IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

RHODE ISLAND COALITION AGAINST DOMESTIC VIOLENCE, *et al.* *Plaintiffs*, v. TODD BLANCHE, in his official capacity as Acting Attorney General, *et al.*, *Defendants*.	Case No. 1:25-cv-00279-MRD-PAS

PLAINTIFFS' COMBINED REPLY IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT AND OPPOSITION TO DEFENDANTS' CROSS-MOTION FOR SUMMARY JUDGMENT

TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

INTRODUCTION 1

I. Plaintiffs Have Standing for All Their Claims 2

II. Plaintiffs Are Entitled to Summary Judgment on Their APA Claims 4

A. The New Conditions are reviewable under the APA 4

1. The New Conditions are final agency action 4

2. The New Conditions are not committed to agency discretion by law 6

B. The New Conditions are arbitrary and capricious 8

1. The OVW Out-of-Scope Conditions are arbitrary and capricious 8

2. The OVW and OJP Anti-DEI Certifications are arbitrary and capricious 13

3. The OJP Immigration Condition is arbitrary and capricious 13

C. The New Conditions exceed Defendants' statutory authority 14

1. Defendants lack authority to impose the OVW Out-of-Scope Conditions. 15

2. Defendants lack authority to impose the OVW and OJP Anti-DEI Certifications 16

3. Defendants lack authority to impose the OJP Immigration Condition 17

D. Many of the New Conditions are contrary to law 18

III. Plaintiffs Are Entitled to Summary Judgment on Their Constitutional Claims 21

A. The New Conditions violate the Spending Clause and other constitutional provisions safeguarding the separation of powers 21

B. The Anti-DEI Certifications and OVW "Gender Ideology" Condition violate the First Amendment 22

C. The New Conditions are unconstitutionally vague 25

D. The New Conditions are ultra vires 28

IV. Plaintiffs Are Entitled to Vacatur and a Permanent Injunction 29

A. Defendants do not dispute that vacatur is an appropriate remedy 29

B. The Court should also enter a permanent injunction 29

1. Permanent injunctive relief is warranted 29

2. To assure complete relief to Plaintiffs and their members, the permanent injunction should apply to "substantially similar" conditions and all grantees 30

CONCLUSION 33

TABLE OF AUTHORITIES

CASES

Agency for Int'l Dev. v. All. for Open Soc'y Int'l, Inc.,
570 U.S. 205 (2013) 22, 24

Am. Fed'n of Teachers v. Dep't of Educ.,
796 F. Supp. 3d 66 (D. Md. 2025) 4

Animal Legal Def. Fund, Inc. v. Glickman,
154 F.3d 426 (D.C. Cir. 1998) 3

Bd. of Regents of State Colls. v. Roth,
408 U.S. 564 (1972) 26

Becerra v. Sessions,
284 F. Supp. 3d 1015 (N.D. Cal. 2018) 6

Bennett v. Spear,
520 U.S. 154 (1997) 4

Bost v. Ill. State Bd. of Elections,
146 S. Ct. 513 (2026) 3

Cent. Maine Power Co. v. Maine Comm'n on Governmental Ethics & Election Pracs.,
144 F.4th 9 (1st Cir. 2025) 23

Chi. Women in Trades v. Trump,
778 F. Supp. 3d 959 (N.D. Ill. 2025) 17

Citizens Alert Regarding Env't v. EPA,
102 F. App'x 167 (D.C. Cir. 2004) 5

City & Cnty. of S.F. v. Sessions,
349 F. Supp. 3d 924 (N.D. Cal. 2018) 5

City & Cnty. of S.F. v. Trump,
897 F.3d 1225 (9th Cir. 2018) 27

City of Chi. v. Sessions,
321 F. Supp. 3d 855 (N.D. Ill. 2018) 6

City of Chicago v. U.S. Dep't of Homeland Security,
815 F. Supp. 3d 727 (N.D. Ill. 2025) 22

City of Fresno v. Turner,
No. 25-cv-7070, 2025 WL 2721390 (N.D. Cal. 2025) 4, 17

City of Los Angeles v. Patel,
576 U.S. 409 (2015) 23, 25

City of Los Angeles v. Sessions,
No. 18-cv-7347, 2019 WL 1957966 (C.D. Cal. Feb. 15, 2019) 32

City of Phila. v. Sessions,
309 F. Supp. 3d 271 (E.D. Pa. 2018) 5

City of Providence v. Barr,
954 F.3d 23 (1st Cir. 2020) 18

Const. Party of Pa. v. Aichele,
757 F.3d 347 (3d Cir. 2014) 3

Dalton v. Specter,
511 U.S. 462 (1994) 21, 24

Dep't of Comm. v. New York,
588 U.S. 752 (2019) 6, 8

Diamond Alternative Energy, LLC v. EPA,
606 U.S. 100 (2025) 3

FCC v. Fox Television Stations, Inc.,
556 U.S. 502 (2009) 9, 13

FTC v. Colgate-Palmolive Co.,
380 U.S. 374 (1965) 31

FTC v. Pukke,
53 F.4th 80 (4th Cir. 2022) 31

Furtado v. Oberg,
949 F.3d 56 (1st Cir. 2020) 18, 25

Grayned v. City of Rockford,
408 U.S. 104 (1972) 27

Karst Envt'l Educ. & Prot., Inc. v. U.S. EPA,
403 F. Supp. 2d 74 (D.D.C. 2005) 5

La. Pub. Serv. Comm'n v. FCC,
476 U.S. 355 (1986) 14

Martin Luther King, Jr. Cnty. v. Turner,
785 F. Supp. 3d 863 (W.D. Wash. 2025) 13

Melone v. Coit,
100 F.4th 21 (1st Cir. 2024) 9

Nat'l Ass'n of Diversity Officers in Higher Education v. Trump,
167 F.4th 86 (4th Cir. 2026) 24

NEA v. Finley,
524 U.S. 569 (1998) 25

Nuclear Regul. Comm'n. v. Texas,
605 U.S. 665 (2025) 28

Planned Parenthood of Wis. v. Azar,
316 F. Supp. 3d 291 (D.D.C. 2018) 5

R.I. Coal. Against Domestic Violence v. Bondi,
794 F. Supp. 3d 58 (D.R.I. 2025) 30

R.I. Coalition Against Domestic Violence v. Kennedy,
812 F. Supp. 3d 180 (D.R.I. 2025) 4, 26, 28, 30

Rattlesnake Coal. v. EPA,
509 F.3d 1095 (9th Cir. 2007) 5

Rhea Lana, Inc. v. United States,
925 F.3d 521 (D.C. Cir. 2019) 9

S.F. AIDS Found. v. Trump,
786 F. Supp. 3d 1184 (N.D. Cal. 2025) 16, 25

Sierra Club v. Trump,
929 F.3d 670 (9th Cir. 2019) 22

Simon v. E. Ky. Welfare Rights Org.,
426 U.S. 26 (1976) 2

Susan B. Anthony List v. Driehaus,
573 U.S. 149 (2014) 26

Tel. & Data Sys., Inc. v. FCC,
19 F.3d 42 (D.C. Cir. 1994) 2

Trump v. CASA, Inc.,
606 U.S. 831 (2025) 32

United States v. Orleans,
425 U.S. 807 (1976) 14, 15

Wash. State Ass'n of Head Start and Early Childhood Assistance and Educ. Program v. Kennedy,
820 F. Supp. 3d 1178 (W.D. Wash. 2026) 4

Webster v. Doe,
486 U.S. 592 (1988) 7, 8

US CONSTITUTIONAL PROVISIONS

U.S. Const. amend. I 22

FEDERAL STATUTES

5 U.S.C. § 701 6

34 U.S.C. § 10441 .... 7, 15

34 U.S.C. § 10444 15

34 U.S.C. § 10446 7

34 U.S.C. § 10450 7

34 U.S.C. § 10454 7

34 U.S.C. § 12464 7

34 U.S.C. § 12291 .... 7, 19, 20

34 U.S.C. § 12421 15

34 U.S.C. § 20101 .... 7, 8

34 U.S.C. § 20103 .... 7, 8

34 U.S.C. § 20111 17

34 U.S.C. § 20121 7

34 U.S.C. § 20123 7

34 U.S.C. § 20124 7

34 U.S.C. § 20127 .... 18, 20

FEDERAL REGULATIONS

2 C.F.R. § 200.303 20

LEGISLATIVE MATERIALS

S. Rep. No. 103-138 (1993) 12, 16

INTRODUCTION

The Department of Justice's Office on Violence Against Women (OVW) and Office of Justice Programs (OJP) seek to subject non-profit organizations to unlawful funding conditions that threaten those organizations' lifesaving work helping survivors of domestic violence and sexual assault. Those new conditions are unlawful under the APA and the Constitution, and Plaintiffs are entitled to summary judgment.

Defendants offer no persuasive reason to deny Plaintiffs' motion for summary judgment or to grant Defendants' own motion. At bottom, Defendants contend that the New Conditions just reiterate preexisting requirements or lawfully effectuate Defendants' policy priorities. That is deeply mistaken. While certain new conditions require organizations to certify their compliance with existing nondiscrimination laws, those conditions do far more than just reiterate existing requirements. The new certifications expressly deter diversity, equity, and inclusion activities and force grantees to concede materiality under the False Claims Act (FCA)—all part of Defendants' campaign to use the False Claims Act as a "weapon" in effectuating their ideological views.

And while Defendants have sought to use those conditions and others to implement their own ideological and policy priorities, that is impermissible several times over. No statute grants Defendants the authority to leverage these funds to advance their own policy priorities. Some conditions outright conflict with governing laws. And Defendants have utterly failed to satisfy the Administrative Procedure Act's requirements for reasoned decisionmaking: They failed to consider the real-world impacts of the conditions, failed to consider how they will make the grant programs less effective, and in many instances even failed to offer any contemporaneous explanation at all. The New Conditions exceed constitutional limits as well.

The Court should deny Defendants' motion for summary judgment, grant summary judgment to the Plaintiffs, vacate the challenged conditions, and permanently enjoin Defendants from imposing or enforcing them (or allowing direct recipients to impose or enforce them) in their current or any substantially similar form. That relief will allow Plaintiffs and their members to continue their critical, lifesaving work in accordance with Congress's directives.

I. Plaintiffs Have Standing for All Their Claims

At the outset, Plaintiffs have standing to assert all their claims. This is generally not in dispute, and Defendants contest only Plaintiffs' standing to challenge the OJP Anti-DEI Certification in the context of Victims of Crime Act (VOCA) Victim Assistance grants. *See* Defs.' Combined Cross-Mot. for Summ. J. and Opp'n to Pls.' Mot. for Summ. J. (Defs.' Mem.) at 20–21 (Dkt. No. 72). For those grants, Defendants have made awards to states, and the states have then made sub-awards to Plaintiffs or their members and, in some instances, required those subrecipients to agree to the OJP Anti-DEI Certification. Declaration of Kirsten Faisal ¶¶ 18, 24, 30 (Dkt. No. 71-8); Declaration of Kelsen Young ¶ 17 (Dkt. No. 71-26). Contrary to Defendants' contention (at 21), the fact that the state recipients choose whether to impose that certification does not defeat the "traceability and redressability" required for standing—because Defendants are the ones allowing the states to impose that unlawful certification in connection with DOJ awards.

First, traceability is satisfied. The direct state recipients cannot just do whatever they want with the grants from DOJ; rather, they can impose conditions when sub-awarding these DOJ grants only if Defendants authorize them to do so. Plaintiffs' and their members' injury—being subject to an anti-DEI certification that exposes them to False Claims Act risk—is traceable to the fact that Defendants have authorized direct recipients to impose the certifications on subrecipients. As courts have explained, it "is clear" that a third party's "conduct is fairly traceable to the [government] action contested in the suit if that [government] action authorized the conduct." *Tel. & Data Sys., Inc. v. FCC*, 19 F.3d 42, 47 (D.C. Cir. 1994) (citing *Simon v. E. Ky. Welfare Rights Org.*, 426 U.S. 26, 45 n.25 (1976)); *accord, e.g.*, *Const. Party of Pa. v. Aichele*, 757 F.3d 347, 366 (3d Cir. 2014). That is the situation here.

Second, redressability is also satisfied. Indeed, "causation and redressability[] are usually flip sides of the same coin." *Diamond Alternative Energy, LLC v. EPA*, 606 U.S. 100, 111 (2025) (cleaned up). A favorable decision would bar Defendants from continuing to authorize direct recipients to impose the OJP Anti-DEI Certification on subrecipients—meaning it would no longer be permissible for the direct recipients to impose it. In such circumstances—where "the relief sought … would make the injurious conduct of third parties" (here, the direct recipients' imposition of the anti-DEI certification on subrecipients) "illegal"—the redressability requirement for standing is satisfied. *Animal Legal Def. Fund, Inc. v. Glickman*, 154 F.3d 426, 441 (D.C. Cir. 1998) (cleaned up). Defendants miss this key point in contending (at 21) that "enjoin[ing] the federal certification" would not redress Plaintiffs' injury because the direct recipients still "could independently require similar assurances from their subrecipients." The direct recipients could not because Plaintiffs seek an injunction barring Defendants from continuing to permit direct recipients to impose the certification on subrecipients. Defendants cannot credibly deny that that would redress Plaintiffs' injury.

In any event, Defendants do not dispute that at least some Plaintiffs directly receive OJP grants and thus have standing to challenge the OJP Anti-DEI Certification. *See* Defs.' Mem. at 20. That alone is enough to consider Plaintiffs' challenge, as it is well established that "only one plaintiff needs standing for a suit to proceed." *Bost v. Ill. State Bd. of Elections*, 146 S. Ct. 513, 519 n.3 (2026).

II. Plaintiffs Are Entitled to Summary Judgment on Their APA Claims

Plaintiffs are entitled to summary judgment on their APA claims. Contrary to Defendants' contentions (at 22–24), the New Conditions are reviewable under the APA because they constitute final agency action and are not committed to agency discretion by law. And the Conditions must be set aside for multiple different reasons—they are arbitrary and capricious; they exceed Defendants' statutory authority; and many are contrary to law.

A. The New Conditions are reviewable under the APA

1. The New Conditions are final agency action

As this Court (and others) correctly held before, grant conditions constitute final agency action. *See* Order at 13–15 (Dkt. No. 34); Order at 7 (Dkt. No 63); *see also, e.g.*, *R.I. Coalition Against Domestic Violence (RICADV) v. Kennedy*, 812 F. Supp. 3d 180, 191–92 (D.R.I. 2025), *appeal dismissed*, No. 25-2229; *Am. Fed'n of Teachers v. Dep't of Educ.*, 796 F. Supp. 3d 66, 102 (D. Md. 2025), *appeal dismissed*, No. 25-2228; *Wash. State Ass'n of Head Start and Early Childhood Assistance & Educ. Program v. Kennedy*, 820 F. Supp. 3d 1178, 1193 (W.D. Wash. 2026); *City of Fresno v. Turner*, No. 25-cv-7070, 2025 WL 2721390, at *1, *7 (N.D. Cal. 2025), *appeal pending*, No. 25-7378. The New Conditions at issue here are no different. Indeed, Defendants appear to concede that the OJP Immigration Condition is final agency action, and contest only whether the OVW Out-of-Scope Conditions and OVW and OJP Anti-DEI Certifications Requirements qualify. *See* Defs.' Mem. at 23. All New Conditions qualify as final agency action subject to APA review.

For agency action to be "final," it must (1) "mark the consummation of the agency's decisionmaking process" and (2) "be one by which rights or obligations have been determined, or from which legal consequences will flow." *Bennett v. Spear*, 520 U.S. 154, 177–78 (1997) (cleaned up). The New Conditions satisfy both requirements. OVW and OJP have made final decisions to impose the conditions, and those conditions determine rights or obligations and impose legal consequences by requiring applicants to agree to the conditions to apply for awards and by restraining what grantees can do once they receive an award.

Defendants' objections are unavailing. As for the OVW Out-of-Scope Conditions, Defendants err in contending (at 22) that there is no "final action in the grant context until [the agency] … decides whether to award or disburse funds." The cases they cite do not support that proposition—and do not deal with grant conditions at all. Three deal with environmental challenges to projects that agencies had not yet decided to fund.[1] And Defendants' final cited case (in addition to being vacated) held only that "criteria by which applications will be evaluated" at an "intermediate stage" were not final agency action where they did "not bind" the final decisionmaker. *Planned Parenthood of Wis. v. Azar*, 316 F. Supp. 3d 291, 300 (D.D.C. 2018), *vacated as moot*, 942 F.3d 512 (D.C. Cir. 2019).

By contrast to Defendants' inapposite cases, court after court has held that *conditions* on federal grants are final agency action, even where the agency has not yet awarded the funds. *City & Cnty. of S.F. v. Sessions*, 349 F. Supp. 3d 924, 961–62 (N.D. Cal. 2018) (concluding that a requirement that grantees "certify[] compliance" with a law was final agency action even though the agency had "not yet granted or denied" the challenger's "application or imposed the

[1] *See Rattlesnake Coal. v. EPA*, 509 F.3d 1095, 1104 (9th Cir. 2007) (concluding that there was no reviewable "final agency action until [the agency] completes its review of the grant application and decides to disburse the appropriated funds" because before then, the agency could complete required environmental assessments); *Citizens Alert Regarding Env't v. EPA*, 102 F. App'x 167, 168 (D.C. Cir. 2004) (concluding that agency's "supposed failure to review the environmental impact of [a] sewer project" was not "final agency action" where agency had "not yet made a final determination as to the environmental effects of the sewer line, or on whether to award the grant"); *Karst Envt'l Educ. & Prot., Inc. v. U.S. EPA*, 403 F. Supp. 2d 74, 81 (D.D.C. 2005) (finding no final agency action where the agency had "not yet decided whether to award the grant" to a project alleged to violate environmental laws).

conditions on the grant"), *vacated in part on other grounds*, *City & Cnty. of S.F. v. Barr*, 965 F.3d 753 (9th Cir. 2020); *City of Phila. v. Sessions*, 309 F. Supp. 3d 271, 279–80 (E.D. Pa. 2018) (concluding that a policy of requiring grantees to comply with challenged conditions was final agency action even though no award had "yet been granted" to the plaintiff); *City of Chi. v. Sessions*, 321 F. Supp. 3d 855, 865–66 (N.D. Ill. 2018) (concluding that the "decision to attach the Conditions to the grant" was final agency action even though the agency had "not yet reached a final decision on whether to award [the plaintiff] funds"); *Becerra v. Sessions*, 284 F. Supp. 3d 1015, 1032 (N.D. Cal. 2018) (concluding that certification requirements for a grant were final agency action because "[r]eceipt of the grants [wa]s conditioned on certifying compliance," even though the plaintiffs had not yet been awarded funding).

Defendants' likewise miss the mark in contending (at 23) that the OVW and OJP Anti-DEI Certification Requirements are not final agency action "because they reiterate existing legal obligations." Those conditions do more than that: They require grantees to make a certification. That requirement to certify affects organizations' rights and obligations, as they cannot obtain grant funds without making the certification. The certification also produces legal consequences because it requires Plaintiffs to concede materiality upfront—and, as this Court held before, requiring Plaintiffs "to subject themselves to potential criminal and civil liability under the False Claims Act" produces "legal consequences" that renders the conditions final agency action. Order at 14–15 (Dkt. No. 34).

2. The New Conditions are not committed to agency discretion by law

Defendants also err in contending that the New Conditions are "committed to agency discretion by law" and thus unreviewable under 5 U.S.C. § 701(a)(2). The Supreme Court has emphasized that this exception to the strong "presumption of judicial review" under the APA is "quite narrow[]." *Dep't of Comm. v. New York*, 588 U.S. 752, 771–72 (2019) (cleaned up). An agency action is "committed to agency discretion by law" only where "the statute is drawn so that a court would have no meaningful standard against which to judge the agency's exercise of discretion." *Webster v. Doe*, 486 U.S. 592, 599–600 (1988) (cleaned up). Only in those "rare instances" in which there is "no law to apply" is it appropriate to deem an action "committed to agency discretion" and therefore unreviewable. *Id.* at 599 (cleaned up).

As this Court already preliminarily determined, this case presents no such rare instance. Order at 16 (Dkt. No. 34); Order at 7–8 (Dkt. No. 63). The governing statutes "provide meaningful internal standards by which to judge" Defendants' imposition of the New Conditions." Order at 16 (Dkt. No. 34). The Violence Against Women Act (VAWA), for example, sets forth the OVW grants' purposes, eligibility criteria, certification requirements, and other grant conditions, among other things. *See, e.g.*, 34 U.S.C. §§ 10441(b)–(c); 12291(b)(2), (5), (9), (10), (15)(C); 20121(b), (d); 20123(b), (h); 20124(c), (g); 10450(a); 10446(c); 10454(3); 12464(d)(3), (6). Defendants point out (at 23) that the statute grants the OVW Director authority to "manage[] … grant programs" and to "establish[] such rules, regulations, guidelines, and procedures as are necessary to carry out any function of the Office," but that does not give the Director unreviewable discretion because the functions of the Office are detailed by the statute. *See id.* § 10444(5)(B), (8).

Similarly, the Victims of Crime Act specifies the purposes of the grants and the amounts that should be allocated, and, for some programs, imposes specific eligibility and certification requirements. *Id.* §§ 20101(d)(4)(C), 20103(a)–(c). In granting OVC authority to administer the programs, the statutes cabin OVC's discretion. OVC can require recipients to provide assurances, but only if "related to the purposes" of the statute creating the grant program. *Id.*

§ 20103(a)(2)(D). And OVC can impose "terms and conditions" on certain grants, but only if "consistent with" the section authorizing the grants. *Id.* § 20111(c)(3).

Finally, the PAWS Act establishes eligibility criteria for grantees and victims, authorizes particular types of assistance, requires certain assurances and other conditions, and otherwise restrains what grantees can do. *Id.* § 20127(1)-(5), (9). The statute authorizes the agency to require applicants to make assurances, but only as the agency "determines to be necessary to ensure compliance by the entity with the requirements of" the statute. *Id.* § 20127(2)(A)(ii). If Defendants mean to suggest (at 24) that the statute commits matters to their unreviewable discretion by referring to what the agency "determines" to be necessary, they are mistaken. The Supreme Court has held that courts could review agency action taken pursuant to a statute that similarly refers to what the agency "determine[s]." *See Dep't of Comm.*, 588 U.S. at 771–73 (holding that Court could review agency action taken pursuant to statutory provision authorizing agency to take census "'in such form and content as [the Secretary] may determine'").

These statutes all provide "law to apply" and demonstrate that imposing grant conditions is not committed to Defendants' unreviewable discretion. *See Webster*, 486 U.S. at 599.

B. The New Conditions are arbitrary and capricious

1. The OVW Out-of-Scope Conditions are arbitrary and capricious

OVW's Out-of-Scope Conditions are arbitrary and capricious for multiple independent reasons.

Failure to Explain. To start, Defendants offer no persuasive response to Plaintiffs' showing that the contemporaneous record only even mentions two of the nine Out-of-Scope Conditions—the "Gender Ideology" and Immigration Enforcement Conditions—and that Defendants failed to provide any explanation at all for the other seven. *See* OVW AR at 63–64. Defendants point to discussion of those other seven conditions contained in internal "talking points regarding the NOFOs" and a declaration prepared to respond to this litigation. Defs.' Mem. at 26–27. But OVW prepared those documents *after* it adopted the Out-of-Scope Conditions. *See* OVW AR at 87–89, 278–302. "It is a bedrock principle of administrative law that a court reviewing agency action may consider only the agency's explanation given at the time the relevant decision was made, as opposed to its post hoc rationale." *Melone v. Coit*, 100 F.4th 21, 31 (1st Cir. 2024). While Defendants claim (at 26–27) that the Court can consider the after-the-fact explanations because they "accurately reflect" the agency's "contemporaneous reasoning," that is mistaken. As the very case that Defendants rely on makes clear, a court will not consider post hoc materials "when the contemporaneous record discloses no basis for the agency determination whatsoever." *Rhea Lana, Inc. v. United States*, 925 F.3d 521, 524 (D.C. Cir. 2019) (cleaned up). Here, the contemporaneous record "discloses no basis … whatsoever," *id.*, for any OVW Out-of-Scope Condition other than the "Gender Ideology" and Immigration Enforcement Conditions, so Defendants cannot rely on after-the-fact records to justify them.

Failure to Acknowledge Change. Defendants also failed to "display awareness that [they were] changing position" or to provide "good reasons" for the change. *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009). Instead, Defendants suggest that the conditions by and large just underscore what OVW has always disallowed. *See, e.g.*, Defs.' Mem. at 26 (emphasizing that OVW "has long used NOFOs to tell applicants what activities fall outside a grant program's scope"). But the Conditions are undoubtedly new, and undoubtedly cause a new chill on grantees—facts that Defendants improperly failed to acknowledge and consider. *See Fox*, 556 U.S. at 515.

Failure to Consider Important Aspects of the Problem. In adopting the Out-of-Scope Conditions, Defendants also failed to consider multiple important aspects of the problem, including the impact the conditions would have on programs' effectiveness, the difficulty grantees would face in understanding what is required (particularly in light of conflicting statutory mandates), the chilling effect the conditions and their accompanying threat of False Claims Act liability would have on legitimate activities, and grantees' and victims' reliance interests in ongoing services under programs with understandable terms. *See* Pls.' Mem. in Supp. of Pls.' Mot. for Summ. J. (Pls.' Mem.) at 32–35 (Dkt No. 71-1). Defendants' response only confirms that they failed to consider these matters. Indeed, Defendants did not consider these matters even in the post hoc rationalizations on which Defendants improperly seek to rely.

● *Anti-DEI Condition.* Defendants did not consider how grantees would struggle to understand the condition barring grantees from "[p]romoting or facilitating discriminatory programs or ideology, including illegal DEI and 'diversity, equity, inclusion, and accessibility' programs that do not advance the policy of equal dignity and respect." Defendants emphasize (at 27) that they made clear that grantees can still provide "culturally specific services" and "disability programs," OVW AR at 212, but that hardly clears up the confusion. Defendants say (at 5) that they add "out-of-scope" conditions "in response to noncompliant activities commonly proposed by applicants." But they never identify what "common[]" activities are now forbidden—and failed to consider how the addition of this condition would confuse grantees and chill them from engaging in entirely appropriate diversity, equity, and inclusion activities.

● *"Gender Ideology" Condition.* Defendants did not consider how the condition barring grantees from "[i]nculcating or promoting gender ideology" would appear to bar grantees from recognizing transgender and nonbinary individuals' identities and thereby make it difficult or impossible to effectively serve those individuals. Defendants emphasize (at 28) that grantees can still serve all eligible victims, but that is beside the point. Even if grantees can serve all victims, the condition still forces grantees to use the wrong pronouns and to make victims use spaces and participate in programs that do not align with their gender identities. That erodes necessary trust and undercuts the programs' effectiveness—important consequences that Defendants failed to consider.

● *Immigration Enforcement Condition.* Defendants did not consider how the restriction on "[p]romoting or facilitating the violation of federal immigration law" would deter grantees from helping undocumented immigrants at all. Again, Defendants failed to consider how the conditions would confuse grantees—particularly given that out-of-scope conditions are meant to clarify when "commonly proposed" activities are in fact forbidden. *See* Defs.' Mem. at 5. Surely grantees were not proposing to use OVW grants to help people violate immigration law, so it is hard to see what the point of this condition is, if not to chill grantees from aiding immigrant victims at all. Defendants did not consider this.

● *Immigration Priority Condition.* Defendants did not consider how the prohibition on "[i]nitiatives that prioritize illegal aliens over U.S. citizens and legal residents" would cause confusion and deter grantees from serving undocumented immigrants at all, for fear that they would be accused of "prioritizing" them. Yet again, it is unclear what problem Defendants were attempting to correct here—and Defendants did not consider the chilling effect this would have.

● *Law Enforcement and Immigration Enforcement Condition.* Defendants did not consider how the prohibition on "[d]iscouraging collaboration with law enforcement" and on "limit[ing]" law enforcement's role could chill grantees from informing victims about potential downsides of involving law enforcement—such as, in some jurisdictions, exposing the victim to risk of prosecution if they later returned to live with their abuser. *See* Declaration of Kirsten Faisal ¶ 40 (Dkt. No. 71-8). Defendants emphasize (at 29) that law enforcement is important but nowhere show that they considered the impacts of requiring collaboration no matter the circumstances.

● *Systemic Framing Condition.* Defendants did not consider how the prohibition on "[a]ctivities that frame domestic violence or sexual assault as systemic social justice issues rather than criminal offenses" would chill grantees from offering trainings that address the systemic factors that cause domestic violence and sexual assault—factors that Congress itself recognized in enacting VAWA. *See* S. Rep. No. 103-138, at 37 (1993). Defendants contend (at 29) that they reasonably required grantees to use funds to "combat[] violent crime and enhance[] services for victims," but failed to consider how addressing systemic causes serves those very goals.

● *Awareness Campaigns Condition.* Defendants failed to consider how the prohibition on "[a]wareness campaigns or media that do not lead to tangible improvements in prevention, victim safety, or offender accountability" would cause confusion and fear about engaging in awareness campaigns at all. OVW's post hoc talking points recognize that it "might not always be simple or obvious" how to satisfy this condition, yet OVW warns that it may not provide "explicit guidance" and that recipients must figure it out "on their own." OVW AR at 89. Defendants did not consider the impact this massive uncertainty would have on grantees.

● *E.O. Condition.* Defendants also failed to consider the tremendous chilling effect that the prohibition on "[a]ny activity or program that unlawfully violates an Executive Order" would have. Defendants claim (at 30) that this condition reasonably just bars "unlawful activities." But it is very unclear what activities would "unlawfully violate" an executive order—particularly given that executive orders generally impose requirements on federal agencies, not the public. And Defendants did not consider that this condition would confuse grantees and deter them from engaging in legal activities that executive orders disfavor, like DEI programming, recognizing transgender people's existence, or providing support and services to immigrant victims of crime.

2. The OVW and OJP Anti-DEI Certifications are arbitrary and capricious

OVW's and OJP's Anti-DEI Certification Requirements are also arbitrary and capricious. Defendants' chief defense is that these requirements "are not new." Defs.' Mem. at 31. But that is mistaken. The Anti-DEI Certification Requirements are new in that they (1) for the first time require grantees *to concede* materiality and (2) for the first time single out "diversity, equity, and inclusion" programs as potentially violating nondiscrimination laws. *See* OVW AR at 124–25; OJP AR-1 at 61. Defendants' failure to "display awareness" that these new certifications represent a "chang[e]" is reason enough alone to set them aside as arbitrary and capricious. *See Fox*, 556 U.S. at 515.

Defendants, moreover, failed to explain these new certifications at all—another independent reason they are arbitrary and capricious. *See Martin Luther King, Jr. Cnty. v. Turner*, 785 F. Supp. 3d 863, 888 (W.D. Wash. 2025), *appeal pending*, No. 25-3664 (finding that the government's adoption of new funding conditions, without any explanation, was arbitrary and capricious). And they also failed to consider the chilling effect these certifications, and the accompanying threat of FCA liability, would have on lawful diversity, equity, and inclusion activity—a point that Defendants do not refute. *See* Defs.' Mem. at 31–34.

3. The OJP Immigration Condition is arbitrary and capricious

Defendants offer no response to the chief reason why the OJP Immigration Condition is arbitrary and capricious: Defendants failed to consider that it will be difficult or impossible for grantees to reliably determine whether a victim seeking services is a "removable alien" or "unlawfully present"—or that this difficulty will mean that, to avoid violating the Condition, grantees will be forced to turn away victims in need, including those who are lawfully in the

United States or even U.S. citizens. *See* Pls.' Mem. at 37–40. Defendants claim (at 34) they just made a "permissible allocation judgment" to direct limited funds toward U.S. citizens and lawful residents. But that is no answer because Defendants failed to consider how the requirement would force grantees to turn away even citizens and lawful residents who cannot prove their status and how the requirement would make services less effective overall. Defendants also emphasize (at 35) that the Condition "does not prescribe any particular verification process," but that does not help. The problem is that in many cases it is difficult or impossible for grantees to determine a victim's immigration status through any process. Defendants never considered this, and that alone renders their imposition of this Condition arbitrary and capricious.

C. The New Conditions exceed Defendants' statutory authority

Defendants all but completely ignore Plaintiffs' claim that the New Conditions exceed Defendants' statutory authority. Defendants instead claim that Plaintiffs point to no "statutory provisions that *prohibit* the agencies" from imposing these conditions. Defs.' Mem. at 36 (emphasis added). That confuses the issues and conflates whether the conditions exceed Defendants' authority with whether they are contrary to law. An agency can exceed its statutory authority even if no statute affirmatively prohibits it from taking the relevant action. That is because an agency "literally has no power to act ... unless and until Congress confers power upon it." *La. Pub. Serv. Comm'n v. FCC*, 476 U.S. 355, 374 (1986). The relevant question thus is whether Congress has granted the agency authority—and Defendants fail to show that any statute grants them authority to impose the New Conditions.

At the outset, Defendants misleadingly suggest that the Supreme Court held that the government has plenary authority to impose, by contract, "specific and precise conditions to implement federal objectives." Defs.' Mem. at 36 (citing *United States v. Orleans*, 425 U.S. 807, 816 (1976)). Not so. The case Defendants cite in no way suggests that federal agencies can impose conditions on grants absent relevant statutory authority—and instead addresses the entirely separate issue of whether certain federal funding recipients qualify as federal agencies for purposes of Federal Tort Claims Act liability. *Orleans*, 425 U.S. at 809, 816. Agencies cannot impose conditions beyond their grant of authority, and no statute grants Defendants the authority to impose the conditions at issue here.

1. Defendants lack authority to impose the OVW Out-of-Scope Conditions.

Defendants point to a single provision that they claim authorizes the OVW Out-of-Scope Conditions, but the cited provision does not supply the authority Defendants need.[2] In particular, Defendants point to 34 U.S.C. § 10444(8), which authorizes the OVW Director to "establish[] such rules, regulations, guidelines, and procedures as are necessary to carry out any function of the Office." The "function[s] of the Office" include "management of grant programs" and "the award … of grants." *Id.* § 10444(5)(B)–(C), (8). But the Out-of-Scope Conditions are not "necessary to carry out" those functions. *Congress* defined what activities grantees could permissibly engage in with grant funds. *See, e.g.*, *id.* § 10441(b) (setting forth "[p]urposes for which grants may be used"); *id.* § 12421(1) (establishing "[m]andatory" and "[p]ermissible activities" for particular grants). And Congress did not authorize OVW to impose restrictions forbidding grantees from undertaking activities that Congress allowed. Imposing such additional restrictions is not "necessary to carry out" the grant programs and thus does not fall within the grant of authority on which Defendants rely. *See id.* § 10444(8).

To the extent that Defendants mean to suggest that the Out-of-Scope Conditions do not impose new restrictions and instead just reiterate existing restrictions, that is mistaken as well.

[2] As previously noted, Plaintiffs do not argue that Defendants lack authority to impose the Awareness Campaigns Condition. *See* Pls.' Mem. at 45 n.17. But Defendants lack authority to impose all the other conditions (and the Awareness Campaigns Condition is arbitrary and capricious for the reasons explained above, *supra* Section II.B.1).

The Anti-DEI Condition's prohibition on "discriminatory programs or ideology" and DEIA programs "that do not advance the policy of equal dignity and respect" go beyond merely proscribing activity that is otherwise illegal. The "Gender Ideology" Condition's prohibition on "promoting gender ideology" does not echo any existing restriction and instead bars grantees from even so much as recognizing individuals' gender identity, such as by using preferred pronouns. *See* Pls.' Mem. at 16; *see also S.F. AIDS Found. v. Trump*, 786 F. Supp. 3d 1184, 1219 (N.D. Cal. 2025) (government representing that analogous provision would bar a grantee from "refer[ring] to clients by a pronoun other than Mr., Ms., Mrs., or Miss"). The Law Enforcement and Immigration Enforcement Condition's prohibition on limiting the role of law enforcement strays beyond VAWA's general support for law enforcement responses and precludes grantees from responding appropriately in situations where involving law enforcement could harm victims. The conditions barring grantees from "[p]romoting … the violation of federal immigration law" and "prioritiz[ing] illegal aliens" aim to stop grantees from serving undocumented immigrants altogether. The E.O. Condition purports to require grantees to follow executive orders, which are plainly not limited to reiterating existing requirements. And nothing in VAWA bars grantees from "fram[ing] domestic violence or sexual assault as systemic social justice issues rather than criminal offenses"—indeed, that would make no sense given that, in enacting VAWA, Congress recognized and aimed to address the systemic social justice causes of violence against women. *See* S. Rep. No. 103-138, at 38, 42.

2. Defendants lack authority to impose the OVW and OJP Anti-DEI Certifications

Defendants miss the mark in attempting to defend the Anti-DEI Certifications as exercises of Defendants' ordinary authority to require certifications of compliance with non-discrimination laws. *See* Defs.' Mem. at 41–45. As Plaintiffs have explained, these certifications are far from ordinary in that they (1) require grantees to concede materiality and (2) single out diversity, equity, and inclusion for disfavor. *See* Pls.' Mem. at 46–48. Defendants' attempts to defend the certifications mischaracterize what the certifications actually do.

On the first point, Defendants emphasize (at 41–43) that they can permissibly "[i]dentify[] compliance with a particular term as material." But that ignores that the Certification Requirements go beyond that and require each grantee to certify that it "*agrees* that its compliance … is material" to the government's payment decision for FCA purposes. OVW AR at 124–25; OJP AR-1 at 61 (emphasis added). The certifications thereby attempt to force a concession—and obviate the need for the government or private relator to actually prove up the essential "materiality" element in any later FCA lawsuit. No statute grants Defendants authority to circumvent the FCA's elements in this way.

On the second point, Defendants maintain (at 43) that the certifications merely "not[e] that certain DEI programs may violate nondiscrimination laws." But that strains credulity given the overwhelming campaign by the Administration to eradicate diversity, equity, and inclusion altogether. *See* Pls.' Mem. at 10–15. As other courts have recognized in blocking similar requirements, "the government's view of what is illegal" under antidiscrimination laws "has changed significantly with the new Administration." *Chi. Women in Trades v. Trump*, 778 F. Supp. 3d 959, 984 (N.D. Ill. 2025). Thus, these requirements "go beyond prohibiting violations of federal law as it is currently understood and pose a real risk of curtailing programs that would not be found violative." *City of Fresno*, 2025 WL 2721390, at *11. Defendants offer no response to these points.

3. Defendants lack authority to impose the OJP Immigration Condition

Defendants point to no statute granting them authority to impose the OJP Immigration Condition on the VOCA Victim Services grants or Pet Shelter grants. For the VOCA Victim Services grants, Defendants cite in passing 34 U.S.C. § 20111(c)(3), which authorizes OVC to impose "terms and conditions determined by the Director to be consistent with [§ 20103(c)]," which in turn directs OVC to make grants "for victim services" and related activities. *See* Defs.' Mem. at 36. But as Plaintiffs explained before, the exclusion for "unlawfully present" victims undermines the very purposes of the program by establishing impossible barriers, eroding trust, and deterring citizens and noncitizens from seeking help at all. Pls.' Mem. at 45–46. It is not "consistent with" the requirement to fund victim services to adopt a condition that makes victim services ineffective.

For the Pet Shelter grants, Defendants attempt to rely on 34 U.S.C. § 20127(2)(A)(ii), which authorizes the agency to require applicants to make "such assurances as the [agency] determines to be necessary to ensure compliance by the entity with the requirements of this section." *See* Defs.' Mem. at 45–46. But nothing about the Immigration Condition helps "ensure [the grantee's] compliance" with any requirements of the statute. *See* 34 U.S.C. § 20127(2)(A)(ii). Defendants offer no theory for how it does. That provision does not authorize the Immigration Condition either.

D. Many of the New Conditions are contrary to law

Many of the New Conditions must also be set aside as contrary to law because they outright conflict with applicable statutory provisions.

● *All OVW Conditions on Coalition Grants.* To start, Defendants fail to refute Plaintiffs' argument that the OVW Conditions are all contrary to law as applied to the coalition grants, given that those are formula grants that Congress mandated OVW to distribute to recognized coalitions in specified circumstances. Pls.' Mem. at 48–49; *see also City of Providence v. Barr*, 954 F.3d 23, 34–35 (1st Cir. 2020) (holding that conditions "further[ing DOJ's] own unrelated … priorities" were incompatible with the "formulaic nature" of a formula grant program). Defendants have therefore waived any defense to this claim. *See Furtado v. Oberg*, 949 F.3d 56, 59 (1st Cir. 2020) (holding that courts may treat a party's failure "to respond to a properly raised argument for summary judgment as waiver").

● *OVW "Gender Ideology" Condition.* As Plaintiffs explained, the prohibition on "promoting gender ideology" conflicts with VAWA's prohibition on discrimination in any VAWA-funded program "on the basis of … gender identity." Pls.' Mem. at 49–50 (citing 34 U.S.C. § 12291(b)(13)(A)). Defendants' sole response (at 38) is that the condition does not bar grantees from serving transgender victims, but this misses the point. Even if a grantee serves a transgender victim, it discriminates against that victim to refuse to recognize and respect their gender identity, for example by using "she" to refer to a transgender male. *See* Pls.' Mem. at 49 & n.18. Defendants do not respond to that key point.

● *OVW Anti-DEI Condition*. The prohibition on "discriminatory programs" and DEIA programs "that do not advance the policy of equal dignity and respect" conflicts with the long list of VAWA provisions that promote and even require activities that would be considered diversity, equity, inclusion and that Defendants would likely deem "discriminatory" or otherwise as not advancing (their view of) "equal dignity and respect." *See* Pls.' Mem. at 50–51. Defendants point out (at 37) that the condition states it is "not intended to interfere with" statutorily required activities like "funding for HBCUs, culturally specific services, and disability programs"—but they never explain how grantees are supposed to ascertain what types of DEI activities Defendants will deem to fall on the permissible and impermissible sides of the line.

● *OVW's immigration-related conditions.* Defendants' baldly assert (at 38–39) that OVW's restrictions on "facilitating" immigration violations, "prioritiz[ing] illegal aliens," and "limit[ing] the role of … immigration enforcement" do not actually interfere with the myriad provisions expressly authorizing services for immigrants. But they fail to explain how grantees can safely avoid the FCA and other risks that these conditions create while continuing to serve immigrant victims—particularly given Defendants' own signals that they consider serving undocumented immigrants to "facilitate illegal immigration." *See* Defs.' Mem. at 34 (explaining that OJP prohibited grantees from serving "unlawfully present" victims to "ensure that federal funds … do not … facilitate illegal immigration").

● *OJP Immigration Condition.* As Plaintiffs explained, the OJP Immigration Condition conflicts with a VAWA provision barring the disclosure of client information and with a PAWS Act provision barring "background checks of domestic violence victims" or other "activities that may compromise [their] safety." Pls.' Mem. at 52–53 (citing 34 U.S.C. §§ 12291(b)(2), 20127(2)(B)(i), 20127(4)(A)). Defendants' primary response is that the OJP Immigration Condition does not "expressly require" grantees to disclose client information or to conduct background checks. *See* Defs.' Mem. at 46. But Defendants never say how grantees could possibly comply with the provision—and ensure they are not providing services to "removable aliens" or others who are "unlawfully present"—without disclosing client information to verify status or conducting a background check. (And even those steps would often not suffice.) Defendants obliquely imply that grantees just have to do their best, and point to regulations requiring grant recipients to maintain "effective internal control … that provides reasonable assurance that the recipient … is managing the Federal award in compliance with" the award's conditions. *See* Defs.' Mem. at 46 (citing 2 C.F.R. § 200.303(a)). But those regulations just require grantees to maintain reasonable internal controls; they do not relieve grantees from any liability for noncompliance with grant terms so long as they maintained those internal controls.

Defendants also note (at 47) that the OJP Immigration Condition "includes an explicit savings clause." But the savings clause is decidedly unclear, and states only that the prohibition does not apply where it "would contravene any express requirement of any law … governing or applicable to the award." OJP AR-2 at 82. Defendants notably do not actually say that this savings clause would permit grantees to serve a victim whose status is unverified where verification would require a background check or disclosing client information to third parties.

* * *

In all, Defendants imposed a host of New Conditions to advance ideological goals unrelated to the purposes for which Congress created these grant programs. The New Conditions undermine the programs' effectiveness, find no support in the programs' authorizing statutes, and in some cases outright conflict with statutory requirements. The New Conditions must be set aside under the APA for these multiple independent reasons.

III. Plaintiffs Are Entitled to Summary Judgment on Their Constitutional Claims

The New Conditions also violate the Constitution—providing grounds to invalidate them under the APA and to enjoin them directly under the Constitution. Defendants fail to show otherwise.

A. The New Conditions violate the Spending Clause and other constitutional provisions safeguarding the separation of powers

To start, the New Conditions violate a host of constitutional provisions safeguarding the separation of powers because only Congress has authority to impose conditions on funding—and Congress has not imposed, or authorized Defendants to impose, the conditions here. *See* Pls.' Mem. at 40–42. Defendants' chief response is that, under *Dalton v. Specter*, 511 U.S. 462 (1994), "claims simply alleging that the President has exceeded his statutory authority are not constitutional claims." Defs.' Mem. at 56–57 (quoting *Dalton*, 511 U.S. at 473) (cleaned up). But Plaintiffs do not simply allege that Defendants have exceeded their statutory authority; they also allege that Defendants "acted in violation of constitutional separation of powers principles because [they] lack any background constitutional authority" to impose the conditions—"making Plaintiffs' claim fundamentally a constitutional one." *Sierra Club v. Trump*, 929 F.3d 670, 696–97 (9th Cir. 2019). In circumstances like this, courts have recognized separation-of-powers claims and held that *Dalton* was no barrier. *See id.*; *see also, e.g.*, *City of Chicago v. U.S. Dep't of Homeland Security*, 815 F. Supp. 3d 727, 749–51 (N.D. Ill. 2025).

Defendants also contend (at 57–58) that the Spending Clause in particular "does not apply here at all" because it only "limits Congress's power to legislate" and "has no application to [e]xecutive [b]ranch decisions." That is mistaken and, in any event, misapprehends the nature of Plaintiffs' Spending Clause claim. Plaintiffs do not contend that Defendants imposed conditions that *Congress* would not have power to adopt under the Spending Clause (though the conditions may have that problem as well); Plaintiffs contend that Defendants usurped Congress's Spending Clause power by imposing any conditions at all without any authority delegated from Congress. The cases that Defendants cite (at 57–58) do not speak to that type of Spending Clause claim.

B. The Anti-DEI Certifications and OVW "Gender Ideology" Condition violate the First Amendment

Both OVW and OJP's Anti-DEI Certification and OVW's "Gender Ideology" Condition violate the First Amendment's protection of "the freedom of speech," U.S. Const. amend. I. Defendants' principal argument to the contrary appears to be that, because the government is acting as a funder, its encroachment on recipients' speech is fair game. *See* Defs.' Mem. at 52. But that is not the law. Although the government may attach some conditions to federal funding that "affect the recipient's exercise of its First Amendment rights," there are limits to what the government can do. *Agency for Int'l Dev. v. All. for Open Soc'y Int'l, Inc.*, 570 U.S. 205, 214–15 (2013); *see also* Pls.' Mem. at 43. Both the Anti-DEI Certifications and the

Gender Ideology Condition go well beyond these limits, as Plaintiffs have explained. *See* Pls.' Mem. at 56–61.

Defendants also mistakenly contend that Plaintiffs cannot satisfy the standards for a facial challenge because they cannot show that "a substantial number of the challenged provision[s'] application[s] are unconstitutional, judged in relation to [their] plainly legitimate sweep." Defs.' Mem. at 53 (quoting *Cent. Maine Power Co. v. Maine Comm'n on Governmental Ethics & Election Pracs.*, 144 F.4th 9 (1st Cir. 2025)). Defendants overlook that the Supreme Court has made clear that, in applying the standard for facial challenges, courts should "consider[] only applications of the [challenged action] in which it actually authorizes or prohibits conduct." *City of Los Angeles v. Patel*, 576 U.S. 409, 418 (2015). In other words, the court should disregard applications where the challenged provisions "do no work" because the prohibited or required conduct would be prohibited or required anyway, "irrespective of whether" the challenged provision existed. *See id.* at 418–19. Here, Defendants contend (at 53) that the conditions have "plainly lawful" applications because the Anti-DEI Certifications require compliance with civil rights laws, and the "Gender Ideology" Condition "prevent[s] grant funds from being used to promote ideological views unrelated to victim services." But those are just the sorts of applications that the Court must disregard because the challenged conditions "do no work," *Patel*, 576 U.S. at 419. Even without the challenged conditions, grantees would be barred from violating civil rights laws and from using grant funds on activities unrelated to victim services. And where the challenged provisions *do* "do … work," *id.*, they chill (lawful) DEI activities and speech recognizing transgender people's identities. These applications are unconstitutional—and are not shielded from facial invalidation by any meaningful number of legitimate applications.

Next, Defendants erroneously argue (53–54) that the Anti-DEI Certification Requirements are constitutional because they "do not restrict protected speech" at all and instead just require compliance with nondiscrimination laws. That asks the Court to read the Anti-DEI Certifications in a vacuum. In other words, Defendants urge the Court—and Plaintiffs, under threat of the False Claims Act—to ignore the Department's own clear statements detailing the shift in how it interprets federal antidiscrimination laws. *See* Pls.' Mem. 59–60 (identifying Administration statements and actions demonstrating that shift and citing court decisions recognizing the shift). But, when faced with potential criminal liability, ruinous penalties, and costly investigations, Plaintiffs simply do not have the luxury of ignoring the Department's own promises of how it will interpret the law. Rather, they must take those promises into account in choosing whether to engage in speech in support of diversity, equity, and inclusion, including in their own, non-federally-funded activities. *See, e.g.*, Declaration of Hema Sarang-Sieminski ¶ 33 (Dkt. No. 71-22); Declaration of Dawn Dalton ¶ 28 (Dkt. No. 71-7). That chilling effect violates the First Amendment. Defendants point out (at 33) that another court rejected a First Amendment challenge to a similar anti-DEI certification provision because it required only that grantees "certify compliance with federal antidiscrimination laws." *Nat'l Ass'n of Diversity Officers in Higher Education v. Trump*, 167 F.4th 86, 103 (4th Cir. 2026). That case, however, did not consider the impact of the required concession of materiality. *See generally id.*

Finally, Defendants miss the mark in contending (at 55) that the "Gender Ideology" Condition is constitutional because "it does not bar Plaintiffs from expressing their views about gender outside the federally funded program." As Plaintiffs explained previously (Pls.' Mem. at 58), it does: The condition reaches beyond the scope of the federally funded program because it "demand[s] that funding recipients adopt—as their own—the Government's view on" gender.

See Open Soc'y, 570 U.S. at 218. Defendants do not respond to that point. Nor do they respond to Plaintiffs' points that the "Gender Ideology" Condition is independently unconstitutional for the separate reasons that it (1) impermissibly "aim[s] at the suppression of dangerous ideas," *NEA v. Finley*, 524 U.S. 569, 587 (1998) (cleaned up), and (2) is "entirely untethered to any 'legitimate objective[s]'" of the VAWA programs it burdens, *S.F. AIDS Found.*, 786 F. Supp. 3d at 1218–20. Defendants fail to even address these arguments in their opposition and therefore have waived any defense to them. *See Furtado*, 949 F.3d at 59.

C. The New Conditions are unconstitutionally vague

The New Conditions also impose unclear, ill-defined prohibitions and give Defendants sweeping discretion over their enforcement, in violation of the Fifth Amendment's due process guarantees. Defendants' responses are unavailing.

First, Defendants err in contending (at 48–49) that Plaintiffs cannot prevail on a facial challenge because they cannot show that "no set of circumstances" exists in which the provisions are sufficiently clear. As explained above, in assessing a facial challenge, the Court must look only to those applications where the challenged provisions "do … work." *Patel*, 576 U.S. at 418. And where these provisions have legitimate applications, they do not actually do any work—because other provisions of law already make it unlawful for grantees to violate nondiscrimination laws or to use grant funds on activities unrelated to victim services.

Second, Defendants also miss the mark in claiming that vagueness is acceptable because the grant terms pertain to government funding. *See* Defs.' Mem. at 49 (citing *Finley*, 524 U.S. at 589). It is true that the "decisionmaking criteria" for how to *award* funding need not be as clear as terms in a "regulatory scheme." *Finley*, 524 U.S. at 572, 588–89 (considering a provision requiring an agency to judge grant applications according to "artistic excellence and artistic merit"). That is because "the consequences of imprecision are not constitutionally severe"—the criteria for making awards just affect who receives "selective subsidies." *Id.* at 589. But that is not what is at issue here; the New Conditions are not "decisionmaking criteria." They are conditions that organizations that have received awards must adhere to—under penalty of FCA liability if they do not comply. This goes beyond affecting whether an entity receives funding and imposes more "severe" consequences that trigger vagueness concerns.

Third, Defendants mistakenly contend (at 49–50) that Plaintiffs lack any property and liberty interests protected by the Due Process Clause. The New Conditions, by design, put grantees at risk of both criminal and civil False Claims Act liability, and that liability threatens Plaintiffs' property interests in their own funds (and liberty interests given the threat of jail time). Additionally, some of the OVW grants at issue are formula grants, to which Plaintiffs are statutorily entitled, which gives rise to a "legitimate claim of entitlement" to these funds and in turn establishes a protected property interest. *See Bd. of Regents of State Colls. v. Roth*, 408 U.S. 564, 577 (1972). With the "Gender Ideology" Condition and OVW and OJP Anti-DEI Certification Requirements, Plaintiffs also have constitutionally protected First Amendment rights at stake. *See supra* Section III.B. Courts routinely entertain vagueness challenges where a law burdens First Amendment rights, even apart from any independent property interest. *See, e.g.*, *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 159 (2014).

Finally, Defendants fare no better in attempting to show that the New Conditions "are not vague." Defs.' Mem. at 50–52. Defendants claim (at 50) that the OVW Conditions use "ordinary" words like "promote" or "facilitate," but this Court has previously rejected just this type of argument in another case—where the Court explained that "phrases like 'promote gender ideology' … obscure meaning like Russian dolls stacked inside each other" because nothing "sheds light on … the intentions of the phrases." *RICADV v. Kennedy*, 812 F. Supp. 3d at 197.

Defendants also err in claiming that the prohibition on "unlawfully violat[ing]" executive orders cannot be vague because it by its terms applies only where the grantee's conduct would be "unlawful[]." If that sort of phrasing—which purports to limit a provision to only those instances where applying it would be lawful—sufficed, that would "lead [the Court] into an intellectual cul-de-sac" and make "judicial review … a meaningless exercise." *City & Cnty. of S.F. v. Trump*, 897 F.3d 1225, 1240 (9th Cir. 2018).

And while Defendants' attempt (at 51) to frame the OVW and OJP Anti-DEI Certifications as nothing more than an effort to enforce current anti-discrimination law, those certifications in fact require Plaintiffs to agree to undefined and unexplained terms, such as what constitutes a program "relating to diversity, equity, and inclusion," or what is illegal under the Administration's new view. The requirement that Plaintiffs certify the materiality of their compliance with antidiscrimination law, combined with the Administration's extreme enforcement strategy, *see* Pls.' Mem. at 10–15, leaves Plaintiffs vulnerable to the kind of "arbitrary and discriminatory" application of the law that due process prohibits. *Grayned v. City of Rockford*, 408 U.S. 104, 108–09 (1972).

Defendants' argument (at 51–52) that the OJP Immigration Condition is sufficiently clear because it likewise only incorporates existing law is similarly unavailing. Defendants maintain that the OJP Immigrant Condition is lawful because it incorporates the immigration law concept of "removable alien[s]' without providing any explanation as to how a private entity could determine that a person falls within that definition, a determination that an immigration judge makes after an adjudicatory proceeding and with review and relief protections. *See* Pls.' Mem. at 66. Defendants likewise point (at 51) to purported "carveouts" permitting the use of funds where it is authorized by law. But the provision's purported exceptions only underscore the provision's vagueness. Defendants still offer no guidance as to how grantees are to determine when any of those exceptions applies, who qualifies as "unlawfully present," or what legal authority would make the use of funds "authorized by law." The Due Process Clause requires standards that provide ordinary grantees with fair notice of what the Condition prohibits and meaningful guidance for compliance. As this Court has held, where grant conditions "do not clearly identify and define the contours of what is prohibited" and therefore "provide[] the Defendants with unlimited discretion," they expose plaintiffs to potentially arbitrary discrimination and enforcement and in effect are unconstitutionally vague." *RICADV v. Kennedy*, 812 F. Supp. 3d at 196.

D. The New Conditions are ultra vires

If for some reason review under Plaintiffs' other claims were not available, the Court should grant Plaintiffs summary judgment on their ultra vires claim. Defendants object (at 60) that ultra vires review is unavailable here because "Congress has provided a meaningful avenue for judicial review—here, the APA." Plaintiffs agree. APA review is available (contrary to Defendants' arguments elsewhere in their brief, *see* Defs.' Mem. at 22–24), and so the Court need not reach Plaintiffs' ultra vires claim. But if APA review were somehow foreclosed, relief under the ultra vires doctrine would be warranted. Defendants point out (at 59) that ultra vires review applies "only when an agency has taken action entirely in excess of its delegated powers and contrary to a specific prohibition in a statute." *Nuclear Regul. Comm'n. v. Texas*, 605 U.S. 665, 681 (2025) (cleaned up). Multiple New Conditions violate specific prohibitions of relevant statutes for the reasons explained above, and those New Conditions are therefore ultra vires under this standard. *See supra* Section II.D.

IV. Plaintiffs Are Entitled to Vacatur and a Permanent Injunction

Defendants acknowledge that vacating the New Conditions is warranted if the Court rules for Plaintiffs on any APA claim. Defendants dispute only whether a permanent injunction is warranted, but that relief is appropriate as well to provide Plaintiffs with complete relief.

A. Defendants do not dispute that vacatur is an appropriate remedy

Defendants do not dispute that vacatur is an appropriate remedy for Defendants' violations of the APA. Nor do they appear to dispute that vacatur invalidates the agency action itself and therefore is not a party-specific remedy. *See* Pls.' Mem. at 68; *see also* Defs.' Mem. at 64–67 (contesting only whether the Court should "extend[] *the injunction*" as to non-parties (emphasis added)). Thus, if the Court concludes that Defendants violated the APA in any one of the myriad ways discussed above, it is undisputed that vacating the New Conditions is warranted.

B. The Court should also enter a permanent injunction

A permanent injunction is also warranted to fully protect Plaintiffs from harm—by barring Defendants from imposing or enforcing (or allowing direct recipients to impose or enforce) the New Conditions in their current or any substantially similar form. That injunction should cover not just literally identical conditions, but substantially similar ones as well, and should bar Defendants from imposing the conditions on any grantee, not just Plaintiffs and their members.

1. Permanent injunctive relief is warranted

A permanent injunction is warranted, and Defendants' objections to that relief fall flat. To begin, contrary to Defendants' contention (at 61), vacatur alone is not "sufficient to address" the problem. Vacatur would not prevent Defendants from reimposing the conditions again, and would not prevent Defendants from allowing direct recipients to impose the conditions (and the Anti-DEI Certification Requirements in particular) on subrecipients.

Defendants also miss the mark in objecting (at 61–62) that an injunction "would prevent Defendants from curing any defects through additional explanation, additional process, or revised terms." No additional "explanation" or "process" can cure the fact that the Defendants lack authority to impose the New Conditions or that they conflict with the Constitution or other binding laws. And the injunction would not bar Defendants from imposing "revised" conditions that are not substantially similar, *i.e.*, revised conditions that do not have the same defects.

Defendants also err in contending (at 63) that Plaintiffs fail to meet the requirements for injunctive relief because "[t]heir alleged harms are largely speculative predictions about future funding decisions or economic consequences." It is not at all speculative that, should Defendants impose the conditions again, Plaintiffs would again be put "between a rock and a hard place" in being forced to choose between forgoing critical funding or accepting conditions that create great "'uncertainty'" and "'come[] with serious [FCA] risks.'" *RICADV v. Kennedy*, 812 F. Supp. 3d at 198 (quoting *R.I. Coal. Against Domestic Violence v. Bondi*, 794 F. Supp. 3d 58, 72 (D.R.I. 2025)). That is not mere "economic" harm. *Contra* Defs.' Mem. at 63. And Defendants' contention that *they* would face irreparable harm by being enjoined "from effectuating laws" is off-base because the injunction would just bar Defendants from imposing unlawful conditions. *See* Defs.' Mem. at 63 (cleaned up).

2. To assure complete relief to Plaintiffs and their members, the permanent injunction should apply to "substantially similar" conditions and all grantees

Defendants fare no better in objecting to the scope of the requested injunction. To ensure complete relief to Plaintiffs and their members, the injunction must apply to "substantially similar" conditions and any grantee.

First, barring Defendants from imposing not just the exact same conditions, but also "substantially similar" ones, is necessary to ensure Defendants do not easily circumvent the

Court's relief. Contrary to Defendants' contention (at 63), such relief would not be advisory or beyond the Court's authority. Plaintiffs are not asking the Court to opine in the abstract about unidentified future grant policies that are not yet ripe for evaluation. Instead, Plaintiffs ask that the Court, after adjudicating the lawfulness of the specific conditions now before it, prohibit Defendants from reimposing those very conditions—or essentially indistinguishable substitutes—again. That is ordinary forward-looking relief designed to prevent recurrence of adjudicated unlawful conduct. *See, e.g.*, *FTC v. Pukke*, 53 F.4th 80, 110 (4th Cir. 2022) (holding that an injunction may appropriately include "fencing in" provisions designed to "'prevent [defendants] from engaging in similarly illegal practices'" in the future (quoting *FTC v. Colgate-Palmolive Co.*, 380 U.S. 374, 395 (1965))).

Barring "substantially similar" conditions also would not be "impermissibly vague." *Contra* Defs.' Mem. at 62. That command is sufficiently specific, as revised conditions would only violate the injunction if they shared the same features that render the current conditions unlawful. So, for example, Defendants are wrong to worry that this would "create significant uncertainty about DOJ's longstanding practice of requiring compliance with civil-rights and nondiscrimination laws." *Contra* Defs.' Mem. at 62. DOJ's longstanding requirements are not substantially similar because those requirements, unlike the unlawful new OVW and OJP Anti-DEI Certification Requirements, do not require a concession of materiality or single out DEI.

Second, for two independent reasons, the injunction must bar Defendants from imposing the conditions altogether, not just on grants to Plaintiffs and their members. For one, the work of victim services providers is interconnected, and if some organizations start inquiring about immigration status, turning victims away, denying victims' gender identities, or taking other harmful actions to comply with the conditions, that undermines trust victims have in the system and makes them less likely to turn to *anyone* for help. *See* Pls.' Mem. at 73–74. While Defendants' object that this is "speculative," the reason why Plaintiffs cannot point to instances where the New Conditions *already* caused these harms is because this Court blocked the harmful conditions from ever taking effect. *See* Order (Dkt. No. 34); Order (Dkt. No. 63).

Further, the injunction must bar Defendants from imposing the conditions on any grantee for the additional reason that this is necessary to ensure that Plaintiffs face no competitive disadvantage. Pls.' Mem. at 72–73. Defendants protest (at 66) that the challenged grant conditions are not "competitive scoring criteria," but that misses the point. Absent complete relief barring Defendants from imposing these conditions on anyone, Defendants would have every incentive to direct grant funds toward organizations on whom they could impose Defendants' preferred conditions.

As Plaintiffs pointed out, another court recognized this very problem in "enjoining [DOJ] from imposing [challenged] Conditions as to all competitors" to "ensure an even playing field." *See* Pls.' Mem. at 73 (citing *City of Los Angeles v. Sessions*, No. 18-cv-7347, 2019 WL 1957966, at *6 (C.D. Cal. Feb. 15, 2019)). Defendants' attempts to distinguish that case are unavailing. *See* Defs.' Mem. at 66. While that case predates *Trump v. CASA, Inc.*, 606 U.S. 831 (2025), it applied the standard that *CASA* ultimately adopted and refused to grant relief beyond what was "necessary to provide complete relief to the plaintiff." *City of Los Angeles*, 2019 WL 1957966, at *6 (cleaned up); *accord CASA*, 606 U.S. at 852 (holding that injunction can do no more than "offer complete relief *to the plaintiffs*"). Defendants also err in suggesting (at 66) that *City of Los Angeles* involved unfair competition in some way this case does not—there, as here, the plaintiffs challenged conditions that DOJ sought to impose on grants, not competitive scoring criteria. *See City of Los Angeles*, 2019 WL 1957966, at *1.

CONCLUSION

The Court should grant summary judgment to Plaintiffs and enter their requested relief.

August 7, 2026

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CERTIFICATE OF SERVICE

I hereby certify that on August 7, 2026, I electronically filed the within document and it is available for viewing and downloading from the Court's CM/ECF System, and that the participants in the case that are registered CM/ECF users will be served electronically by the CM/ECF system.

/s/ Kristin Bateman
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