

Grant Number/FAIN: WA9996U0T042404
Recipient Name: County of Snohomish
Tax ID No.: 91-6001368
Unique Entity Identifier (UEI) Number: LG8NG8JNJD83
Federal Award Date: 09/02/2025

CONTINUUM OF CARE PROGRAM (Assistance Listing# 14.267)
GRANT AGREEMENT FOR YHDP RENEWAL AND REPLACEMENT PROJECTS

This Grant Agreement (“this Agreement”) is made by and between the United States Department of Housing and Urban Development (“HUD”) and County of Snohomish (the “Recipient”).

This Agreement, the Recipient’s use of funds provided under this Agreement (the “Grant” or “Grant Funds”), and the Recipient’s operation of projects assisted with Grant Funds are governed by

1. The Consolidated Appropriations Act, 2024 (Public Law 118-42, approved March 9, 2024);
2. title IV of the McKinney-Vento Homeless Assistance Act 42 U.S.C. 11301 et seq. (the “Act”);
3. the Notice of Funding Opportunity for FY 2024 and FY 2025 Continuum of Care Competition and Renewal or Replacement of Youth Homeless Demonstration Program (NOFO), except for references in the NOFO to Executive Orders that have since been repealed;
4. the following provisions of the Continuum of Care Program rule at 24 CFR part 578 (the “Rule”), as amended from time to time, except where they conflict with the requirements of the FY 2024 and FY 2025 Continuum of Care Competition and Renewal or Replacement of Youth Homeless Demonstration Program Grants, the YHDP activities identified in the associated renewal or replacement YHDP project applications approved by HUD, or the requirement that grant funds may only be used to serve homeless youth, age 24 and younger: 24 CFR 578.3, 578.15, 578.23(a), 578.25, 578.27, 578.29, 578.37, 578.43, 578.45, 578.47, 578.49, 578.51, 578.53, 578.55, 578.57, 578.59, 578.61, 578.63, 578.73(c), 578.75, 578.77, 578.79, 578.81, 578.83, 578.85, 578.87, 578.89, 578.91, 578.93, 578.95, 578.97, 578.99, 578.103(a)(3) - (18) and (b) – (e), 578.105, 578.107 and 578.109. The requirements of 2 CFR 200.306, as may be amended from time to time, with the exception of 200.306(b)(5) apply. All YHDP Renewal, YHDP Replacement and new YHDP Reallocation projects must comply with 24 CFR 578.93, except that in 578.93(c)(2), recipients must provide such information to the jurisdiction in which the project is located. Federal fair housing and nondiscrimination requirements cannot be waived;

5. ~~all current Executive Orders~~; and
6. the Recipient's application submissions on the basis of which these Grant Funds were approved by HUD, including the certifications, assurances, technical submission documents, and any information or documentation required to meet any grant award condition (collectively, the "Application").

The Application is incorporated herein as part of this Agreement, except that only the project (those projects) listed below are funded by this Agreement. In the event of any conflict between any application provision and any provision contained in this Agreement, this Agreement shall control. Capitalized terms that are not defined in this agreement shall have the meanings given in the Rule.

- ☒ The Recipient is a Unified Funding Agency (UFA).
- ☐ The Recipient is the sole recipient designated by the applicable Continuum of Care.
- ☐ The Recipient is not the only recipient designated by the applicable Continuum of Care.

If the Recipient is a UFA or sole recipient these provisions apply:

HUD's total funding obligation for this grant is **\$1,392,682** allocated as follows:

<u>Period of Performance</u>	<u>Budget Period</u>
July 1, 2025- June 30, 2026	July 1, 2025- June 30, 2026
a. Continuum of Care Planning Activities	\$ 0
b. UFA Costs	\$ 0
c. Acquisition	\$ 0
d. Rehabilitation	\$ 0
e. New construction	\$ 0
f. Leasing	\$ 55,200
g. Rental assistance	\$ 489,132
h. Supportive services	\$ 729,436
i. Operating costs	\$ 9,500
j. Homeless Management Information System	\$ 0
k. Administrative costs	\$ 109,414
l. Relocation costs	\$ 0
m. VAWA Costs	\$ 0
n. Rural Costs	\$ 0
o. HPC homelessness prevention activities:	
Housing relocation and stabilization services	\$ 0
Short-term and medium-term rental assistance	\$ 0

Summary of Comments on Snohomish County FY2024 CoC YHDP Grant Agreement WA9996U0T042404

Page: 2

Number: 1

Subject: Cross-Out

The agreement purports to impose conditions enjoined by the Preliminary Injunction in King County et al. v. Turner et al., 2:25-cv-00814-BJR (W.D. Wash.) (issued June 3, 2025), in which Snohomish County is a plaintiff. These prohibited provisions remain in the grant agreement. Snohomish County withholds consent to and objects to the inclusion of the terms that are subject to the PI, which are legally unenforceable. Snohomish County has stricken these terms from the enclosed grant agreement.

The Grant Funds an individual project will receive are as shown in the Application on the final approved Summary Budget for the project. Grant funds are provided for the projects and in the amounts listed below to be used during the budget period stated above.

UFA Renewal projects:

<u>Project No.</u>	<u>Amount</u>
WA0518Y0T042403	\$ 439,725
WA0517Y0T042403	\$ 952,957

Any default by Recipient under this Agreement shall constitute a default by Recipient under any other grant agreement executed in accordance with 24 CFR 578.23(b)(2) or (3) by HUD and the Recipient for awards selected in the same fiscal year Continuum of Care program competition.

These provisions apply to all Recipients:

~~The Recipient:~~

- ~~(1) shall not use grant funds to promote “gender ideology,” as defined in E.O. 14168, Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government;~~
- ~~(2) agrees that its compliance in all respects with all applicable Federal anti-discrimination laws is material to the U.S. Government’s payment decisions for purposes of section 3729(b)(4) of title 31, United States Code;~~
- ~~(3) certifies that it does not operate any programs that violate any applicable Federal anti-discrimination laws, including Title VI of the Civil Rights Act of 1964;~~
- ~~(4) shall not use any Grant Funds to fund or promote elective abortions, as required by E.O. 14182, Enforcing the Hyde Amendment; and~~
- (5) Notwithstanding anything in the NOFO or Application, this Grant shall not be governed by Executive Orders revoked by E.O. 14154, including E.O. 14008, or NOFO requirements implementing Executive Orders that have been revoked.

~~The recipient must administer its grant in accordance with all applicable immigration restrictions and requirements, including the eligibility and verification requirements that apply under title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, as amended (8 U.S.C. 1601-1646) (PRWORA) and any applicable requirements that HUD, the Attorney General, or the U.S. Center for Immigration Services may establish from time to time to comply with PRWORA, Executive Order 14218, or other Executive Orders or immigration laws.~~

Summary of Comments on Snohomish County FY2024 CoC YHDP Grant Agreement WA9996U0T042404

Page: 3

Number: 2

Subject: Cross-Out

The agreement purports to impose conditions enjoined by the Preliminary Injunction in King County et al. v. Turner et al., 2:25-cv-00814-BJR (W.D. Wash.) (issued June 3, 2025), in which Snohomish County is a plaintiff. These prohibited provisions remain in the grant agreement. Snohomish County withholds consent to and objects to the inclusion of the terms that are subject to the PI, which are legally unenforceable. Snohomish County has stricken these terms from the enclosed grant agreement.

~~No state or unit of general local government that receives funding under this grant may use that funding in a manner that by design or effect facilitates the subsidization or promotion of illegal immigration or abets policies that seek to shield illegal aliens from deportation.~~

~~Subject to the exceptions provided by PRWORA, the recipient must use SAVE, or an equivalent verification system approved by the Federal government, to prevent any Federal public benefit from being provided to an ineligible alien who entered the United States illegally or is otherwise unlawfully present in the United States.~~

HUD will not enforce provisions of the Grant Agreement to the extent that they require the project to use a housing first program model.

As stated in Section III.A.2 of the NOFO, Faith-based organizations may be recipients or subrecipients for funds under this agreement on the same basis as any other organization. Recipients may not, in the selection of subrecipients, discriminate against an organization based on the organization's religious character, affiliation, or exercise.

If any new projects funded under this Agreement are for project-based rental assistance for a term of fifteen (15) years, the funding provided under this Agreement is for the performance period stated herein only. Additional funding is subject to the availability of annual appropriations.

The budget period and performance period of renewal projects funded by this Agreement will begin immediately at the end of the budget period and performance period of the grant being renewed. Eligible costs incurred between the end of Recipient's budget period and performance period under the grant being renewed and the date this Agreement is executed by both parties may be reimbursed with Grants Funds from this Agreement. No Grant Funds for renewal projects may be drawn down by Recipient before the end date of the project's budget period and performance period under the grant that has been renewed.

For any transition project funded under this Agreement the budget period and performance period of the transition project(s) will begin immediately at the end of the Recipient's final operating year under the grant being transitioned. Eligible costs, as defined by the Act and the Rule incurred between the end of Recipient's final operating year under the grant being transitioned and the execution of this Agreement may be paid with funds from the first operating year of this Agreement.

HUD designations of Continuums of Care as High-performing Communities (HPCS) are published on HUD.gov in the appropriate Fiscal Years' CoC Program Competition Funding Availability page. Notwithstanding anything to the contrary in the Application or this Agreement, Recipient may only use grant funds for HPC Homelessness Prevention Activities if the Continuum that designated the Recipient to apply for the grant was designated an HPC for the applicable fiscal year.

The Recipient must use the Grant Funds only for costs (including indirect costs) that meet the applicable requirements in 2 CFR part 200 (including appendices), as may be amended from

Summary of Comments on Snohomish County FY2024 CoC YHDP Grant Agreement WA9996U0T042404

Page: 4

Number: 3

Subject: Cross-Out

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time to time. The Recipient's indirect cost rate information is as provided in Addendum #1 to this Agreement. The Recipient must immediately notify HUD upon any change in the Recipient's indirect cost rate, so that HUD can amend the Agreement to reflect the change if necessary.

HUD notifications to the Recipient shall be to the address of the Recipient as stated in the Recipient's applicant profile in *e-snaps*. Recipient notifications to HUD shall be to the HUD Field Office executing the Agreement. No right, benefit, or advantage of the Recipient hereunder may be assigned without prior written approval of HUD.

The Recipient must comply with the applicable requirements in 2 CFR part 200, as may be amended from time to time.

Build America, Buy America Act. The Grantee must comply with the requirements of the Build America, Buy America (BABA) Act, 41 USC 8301 note, and all applicable rules and notices, as may be amended, if applicable to the Grantee's infrastructure project. Pursuant to HUD's Notice, "Public Interest Phased Implementation Waiver for FY 2022 and 2023 of Build America, Buy America Provisions as Applied to Recipients of HUD Federal Financial Assistance" (88 FR 17001), any funds obligated by HUD on or after the applicable listed effective dates, are subject to BABA requirements, unless excepted by a waiver.

Waste, Fraud, Abuse, and Whistleblower Protections. Any person who becomes aware of the existence or apparent existence of fraud, waste or abuse of any HUD award must report such incidents to both the HUD official responsible for the award and to HUD's Office of Inspector General (OIG). HUD OIG is available to receive allegations of fraud, waste, and abuse related to HUD programs via its hotline number (1-800-347-3735) and its online hotline form. You must comply with 41 U.S.C. § 4712, which includes informing your employees in writing of their rights and remedies, in the predominant native language of the workforce. Under 41 U.S.C. § 4712, employees of a government contractor, subcontractor, grantee, and subgrantee—as well as a personal services contractor—who make a protected disclosure about a Federal grant or contract cannot be discharged, demoted, or otherwise discriminated against as long as they reasonably believe the information they disclose is evidence of:

1. Gross mismanagement of a Federal contract or grant;
2. Waste of Federal funds;
3. Abuse of authority relating to a Federal contract or grant;
4. Substantial and specific danger to public health and safety; or
5. Violations of law, rule, or regulation related to a Federal contract or grant.

HUD may terminate all or a portion of the Grant in accordance with the Act, the Rule, and 2 CFR 200.340. The Agreement constitutes the entire agreement between the parties and may be amended only in writing executed by HUD and the Recipient.

By signing below, Recipients that are states and units of local government certify that they are following a current HUD approved CHAS (Consolidated Plan).

This agreement is hereby executed on behalf of the parties as follows:

**UNITED STATES OF AMERICA,
Secretary of Housing and Urban Development**

BY: **Brian Sturdivant**  Digitally signed by Brian Sturdivant
Date: 2025.09.02 14:33:04 -07'00'

(Signature)

Brian Sturdivant, Acting Director
(Typed Name and Title)

September 2, 2025
(Date/Federal Award Date)

RECIPIENT

(Name of Organization)

BY: _____
(Signature of Authorized Official)

(Typed Name and Title of Authorized Official)

(Date)

Indirect Cost Information for Award Applicant/Recipient

1. Federal Program/Assistance Listing Program Title:
CONTINUUM OF CARE PROGRAM/Assistance Listing# 14.267

2. Legal Name of Applicant/Recipient: County of Snohomish

3. Indirect Cost Rate Information for the Applicant/Recipient:

Please check the box that applies to the Applicant/Recipient and complete the table only as provided by the instructions accompanying this form.

- ☒ The Applicant/Recipient will not charge indirect costs using an indirect cost rate.
- ☐ The Applicant/Recipient will calculate and charge indirect costs under the award by applying a *de minimis* rate as provided by 2 CFR 200.414(f), as may be amended from time to time.
- ☐ The Applicant/Recipient will calculate and charge indirect costs under the award using the indirect cost rate(s) in the table below, and each rate in this table is included in an indirect cost rate proposal developed in accordance with the applicable appendix to 2 CFR part 200 and, *if required*, has been approved by the cognizant agency for indirect costs.

Agency/department/major function	Indirect cost rate	Type of Direct Cost Base	Type of Rate
	%		
	%		
	%		

4. Submission Type (check only one):

☒ Initial submission ☐ Update

5. Effective date(s):

07.01.2025

6. Certification of Authorized Representative for the Applicant/Recipient:

****Under penalty of perjury, I certify on behalf of the Applicant/Recipient that**

- (1) all information provided on this form is true, complete, and accurate, and
 (2) the Applicant/Recipient will provide HUD with an update to this form immediately upon learning of any change in the information provided on this form, and
 (3) I am authorized to speak for the Applicant/Recipient regarding all information provided on this form.

Signature: _____

Date: _____

Name: _____

Title: _____

****Warning:** Anyone who knowingly submits a false claim or makes a false statement is subject to criminal and/or civil penalties, including confinement for up to 5 years, fines, and civil and administrative penalties (18 U.S.C §§ 287, 1001, 1010, 1012, 1014; 31 U.S.C. § 3729, 3802; 24 CFR § 28.10(b)(iii)).

Public Reporting Burden Statement: This collection of information is estimated to average 0.25 hours per response, including the time for reviewing instructions, searching existing data sources, gathering, and maintaining the data needed, and completing and reviewing the collection of the requested information. Comments regarding the accuracy of this burden estimate and any suggestions for reducing this burden can be sent to: U.S. Department of Housing and Urban Development, Office of the Chief Data Officer, R, 451 7th St SW, Room 8210, Washington, DC 20410-5000. Do not send completed forms to this address. This agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid OMB control number. This agency is authorized to collect this information under Section 102 of the Department of Housing and Urban Development Reform Act of 1989. The information you provide will enable HUD to carry out its responsibilities under this Act and ensure greater accountability and integrity in the provision of certain types of assistance administered by HUD. This information is required to obtain the benefit sought in the grant program. Failure to provide any required information may delay the processing of your application and may result in sanctions and penalties including of the administrative and civil money penalties specified under 24 CFR §4.38. This information will not be held confidential and may be made available to the public in accordance with the Freedom of Information Act (5 U.S.C. §552). The information contained on the form is not retrieved by a personal identifier, therefore it does not meet the threshold for a Privacy Act Statement.

Instructions for Completing the Indirect Cost Information for the Award Applicant/Recipient

Number	Item	Instructions
1	Federal Program/ Assistance Listing Program Title	Enter the title of the program as listed in the applicable funding announcement or notice of funding availability.
2	Legal Name of Applicant/ Recipient	Enter the legal name of the entity that will serve as the recipient of the award from HUD.
3	Indirect Cost Rate Information for the Applicant/ Recipient	Mark the one (and only one) checkbox that best reflects how the indirect costs of the Applicant/Recipient will be calculated and charged under the award. Do not include indirect cost rate information for subrecipients. The table following the third checkbox must be completed only if that checkbox is checked. When listing a rate in the table, enter the percentage amount (for example, "15%"), the type of direct cost base to be used (for example, "MTDC"), and the type of rate ("predetermined," "final," "fixed," or "provisional"). If using the Simplified Allocation Method for indirect costs, enter the applicable indirect cost rate and type of direct cost base in the first row of the table. If using the Multiple Allocation Base Method, enter each major function of the organization for which a rate was developed and will be used under the award, the indirect cost rate applicable to that major function, and the type of direct cost base to which the rate will be applied. If the Applicant/Recipient is a government and more than one agency or department will carry out activities under the award, enter each agency or department that will carry out activities under the award, the indirect cost rate(s) for that agency or department, and the type of direct cost base to which each rate will be applied.
4	Submission Type	Check the appropriate box to identify whether this is the first submission of this form for the award or an update to a previous submission of this form for the award.
5	Effective date(s)	Enter the date(s) for which the information on this form applies.
6	Certification of Authorized Representative for the Applicant/ Recipient	An employee or officer of the Applicant/Recipient with the capacity and authority to make this certification for the Applicant/Recipient must make the certification by signing as provided. They must also provide the date of their signature, full name, and position title.

From: [Sheth, Genie M](#)
To: [Brell-Vujovic, Mary Jane](#)
Cc: [Anderson, Jackie M](#); [Scoville, Samuel](#); [Tracy, Sue](#); [CPD Field Operations](#)
Subject: Transmittal of FY2024 CoC UFA Grant Agreement WA9996U0T042404
Date: Tuesday, September 2, 2025 3:33:26 PM
Attachments: [County of Snohomish CoC UFA Grant Agreement Letter WA9996U0T042404.pdf](#)
[County of Snohomish YHDP UFA WA9996U0T042404.pdf](#)



CAUTION. This email originated from outside of this organization. Please exercise caution with links and attachments.

Dear County of Snohomish,

Attached is the CoC UFA grant agreement along with a letter pertaining to the Preliminary Injunction Order.

Congratulations on your award under the Department of Housing and Urban Development's Fiscal Year (FY) 2024 Continuum of Care Program funding competition. Addressing homelessness is one of the Department's top priorities and these projects will make a significant contribution toward supporting a continuum of care system in your community.

Our goal is to process your renewal grants as expeditiously as possible. This transmittal includes important instructions for processing your grant agreement and additional information regarding the administration of CoC program funds.

Once executed, the grant agreement will be in effect for the grant period of performance. It contains relevant project information such as the project number, period of performance, grant award amount, and grant Budget Line Item (BLI) amounts.

Please execute the grant agreement in accordance with the instructions provided and once executed, **email a PDF** of the grant agreement to genie.m.sheth@hud.gov. Please retain a copy for your records.

Important Instructions

- **The signatory to the agreement must match the authorized official in [e-snaps](#).** Our office cannot process any grants with discrepancies. This is found in each grantee's Applicant Profile in *e-snaps*.
- New for FY2024, the authorized official **must** complete the **Indirect Cost Rate Addendum** to each agreement. Please mark one (and only one) checkbox to reflect how indirect costs will be calculated and charged under the grant. Complete this section in full by applying the authorized official's name, title, date, and signature. The selection reflected in the Indirect Cost Rate Addendum should match what was stated in the project application as it relates to the indirect cost rate.

- **Financial Information** is only required if your organization has made staffing or banking changes. Please ensure that the appropriate staff have eLOCCs access. The Financial Instructions (eLOCCS and Secure System) are available [here](#). Please complete these forms, only as needed, and submit them to our Office for processing.
- **Funds may only be drawn down after full execution of the grant agreement, after the expiration of the prior grant’s Period of Performance and the start of the renewal grant’s Period of Performance.**
- **Your UNIQUE ENTITY IDENTIFIER (UEI) NUMBER (formerly DUNS) must be active in SAMS** (<https://www.sam.gov/SAM/>). Currently, the system shows that **your UEI is active**. Please ensure that your UEI status remains active for the entire Period of Performance.

Additional important information and reminders for administering your CoC program funds are available below.

HUD congratulates your organization on your grant award, and we look forward to assisting you in administering your grants and accomplishing your program goals. If you have any questions or need further information or assistance, please contact me at the HUD Seattle Regional Office.

**Administering CoC Program Funds:
Additional Information and Reminders**

CoC Specific Requirements	
FY2024 CoC NOFO	2024 CoC funds must be administered in accordance with the FY2024 CoC NOFO, available here , and the issues and conditions contained in the grant agreement.
CoC Program Regulations	The CoC Interim Rule is available in 24 CFR §578 here .
Definition of “Homelessness” and Recordkeeping Requirements	A helpful summary of the CoC Criteria for Defining Homelessness and the corresponding Recordkeeping Requirements is available here: At a Glance Criteria and Recordkeeping Requirements for Definition of Homeless (hudexchange.info) .
CoC Virtual Binders	CoC Virtual Binders (available here) cover foundational topics from the CoC program, with the goal to transfer basic knowledge to grantees in order to more successfully administer their projects. Each binder reflects a range of learning styles and offers a variety of ways to interact with the topics.
Match	Recipients of new and renewal CoC Program grants

	must adhere to 24 CFR 578.73 and 2 CFR 200.306 and must match the total grant, except leasing, with no less than 25 percent cash or in-kind contributions from other sources and match must be used for the eligible CoC Program costs outlined in Subpart D of the CoC Program interim rule. 24 CFR 578.97(c) provides that rents and occupancy charges collected by the recipient or subrecipient from program participants are program income. H.R.4366 - 118th Congress (2023-2024): Consolidated Appropriations Act, 2024 Congress.gov Library of Congress (Sec. 226) permits costs paid by the program income of grant recipients to count toward the recipient's matching requirements for FY2015-FY2024 Continuum of Care funds.
Quarterly Draw Requirement	The CoC program regulation “timeliness standards” at 24 CFR §578.85 require recipients to draw down funds at least once per quarter of the program year, after eligible activities commence.
Annual Performance Reporting (APR)	Recipients of CoC funding required to submit an Annual Performance Report (APR) electronically to HUD every operating year in the in the Sage HMIS Reporting Repository. Final eLOCCS voucher requests and the final APR submission through Sage is due no later than 90 days after the period of performance end date. To assist you with this reporting, please take note of the following resources: • Sage CoC APR Guidebook for CoC Grant-Funded Programs • Sage HMIS Reporting Repository User Manual • Additional guides, tools, and training is available here.
Federal Cross-Cutting Requirements	
Build America, Buy America (BABA)	The Build America, Buy America (BABA) Act requires any public infrastructure project funded by any Federal Financial Assistance (FFA) apply a domestic content procurement preference, meaning that all iron, steel, manufactured products, and construction materials used in the infrastructure project have been produced in the United States, unless the awarding agency has issued a waiver of this requirement. This is called the “Buy America Preference” (BAP). For more information, including whether the BAP applies to your project and important clarity on how the BAP applies to housing projects, please consult Notice CPD-2025-01.

Preventing Waste, Fraud, and Abuse and Whistleblower Protections	Preventing waste, fraud, and abuse of Federal funds is a shared responsibility and any person who becomes aware of the existence or apparent existence of fraud, waste or abuse of any HUD award must report such incidents to both the HUD official responsible for the award and to HUD's Office of Inspector General (OIG). HUD OIG is available to receive allegations of fraud, waste, and abuse related to HUD programs via its hotline number (1-800-347-3735) and its online hotline form. Please be reminded of the Whistleblower Protection requirements contained in 41 U.S.C. § 4712, which, as amended, protect employees of a government contractor, subcontractor, grantee, and subgrantee from retaliation or reprisal as a result of protected disclosures of gross mismanagement, gross waste, abuse of authority, and other violations in connection with Federal contracts or grants. Grantee must inform employees in writing of their rights and remedies.
Federal Funding Accountability and Transparency Act (FFATA)	The FFATA Subaward Reporting System (FSRS) is a reporting tool that Federal prime awardees (i.e., prime grant recipients and prime contractors) use to capture and report subaward and executive compensation data to meet the FFATA reporting requirements. For FSRS reporting, prime awardees will report on all subawards they make. In accordance with 2 CFR part 170, prime awardees awarded a Federal grant are required to file a FFATA subaward report by the end of the month following the month in which the prime awardee awards any subaward equal to or greater than \$30,000 in Federal funds. Additional information can be found on the FSRS website, at https://www.fsrs.gov/.
Environmental Review	Activities under the CoC program are subject to environmental review by a responsible entity under HUD regulations at 24 CFR part 58. Environmental reviews for an activity may be completed after the award but must be completed prior to the execution of the grant agreement if an environmental review for that particular activity has not been completed within 5 years. HUD recommends a new environmental review is conducted every five years or sooner if/when environmental conditions change or there is a change

to the project. HUD has published a series of FAQs relating to environmental review requirements [here](#). We also encourage you to visit the CoC Program Environmental Review Resources page [here](#) and the Office of Environment and Energy (OEE) webpage [here](#).

Best regards,



Genie Sheth

Community Planning & Development Representative
U.S. Department of Housing & Urban Development
909 First Avenue, Suite 300
Seattle, WA 98104



U.S. Department of Housing and Urban Development

Seattle Regional Office
Seattle Federal Office Building
Office of Community Planning & Development
909 First Avenue, Suite 300
Seattle, WA 98104-1000
www.hud.gov/washington.html

September 2, 2025

Mary Jane Brell Vujovic
Director, Human Services Department
County of Snohomish
3000 Rockefeller Avenue
Everett, WA 98201

Dear Director Brell Vujovic:

The U.S. District Court for the Western District of Washington recently issued a Preliminary Injunction Order which impacts your challenged Continuum of Care (CoC) grant agreements, only. HUD provides you with a new grant agreement WA9996U0T042404 having the same conditions at issue in the subject lawsuit. Notwithstanding this, HUD will comply with the Court's Preliminary Injunction Order. To accomplish this, please return an executed copy of the grant agreement, and HUD will make grant funds at issue in your agreement available in accordance with the Preliminary Injunction Order. Please be advised that should the Preliminary Injunction Order in this matter be stayed, dissolved, or reversed, there will be no grant agreement in effect and HUD will reissue a new grant agreement for your execution. HUD reserves all legal rights and defenses.

If you have any questions, please feel free to contact Maggie Keller, CPD Program Manager, at (206) 220-5331 or maggie.keller@hud.gov.

Sincerely,

**Brian
Sturdivant**

Digitally signed by Brian
Sturdivant
Date: 2025.09.02 14:31:51
-07'00'

Brian Sturdivant,
Acting Director
Office of Community Planning
and Development

The Honorable Barbara J. Rothstein

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

NO. 2:25-cv-814

MARTIN LUTHER KING, JR. COUNTY;
PIERCE COUNTY; SNOHOMISH COUNTY;
CITY AND COUNTY OF SAN FRANCISCO;
COUNTY OF SANTA CLARA; CITY OF
BOSTON; CITY OF COLUMBUS; and CITY
OF NEW YORK,
Plaintiffs,

vs.

SCOTT TURNER in his official capacity as
Secretary of the U.S. Department of Housing
and Urban Development; the U.S.
DEPARTMENT OF HOUSING AND URBAN
DEVELOPMENT; SEAN DUFFY in his
official capacity as Secretary of the U.S.
Department of Transportation; the U.S.
DEPARTMENT OF TRANSPORTATION;
MATTHEW WELBES in his official capacity
as acting Director of the Federal Transit
Administration; and the FEDERAL TRANSIT
ADMINISTRATION, Defendants.

**ORDER GRANTING PLAINTIFFS'
FIRST AND SECOND MOTIONS FOR
PRELIMINARY INJUNCTION**

ORDER GRANTING PLAINTIFFS'
MOTIONS FOR PRELIMINARY INJUNCTION

I. INTRODUCTION

Plaintiffs King County, New York City, Denver, and 28 other counties, cities, and local housing and transportation agencies bring this action to challenge the Trump administration’s imposition of what Plaintiffs claim are unlawful and politically motivated funding conditions on an estimated \$4 billion in critical federal grants. Plaintiffs contend that these funding conditions seek to compel compliance with the administration’s political agenda, including mandates to prohibit “promotion” of “gender ideology” and “elective abortions,” and to verify that “any Federal public benefit” will not be provided to any “ineligible alien.” Plaintiffs claim that these funding conditions are unrelated to the underlying grants, which were conditionally awarded earlier this year by Defendants U.S. Department of Housing and Urban Development (“HUD”) and the U.S. Department of Transportation (“DOT”), including through DOT agencies, the Federal Transit Administration (“FTA”), Federal Highway Administration (“FHWA”), Federal Aviation Administration (“FAA”), and Federal Railroad Administration (“FRA”).¹ These grants

¹Plaintiffs are Martin Luther King, Jr. County, Washington (“King County”), Pierce County, Washington (“Pierce County”), Snohomish County, Washington (“Snohomish County”), City and County of San Francisco, California (“San Francisco”), County of Santa Clara, California (“Santa Clara”), City of Columbus, Ohio (“Columbus”), City of Boston, Massachusetts (“Boston”), City of New York, New York (“NYC”), City and County of Denver, Colorado (“Denver”), the Metropolitan government of Nashville and Davidson County, Tennessee (“Nashville”), Pima County, Arizona (“Pima County”), County of Sonoma, California (“Sonoma”), City of Bend, Oregon (“Bend”), City of Cambridge, Massachusetts (“Cambridge”), City of Chicago, Illinois (“Chicago”), City of Culver City, California, (“Culver City”), City of Minneapolis, Minnesota (“Minneapolis”), City of Pittsburgh, Pennsylvania (“Pittsburgh”), City of Portland, Oregon (“Portland”), City of San Jose, California (“San Jose”), City of Santa Monica, California (“Santa Monica”), City of Pasadena, California (“Pasadena”), City of Tucson, Arizona (“Tucson”), City of Wilsonville, Oregon (“Wilsonville”), Central Puget Sound Regional Transit Authority located in King, Pierce, and Snohomish Counties, Washington (“CPSRTA”), Intercity Transit located in Thurston County, Washington (“Intercity Transit”), Port of Seattle, Washington (“Port of Seattle”), King County Regional Homelessness Authority located in King County, Washington (“King County RHA”), Santa Monica Housing Authority, California (“Santa Monica HA”), San Francisco County Transportation Authority, located in the City and County of San Francisco, California (“SFCTA”), and Treasure Island Mobility Management Agency located in Treasure Island and Yerba Buena Island, California (“TIMMA”) (collectively “Plaintiffs”). Dkt. No. 71 (“Amend. Comp.”) ¶¶ 8-38.

Defendants are HUD, DOT, Scott Turner in his official capacity as Secretary of HUD, Sean Duffy in his official capacity as Secretary of DOT, FTA, Tariq Bokhari as the acting Director of FTA, FHWA, Gloria M. Shepard as the

ORDER GRANTING PLAINTIFFS’
MOTIONS FOR PRELIMINARY INJUNCTION

support vital programs in urban centers across the country, including homelessness prevention, housing assistance, and transportation infrastructure, that Congress has long recognized as essential through its appropriations. Plaintiffs assert that these new funding conditions are unconstitutional, exceed statutory authority, and violate the Administrative Procedure Act.

Currently before the Court are Plaintiffs' First and Second Motions for Preliminary Injunction, both of which Defendants oppose. Having reviewed the briefs and exhibits filed in support of and in opposition to the motions, the record of the case, and the relevant legal authority, and having heard the argument of counsel, the Court will grant the motions. The reasoning for the Court's decision follows.

II. PROCEDURAL HISTORY

This lawsuit began on May 2, 2025, when eight cities and counties across the United States sued HUD, DOT, FTA, and their respective administrators, challenging their imposition of new funding conditions on grants the cities and counties had been conditionally awarded for fiscal year 2024. Dkt. No. 1 ("Compl.").² Three days later, on May 5, 2025, seven of the cities and counties filed a motion for a temporary restraining order ("TRO") in which they sought to enjoin HUD, DOT, and FTA from imposing the new funding conditions on the grants.³ Dkt. No. 5 ("TRO Mot."). After briefing and a hearing on May 7, 2025, this Court granted the motion and temporarily enjoined HUD, DOT, and FTA from: (1) imposing or enforcing the new funding conditions on the grants, (2) rescinding or cancelling the grant agreements (or otherwise impeding

acting Director of FHWA, FAA, Chris Rocheleau as acting Administrator of FAA, FRA, and Drew Feeley as acting Administrator of FRA (collectively "Defendants").

² The original eight plaintiffs were: King County, Pierce County, Snohomish County, San Francisco, Santa Clara, Boston, Columbus, and NYC. Dkt. No. 1.

³ Columbus did not join the motion.

1 or withholding the funds) based on the new funding conditions, and (3) requiring Plaintiffs to
2 make certifications or other representations related to compliance with the new funding
3 conditions. Dkt. No. 52 (“TRO Order”).

4 At the conclusion of the hearing on the TRO motion, the seven cities and counties stated
5 their intent to move for a preliminary injunction on the same issues subject to the TRO, which
6 was set to expire fourteen days later. Dkt. No. 53. This Court ordered briefing and on May 21,
7 2025, held a hearing on the motion for a preliminary injunction. *Id.*; Dkt. No. 73. At the
8 conclusion of that hearing, the Court determined that good cause existed to extend the TRO by
9 another fourteen days, to June 4, 2025, and indicated that it would issue a written decision on the
10 motion for preliminary injunction by that date. Dkt. No. 73. Thereafter, also on May 21, 2025,
11 Plaintiffs filed an amended complaint adding twenty-one cities, counties, and local housing and
12 transit agencies as plaintiffs, as well as FHWA, FAA, FRA, and their respective administrators, as
13 defendants. Dkt. No. 71 (“Amend. Compl.”). Plaintiffs Cambridge, KCRHA, Nashville,
14 Pasadena, Pima County, San Jose, Santa Monica HA, and Tucson join in the original plaintiffs’
15 challenge to the imposition of the new funding conditions on HUD grants that they were
16 conditionally awarded for fiscal year 2024. Dkt. No. 72, Ex. 2, n. 1. Plaintiffs Bend, Boston,
17 Chicago, Columbus, Culver City, Denver, Intercity, Minneapolis, Nashville, NYC, Pierce County,
18 Pima County, Pittsburgh, Port of Seattle, Portland, San Francisco, San Jose, Santa Clara, Santa
19 Monica, Snohomish County, Sonoma County, CPSRTA, SFCTA, TIMMA, Tucson, and
20 Wilsonville join in the original plaintiffs’ challenge to the imposition of the new funding
21 conditions on DOT grants that they were conditionally awarded for fiscal year 2024. *Id.*

22 The Amended Complaint was accompanied by Plaintiffs’ Second Motion for a Temporary

23 ORDER GRANTING PLAINTIFFS’
24 MOTIONS FOR PRELIMINARY INJUNCTION

1 Restraining Order and Preliminary Injunction. Dkt. No. 72 (“Pls. Sec. Mot.”). In this motion,
 2 Plaintiffs Columbus, Intercity, Minneapolis, NYC, Port of Seattle, and Tucson sought a TRO
 3 against DOT enjoining it from imposing the new funding conditions on their conditionally
 4 awarded grants. Pls. Sec. Mot, Ex. 1, n. 1. And Plaintiffs Cambridge and Pasadena sought a TRO
 5 against HUD enjoining it from imposing the new funding conditions on their conditionally
 6 awarded grants. *Id.* Defendants acknowledged that they “oppose the New Plaintiffs’ TRO and
 7 preliminary injunction motion for the same reasons they opposed the first.” Dkt. No. 151 (“Defs.
 8 Opp. to Pls. Sec. Mot.”) at 4. After reviewing the second motion for a TRO and Defendants’
 9 opposition thereto, this Court determined that the motion raised questions of law and fact that are
 10 materially identical to those raised in the first motion for a TRO, and granted the second TRO on
 11 the same terms as the first TRO. *See* Dkt. No. 152 (“Sec. TRO Order”) at 2–4.

12 Now before the Court are Plaintiffs’ first and second motions for a preliminary injunction,
 13 in which collectively all Plaintiffs join.

14 III. FACTUAL BACKGROUND

15 A. Overview of Federal Grants

16 As stated above, this lawsuit concerns the allocation of grants from two federal agencies:
 17 HUD and DOT, and several DOT operating administrations: FTA, FHWA, FAA, and FRA.⁴
 18 Plaintiffs allege that in January 2025, they were each awarded grants from these agencies for the
 19 fiscal year 2024, but beginning in March and April 2025, Defendants began to impose new
 20 funding conditions on the grants. Plaintiffs claim that these conditions exceed Congressional
 21

22 ⁴ Congress and DOT refer to DOT divisions—including FTA, FHWA, FAA, and FRA—as “operating
 23 administrations.” 49 U.S.C. § 102; 49 C.F.R. § 1.2.

1 authorization and violate the United States Constitution and the Administrative Procedure Act.
 2 With this lawsuit, Plaintiffs seek a declaration that the new funding conditions are unlawful and
 3 an injunction enjoining Defendants from imposing the conditions, or substantially similar
 4 conditions, on the grants, and/or from withholding the grants based on those conditions. To that
 5 end, it is helpful to have a basic understanding of the federal grant process.

6 Each year, Congress exercises its constitutional authority to appropriate taxpayer
 7 resources to federal agencies through annual appropriation bills. These bills specify the amount of
 8 money allocated to each agency, and for what purposes, for that fiscal year.⁵ While the process
 9 for awarding grant funds varies by program, generally the federal agencies issue notices of
 10 funding opportunity (“NOFO”) that announce the availability of funding, outline the requirements
 11 for the grant programs, and reflect the specific goals and priorities of the funding programs.⁶ State
 12 and local governments, nonprofits, and other entities apply to receive grant funds and the agencies
 13 review the applications to assess the eligibility both of the applicant and the proposed use of the
 14 funds to ensure the proposed project is in compliance with the program’s statutory and regulatory
 15 requirements.⁷ The agencies then issue notices of award to those applicants whose proposals are
 16 approved and conditionally funded.⁸ Once the grant recipient successfully meets the requirements
 17 for the grant, a grant or cooperative agreement is issued, and the funds are released. The grant or
 18

19 ⁵ *The Appropriations Committee: Authority, Process, and Impact*, Appropriations Chairman Tom Cole,
 20 <https://appropriations.house.gov/about/appropriations-committee-authority-process-and-impact> (last visited May 9,
 2025).

21 ⁶ *The Grant Lifecycle*, Grants.gov, <https://www.grants.gov/learn-grants/grants-101/the-grant-lifecycle> (last visited
 May 9, 2025).

22 ⁷ Natalie Paris, *Understanding Federal Agency Grant Disbursement, Payment Processes, and “Freezes”*,
 Congressional Research Service (Feb. 21, 2025), <https://www.congress.gov/crs-product/IF12924>.

23 ⁸ *Award Phase*, Grants.gov, <https://www.grants.gov/learn-grants/grants-101/award-phase.html#NOA> (last visited
 May 9, 2025).

24 ORDER GRANTING PLAINTIFFS’
 MOTIONS FOR PRELIMINARY INJUNCTION

1 cooperative agreement sets forth the terms and conditions attached to the award, which generally
 2 include the amount of funding approved, a description and scope of the project, an approved
 3 budget, and financial and performance reporting requirements.⁹ If the grant recipient signs the
 4 agreement or withdraws grant funds, it becomes legally obligated to carry out the terms and
 5 conditions of the agreement.¹⁰

6 **B. The HUD Grants**

7 Congress enacted the McKinney-Vento Homeless Assistance Act (the “Homeless
 8 Assistance Act”) to “meet the critically urgent needs of the homeless of the Nation” by providing
 9 “funds for programs to assist the homeless, with special emphasis on elderly persons,
 10 handicapped persons, families with children, Native Americans, and veterans.” 42 U.S.C. §
 11 11301(b)(2)–(3). Through the Act, Congress provides federal funding for a number of programs,
 12 including the Continuum of Care Program (“CoC Program”). The CoC Program is designed “to
 13 assist individuals (including unaccompanied youth) and families experiencing homelessness” by
 14 providing services “to help such individuals move into transitional and permanent housing, with
 15 the goal of long-term stability.”¹¹ It does this by providing funding to states, local governments,
 16 Indian Tribes, and nonprofit entities for a variety of programs, including shelters and supportive
 17 housing, rental assistance, childcare, job training, healthcare, mental health services, and life
 18 skills training. *Id.* §§ 11360(29), 11381, 11383.

21 ⁹ Paris, *supra* note 7.

22 ¹⁰ Award Phase, *supra* note 8.

23 ¹¹ Continuum of Care (CoC) Program Eligibility Requirements, HUD Exchange,
<https://www.hudexchange.info/programs/coc/coc-program-eligibility-requirements/> (last visited May 9, 2025).

1 HUD is the federal agency responsible for administering the CoC Program. Most
 2 recently, Congress appropriated funds for the CoC Program in the 2024 Consolidated
 3 Appropriations Act (“the Appropriations Act”) and in January 2024, HUD posted a NOFO
 4 announcing CoC funding for fiscal years 2024 and 2025.¹² Plaintiffs King County, Pierce
 5 County, Snohomish County, San Francisco, Santa Clara, Boston, Columbus, NYC, Nashville,
 6 Pima County, Cambridge, Pasadena, San Jose, Tucson, King County RHA, and Santa Monica
 7 HA (collectively, “the CoC Plaintiffs”) each timely submitted applications in response to the
 8 NOFO and on January 17, 2025, HUD conditionally awarded the CoC Plaintiffs hundreds of
 9 millions of dollars in CoC grants for fiscal year 2024. Relying on these awards, CoC Plaintiffs
 10 have already committed, and in some cases expended, millions of dollars for homeless assistance
 11 services.

12 C. The DOT Grants

13 Congress established DOT in 1966 “to assure the coordinated, effective administration of
 14 the transportation programs of the Federal Government” and has established by statute a wide
 15 variety of grant programs that provide federal funds to state and local governments for public
 16 transit services. Department of Transportation Act, Pub. L. No. 89-670, 80 Stat. 931 (1966). In
 17 administering these grant programs, DOT often acts through its operating administrations,
 18 including the FTA, FHWA, FAA, and FRA.

21 ¹² *FY 2024 and FY 2025 Continuum of Care Competition and renewal or Replacement of Youth Homeless*
 22 *Demonstration Program Grants FR-6800N-2025*, U.S. Department of Housing and Urban Development (August 29,
 23 2025), [FY 2024 and FY 2025 Continuum of Care Competition and Renewal or Replacement of Youth Homeless](#)
 24 [Demonstration Program Grants](#).

1 **1. The FTA Grant Programs**

2 FTA provides financial and technical assistance to local public transit systems
 3 nationwide.¹³ Since at least 2021, Congress has annually appropriated funding for grants
 4 administered by FTA, including grants for: (1) the operation of public transit facilities and
 5 equipment in urban areas, (2) public transit systems that operate on fixed rights-of-way such as
 6 rail or passenger ferries, (3) replacement of rail rolling stock, and (4) the purchase and
 7 maintenance of buses and bus facilities. 49 U.S.C. §§5302(8), 5307(a)(1), 5337(b), 5339(a)(2),
 8 (b), (c). Plaintiffs King County, San Francisco, Boston, NYC, Pima County, Denver, Chicago,
 9 Culver City, Portland, Santa Monica, Tucson, Wilsonville, Intercity Transit, and Sound Transit
 10 operate public transit or are otherwise eligible for FTA grants and “currently rely on billions of
 11 dollars in appropriated federal funds from FTA grant programs for transit services and
 12 improvements provided or undertaken for the benefit of their residents.” Amend. Compl. ¶ 91.

13 **2. FHWA Grant Programs**

14 FHWA supports state and local governments in the design, construction, and maintenance
 15 of the nation’s highway system through financial and technical assistance.¹⁴ To that end, FHWA
 16 administers programs such as Safe Streets and Roads for All, the Federal Highway-Aid Program,
 17 the Bridge Investment Program, and the National Culvert Removal, Replacement, and Restoration
 18 Grant Program. Congress annually appropriates funds to the foregoing programs, including
 19 through the Infrastructure Investment and Jobs Act of 2021 (“the Infrastructure and Jobs Act”).
 20

21 ¹³ *About FTA*, Federal Transit Administration, <https://www.transit.dot.gov/about-fta> (last visited May 9, 2025).

22 ¹⁴ *About FHWA*, U.S. Department of Transportation Federal Highway Administration,
 23 <https://highways.dot.gov/about/about-fhwa#:~:text=Who%20We%20Are,technologically%20sound%20in%20the%20world> (last visited May 29, 2025).

1 Plaintiffs King County, Pierce County, San Francisco, Santa Clara, Snohomish County, Boston,
2 Columbus, NYC, Denver, Nashville, Pima County, Chicago, Minneapolis, Portland, Pittsburgh,
3 San Jose, Santa Monica, Sound Transit, Tucson, SFCTA, and TIMMA receive and rely on
4 FHWA grants worth hundreds of millions of dollars in appropriated funds.

5 **3. FAA Grant Programs**

6 The FAA's primary purpose is to regulate civil aviation and to maintain and operate air
7 traffic control and navigation systems.¹⁵ Congress has established by statute a variety of grant
8 programs administered by DOT, acting through the FAA, that provide federal funds to public
9 agencies for planning and development of airports. These programs include the Airport
10 Improvement Program and the Airport Infrastructure Grants Program, which are funded by
11 Congress through statutes such as the Infrastructure and Jobs Act, the FAA Reauthorization Acts
12 of 2018 and 2024, and most recently, the Consolidated Appropriations Act of 2024. Plaintiffs
13 King County, Pierce County, Snohomish County, San Francisco, Denver, Pima County, Sonoma
14 County, Bend, Chicago, San Jose, and Port of Seattle currently have hundreds of millions of
15 dollars in appropriated federal funds from FAA grant programs for airport development and
16 infrastructure projects.

17 **4. FRA Grant Programs**

18 The mission of FRA is to enable the safe, reliable, and efficient movement of people and
19 goods via railways across the United States.¹⁶ FRA provides federal funds to public agencies for
20

21 ¹⁵ *Federal Aviation Administration*, Federal Register, <https://www.federalregister.gov/agencies/federal-aviation-administration#:~:text=The%20mission%20of%20the%20FAA,and%20the%20National%20Airspace%20System>
22 (last visited May 29, 2025).

23 ¹⁶ *FRA 101: Getting to Know FRA*, U.S. Department of Transportation Federal Railroad Administration (Aug.
24 2021), <https://railroads.dot.gov/sites/fra.dot.gov/files/2021-12/20210824-FRA101.pdf>.

1 rail infrastructure projects such as the Railroad Crossing Elimination Grant Program that provides
2 funds to improve the safety and mobility of people and goods at railway crossings. Funding for
3 the program was provided through the Infrastructure and Jobs Act. Plaintiffs allege that Bend,
4 Minneapolis, Portland, Sound Transit, and San Jose currently have millions of dollars in
5 appropriated federal funds from FRA grant programs for rail infrastructure projects.

6 **5. The DOT SMART Grant Program**

7 The Strengthening Mobility and Revolutionizing Transportation (“SMART”) grant
8 program was established by Congress through the Infrastructure and Jobs Act to provide grants
9 “to eligible public sector agencies for projects focused on advanced smart community
10 technologies and systems in order to improve transportation efficiency and safety.” *Id.* ¶ 116. It is
11 administered by DOT. Plaintiffs allege that Boston, Chicago, Minneapolis, Nashville, and
12 Intercity Transit are slated to receive millions of dollars in appropriated funds for the SMART
13 grant program.

14 **D. New Funding Conditions in the HUD and DOT Grant Agreements**

15 Plaintiffs claim that HUD and DOT are imposing unlawful funding conditions on the
16 CoC and DOT grants—conditions that were not included in the relevant NOFOs or authorized by
17 statute or regulation. Rather, Plaintiffs argue, the new funding conditions seek “to coerce grant
18 recipients that rely on federal funds into implementing President Trump’s policy agenda, and
19 direct them to adopt his legal positions, contrary to settled law. Amend. Compl. ¶ 4. Plaintiffs
20 challenge Defendants’ imposition of new funding conditions on the grants, arguing that the
21 conditions are unconstitutional, violate the Administrative Procedure Act, and exceed statutory

22
23 ORDER GRANTING PLAINTIFFS’
24 MOTIONS FOR PRELIMINARY INJUNCTION

1 authority. It is understood that without acceptance of these conditions, the grants will not be
2 funded.

3 **1. The New HUD Funding Conditions**

4 Plaintiffs allege that beginning in March and April 2025, HUD presented the CoC
5 Plaintiffs with grant agreements (collectively, “the CoC Grant Agreements”) that contained new
6 funding conditions that were not included in the relevant NOFO, and not authorized by the
7 Homeless Assistance Act, the Appropriations Act, or HUD regulations. Specifically, Plaintiffs
8 object to the following six conditions in the CoC Grant Agreements:

- 9 A. The recipient “shall not use grant funds to promote ‘gender ideology,’ as defined
10 in E.O. 14168 Defending Women from Gender Ideology Extremism and
Restoring Biological Truth to the Federal Government”;
- 11 B. The recipient “agrees that its compliance in all respects with all applicable Federal
12 anti-discrimination laws is material to the U.S. Government’s payment decisions
for purposes of [the False Claims Act, 31 U.S.C. § 3729(b)(4)]”;
- 13 C. The recipient “certifies that it does not operate any programs that violate any
14 applicable Federal anti-discrimination laws, including Title VI of the Civil Rights
Act of 1964”;
- 15 D. The recipient “shall not use any Grant Funds to fund or promote elective
16 abortions, as required by E.O. 14182, Enforcing the Hyde Amendment”;
- 17 E. “No state or unit of general local government that receives funding under this
18 grant may use that funding in a manner that by design or effect facilitates the
subsidization or promotion of illegal immigration or abets policies that seek to
shield illegal aliens from deportation”; and
- 19 F. “Subject to the exceptions provided by [the Personal Responsibility and Work
20 Opportunity Reconciliation Act of 1996 (“PRWORA”)], the recipient must use
21 SAVE, or an equivalent verification system approved by the Federal government,
to prevent any Federal public benefit from being provided to an ineligible alien
22 who entered the United States illegally or is otherwise unlawfully present in the
United States.”

23 ORDER GRANTING PLAINTIFFS’
24 MOTIONS FOR PRELIMINARY INJUNCTION

Dkt. No. 11 (“McSpadden Decl.”), Ex. A at 3. In addition, the CoC Grant Agreements also state that the Agreements, the recipients’ use of funds provided under the Agreements, and the recipients’ operation of projects with grant funds are “governed by” “all current Executive Orders.” *Id.* at 1, ¶ 5.

2. The New DOT Funding Conditions

Plaintiffs claim that DOT and its operating administrations have also attached unlawful funding conditions to the DOT grants by amending the grants’ general terms and agreements, master grant agreements, and/or assurance requirements. For instance, Plaintiffs allege that DOT inserted the following funding conditions in the FTA Master Agreement that governs all FTA grants:

- A. “Pursuant to section (3)(b)(iv)(A), Executive Order 14173, *Ending Illegal Discrimination and Restoring Merit-Based Opportunity*, the Recipient agrees that its compliance in all respects with all applicable Federal anti-discrimination laws is material to the government’s payment decisions for purposes of [the False Claims Act, 31 U.S.C. § 3729(b)(4)]”;
- B. “Pursuant to section (3)(b)(iv)(B), Executive Order 14173, *Ending Illegal Discrimination and Restoring Merit-Based Opportunity*, by entering into this Agreement, Recipient certifies that it does not operate any programs promoting diversity, equity, and inclusion (DEI) initiatives that violate any applicable Federal anti-discrimination laws”; and
- C. “[T]he Recipient will cooperate with Federal officials in the enforcement of Federal law, including cooperating with and not impeding U.S. Immigration and Customs Enforcement (ICE) and other Federal offices and components of the Department of Homeland Security in the enforcement of Federal immigration law.”

Amend. Compl. ¶¶ 164, 172. In addition, the April 25, 2025 FTA Master Agreement requires that the recipient comply with all applicable federal laws, regulations, and requirements and defines “federal requirements” to include “executive order.” *Id.* ¶¶ 168, 170. Plaintiffs allege that the

ORDER GRANTING PLAINTIFFS’
MOTIONS FOR PRELIMINARY INJUNCTION

foregoing new funding conditions are included in materially identical form in the FHWA, FAA, and FRA grant requirements, as well as the DOT SMART grant program. They charge that the new funding conditions were not included in the relevant NOFOs, were not authorized by the relevant statutes, and are inconsistent with the relevant regulations.

E. Plaintiffs Allege Irreparable Harm

Plaintiffs allege that “[t]he grant conditions that Defendants seek to impose leave [them] with the Hobson’s choice of accepting illegal conditions that are without authority [and] contrary to the Constitution . . . or forgoing the benefit of grant funds . . . that are necessary for crucial local services.” *Id.* ¶ 235. Plaintiffs claim that loss of the CoC Program grants would result in a loss of hundreds of millions of dollars in funding for housing and other services meant to meet the basic needs of the CoC Plaintiffs’ homeless residents, including access to housing, healthcare, and counseling, which would have a devastating impact on their residents and communities. Likewise, Plaintiffs allege that the DOT grants represent billions of dollars in funding for critical services and projects for the DOT Plaintiffs’ residents, including transit improvement and safety initiatives, critical railway and airport infrastructure, transportation modernization, and improved air quality. Plaintiffs assert that the loss of these projects would irreparably harm DOT Plaintiffs’ residents and communities.

IV. DISCUSSION

A. The APA Sovereign Immunity Waiver Applies to Plaintiffs’ Claims and this Court Has Jurisdiction pursuant to 28 U.S.C. § 1331

“[A plaintiff] may sue the United States only if Congress has waived sovereign immunity for the lawsuit, and may bring its claim in federal district court only if Congress has provided for jurisdiction there.” *North Star Alaska v. United States*, 9 F.3d 1430, 1432 (9th Cir. 1993) (en

ORDER GRANTING PLAINTIFFS’
MOTIONS FOR PRELIMINARY INJUNCTION

banc) (per curiam). Thus, as a threshold matter, this Court must determine whether Congress has waived sovereign immunity for Plaintiffs’ claims and whether this Court has subject-matter jurisdiction to address them. For the reasons set forth below, this Court concludes that the answer to both questions is yes.

1. The Sovereign Immunity Waiver under the APA

It is a bedrock principal of our legal system that the federal government—including its federal agencies—has sovereign immunity and may not be sued absent a clear and express waiver by statute. *See United Aeronautical Corporation v. United States Air Force*, 80 F.4th 1017, 1022 (9th Cir. 2023); *see also United States v. Mitchell*, 463 U.S. 206, 212 (1983) (“It is axiomatic that the United States may not be sued without its consent and that existence of such consent is a prerequisite for jurisdiction.”). The Administrative Procedure Act (“APA”), 5 U.S.C. § 551 *et seq.*, is one example of such waiver—the statute expressly waives federal sovereign immunity so that a plaintiff “adversely affected” by a “final agency action” may obtain “judicial review thereof.” *Id.* § 702; *see also Cmty Legal Servs. in E. Palo Alto v. U.S. Dep’t of Health & Hum. Servs.*, No. 25-2802, 2025 WL 1393876, at *2 (9th Cir. May 14, 2025) (quoting *Abbott Lab’ys v. Gardner*, 387 U.S. 136, 140–41 (1967) (The APA “embodies [a] basic presumption of judicial review to one ‘suffering legal wrong because of agency action.’”)).

However, the APA’s sovereign immunity waiver is not without limits. Relevant to this motion are two such limitations. First, the waiver does not apply if the relief sought by the plaintiff is expressly or impliedly forbidden by another statute. *Tucson Airport Auth. v. Gen. Dynamics Corp.*, 136 F.3d 641, 645 (9th Cir. 1998); *see also Cmty Legal Servs. in E. Palo Alto*, 2025 WL 1393876, at *2 (“The APA generally waives sovereign immunity and permits a

ORDER GRANTING PLAINTIFFS’
MOTIONS FOR PRELIMINARY INJUNCTION

challenge to agency action unless ‘any other statute that grants consent to suit expressly or impliedly forbids the relief which is sought.’”) (quoting 5 U.S.C. § 702). Second, the waiver does not apply if an agency action is “committed to agency discretion by law.” *Jajati v. U.S. Customs & Border Prot.*, 102 F.4th 1011, 1014 (9th Cir. 2024) (quoting 5 U.S.C. § 701(a)(2)).

In addition, the APA is not a jurisdiction-conferring statute in that it does not directly grant subject matter jurisdiction to the federal courts. *See Califano v. Sanders*, 430 U.S. 99, 105 (1977). Instead, federal courts exercise jurisdiction over APA claims pursuant to 28 U.S.C. § 1331, which grants courts jurisdiction to hear cases arising under federal law. *See South Delta Water Agency v. United States*, 767 F.2d 531, 539 (9th Cir. 1985) (“[T]he Supreme Court has interpreted section 1331 as conferring jurisdiction on federal courts to review agency action ‘subject only to preclusion-of-review statutes created or retained by Congress. . . .’”) (quoting *Califano*, 430 U.S. at 105)).

2. The Parties’ Jurisdictional Arguments

According to Plaintiffs, their claims fall squarely within the APA’s sovereign immunity waiver because they seek injunctive and declaratory relief against HUD and DOT actions that have adversely affected them, and that this Court has jurisdiction under 28 U.S.C. § 1331. Defendants counter that Plaintiffs’ claims fall outside the APA’s waiver and this Court’s jurisdiction for two reasons. First, they argue that the relief Plaintiffs request is impliedly forbidden by the Tucker Act, 28 U.S.C. § 1491, which grants the Court of Federal Claims exclusive jurisdiction over contract claims against the federal government. § 1491(a). Second, Defendants contend that HUD’s and DOT’s decision to impose the new funding conditions on

ORDER GRANTING PLAINTIFFS’
MOTIONS FOR PRELIMINARY INJUNCTION

the grants is not subject to this Court’s review because the action is “committed to agency discretion by law.” 5 U.S.C. § 701(a)(2).

3. The Tucker Act Does Not Impliedly Forbid the Relief Sought by Plaintiffs

Defendants argue that Plaintiffs’ claims, while pled under the APA, are actually breach-of-contract claims against the United States and, therefore, must be brought in the Court of Federal Claims. In other words, Defendants’ jurisdictional argument hinges on their successfully recharacterizing Plaintiffs’ allegations as contract claims rather than APA challenges to agency action. *See Cmty Legal Servs. in E. Palo Alto*, 2025 WL 1393876, at *2 (“[T]he Tucker Act . . . ‘impliedly forbid[s]’ an APA action seeking injunctive and declaratory relief only if that action is a ‘disguised’ breach-of-contract claim.”) (quoting *United Aeronautical Corp.*, 80 F.4th at 1026).

a. Plaintiffs’ APA Claims Are Not “Disguised” Breach-of-Contract Claims

To resolve whether Plaintiffs’ APA claims are “disguised” breach-of-contract claims that must be brought in the Court of Federal Claims, this Court must determine: (1) “the source of the rights” upon which Plaintiffs base their claims, and (2) “the type of relief” Plaintiffs seek. *United Aeronautical Corp.*, 80 F.4th at 1026 (quoting *Megapulse, Inc. v. Lewis*, 672 F.2d 959, 967 (D.C. Cir. 1982) (“The classification of a particular action as one which is or is not ‘at its essence’ a contract action depends on both the source of the rights upon which plaintiff bases its claims, and upon the type of relief sought (or appropriate).”). “If the rights and remedies are *statutorily* or *constitutionally* based,” this Court has jurisdiction; “if the rights and remedies are *contractually* based,” the Court of Federal Claims has jurisdiction. *Id.* (emphasis in original).

ORDER GRANTING PLAINTIFFS’
MOTIONS FOR PRELIMINARY INJUNCTION

(i) The Source of Rights on which Plaintiffs’ Base Their Claims

In examining the source of the rights upon which a plaintiff bases its claims, courts consider, among other things: (1) whether the “asserted rights and the government’s purported authority arise from statute,” (2) whether the “rights exist . . . apart from rights created under [a] contract,” and (3) whether the plaintiff seeks to enforce a duty on the government that was created by a contract “to which the government is a party. *Crowley Gov’t Servs., Inc. v. Gen. Servs. Admin.*, 38 F.4th 1099, 1107 (D.C. Cir. 2022). Courts have explicitly rejected the notion “that any case requiring some reference to . . . a contract is necessarily on the contract and therefore directly within the Tucker Act” because to do so would “deny a court jurisdiction to consider a claim that is validly based on grounds other than a contractual relationship with the government.” *Id.* (quoting *Megapulse*, 672 F.2d at 967–68) (recognizing that “[c]ontract issues may arise in various types of cases where the action itself is not founded on a contract”). “[T]he mere fact that a court may have to rule on a contract issue does not, by triggering some mystical metamorphosis, automatically transform an action . . . into one on the contract and deprive the court of jurisdiction it might otherwise have.” *Megapulse*, 672 F.2d at 968; *see also Transohio Sav. Bank v. Director, Office of Thrift Supervision*, 967 F.2d 598, 609 (D.C. Cir. 1992), *rev’d on other grounds*, *Perry Capital LLC v. Mnuchin*, 864 F.3d 591 (D.C. Cir. 2017) (“The answer . . . depends not simply on whether a case involves contract issues, but on whether, despite the presence of a contract, plaintiffs’ claims are founded only on a contract, or whether they stem from a statute or the Constitution.”).

Defendants argue that the purpose of Plaintiffs’ lawsuit is to force the government to release the CoC and DOT grant funds to them, and the sources of Plaintiffs’ rights to those funds

ORDER GRANTING PLAINTIFFS’
MOTIONS FOR PRELIMINARY INJUNCTION

are the CoC and DOT Grant Agreements. According to Defendants, “[t]hat means the source of Plaintiffs’ rights are [*sic*] contractual, and this Court lacks subject-matter jurisdiction.” Dkt. No. 55 (“Defs.’ Opp.”) at 15. Defendants misconstrue the nature of Plaintiffs’ lawsuit. Contrary to what Defendants argue, Plaintiffs are not seeking an order from this Court directing payment of the grant funds to them. Instead, the relief Plaintiffs seek is an order from this Court *declaring* that the *new funding conditions* are unlawful and *enjoining* Defendants from imposing them in the Grant Agreements. Specifically, Plaintiffs seek: (1) a declaration that the new funding conditions Defendants imposed in the Grant Agreements “are unconstitutional, are not authorized by statute, violate the APA, and are otherwise unlawful” and (2) an injunction “enjoining [Defendants] from “imposing or enforcing [the new funding conditions] or any materially similar terms or conditions to any [CoC or DOT] funds received by or awarded to, directly or indirectly, [Plaintiffs].” Amend Compl. at VI. A–D. Plaintiffs contend that the funding conditions are unlawful because they are not included in the relevant NOFOs, are unauthorized by the statutes that created the relevant programs, are inconsistent with the appropriations statutes that fund the programs, and do not comply with the regulations that HUD and DOT promulgated to implement the programs. *See generally* Amend. Compl. Resolution of Plaintiffs’ claims will require this Court to conduct an in-depth analysis of the foregoing statutes and regulations to determine whether Defendants acted reasonably and in compliance with Plaintiffs’ statutory and constitutional rights; resolution of Plaintiffs’ claims will not require an analysis of the respective Grant Agreements. Thus, the source of Plaintiffs’ rights resides in statutes and the Constitution, not in any contractual provisions in the Grant Agreements. *See Cmty Legal Servs. in E. Palo Alto*, 2025 WL 1393876, at *2 (“[P]laintiffs seek to enforce

ORDER GRANTING PLAINTIFFS’
MOTIONS FOR PRELIMINARY INJUNCTION

compliance with statutes and regulations, not any government contract. . . . Seeking to ensure compliance with statutory and regulatory commands is a matter beyond the scope of the Tucker Act’s exclusive jurisdiction.”); *Widakuswara v. Lake*, No. 25-5144, 2025 WL 1288817, at *10 (D.C. Cir. May 3, 2025) (Pillard dissenting) (“What matters is what the court must examine to resolve the case: If a plaintiff’s claim depends on interpretation of statutes and regulations rather than the terms of an agreement negotiated by the parties, the claim is not in essence contractual.”); *Crowley*, 38 F.4th at 1109–10 (claim was statutory, not contractual, when it “require[d] primarily an examination of statutes”); *Climate United Fund v. Citibank, N.A.*, No. 25-cv-698, 2025 WL 842360, at *6 (D.D.C. March 18, 2025) (“Plaintiffs do not challenge a contract between the parties—they challenge an action . . . Plaintiffs’ ‘claims arise under a federal grant program and turn on the interpretation of statutes and regulations rather than on the interpretation of an agreement negotiated by the parties.’”) (quoting *Md. Dep’t of Hum. Res. v. Dep’t of Health & Hum. Servs.*, 763 F.2d 1441, 1449 (D.C. Cir. 1985)).

(ii) The Type of Relief Sought by Plaintiffs

Next, this Court must consider the nature of the relief sought by Plaintiffs in this lawsuit. *United Aeronautical Corp.*, 80 F.4th at 1026. If the relief sought is “akin to the traditional remedies available for breach of contract (damages or specific performance)”, the Tucker Act applies, and Plaintiffs’ claims belong in the Court of Federal Claims. *Id.*; *Crowley*, 398 F.4th at 1107 (“The crux of this inquiry . . . boils down to whether the plaintiff effectively seeks to attain money damages in the suit.”). If, however, the relief sought is not for money damages, then Plaintiffs’ claims do not belong in the Court of Federal Claims, which is a specialized forum to resolve “actions based on government contracts,” *Megapulse*, 672 F.2d at 967, for “naked money

ORDER GRANTING PLAINTIFFS’
MOTIONS FOR PRELIMINARY INJUNCTION

judgment[s] against the United States.” *Bowen v. Massachusetts*, 487 U.S. 879, 905 (1988). As discussed above, Plaintiffs seek injunctive and declaratory relief only, they do not seek money damages based on a breach of contract claim. Indeed, the Amended Complaint expressly seeks no monetary relief. This, alone, is sufficient to render the Tucker Act inapplicable. *See Bowen*, 487 U.S. at 893 (“[I]nsofar as the complaints sought declaratory and injunctive relief, they were certainly not actions for money damages.”).

Nevertheless, Defendants argue that if this Court grants the equitable relief Plaintiffs request, it will ultimately result in the federal government having to disburse the grant funds, so Plaintiffs’ request is really one for money damages. Defendants’ argument is foreclosed by *Bowen*, 487 U.S. at 893. In *Bowen v. Massachusetts*, the Supreme Court was asked to address the scope of the APA’s sovereign immunity waiver where the Commonwealth of Massachusetts challenged a final order of the Secretary of Health and Human Services (“the Secretary”) refusing to reimburse Massachusetts through the Medicaid program for services related to care for the mentally disabled. *Id.* at 882. Massachusetts filed a complaint in district court alleging jurisdiction pursuant to 28 U.S.C. § 1331 and waiver of sovereign immunity under the APA. *Id.* The Secretary argued that Massachusetts could not bring its claim under the APA because it was seeking “money damages”—*i.e.*, reimbursement for the Medicaid services—and, as such, the federal district court did not have jurisdiction.

The Supreme Court disagreed, concluding that the district court did have jurisdiction because the relief sought by Massachusetts did not constitute “money damages” within the meaning of the APA. *Id.* at 893. In reaching this decision, the Supreme Court noted that “[t]he fact that a judicial remedy may require one party to pay money to another is not a sufficient

ORDER GRANTING PLAINTIFFS’
MOTIONS FOR PRELIMINARY INJUNCTION

reason to characterize the relief as ‘money damages’”. *Id.* In other words, the Supreme Court held that even though the relief Massachusetts requested—reversal of the Secretary’s decision to deny reimbursement—would obligate the United States to pay Massachusetts, this did not mean that Massachusetts’ claim was for “‘money damages’ as that term is used in the law.” *Id.* at 883. The Supreme Court distinguished between compensatory damages, which “‘are given to the plaintiff to *substitute* for a suffered loss”” and specific remedies, which “‘are not substitute remedies at all, but attempt to give the plaintiff the very thing to which he was entitled.” *Id.* at 895 (quoting *Md. Dep’t of Hum. Res.*, 763 F.2d at 1446 (quoting D. Dobbs, *Handbook on the Law of Remedies* 135 (1973)) (emphasis in original)). With this distinction in mind, the Supreme Court concluded that Massachusetts’ action to enforce the requirement that the government “‘shall pay’ certain amounts for appropriate Medicaid services, is not a suit seeking money in *compensation* for the damage sustained by the failure of the Federal Government to pay as mandated; rather, it is a suit seeking to enforce the statute mandate itself, which happens to be one for the payment of money.” *Id.* at 900 (emphasis in original). Thus, the Supreme Court determined that Massachusetts’ claim was one for specific relief, not money damages; as such, the district court had jurisdiction over the claim.¹⁷

The United States Court of Appeals for the Federal Circuit (“Federal Circuit”) faced a similar jurisdictional issue in *Katz v. Cisneros*, 16 F.3d 1204 (Fed Cir. 1994). The plaintiff in that case was a low-income housing developer who entered into a housing assistance payments

¹⁷ The Supreme Court also noted that the legislative history of the 1976 amendment to the APA (the amendment that added the sovereign immunity waiver) made it clear that Congress intended to authorize APA review of federal grant-in-aid programs, and this is “surely strong affirmative evidence” that Congress “did not regard judicial review of an agency’s disallowance decision as an action for damages.” *Id.* at 898.

1 contract as part of the Section 8 Moderate Rehabilitation Program of the United States Housing
2 Act of 1937. The Section 8 Program is administered by HUD through Public Housing Agencies
3 (“PHAs”) with whom HUD contracts to carry out the program at the local level. The *Katz*
4 plaintiff had entered into a contract with a local PHA to develop a low-income housing project
5 for an agreed-upon amount of rent payable to the plaintiff. The agreed-upon rent was calculated
6 in accordance with HUD regulations based on the plaintiff’s cost of acquiring, owning,
7 managing, and maintaining the project. However, after the plaintiff completed the project, HUD
8 determined that the contract rent rate was too high, ordered that the rent be lowered, and further
9 ordered that the plaintiff return all overpayments. The plaintiff filed suit in federal district court,
10 alleging claims for declaratory and injunctive relief, as well as breach of contract, among other
11 claims, and asserting that the district court had jurisdiction under 28 U.S.C. § 1331 and the APA
12 sovereign immunity waiver. HUD challenged the district court’s jurisdiction, arguing that the
13 lawsuit was “contractual and that money damages [were] the appropriate relief.” *Id.* at 1207. The
14 district court agreed with HUD and transferred the case to the Court of Federal Claims.

15 The plaintiff appealed and the Federal Circuit reversed and remanded the case back to the
16 district court. In reaching its decision, the Federal Circuit held that “*Bowen v.*
17 *Massachusetts* . . . compels the conclusion that the relief sought by [the plaintiff] is not money
18 damages, but a declaratory judgment and other equitable relief.” *Id.* at 1208. The Federal Circuit
19 saw no distinction between the kind of relief sought by Massachusetts in *Bowen* and that sought
20 by the plaintiff in the case before it:

21 Like Massachusetts, [plaintiff] seeks payments to which it alleges it is entitled
22 pursuant to federal statute and regulations; it does not seek money as compensation
23 for a loss suffered. It wants to compel HUD to perform the calculation of contract
rents in accordance with [HUD regulations]. That a payment of money may flow

24 ORDER GRANTING PLAINTIFFS’
MOTIONS FOR PRELIMINARY INJUNCTION

1 from a decision that HUD erroneously interpreted or applied its regulation does not
2 change the nature of the case.

3 *Id.*

4 The Federal Circuit reached the same conclusion in *National Center for Mfg. Sciences v.*
5 *United States*, 114 F.3d 196 (Fed. Cir. 1997) in which the National Center for Manufacturing
6 Sciences (“NCMS”) filed suit against the United States Air Force in federal district court seeking
7 an order directing the Air Force to release funds appropriated by Congress pursuant to an
8 agreement between NCMS and the Air Force. The district court had determined that NCMS’s
9 claim was a contract claim against the government and ordered that the case be transferred to the
10 Court of Federal Claims. NCMS appealed the transfer and the Federal Circuit determined that
11 the district court had jurisdiction, stating:

12 [t]he distinction drawn by the Supreme Court in *Bowen v. Massachusetts* and by
13 this court in *Katz v. Cisneros* between “money damages” (as that term is used in 5
14 U.S.C. § 702) and other forms of monetary relief makes it clear that NCMS’s
15 demand for the release of the remaining funds referred to in the Appropriations Act
16 is not a demand for “money damages” within the meaning of the exception to the
17 APA’s waiver of sovereign immunity. Like the grant-in-aid applicants referred to
18 in *Bowen v. Massachusetts*, NCMS is seeking funds to which it claims it is entitled
19 under a statute; it is not seeking money in compensation for losses that it has
20 suffered or will suffer as a result of the withholding of those funds. Thus, the
21 message of *Bowen v. Massachusetts* and *Katz v. Cisneros*, as applied to this case,
22 is that sovereign immunity does not bar the district court from conducting APA
23 review of the Air Force’s refusal to release funds appropriated under the
24 Appropriations Act.

18 *Id.* at 200.

19 The message of *Bowen*, *Katz*, and *NCMS* is crystal clear—the term “money damages” for
20 purposes of the APA’s sovereign immunity waiver refers to “a sum of money used as
21 compensatory relief” that is “given to the plaintiff to *substitute* for a suffered loss.” *Bowen*, 487
22 U.S. at 895 (quoting *Md. Dep’t of Hum. Res.*, 763 F.2d at 1446 (emphasis in original)). This

23 ORDER GRANTING PLAINTIFFS’
24 MOTIONS FOR PRELIMINARY INJUNCTION

1 contrasts with “specific remedies,” which “are not substitute remedies at all, but attempt to give
2 the plaintiff the very thing to which he is entitled.” *Id.* Applying this message to the instant case,
3 it is beyond dispute that Plaintiffs are not seeking monetary damages to compensate them for
4 losses they have suffered or will suffer because Defendants have inserted the challenged funding
5 conditions in the Grant Agreements. Instead, they are seeking a specific remedy: the right to
6 enter into the Grant Agreements without the challenged funding conditions. As the Supreme
7 Court, the Federal Circuit Court, and numerous other courts have held, the fact that the relief
8 requested may eventually result in disbursement of the money to Plaintiffs does not change the
9 nature of the relief sought. *See, e.g., Tucson*, 136 F.3d at 645 (“An action for specific
10 performance is not an action of ‘money damages’ under APA § 702, even if the remedy may
11 actually require a payment of money by the government.”); *Tootle v. Secretary of Navy*, 446 F.3d
12 167, 175–76 (D.C. Cir. 2006) (the fact that plaintiff may recover monetary benefits if he prevails
13 does not render his lawsuit anything “more than a routine APA case—a challenge to the
14 reasonableness of the governmental action on the grounds that it was arbitrary, capricious,
15 inadequately explained, and in violation of agency regulations.”); *Kidwell v. Dep’t of Army, Bd.*
16 *for Correction of Military Records*, 56 F.3d 279, 284 (D.C. Cir. 1995) (“A plaintiff does not ‘in
17 essence’ seek monetary relief . . . merely because he or she hints at some interest in a monetary
18 award from the federal government or because success on the merits may obligate the United
19 States to pay the complainant.”); *Pacito v. Trump*, No. 2:25-cv-255-JNW, 2025 WL 655075, at *
20 17 (W.D. Wash. Feb. 28, 2025) (“[W]hen a party suing the federal government ‘seek[s] funds to
21 which a statute allegedly entitles it, rather than money in compensation for the losses,’ such a
22 claim is not excepted from Section 702’s sovereign-immunity waiver.”).

23 ORDER GRANTING PLAINTIFFS’
24 MOTIONS FOR PRELIMINARY INJUNCTION

1 The Supreme Court’s recent stay order in *Department of Education v. California*, 145 S.
2 Ct. 966 (2025) does not mandate a different outcome. In that case, a federal district court had
3 issued a temporary restraining order enjoining the government from terminating education-
4 related grants. In addition, the order required the government to pay past-due grant obligations
5 and future obligations as they accrued. *Id.* at 968. Given the payment requirements, the Supreme
6 Court construed the order as effectively an order “to enforce a contractual obligation to pay
7 money” and stayed the temporary restraining order, finding, in part, that the government was
8 likely to succeed on its claim that the federal district court did not have jurisdiction to order the
9 payment of money under the APA. *Id.* The Supreme Court noted that while a district court’s
10 jurisdiction is not barred simply because “an order setting aside an agency’s action may result in
11 the disbursement of funds,” the APA’s immunity waiver “does not extend to orders ‘to enforce a
12 contractual obligation to pay money’ along the lines of what the District Court ordered here.” *Id.*
13 (quoting *Great-West Life & Annuity Ins. Co. v. Knudson*, 534 U.S. 204, 212 (2002)). In the
14 instant case, while it is true that a preliminary injunction may ultimately result in payment by the
15 government to Plaintiffs, the injunction, itself, will not direct such payment. Thus, *Department of*
16 *Education* has no application where, as here, the claims sound in statute and the Constitution, not
17 a contract. *See Cmty. Legal Servs. in E. Palo*, 2025 WL 1393876, at *3 (9th Cir. May 14, 2025)
18 (holding that *Department of Education* is inapplicable to claims that sound in statute rather than
19 contract).

20 **4. The Imposition of the New Funding Conditions on the Grants Is**
21 **Not Committed to Agency Discretion by Law**

22 Next, Defendants argue that even if this Court determines that Plaintiffs’ claims are not
23 foreclosed under the Tucker Act, the claims are not reviewable because the actions at issue are

24 ORDER GRANTING PLAINTIFFS’
25 MOTIONS FOR PRELIMINARY INJUNCTION

1 committed to the agencies’ discretion by law. While “the APA establishes a basic presumption of
2 judicial review for one suffering legal wrong because of agency action, that presumption can be
3 rebutted by a showing that . . . the agency action is committed to agency discretion by law.” *Dep’t*
4 *of Homeland Sec. v. Regents of the Univ. of California*, 140 S. Ct. 1891, 1905 (2020) (cleaned
5 up); 5 U.S.C. § 701(a)(2). Where that is the case, courts have no authority to review or set aside
6 the agency’s action.

7 The Court concludes this exception to the “strong” and “basic presumption of judicial
8 review” does not apply in this case. Agency action is committed to agency discretion only in
9 those “rare instances where statutes are drawn in such broad terms that in a given case there is no
10 law to apply, thereby leaving the court with no meaningful standard against which to judge the
11 agency’s exercise of discretion.” *ASSE Int’l, Inc. v. Kerry*, 803 F.3d 1059, 1068 (9th Cir. 2015);
12 *Texas v. United States*, 809 F.3d 134, 168 (5th Cir. 2015), as revised (Nov. 25, 2015) (Even where
13 “a statute grants broad discretion to an agency,” courts are empowered to review the agency’s
14 actions under the APA “unless the statutory scheme, taken together with other relevant materials,
15 provides absolutely no guidance as to how that discretion is to be exercised.”). As courts have
16 often (and recently) repeated, to “honor the [APA’s] presumption of review, we have read the
17 exception in § 701(a)(2) quite narrowly,” confining it to a “rare” and “limited category” of
18 “administrative decision[s] traditionally left to agency discretion.” *Regents*, 140 S. Ct. at 1905
19 (citing *Weyerhaeuser Co. v. United States Fish and Wildlife Serv.*, 139 S. Ct. 361, 370 (2018);
20 *Lincoln v. Vigil*, 508 U.S. 182, 191 (1993)).

21 Defendants have failed to demonstrate that the contested conditions fall within “[t]his
22 limited category of unreviewable actions.” *Id.* They broadly assert that an “agency’s

23 ORDER GRANTING PLAINTIFFS’
24 MOTIONS FOR PRELIMINARY INJUNCTION

determination of how best to condition appropriated funds to fulfill its legal mandates is classic discretionary agency action,” and cite a single case, *Lincoln v. Vigil*, for the principle that an agency’s decision to cancel a program is unreviewable, because how to allocate funds “‘from a lump-sum appropriation’ is an ‘administrative decision traditionally regarded as committed to agency discretion.’” Defs.’ Opp. at 29 (citing 508 U.S. at 193). But the agency action at issue in *Lincoln* differs materially from the actions at issue in this case.

In *Lincoln*, the Indian Health Service (“IHS”) administered the “Indian Children’s Program,” funded through a “lump-sum appropriation” from Congress with instruction to “expend such moneys as Congress may from time to time appropriate, for the benefit, care, and assistance of the Indians” for the “relief of distress and conservation of health.” *Lincoln*, 508 U.S. at 185 (citing 25 U.S.C. § 13). After IHS discontinued the program, plaintiffs filed suit under, *inter alia*, the APA. The *Lincoln* court determined that the lack of congressional attention to any details regarding the spending of the appropriated funds indicated that the agency receiving funds was empowered to exercise discretion in how to spend them. *Id.* at 193 (“[A]s the agency allocates funds from a lump-sum appropriation to meet permissible statutory objectives, [the APA] gives the courts no leave to intrude.”). In fact, as Plaintiffs point out, Congress’s “lump sum” appropriation did not even mention the program. *See id.* at 190 (noting lower courts could identify “no statute or regulation even mentioning the Program”); *id.* at 187 (“Congress never authorized or appropriated moneys expressly for the Program.”).

In contrast, the moneys at issue in this case were not appropriated in an undifferentiated “lump sum.” To the contrary, the grants at issue here abound with specific directives. For instance, the Homeless Assistance Act specifically authorized the CoC Program to provide

ORDER GRANTING PLAINTIFFS’
MOTIONS FOR PRELIMINARY INJUNCTION

1 services to those experiencing homelessness with the goal of achieving long-term stability, and
2 expressly sets forth directives that specify the types of programs that are eligible for funding and
3 the criteria for selecting grant recipients. *See, e.g.*, 42 U.S.C. § 11383(a) (eligible activities
4 include construction of new housing units to provide transitional or permanent housing,
5 acquisition or rehabilitation of existing structure to providing housing or supportive services,
6 provision of rental assistance, and payment of operating costs); *id.* § 11386(a) (selection criteria
7 include past performance of recipients, the extent that the recipients address the needs of
8 subpopulations, sets quantifiable performance measures, maintains implementation strategies).
9 Likewise, the FTA grants in question here expressly and specifically allotted funds for (1) the
10 operation of public transit facilities and equipment in urban areas, (2) public transit systems that
11 operate on fixed rights-of-way such as rail or passenger ferries, (3) replacement of rail rolling
12 stock, and (4) the purchase and maintenance of buses and bus facilities. 49 U.S.C. §§ 5302(8),
13 5307(a)(1), 5337(b), 5339(a)(2), (b), (c). And the DOT SMART program establishes a set of
14 selection criteria that requires, among other things, that the funded projects reduce congestion and
15 delays for commerce and the traveling public, improve safety for pedestrians, bicyclists, and the
16 traveling public, and connect access for underserved or disadvantaged populations. Infrastructure
17 Investment and Jobs Act, Pub. L. No. 117-58, § 25005, 135 Stat. 840-41 (2021).

18 As discussed further below, each of these enabling statutes provides substantial guidance
19 as to how the agencies' discretion should be exercised in implementing these programs, and for
20 the Court to evaluate whether that discretion is being exercised in a reasonable manner. Plaintiffs'
21 claims thus do not involve the "narrow category" of agency actions that are unreviewable under
22 the APA.

23 ORDER GRANTING PLAINTIFFS'
24 MOTIONS FOR PRELIMINARY INJUNCTION

1 For the foregoing reasons, this Court concludes that the APA waives federal sovereign
2 immunity for Plaintiffs' claims seeking declaratory and injunctive relief against Defendants'
3 agency action and this Court has subject-matter jurisdiction under 28 U.S.C. § 1331 to resolve
4 the merits of Plaintiffs' claims.

5 **B. Injunctive Relief Is Warranted**

6 **1. Legal Standard**

7 A preliminary injunction is a matter of equitable discretion and is "an extraordinary
8 remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such
9 relief." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008). "A plaintiff seeking
10 preliminary injunctive relief must establish that [it] is likely to succeed on the merits, that [it] is
11 likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities
12 tips in [its] favor, and that an injunction is in the public interest." *Id.* at 20. Alternatively, an
13 injunction may issue where "the likelihood of success is such that serious questions going to the
14 merits were raised and the balance of hardships tips sharply in [the plaintiff's] favor," provided
15 that the plaintiff can also demonstrate the other two *Winter* factors. *All. for the Wild Rockies v.*
16 *Cottrell*, 632 F.3d 1127, 1131–32 (9th Cir. 2011) (citation and internal quotation marks omitted).
17 Under either standard, Plaintiffs bear the burden of making a clear showing that they are entitled
18 to this extraordinary remedy. *Earth Island Inst. v. Carlton*, 626 F.3d 462, 469 (9th Cir. 2010). The
19 most important *Winter* factor is likelihood of success on the merits. *See Disney Enters., Inc. v.*
20 *VidAngel, Inc.*, 869 F.3d 848, 856 (9th Cir. 2017).

21 **2. Plaintiffs Are Likely to Succeed on the Merits of Their APA Claims**

22 The APA broadly "sets forth the procedures by which federal agencies are accountable to
23

24 ORDER GRANTING PLAINTIFFS'
MOTIONS FOR PRELIMINARY INJUNCTION

the public and their actions subject to review by the courts.” *Regents*, 140 S. Ct. at 1905 (quoting *Franklin v. Massachusetts*, 505 U.S. 788, 796 (1992)). Under the APA, agencies must “engage in reasoned decisionmaking,” and the Court is empowered to “hold unlawful and set aside agency action¹⁸. . . found to be (A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; (B) contrary to constitutional right; [or] (C) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right.” 5 U.S.C. § 706(2). Plaintiffs challenge Defendants’ actions as “contrary to constitutional right” and “in excess of statutory authority,” and as arbitrary and capricious. *See* Amend. Compl., Counts 5, 6, 7, ¶¶ 276–303.

a. Defendants’ Actions Violate APA as Contrary to Constitution and in Excess of Statutory Authority (Counts 6 & 7)

(i) Separation of Powers Doctrine

Under the APA, a court may set aside an agency action that is “contrary to constitutional right, power, privilege, or immunity” or “in excess of statutory jurisdiction, authority, or limitations, or short of statutory right.” 5 U.S.C. § 706(2)(B), (C). Plaintiffs challenge Defendants’ conditions as both contrary to the Constitution’s Separation of Powers doctrine and in excess of any authority conferred by Congress. Amend. Compl., ¶¶ 291–95; 296–303. Because the Separation of Powers doctrine and the APA’s “in excess of statutory authority” standard both turn on the same essential question—whether the agency acted within the bounds of its authority, either as conferred by the Constitution or delegated by Congress—the Court addresses the claims

¹⁸ For agency action to be final and thus reviewable under the APA, that action must (1) “mark the consummation of the agency’s decisionmaking process,” meaning not “tentative or interlocutory” 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) (quotations omitted). Plaintiffs assert, Defendants do not dispute, and the Court finds that under this standard, the new funding conditions at issue here are “final agency actions” for purposes of APA review.

1 in a single analysis.

2 The Separation of Powers doctrine recognizes that the “United States Constitution
3 exclusively grants the power of the purse to Congress, not the President.” *City & Cnty. of San*
4 *Francisco v. Trump*, 897 F.3d 1225, 1231 (9th Cir. 2018) (citing the Appropriations Clause, U.S.
5 Const. art. I, § 9, cl. 7 (“No Money shall be drawn from the Treasury, but in Consequence of
6 Appropriations made by Law.”)). “The [Appropriations] Clause has a ‘fundamental and
7 comprehensive purpose . . . to assure that public funds will be spent according to the letter of the
8 difficult judgments reached by Congress as to the common good and not according to the
9 individual favor of Government agents.’” *United States v. McIntosh*, 833 F.3d 1163, 1175 (9th
10 Cir. 2016) (quoting *Office of Pers. Mgmt. v. Richmond*, 496 U.S. 414, 427–28, 2473 (1990)).

11 In contrast, “[t]here is no provision in the Constitution that authorizes the President to
12 enact, to amend, or to repeal statutes.” *Clinton v. City of New York*, 524 U.S. 417, 438 (1998).
13 “Aside from the power of veto, the President is without authority to thwart congressional will by
14 canceling appropriations passed by Congress.” *San Francisco*, 897 F.3d at 1231. It follows that an
15 executive agency “literally has no power to act . . . unless and until Congress confers power upon
16 it.” *La. Pub. Serv. Comm’n v. FCC*, 476 U.S. 355, 374 (1986); see *California v. Trump*, 379 F.
17 Supp. 3d 928, 941 (N.D. Cal. 2019), *aff’d*, 963 F.3d 926 (9th Cir. 2020). When an agency is
18 charged with administering a statute, “both [its] power to act and how [it is] to act [are]
19 authoritatively prescribed by Congress.” *City of Arlington v. FCC*, 569 U.S. 290, 297 (2013).
20 “Absent congressional authorization, the Administration may not redistribute or withhold
21 properly appropriated funds in order to effectuate its own policy goals.” *San Francisco*, 897 F.3d
22 at 1235.

23 ORDER GRANTING PLAINTIFFS’
24 MOTIONS FOR PRELIMINARY INJUNCTION

1 Defendants do not and reasonably could not argue that any of the new funding conditions
2 were explicitly authorized by the Homeless Assistance Act. That legislation does outline several
3 conditions that grant recipients must agree to. These enumerated conditions require recipients,
4 among other things, “to monitor and report to the Secretary the progress of the project”; “to
5 ensure . . . that individuals and families experiencing homelessness are involved” in the project;
6 and to “monitor and report” the receipt of any matching funds. 42 U.S.C. § 11386(b). But the
7 Homeless Assistance Act does not make direct (or even indirect) reference to any of the new
8 conditions Plaintiffs are challenging in this case.

9 While the Act includes a limited “catchall” provision, which allows HUD to impose “such
10 other terms and conditions as the Secretary may establish to carry out this part in an effective and
11 efficient manner,” Defendants have not argued that this provision confers the authority to impose
12 the conditions at issue here. Applying basic rules of statutory interpretation, the Court concludes
13 in any event it does not. Under the canon *ejusdem generis*, or “of the same kind,” “[w]here
14 general words follow specific words in a statutory enumeration, the general words are construed
15 to embrace only objects similar in nature to those objects enumerated by the preceding specific
16 words.” *Cir. City Stores, Inc. v. Adams*, 532 U.S. 105, 114–15 (2001). Substantive conditions
17 implicating controversial policy matters that are unrelated to the authorizing statute, such as
18 prohibitions on DEI initiatives and “promot[ing] elective abortion,” are simply not “of the same
19 kind” as conditions that require recipients to monitor and report the progress of their program.
20 Moreover, Defendants have not even attempted to explain to this Court how the proposed funding
21 conditions might actually fall within this catchall provision—how they would, in other words,
22 support the Secretary in carrying out the CoC program “in an effective and efficient manner.”

23 ORDER GRANTING PLAINTIFFS’
24 MOTIONS FOR PRELIMINARY INJUNCTION

Given the stated objectives of the Homeless Assistance Act, including to “meet the critically urgent needs of the homeless of the Nation,” and “to assist the homeless, with special emphasis on elderly persons, handicapped persons, families with children, Native Americans, and veterans,” the Court is skeptical that Defendants would be convincingly able to do so. 42 U.S.C. § 11301(b). The Court concludes that Plaintiffs are likely to prevail in their claim that in attempting to impose the new funding conditions on recipients of the CoC funds, Defendants have run afoul of the Separation of Powers doctrine, and were acting in excess of statutory authority, and that under the APA, those conditions must be set aside.

(iii) The New DOT Funding Conditions

Defendants’ attempts to identify statutory authority for imposing the contested conditions on the DOT grants administered through FTA, FHWA, FAA, and FRA suffer from similar deficiencies. As noted above with respect to the new funding conditions in the CoC Grant Agreements, agency regulations cannot create or confer statutory authority, and the DOT Defendants’ attempt to rely on them also fails.

Nor have Defendants identified any statutory authority for imposing the new DOT funding conditions. Plaintiffs have identified the statutory sources of the various DOT grant funds at issue in this case, and while many of those statutes contain explicit conditional prescriptions, none of those prescriptions relate to the conditions challenged here. *See* Amend. Compl., ¶¶ 85–120. The statute authorizing FTA’s Urban Area Formula Grants, for example, imposes a number of conditions on grant recipients, providing that they will not be eligible to receive funding for a program unless, among other things, they “have the legal, financial, and technical capacity to carry out the program,” and “have satisfactory continuing control over the use of equipment and

ORDER GRANTING PLAINTIFFS’
MOTIONS FOR PRELIMINARY INJUNCTION

1 facilities.” 49 U.S.C. § 5307(c)(1)(A)–(B). In another similar example, the statute authorizing the
2 FHWA’s Bridge Investment Program provides financial assistance for improving the condition of
3 the nation’s bridges. That statute directs DOT to consider, among other factors, “the average daily
4 person and freight throughput supported by the eligible project,” “the extent to which the eligible
5 project demonstrates cost savings by bundling multiple bridge projects,” and “geographic
6 diversity among grant recipients, including the need for a balance between the needs of rural and
7 urban communities.” 23 U.S.C. § 124(c)(5)(A); *see also* § 124(g)(4)(B) (authorizing grants only
8 for projects that generate “safety benefits, including the reduction of accidents and related costs,”
9 “national or regional economic benefits,” and “environmental benefits, including wildlife
10 connectivity”). Defendants have not claimed that any of the DOT grant-authorizing statutes
11 explicitly, or even implicitly, relate even remotely to the newly imposed DOT funding conditions.

12 The only statute Defendants cite in support of DOT’s claimed statutory authority is 49
13 U.S.C. § 5334. That section authorizes the Secretary of Transportation to “prescribe terms for a
14 project that receives Federal financial assistance under this chapter,” and “include in an agreement
15 or instrument under this chapter a covenant or term the Secretary of Transportation considers
16 necessary to carry out this chapter.” 49 U.S.C. § 5334(a)(1),(9). These provisions do not carry the
17 weight Defendants suggest they do. First, they are contained in a section titled “Administrative
18 provisions,” clearly signaling a limit on what kind of authority is being delegated: to wit,
19 authority to administer the programs, not to inject substantive policies into them. This is
20 particularly true in this case given that the challenged conditions not only are unrelated to the
21 subject matter of the statutes at issue, but also reflect divisive and hotly debated policy choices.
22 Furthermore, as with the proposed CoC funding conditions, these seemingly broad delegations of

23 ORDER GRANTING PLAINTIFFS’
24 MOTIONS FOR PRELIMINARY INJUNCTION

authority must be interpreted under the *ejusdem generis* canon of construction. The specifically enumerated authority outlined in Section 5334 includes such “administrative provisions” as granting the Secretary authority to “sue and be sued,” to “foreclose on property,” and to “collect fees to cover the costs of training.” *Id.* § 5334 (a)(2),(3),(10). The seemingly broad authority that follows—to “prescribe terms for a project”—on which Defendants rely in imposing their conditions must be read in the limiting context of these specific grants of authority that precede it. Properly read, the statute does not confer the unbounded discretion that Defendants claim and indeed, require. And again, Defendants have not even attempted to explain how the conditions challenged here might be “necessary” to carry out the DOT grant programs—for example, how requiring grant recipients to certify that they do not “operate any programs promoting diversity, equity, and inclusion (DEI) initiatives,” might be necessary to carry out the “development and revitalization” of the nation’s “public transportation systems.” 49 U.S.C. § 5301.

Accordingly, the Court concludes that Plaintiffs are likely to prevail on their claim that in attempting to impose on Plaintiffs the conditions in the Master Agreement, Defendants have acted in a manner that violates the Separation of Powers doctrine and exceeds statutory authority, and that under the APA those conditions must be set aside.

b. Defendants’ Actions Were “Arbitrary and Capricious,” 5 U.S.C. § 706(2)(A) (Count 5)

Plaintiffs have also asserted that the funding conditions must be set aside as “arbitrary” and “capricious.” 5 U.S.C. § 706(2)(A); Amend. Compl., ¶¶ 276–90. The APA requires agencies to engage in “reasoned decisionmaking,” and their actions must be “reasonable and reasonably explained.” *Michigan v. EPA*, 576 U.S. 743, 750 (2015); *Ohio v. EPA*, 603 U.S. 279, 292 (2024) (cleaned up). An agency must offer “a satisfactory explanation for its action,” and cannot rely on

ORDER GRANTING PLAINTIFFS’
MOTIONS FOR PRELIMINARY INJUNCTION

“factors which Congress has not intended it to consider.” *Motor Vehicle Mfrs. Ass’n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983). Plaintiffs maintain that Defendants have not followed these prescriptions, and have failed to provide reasonable explanations for any of the new funding conditions.

The Court concludes that Defendants have failed to demonstrate that the new funding conditions were the result of “reasoned decisionmaking,” let alone have been “reasonably explained.” In fact, they have not been explained at all. The CoC Program Grant Agreements and the new DOT agreements proffer no explanation for adoption of the new conditions. Several of the conditions make reference to certain Executive Orders. *See, e.g.*, Abortion Condition, Marshall Decl., Ex. B (providing grant recipient “shall not use any Grant Funds to fund or promote elective abortions, as required by E.O. 14182”). But rote incorporation of executive orders—especially ones involving politically charged policy matters that are the subject of intense disagreement and bear no substantive relation to the agency’s underlying action—does not constitute “reasoned decisionmaking.” For this reason, the Court concludes that Plaintiffs are likely to succeed on the merits of their claim that Defendants’ insistence on the new funding conditions was arbitrary and capricious, which is independent grounds for setting aside those conditions.¹⁹

¹⁹ Plaintiffs have asserted several other claims both under the APA and under the Constitution. *See* Compl., ¶¶ 116–95. The Court does not reach all claims at this stage, in part because “[t]he Court need only find that Plaintiffs are likely to succeed on one of [their] claims for [the likelihood-of-success] factor to weigh in favor of a preliminary injunction,” and a ruling on Plaintiffs’ additional claims would not affect the relief afforded. *Aids Vaccine Advoc. Coal. v. United States Dep’t of State*, No. CV 25-00400 (AHA), 2025 WL 752378, at *7 (D.D.C. Mar. 10, 2025). Furthermore, the Court adheres to the “fundamental and longstanding principle of judicial restraint” that requires courts to “avoid reaching constitutional questions in advance of the necessity of deciding them.” *Al Otro Lado v. Exec. Off. for Immigr. Rev.*, No. 22-55988, 2024 WL 5692756, at *14 (9th Cir. May 14, 2025) (vacating district court’s “entry of judgment for Plaintiffs on the constitutional due process claim” where judgment was granted in Plaintiffs’ favor on APA claim) (citing *Lyng v. Nw. Indian Cemetery Protective Ass’n*, 485 U.S. 439, 445 (1988));

ORDER GRANTING PLAINTIFFS’
MOTIONS FOR PRELIMINARY INJUNCTION

3. Irreparable Injury

A plaintiff seeking a preliminary injunction must establish that it is likely to suffer irreparable harm in the absence of preliminary relief. *Winter*, 555 U.S. at 20. Such harm “is traditionally defined as harm for which there is no adequate legal remedy, such as an award of damages.” *Arizona Dream Act Coal. v. Brewer*, 757 F.3d 1053, 1068 (9th Cir. 2014) (citing *Rent-A-Ctr., Inc. v. Canyon Television & Appliance Rental, Inc.*, 944 F.2d 597, 603 (9th Cir.1991)).

Plaintiffs here have alleged several forms of irreparable harm that are either presently occurring, or are likely to occur, in the absence of injunctive relief. They are facing a choice between two untenable options; as this Court has already determined, “Defendants have put Plaintiffs in the position of having to choose between accepting conditions that they believe are unconstitutional, and risking the loss of hundreds of millions of dollars in federal grant funding, including funding that they have already budgeted and are committed to spending.” TRO Order at 3; *see San Francisco Unified Sch. Dist. v. AmeriCorps*, No. 25-CV-02425-EMC, 2025 WL 974298, at *4 (N.D. Cal. Mar. 31, 2025) (“[H]aving to decide between two losing options constitutes irreparable injury because “very real penalty attaches to [Plaintiffs] regardless of how they proceed.”). On the one hand, being forced to accept conditions that are contrary either to statute or to the Constitution (or both) is a constitutional injury, and constitutional injuries are

see also Washington v. Trump, 441 F. Supp. 3d 1101, 1125 (W.D. Wash. 2020) (“[A] court should not reach a constitutional question if there is some other ground upon which to dispose of the case. Given that this Court has already determined that Defendants’ [action] violates the APA and, therefore, can dispose of the case on that basis, the Court exercises restraint and declines to reach the constitutional claims raised by Washington.”) (cleaned up, citing *Nw. Austin Mun. Util. Dist. No. One v. Holder*, 557 U.S. 193, 205 (2009); *Harmon v. Brucker*, 355 U.S. 579, 581 (1958)). Because Plaintiffs are likely to prevail on Counts 5, 6 and 7 of their Amended Complaint—that the challenged actions were arbitrary and capricious, contrary to the constitutional Separation of Powers doctrine, and in excess of Defendants’ statutory authority, and must therefore be set aside under the APA—the Court’s inquiry into the likelihood-of-success factor is at an end.

ORDER GRANTING PLAINTIFFS’
MOTIONS FOR PRELIMINARY INJUNCTION

1 “unquestionably” irreparable. *Hernandez v. Sessions*, 872 F.3d 976, 994 (9th Cir. 2017) (“It is
2 well established that the deprivation of constitutional rights unquestionably constitutes irreparable
3 injury.”); *Cnty. of Santa Clara v. Trump*, 250 F. Supp. 3d 497, 537–38 (N.D. Cal. 2017) (“[B]eing
4 forced to comply with an unconstitutional law or else face financial injury” constitutes a
5 constitutional injury) (citing *Am. Trucking Ass’n, Inc. v. City of Los Angeles*, 559 F.3d 1046,
6 1058–59 (9th Cir. 2009) (plaintiffs were injured where they were faced with the choice of signing
7 unconstitutional agreements or facing a loss of customer goodwill and significant business.)).
8 Defendants argue that Plaintiffs have failed to demonstrate that the new funding conditions would
9 in fact deprive Plaintiffs of their constitutional rights, arguing that at least some of the conditions
10 are not on their face illegal. Defs.’ Opp. at 29. This contention ignores the Court’s conclusion
11 that, as outlined at some length above, Plaintiffs are likely to succeed in demonstrating that the
12 new funding conditions were imposed in violation of the APA, and are contrary to the
13 Constitution’s Separation of Powers doctrine. *See supra*, § IV.B.2.; *Santa Clara*, 250 F. Supp. 3d
14 at 538 (“[E]ven where the constitutional injury is structural,” e.g. a violation of the Separation of
15 Powers doctrine, “the constitutional violation alone, coupled with the damages incurred, can
16 suffice to show irreparable harm.”) (quoting *Am. Trucking*, 559 F.3d at 1058–59).

17 On the other hand, avoiding the constitutional offense by refusing to agree to the new
18 funding conditions may very well result in the loss of access to promised grant funds. And indeed,
19 Defendants have not denied that Plaintiffs would be assuming this risk by not signing the
20 agreements. They merely complain that Plaintiffs have not provided details as to when exactly
21 that loss will occur. But this argument misses the point. It is this looming risk itself that is the
22 injury, and one that Plaintiffs are already suffering. Courts evaluating similar circumstances have

23 ORDER GRANTING PLAINTIFFS’
24 MOTIONS FOR PRELIMINARY INJUNCTION

1 recognized that this injury of acute budgetary uncertainty is irreparable; “[w]ithout clarification
2 regarding the Order’s scope or legality, the Counties will be obligated to take steps to mitigate the
3 risk of losing millions of dollars in federal funding, which will include placing funds in reserve
4 and making cuts to services. These mitigating steps will cause the Counties irreparable harm.”
5 *Santa Clara*, 250 F. Supp. 3d at 537 (“The threat of the Order and the uncertainty it is causing
6 impermissibly interferes with the Counties’ ability to operate, to provide key services, to plan for
7 the future, and to budget. The Counties have established that, absent an injunction, they are likely
8 to suffer irreparable harm.”) (citing *United States v. North Carolina*, 192 F.Supp.3d 620, 629
9 (M.D.N.C. 2016)). While a preliminary injunction will not eliminate these risks entirely, Plaintiffs
10 have demonstrated it will at least mitigate them pending resolution of this case on its merits.

11 Furthermore, Plaintiffs have submitted substantive and detailed evidence illustrating the
12 ways in which a loss of grant funds would be devastating and irreparable, if these risks in fact
13 materialize. With respect to the HUD Plaintiffs, the resulting irreparable injuries would be both to
14 Plaintiffs and their operations, and to the vulnerable populations they serve. *See, e.g.*, Marshall
15 Decl., ¶¶ 17–21 (King County) ([T]he loss of [CoC] funding would negatively impact King
16 County because King County has already begun the contracting process with service providers in
17 reliance on receiving the CoC funds. . . . It is important to remember that the key focus in this
18 work is keeping people in housing. In order to do that, it is imperative that housing providers,
19 with whom King County contracts, receive the funds necessary to support the housing. 2144
20 households in King County will be impacted by the loss of CoC funds.”); Dillon Decl., ¶¶ 12–14
21 (Boston) (“Without CoC funds, the approximately 2,000 households served would lose assistance
22 that is integral to their ability to maintain stable housing, most likely leading to evictions and

23 ORDER GRANTING PLAINTIFFS’
24 MOTIONS FOR PRELIMINARY INJUNCTION

homelessness.”); Semonoff Decl., ¶ 31 (Cambridge) (“Without grant funding to support the CoC projects, over 200 individuals currently enrolled in CoC . . . projects would potentially lose their housing and access to critical supportive services. The loss of supportive housing capacity would further strain the City’s emergency shelter system, resulting in longer durations of homelessness and reduced exits to stable housing.”); McSpadden Decl., ¶¶ 16–19 (San Francisco) (“Without CoC funding, close to 2,000 program participants will lose their housing subsidies and services and will be at risk of imminent evictions. These individuals and families may slip back into homelessness, which would be profoundly detrimental. Rehousing these individuals and families will come with enormous challenges and costs, adding to the homelessness crisis in San Francisco.”). The administration’s attempt to compel Plaintiffs’ compliance with unrelated policy objectives by leveraging the needs of our most vulnerable fellow human beings is breathtaking in its callousness. Defendants’ argument that these harms are not irreparable is simply wrong.

The harms threatening the DOT Plaintiffs are also demonstrably irreparable. While perhaps emotionally less compelling than injury to the homeless and the local agencies who serve them, injury to the continued operation of the nation’s transportation projects can hardly be considered less important. One need not conjure the most extreme cases of bridges collapsing and train derailments to understand instinctively that maintaining the health of the systems by which this nation—its goods and its people—get from one place to another safely, efficiently, and predictably, is critical. Plaintiffs have submitted evidence supporting their contention that “loss of DOT funding would force Plaintiffs to substantially curtail existing and planned transportation safety and other improvements and operations.” Pls. Sec. Mot. at 13 (citing, *inter alia*, Franklin-Hodge Decl. (Boston) (“The unpredictability injected into these complex road-safety projects

ORDER GRANTING PLAINTIFFS’
MOTIONS FOR PRELIMINARY INJUNCTION

1 through new grant terms hinders the City of Boston’s ability to complete such projects.
2 Specifically, the City is unable to provide stability to its partners in this work, including vendors
3 and other governmental entities.”); Davis Decl., ¶ 22 (Chicago) (“The loss of the pending and
4 expected DOT grant funds will cause severe hardship for [the Chicago Department of
5 Transportation] and its ability to maintain Chicago’s roadways and transportation systems safely.
6 CDOT relies on DOT for a large portion of its budget and Chicago uses the funds to repair and
7 expand bridges and roadways to prevent accidents, to make pedestrian walkways safer and more
8 accessible, and to update outdated transit stations. These funds are critical to Chicago’s ability to
9 implement and maintain safe and effective means of transportation for millions of Chicagoans and
10 its annual visitors.”)); *see also* Morrison Decl., ¶ 12 (King County) (“Given the amount of money
11 at stake, it is almost impossible to overstate how important these FTA grant programs are to
12 Metro’s ongoing transit operations. . . . Given the range and depth of Metro transit operations that
13 are funded by these four FTA grant programs, it is plain that those FTA grant funds are absolutely
14 mission-critical to Metro’s existing and planned transit operations. To be clear, the scope and
15 scale of Metro’s existing and near-future planned transit operations would almost certainly have
16 to be substantially curtailed, and some elements likely entirely abandoned, if any substantial
17 portion of this FTA grant funding were to be withheld or eliminated. As of the date of this
18 declaration, I know of no other existing or proposed funding source that could replace FTA’s
19 grant funds. . . . To put it plainly, without FTA grant funds, Metro’s service network would likely
20 have to be cut back in ways that could significantly reduce mobility options for a large portion of
21 King County’s population while potentially increasing traffic congestion and slowing the
22 movement of freight and goods across our region.”).

23 ORDER GRANTING PLAINTIFFS’
24 MOTIONS FOR PRELIMINARY INJUNCTION

1 Plaintiffs have provided substantial evidence demonstrating that these likely harms are
2 not, as Defendants suggest, merely monetary in nature. Adequate financial compensation for
3 hundreds of shelter-unstable families losing access to housing does not exist; the same must be
4 said of the incalculable effects of forcing unforeseen reductions in transportation spending.
5 Homeless assistance and transit grants are essential tools in addressing these urgent community
6 needs. Congress has consistently affirmed their importance by repeatedly authorizing these grants,
7 underscoring the federal government's vital role in supporting local governments as they confront
8 the challenges of homelessness and maintenance of critical transportation infrastructure. The
9 Court concludes that the harms Plaintiffs have alleged are quintessentially irreparable in nature,
10 and can be avoided only by entry of the requested injunction.

11 4. The Balance of Equities Weighs in Plaintiffs' Favor

12 In deciding whether to grant an injunction, "courts must balance the competing claims of
13 injury and must consider the effect on each party of the granting or withholding of the requested
14 relief." *Disney Enters*, 869 F.3d at 866 (quoting *Winter*, 555 U.S. at 24). Courts "explore the
15 relative harms to applicant and respondent, as well as the interests of the public at large." *Barnes*
16 *v. E-Sys., Inc. Grp. Hosp. Med. & Surgical Ins. Plan*, 501 U.S. 1301, 1305 (1991) (internal
17 quotation marks and citation omitted). Where the government is a party, the balance of equities
18 and public interest factors merge. *Drakes Bay Oyster Co. v. Jewell*, 747 F.3d 1073, 1092 (9th Cir.
19 2014) (citing *Nken v. Holder*, 556 U.S. 418, 435 (2009)).

20 Based on the Court's conclusions discussed above, the Court finds that the balance of
21 equities tips sharply in Plaintiffs' favor. Defendants' argument to the contrary hinges on their
22 position that "Plaintiffs could be compensated for any lost money after a ruling on the merits."

23 ORDER GRANTING PLAINTIFFS'
24 MOTIONS FOR PRELIMINARY INJUNCTION

1 Defs.’ Opp. at 32. The Court has already squarely rejected this contention in discussing the
2 irreparable harm Plaintiffs are likely to suffer in the absence of an injunction. *See supra*, § IV.B.3.
3 Moreover, Defendants have not posited any anticipated (let alone likely) non-monetary harm they
4 will experience if an injunction were to issue, stating only that the “federal government maintains
5 an interest in ensuring that its funds are spent pursuant to the conditions it attaches to those
6 federal dollars.” Defs.’ Opp. at 29. Of course, Defendants do not have a legitimate interest in
7 ensuring that funds are spent pursuant to conditions that were likely imposed in violation of the
8 APA and/or the Constitution. *See Valle del Sol Inc. v. Whiting*, 732 F.3d 1006, 1029 (9th Cir.
9 2013) (there is no legitimate government interest in violating federal law). For the reasons
10 outlined above, the irreparable harms Plaintiffs face in the absence of an injunction tip the balance
11 of equities sharply in their favor.

12 **C. The Court Denies Defendants’ Request for a Bond and Request to Stay**

13 Defendants request that if this Court grants Plaintiffs’ motions for a preliminary
14 injunction, the Court require Plaintiffs to post a bond for the value of the specific grants subject to
15 the injunction and stay the injunction pending “a determination by the Solicitor General whether
16 to appeal and, if appeal is authorized, pending any appeal.” Defs.’ Opp. at 33. Federal Rule of
17 Civil Procedure 65(c) states that courts “may issue a preliminary injunction or a temporary
18 restraining order only if the movant gives security in an amount that the court considers proper to
19 pay the costs and damages sustained by any party found to have been wrongfully enjoined or
20 restrained.” Fed. R. Civ. P. 65(c). “Despite the seemingly mandatory language, Rule 65(c) invests
21 the district court with discretion as to the amount of security required, if any.” *Johnson v.*
22 *Couturier*, 572 F.3d 1067, 1086 (9th Cir. 2009) (citations and internal quotation marks omitted).

23 ORDER GRANTING PLAINTIFFS’
24 MOTIONS FOR PRELIMINARY INJUNCTION

1 “In particular, the district court may dispense with the filing of a bond when it concludes there is
2 no realistic likelihood of harm to the defendant from enjoining his or her conduct.” *Id.* (cleaned
3 up). Defendants have not argued, let alone demonstrated, that they will suffer any material harm
4 from the injunction the Court issues today. Nor have Defendants met the standard for a stay. *See,*
5 *e.g., Maryland v. Dep’t of Agriculture*, JKB-25-0748, 2025 WL 800216, at *26 (D. Md. Mar. 13,
6 2025) (“It is generally logically inconsistent for a court to issue a TRO or preliminary injunction
7 and then stay that order, as the findings on which those decisions are premised are almost perfect
8 opposites.”). Therefore, the Court denies Defendants’ requests for a bond and to stay the
9 injunction.

10 V. CONCLUSION

11 For the foregoing reasons:

- 12 1. Plaintiffs’ Motion for Preliminary Injunction is GRANTED;
- 13 2. Plaintiffs’ Second Motion for Preliminary Injunction is GRANTED;
- 14 3. HUD and its officers, agents, servants, employees, and attorneys, and any other persons
15 who are in active concert or participation with them (collectively “Enjoined HUD Parties”), are
16 enjoined from (1) imposing or enforcing the CoC Grant Conditions, as defined in the Motions, or
17 any materially similar terms or conditions with respect to any CoC funds awarded to the HUD
18 Plaintiffs or members of their Continuums; (2) as to the HUD Plaintiffs, rescinding, withholding,
19 cancelling, or otherwise not processing any CoC Agreements, or pausing, freezing, impeding,
20 blocking, cancelling, terminating, delaying, withholding, or conditioning CoC funds, based on
21 such terms or conditions, including without limitation failing or refusing to process and otherwise
22 implement grants signed with changes or other objection to conditions enjoined by this

23 ORDER GRANTING PLAINTIFFS’
24 MOTIONS FOR PRELIMINARY INJUNCTION

1 preliminary injunction; (3) requiring the HUD Plaintiffs to make any “certification” or other
2 representation related to compliance with such terms or conditions; or (4) refusing to issue,
3 process, or sign CoC Agreements based on HUD Plaintiffs’ participation in this lawsuit;

4 4. The Enjoined HUD Parties shall immediately treat any actions taken to implement or
5 enforce the CoC Grant Conditions or any materially similar terms or conditions as to the HUD
6 Plaintiffs or their Continuums, including any delays or withholding of funds based on such
7 conditions, as null, void, and rescinded; shall treat as null and void any such conditions included
8 in any grant agreement executed by any Plaintiff or member of a Plaintiff Continuum while this
9 PI or the previous TROs are in effect; and may not retroactively apply such conditions to grant
10 agreements during the effective period of this PI or the previous TROs. The Enjoined HUD
11 Parties shall immediately take every step necessary to effectuate this order, including clearing any
12 administrative, operational, or technical hurdles to implementation;

13 5. DOT, the DOT OAs, and their officers, agents, servants, employees, and attorneys, and
14 any other persons who are in active concert or participation with them (collectively “Enjoined
15 DOT Parties”), are enjoined from (1) imposing or enforcing the DOT Grant Conditions, as
16 defined in the Motions, or any materially similar terms or conditions to any DOT funds awarded,
17 directly or indirectly, to the DOT Plaintiffs or their subrecipients; (2) as to the DOT Plaintiffs or
18 their subrecipients, rescinding, withholding, cancelling, or otherwise not processing the DOT
19 grant awards, or pausing, freezing, impeding, blocking, canceling, terminating, delaying,
20 withholding, or conditioning DOT funds, based on such terms or conditions, including without
21 limitation failing or refusing to process and otherwise implement grants signed with changes or
22 other objection to conditions enjoined by this preliminary injunction; (3) requiring the DOT

23 ORDER GRANTING PLAINTIFFS’
24 MOTIONS FOR PRELIMINARY INJUNCTION

1 Plaintiffs or their subrecipients to make any “certification” or other representation related to
2 compliance with such terms or conditions; or (4) refusing to issue, process, or sign grant
3 agreements based on DOT Plaintiffs’ participation in this lawsuit;

4 6. The Enjoined DOT Parties shall immediately treat any actions taken to implement or
5 enforce the DOT Grant Conditions or any materially similar terms or conditions as to DOT funds
6 awarded, directly or indirectly, to the DOT Plaintiffs or their subrecipients, including any delays
7 or withholding of funds based on such conditions, as null, void, and rescinded; shall treat as null
8 and void any such conditions included in any grant agreement executed by any DOT Plaintiff or
9 subrecipient while this PI or the previous TROs are in effect; and may not retroactively apply
10 such conditions to grant agreements during the effective period of this PI or the previous TROs.
11 The Enjoined DOT Parties shall immediately take every step necessary to effectuate this order,
12 including clearing any administrative, operational, or technical hurdles to implementation;

13 7. Defendants’ counsel shall provide written notice of this Order to all Defendants and
14 their employees by the end of the second day after issuance of this Order;

15 8. By the end of the second day after issuance of this Order, the Defendants SHALL FILE
16 on the Court’s electronic docket and serve upon Plaintiffs a Status Report documenting the
17 actions that they have taken to comply with this Order, including a copy of the notice and an
18 explanation as to whom the notice was sent;

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23 ORDER GRANTING PLAINTIFFS’
24 MOTIONS FOR PRELIMINARY INJUNCTION

1 9. This order remains in effect pending further orders from this Court.

2 It is so ordered this 3rd day of June, 2025.

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5 Barbara Jacobs Rothstein
6 U.S. District Court Judge
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24 ORDER GRANTING PLAINTIFFS'
25 MOTIONS FOR PRELIMINARY INJUNCTION