The Honorable Ricardo S. Martinez

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

WASHINGTON STATE ASSOCIATION OF HEAD START AND EARLY CHILDHOOD ASSISTANCE AND EDUCATION PROGRAM, ILLINOIS HEAD START ASSOCIATION, PENNSYLVANIA HEAD START ASSOCIATION, WISCONSIN HEAD START ASSOCIATION, FAMILY FORWARD OREGON, and PARENT VOICES OAKLAND,

Plaintiffs,

v.

ROBERT F. KENNEDY, JR., in his official capacity as Secretary of Health and Human Services; U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES; ANDREW GRADISON, in his official capacity as Acting Assistant Secretary of the Administration for Children and Families; ADMINISTRATION FOR CHILDREN AND FAMILIES; OFFICE OF HEAD START; and TALA HOOBAN, in her official capacity as Acting Director of the Office of Head Start,

Defendants.

Case No. 2:25-cv-00781

PLAINTIFFS' REPLY IN SUPPORT OF MOTION FOR A PRELIMINARY INJUNCTION

NOTE ON MOTION CALENDAR: JUNE 13, 2025

ORAL ARGUMENT REQUESTED

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INTRODUCTION

Plaintiffs moved to preliminarily enjoin discrete unlawful agency actions by Defendants: the DEIA Ban and the April 1 mass cuts of sixty percent of OHS staff and closure of half the regional offices. These actions have caused Plaintiffs' members irreparable harms, threaten imminent harms, and make fundamental changes to the Head Start program without Congressional approval.

Defendants' opposition unconvincingly asserts that the challenged actions have no cognizable impact on Head Start agencies. Defendants do not offer evidence rebutting Plaintiffs' claims that OHS staff have already unlawfully enforced the DEIA Ban and that the mass cuts have impeded Head Start agencies' ability to provide high quality services to children and families. To the contrary, Defendants confirm that the DEIA Ban will "effectuate the President's policy priorities," which they publicly state "focus on…removing Diversity, Equity, and Inclusion" from Head Start.[1]

Without this Court's intervention, Head Start agencies will soon be driven to failure, causing catastrophic harms to children, families, and communities. By June, HSA Plaintiffs' members must prepare for the next school year by planning programming, recruiting staff, and enrolling children. But because of Defendants' actions, Head Start agencies are stymied in their ability to budget, plan, and staff their programs. They do not know whether previously planned programs, such as Spanish immersion or blended inclusion classes, will run afoul of Defendants' vague DEIA Ban and are unable to secure answers from federal Head Start program staff because the majority of those positions have been eliminated. Moreover, Head Start teachers and staff are leaving for more secure jobs after seeing programs on the brink of closure month after month.

[1] HHS, Fiscal Year 2026: Budget in Brief (June 2, 2025), https://perma.cc/L8UE-WDW8.

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This Court should grant Plaintiffs' motion for preliminary injunction[2] to safeguard the Constitutional and statutory rights of Plaintiffs and their members.

ARGUMENT

I. Plaintiffs Satisfy Standing and Preliminary Injunction Standards Because the Challenged Actions Cause Them Irreparable Harm.

A. Plaintiffs Have Demonstrated Standing.

In asserting Plaintiffs lack standing, Defendants ignore the record. "In conducting a standing analysis, courts are to take all material allegations as true." *Isaacson v. Mayes*, 84 F.4th 1089, 1097 (9th Cir. 2023) (internal citations omitted). It is "enough for standing purposes that if the plaintiff's interpretation of the statute was correct, it would suffer serious consequences." *Arizona v. Yellen*, 34 F.4th 841, 853 (9th Cir. 2022) (cleaned up).

1. DEIA Ban.

Plaintiffs have established that the DEIA Ban force agencies to face a Hobson's choice between complying with the Ban and meeting their obligations under the Head Start and Rehabilitation Acts, including whether to make fundamental programmatic changes to try to preserve funding under Defendants' new conditions.

To comply with their statutory obligations, HSA Plaintiffs' members have long engaged in various activities that promote inclusion and accessibility through serving children with disabilities; equity through investing resources to enroll and support children experiencing homelessness; and diversity through providing culturally and linguistically appropriate services, facilitating family participation through accessible outreach and information, and providing materials in multiple languages.[3] *See* Mot. Prelim. Inj. 23-24, ECF No. 37 ["Br."]. The DEIA Ban allows Defendants to use any of these activities as basis for investigation and termination of status

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[2] Defendants argue Plaintiffs have not met the threshold for certain claims on which Plaintiffs have not moved for preliminary injunction and, therefore, are outside the scope of this motion. Defs.' Opp'n 13, 15-16, ECF No. 59 ["Opp."]. Plaintiffs do not waive responses to any future motions.

[3] Calvo-Friedman Ex.39; Maunnamalai ¶¶37-47, 49; Morrison-Frichtl ¶30-31.

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or funding, or even prosecution, resulting in injury to Plaintiffs. *See Isaacson*, 84 F.4th at 1098-99 (finding standing where plaintiffs' planned conduct was "proscribed by statute" and there was "a credible threat of prosecution"); *Santa Cruz Lesbian & Gay Cmty. Ctr. v. Trump*, 508 F. Supp. 3d 521, 538 (N.D. Cal. 2020) (grantees and contractors "show[ed] a reasonable likelihood" that divisive concepts ban would be enforced against them); *Am. Trucking Ass'ns, Inc. v. City of Los Angeles*, 559 F.3d 1046, 1057-58 (9th Cir. 2009) (plaintiff is "being put to a kind of Hobson's choice," so that "very real penalty attaches…regardless of how they proceed. That is an imminent harm.").[4]

The DEIA Ban has caused "actual, substantive programmatic changes with consequences that money cannot remedy." *S.F. Unified Sch. Dist. v. AmeriCorps*, No. 25-CV-02425-EMC, 2025 WL 974298, at *3 (N.D. Cal. Mar. 31, 2025) (internal quotations omitted). Defendants have already indicated they will withhold renewals of HSA Plaintiffs' members' grants unless they remove activities that have long been permitted and encouraged. Plaintiffs' members have been instructed to remove anti-bias and ADA training, eliminate program goals addressing marginalization of underrepresented groups in the workplace, remove "non-English speaker" as a student selection criterion, and remove the words "disability" and "inclusion" in grant applications and other contexts.[5]

Under threat, HSA Plaintiffs' members are considering discontinuing core educational tools they reasonably fear might contravene the DEIA Ban.[6] These programs and activities are critical to Parent Plaintiffs' members.[7] Fundamental and ongoing programmatic changes that degrade services to children and families constitute cognizable harms. *See Cnty. of Santa Clara*

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[4] Defendants' suggestion that prosecution under the False Claims Act is far-fetched is disingenuous. The Department of Justice recently established a Civil Rights Fraud Initiative, which will engage with the Criminal Division and HHS to coordinate enforcement actions against DEIA policies, programs, and activities, as well as "strongly encourage" private parties to file their own False Claims Act lawsuits. *See* Memorandum from Todd Blanche, Deputy Attorney General, U.S. Dep't of Justice (May 19, 2025), https://perma.cc/N9WX-VQY7.

[5] Morrison-Frichtl ¶¶23, 34, 37; Ryan ¶¶37, 78; McFalls ¶15.

[6] Maunnamalai ¶¶33-50; McFalls ¶¶29-30; Morrison-Frichtl ¶¶25-28; Ryan ¶¶31-36.

[7] Doutherd ¶¶18-24, 32-42; Vickers ¶¶6, 14-23, 31-44; Guerra ¶¶7-16; FFO Member A ¶¶6-18; FFO Member B ¶¶7-14, 17-22.

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v. Trump, 250 F. Supp. 3d 497, 519 (N.D. Cal. 2017) ["*Santa Clara*"] (standing established when "a well-founded fear of enforcement action is itself causing present injury").

HSA Plaintiffs are also harmed because they have been "forced to modify [their] speech and behavior to comply" with the Ban.[8] *Ariz. Right to Life Pol. Action Comm. v. Bayless*, 320 F.3d 1002, 1006 (9th Cir. 2003); *see also Virginia v. Am. Booksellers*, 484 U.S. 383, 393 (1988) (coercing self-censorship causes harm "even without an actual prosecution").

Enjoining the Ban would redress these injuries. *See Lujan v. Defs. of Wildlife*, 504 U.S. 555, 561 (1992).

2. Mass Office Closures and Layoffs.

Defendants' argument that "some delay or disruption" cannot establish standing cites no legal authority and misconstrues the nature and severity of the harms. Opp. 6. Defendants' mass cuts—which eliminated the staff serving nearly *half the Head Start agencies in the country* and leaving them without assistance on issues about funding, staffing, infrastructure, and other pressing operational matters—have resulted in closure or preparation for closure of Head Start programs.

First, agencies are now unable to obtain critical services and approvals from OHS that were previously routinely available, forcing HSA Plaintiffs' members to risk closing.[9] One of Plaintiffs' members was forced to close its program when Defendants failed to timely respond about its funding status.[10] Another was forced to announce layoffs.[11] Another has been unable to resolve a funding issue after its previous OHS representative was laid off and no one new was assigned.[12] "[P]ossible loss of federal funding is [] sufficient to establish injury." *Am. Fed'n of Gov't Emps., AFL-CIO v. Trump*, No. 25-CV-03698-SI, 2025 WL 1482511, at *1 (N.D. Cal. May 22, 2025) ("*AFGE*"), and HSA Plaintiffs' members' experiences demonstrate that such loss of

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[8] Ryan ¶55; Maunnamalai ¶¶51-52; McFalls ¶¶58-59.
[9] Morrison-Frichtl ¶49; Ryan ¶28.
[10] Ryan ¶¶52-53.
[11] McFalls ¶¶51-54.
[12] Ryan ¶¶68-71.

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funding is not speculative. *Id.* at *1 n.1 (uncertainty faced by Head Start grantee leading it to notify workers of potential layoffs is an illustration of "what is at stake"). HSA Plaintiffs' members now cannot secure approvals necessary to safely and effectively run their programs, such as to repair a playground,[13] purchase a new vision screening machine,[14] or promote staff.[15] This undermines their program planning.[16] *See Santa Clara*, 250 F. Supp. 3d at 528-29, 537 (budget uncertainty caused real and tangible harms sufficient to establish standing and irreparable harm).

Second, HSA Plaintiffs' members' inability to access training and technical assistance undermines their ability to effectively implement Head Start performance standards, degrading services to Parent Plaintiffs' members, and exacerbates their confusion regarding the meaning of the vague DEIA Ban.[17]

Third, HSA Plaintiffs' members are harmed in their ability to recruit and retain staff. *See Rent-A-Ctr., Inc. v. Canyon Television & Appliance Rental, Inc*., 944 F.2d 597, 603 (9th Cir. 1991) ("[I]ntangible injuries, such as damage to ongoing recruitment efforts and goodwill, qualify as irreparable harm"). Teachers and program managers are resigning or considering resigning for more stable jobs, causing significant disruptions to the quality and continuity of education and services.[18]

Fourth, Defendants' mass cuts also have forced HSA Plaintiffs and their members to spend significant time and resources to elevate concerns within HHS, given gaps in communication and timely decision-making since the mass cuts.[19]

These concrete and particularized harms would be redressed by postponement of Defendants' mass cuts. *Lujan*, 504 U.S. at 561.

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[13] Ryan ¶63.
[14] Ryan ¶64.
[15] Maunnamalai ¶59.
[16] McFalls ¶¶49-50; Doe ¶¶38-41; Garvin ¶¶10-12.
[17] Ryan ¶49; McFalls ¶50; Maunnamalai ¶58; Doe ¶¶34-35; Neas ¶¶15-17.
[18] McFalls ¶¶55-56; Ryan ¶96; Maunnamalai ¶59; Morrison-Frichtl ¶57.
[19] McFalls ¶¶51-52; Maunnamalai ¶¶55, 57-58; Morrison-Frichtl ¶¶46-47; Ryan ¶¶41-44, 46, 58; Doe ¶¶21, 35-41.

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Defendants' argument that "some delay or disruption" cannot establish standing cites no legal authority and misconstrues the nature and severity of the harms. Opp. 6. Defendants' mass cuts—which leave *half the Head Start agencies in the country* without assistance on issues about funding, staffing, infrastructure, and other pressing operational matters—have resulted in closure or preparation for closure of Head Start programs. These concrete and particularized harms would be redressed by postponement of Defendants' mass cuts. *Lujan*, 504 U.S. at 561.

B. Plaintiffs Have Established Irreparable Harm.

While Defendants argue that Plaintiffs' "injuries are readily measurable in monetary terms," Opp. 30, Plaintiffs' injuries go far beyond loss of funding. Harms include suspension and disruption of services, substantive program modifications, and threats to essential educational, health, and nutritional services. Br. 15-16, 30-31; Zaslow ¶¶58-61. *See Massachusetts v. Nat'l Insts. of Health*, No. 25-CV-10338, 2025 WL 702163, at *28 (D. Mass. Mar. 5, 2025) ("suspension of ongoing clinical trials and the resulting threats to patients' lives" and "the potential loss of human capital and talent" constitute irreparable harm).

Moreover, "the deprivation of constitutional rights," here, Plaintiffs Due Process and First Amendment rights, "'unquestionably constitutes irreparable injury.'" *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)).

Where, as here, "plaintiffs reasonably waited to gather what information they could about the harm they may suffer from the [executive actions]," the timing of this request for relief does not detract from their irreparable harm. *See AFGE*, 2025 WL 1482511, at *7.

C. Plaintiffs' Claims Are Ripe.

The challenged actions are "ripe" for judicial decision because they have direct and immediate effects on Plaintiffs, including hardships beyond financial loss, and require immediate compliance with their terms, and "as a practical matter requires the plaintiff to adjust his conduct immediately." *Nat'l Park Hosp. Ass'n v. Dep't of Interior*, 538 U.S. 803, 808 (2003). *See supra* Sections I.A, I.B.

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The administrative appeals process for grant terminations does not affect ripeness. Opp. 7-8. Plaintiffs' injuries are not limited to grant terminations, and the process is irrelevant when Defendants choose to simply freeze funds without terminating the grant or indefinitely withhold renewal. *See* Ryan ¶¶23-26; McFalls ¶¶17-18; *New York v. Trump*, No. 25-CV-39-JJM-PAS, 2025 WL 715621, at *13 (D.R.I. Mar. 6, 2025) (describing harms on Head Start agencies from recent federal funding freeze).

II. Plaintiffs are Likely to Succeed on the Merits of their Claims.

A. Defendants' DEIA Ban Violates the Constitution, APA, and Rehabilitation Act.

1. The DEIA Ban Must be Understood Consistent with its Text and Defendants' Actions.

Defendants argue the DEIA Ban only "emphasizes" compliance with anti-discrimination laws. Opp. 12, 15, 19, 22, 27-29, 32. But that is not what the text of the Ban documents say: the DEI Letter instructs agencies that they cannot undertake *any* initiatives that "promote…diversity, equity, and inclusion," and the Executive Order it "amplifies" directs "terminat[ion]" of "'equity-related' grants"; neither are textually limited to violations of anti-discrimination laws. Calvo-Friedman Exs.5-6; *see* EO 14151 § 2(b). The DEI Certification states agencies cannot "advance or promote DEI, DEIA, or discriminatory equity ideology." Calvo-Friedman Ex.7 at 19. These directives "unambiguously command[] action." *City & Cnty. of S.F. v. Trump*, 897 F.3d 1225, 1240 (9th Cir. 2018). they cannot be "saved" by the DEIA Certification's caveat that it is limited to "violation of Federal anti-discrimination laws," Calvo-Friedman Ex.7 at 19, nor the EO's "consistent with applicable law" clause because "there is more than a 'mere possibility that some agency might make a legally suspect decision.'" *City & Cnty. of S.F.*, 897 F.3d at 1240 (quotation omitted).

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Defendants' own actions demonstrate that they interpret the DEIA Ban expansively[20]—including requiring changes outside of agencies' Head Start programs.[21] *See, e.g.*, *Nat'l Educ. Ass'n v. U.S. Dep't of Educ.*, No. 25-CV-091-LM, 2025 WL 1188160, at *17 (D.N.H. Apr. 24, 2025) (rejecting argument that agency's DEI letter has "no actual legal effect" and "merely restates the Department [of Educations]'s interpretation of Title VI" because the "court is not bound by the 'boilerplate' label the Department attaches to the 2025 Letter").

2. The Due Process Clause Applies and the DEIA Ban is Vague.

The DEIA Ban imperils HSA Plaintiffs' liberty because it suppresses their free speech and violating it could lead to imprisonment under the False Claims Act, 18 U.S.C. § 287; *see supra* n.4. The DEIA Ban also threatens their property because violation could lead to loss of existing designation and funding. *Compare Santa Clara*, 250 F. Supp. 3d at 536 (holding protected property interest arises where "Congress has already appropriated [the funds]" and grantees "have accepted [them].") *with Ohio Head Start Ass'n, Inc. v. U.S. Dep't of Health & Hum. Servs.*, 873 F. Supp. 2d 335 (D.D.C. 2012), *aff'd,* 510 F. App'x 1 (D.C. Cir. 2013) (evaluating only whether agencies had a protected property interest in a *new* designation); *see Isaacson*, 84 F.4th at 1099.

Defendants erroneously argue a less strict vagueness test applies because "the Government is acting as patron rather than as sovereign." Opp. 18. The Ban does not merely "add[] some imprecise considerations to an already subjective selection process"; it imposes a regulatory scheme, subject to civil penalties and criminal liability. *Nat'l Endowment for the Arts v. Finley*, 524 U.S. 569, 590 (1998). The DEIA Ban also abuts on First Amendment freedoms, requiring a more rigorous inquiry. Br. 19.

The DEIA Ban also fails any review because it has no ascertainable standard. Br. 17-19. *See S.F. A.I.D.S. Found. v. Trump,* 25-CV-01824-JST, 2025 WL 1621636, at *21 (N.D. Cal. June

[20] Morrison-Frichtl ¶¶23, 34, 37-38; Ryan ¶¶37, 78; McFalls ¶15.
[21] Ryan ¶55.

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9, 2025) ("[I]t is hard to imagine an Executive Order vaguer in its command" than requiring termination of "equity related" grants).

Defendants' refrain that the Certification is not vague because it "merely prioritizes the enforcement of existing antidiscrimination laws," Opp. 19, contradicts the DEI Letter, which penalizes *all* conduct related to "DEI." Moreover, "a construction so narrow that it renders a legal action legally meaningless cannot possibly be reasonable and is clearly inconsistent with the [the Executive] Order." *Santa Clara*, 250 F. Supp. 3d at 516.

Lastly, Plaintiffs' evidence that Defendants have *already* implemented the Ban, s*upra* Section I.A., rebuts Defendants' argument that relief would be "premature." Opp. 20.

3. The DEIA Ban Violates the First Amendment.

Defendants do not dispute the DEIA Certification's application to speech outside the federally-funded Head Start program. Instead, they argue that such viewpoint-based regulation of speech is permissible because the Certification means nothing new. Opp. 22, 24. But the record shows otherwise. For example, OHS instructed one HSA Plaintiffs' member that Defendants could not approve a Head Start program because one of its board members had a job title—for their non-Head Start employment—that contains the word "equity."[22] That is a clear example of how Defendants are "leverag[ing] funding to regulate speech outside the contours of the federal program itself." *See Agency for Int'l Dev. v. All. for Open Soc'y Int'l, Inc.,* 570 U.S. 205, 214 (2013); *Finley*, 524 U.S. at 587. Other agencies have been chilled from engaging in First Amendment protected activities, such as sending staff to outside trainings and conferences even when not funded by Head Start,[23] and changing websites and materials to remove references that could be considered "DEIA"-related even when not describing their Head Start programs.[24]

Even if the DEIA Ban did nothing more than prohibit certain violations of antidiscrimination laws, Defendants may not single out only "a subset of the potential ways in

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[22] Ryan ¶55.
[23] Maunnamalai ¶51; McFalls ¶¶58-59.
[24] Maunnamalai ¶52.

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which federal funding recipients might violate antidiscrimination law." Opp. 23. *See* Br. 21. "[T]he only interest distinctively served by the content limitation [of the DEIA Ban] is that of displaying the [government's] special hostility towards the particular biases thus singled out. That is precisely what the First Amendment forbids." *R.A.V. v. City of St. Paul*, 505 U.S. 377, 396 (1992).

4. The DEIA Ban Violates the Separation of Powers and Spending Clause.

Defendants raise several flawed arguments in response to Plaintiffs' claims under Separation of Powers and the Spending Clause.

First, they argue Plaintiffs cannot bring a facial challenge to the DEIA Ban because the Executive can lawfully terminate certain "grants in some instances without seeking congressional approval." Opp. 25. Plaintiffs, however, do not contend that *all* conditions on Head Start grants are unlawful; rather, Plaintiffs assert the new DEIA Ban conditions are unlawful because they contradict the obligations the Head Start Act imposes on *all* agencies to serve the diverse needs of their unique communities (and, in particular, families with limited English proficiency and children with disabilities). Br. 23-24; Calvo-Friedman Ex.39. *See Chicago Women in Trades v. Trump*, No. 25-C-2005, 2025 WL 1114466, at *17 (N.D. Ill. Apr. 14, 2025) (anti-"DEIA" restrictions on funding were likely unlawful under Separation of Powers and the Spending Clause where they "ran headlong" into the Congress's affirmative directive that the WANTO grant program benefit women); Opp. 27 (conceding that "new conditions on federal funds" can be basis for Separation of Powers claim).

Second, Defendants' reliance on *Dalton v. Specter*, 511 U.S. 462, 472 (1994), is unavailing because the relevant statute does not give the President discretionary power over Head Start funding. *See Chicago Women in Trades v. Trump*, No. 25-C-2005, 2025 WL 1331743, at *4-5 (N.D. Ill. May 7, 2025). Instead, Congress appropriated funds for "payments under the Head Start Act," 138 Stat. 460, 666 (2024); 139 Stat. 9 (2025). The Executive "may not decline to follow a statutory mandate or prohibition simply because of policy objections." *City & Cnty. of*

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S.F. v. Trump, 897 F.3d at 1232. Moreover, any conditions must be "unambiguous" not "vague." *Santa Clara*, 250 F. Supp. 3d at 516.

5. The DEIA Ban is a Final, Discrete, Agency Action that Violates the APA.

Defendants wrongly assert that Plaintiffs failed to identify a final and discrete agency action. *See* Opp. 11-13. Defendants do not allege the DEI Letter or DEIA Certification were tentative or interlocutory, and do not rebut Plaintiffs' evidence that immediate compliance is required. *See Bennet v. Spear*, 520 U.S. 154, 178 (1997); *Ore. Nat. Desert Ass'n v. U.S. Forest Serv.*, 465 F.3d 977 (9th Cir. 2006).

Nor do Plaintiffs seek "wholesale" improvement under *Lujan v. Nat'l Wildlife Fed'n*, 497 U.S. 871, 891 (1990). *Lujan* does not prohibit challenging multiple discrete agency actions that have across-the-board consequences within the same lawsuit, *id.* at 890, and Plaintiffs have plainly identified the actions that they challenge: the DEIA Ban and the OHS layoffs and office closures. *See New York v. Trump*, 133 F.4th 51, 68 (1st Cir. 2025) ("[W]e are not aware of any supporting authority for the proposition that the APA bars a plaintiff from challenging a number of discrete final agency actions all at once."). Issuing an injunction "would not require this court to manage the day-to-day affairs of the Department, it would simply restore the status quo until this court can determine whether Defendants acted unlawfully." *New York v. McMahon*, No. 25-CV-10601-MJJ, 2025 WL 1463009, at *24 (D. Mass. May 22, 2025).

Defendants' arguments that the DEIA Ban is not contrary to the Head Start and Rehabilitation Acts in violation of the APA also fail. Defendants repeat their argument the DEIA Ban has no legal or practical effect—a contention belied by the record and common sense. *See supra* Sections II.A.1, II.A.3. Defendants then disingenuously argue the Ban does not affect Plaintiffs' members' ability to recruit and serve children from diverse communities and with disabilities, despite the Ban explicitly prohibiting any activities "advancing" or "promoting" "diversity," "equity," "inclusion," and "accessibility." Plaintiffs' unrebutted evidence shows the

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Ban is already impeding agencies' abilities to serve these children.[25] Defendants' further argument that Congress "does not explicitly allocate federal money to Head Start to recruit and train professionals from diverse backgrounds or to serve and deploy resources to children with diverse backgrounds," Opp. 27, ignores the Head Start Act's requirement that Defendants allocate federal money to Head Start in this exact way. *See, e.g.*, 42 U.S.C. § 9843(c) ("recruit and train professionals from diverse backgrounds…to increase the provision of quality services and instruction to children with diverse backgrounds"); 42 U.S.C. § 9836(d)(2)(L) (agencies designated in part based on their plan "to meet the diverse needs of the population served"); 42 U.S.C. § 9836a(a)(1)(B)(x) (performance standards must, "in the case of limited English proficient children…include[e] progress made through the use of culturally and linguistically appropriate instructional services"); *see also* 138 Stat. 460, 666 (2024) (appropriated funding *"shall* be for making payments under the Head Start Act"); 139 Stat. 9 (2025) (continuing resolution); *contra Chicago Women in Trades*, 2025 WL 1331743, at *1.

Defendants fail to respond to Plaintiffs' claim that the DEIA Ban is arbitrary and capricious. *See* Opp. 13-15.

B. OHS Decimation Through Mass Cuts Violates the Constitution and the APA.

1. This Court is the Appropriate Forum for Plaintiffs' Case.

Defendants proffer an extraordinary interpretation of the CSRA: by requiring federal employees and unions to channel some of their federal employment claims to the MSPB and FLRA, Congress silently but "intentionally foreclosed judicial review"—and thus any remedy—to all other parties. Opp. 9-10. Defendants' assertion that the "CSRA's remedial scheme is both exclusive and preemptive," Opp. 9, directly conflicts with Congress's decision to expressly limit the jurisdiction of the MSPB and FLRA to certain claims brought by certain parties. *See Elgin v. Dep't of Treasury*, 567 U.S. 1, 13 (2012) (CSRA applies when "covered employee challenges a covered action"). As the Ninth Circuit recently held, it is "unlikely that Congress intended for the

[25] Ryan ¶¶37, 78; McFalls ¶15.

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CSRA to preclude review for parties not even covered by that statute who allege claims outside the MSPB's and FLRA's jurisdiction." *AFGE v. Trump*, No. 25-3293, 2025 WL 1541714, at *5 (9th Cir. May 30, 2025) (union, non-profits, and government plaintiffs' *ultra vires* and APA claims challenging RIFs "plainly fall outside the scope of the CSRA's review provisions," and the CSRA does not preclude non-profits from bringing those claims in federal court)*; see also McMahon*, 2025 WL 1463009, at *20 ("[T]he plain text of the [CSRA] forecloses its application to any litigant who is not an individual, labor organization, or agency."); *Rhode Island v. Trump*, No. 1:25-CV-128-JJM-LDA, 2025 WL 1303868, *7 (D.R.I. May 6, 2025) ("[N]one of the plaintiffs are federal employees so the Court need not review whether their claims fall under the ambit of the CSRA."). The cases Defendants cite are inapposite because those plaintiffs are federal employees or unions covered by the CSRA or FLRA, or raise employment or labor disputes. Accordingly, this Court is an appropriate forum for Plaintiffs' claims.

2. Defendants' Mass Cuts Violate the Separation of Powers.

Defendants contend that "Plaintiffs have not identified any statutory obligations with which HHS is unable or unwilling to comply." Opp. 28. In fact, Plaintiffs provided numerous examples of statutorily-mandated grant administration and technical assistance services that Defendants are not providing. *Compare e.g.*, 42 U.S.C. § 9843(a)(1) ("Secretary shall provide,…technical assistance and training for Head Start programs") *with* Maunnamalai ¶58; McFalls ¶¶50, 64; Ryan ¶¶41-42, 49; *compare* 42 U.S.C. § 9836a(h)(6)(B)("Secretary shall adjust as necessary the requirements relating to funded enrollment") *with* McFalls ¶49; Doe ¶41; *compare* 42 U.S.C. § 9831 ("[P]urpose of this subchapter to promote the school readiness…through the provision to low-income children and their families of health…services") *with* Ryan ¶64. Defendants offer no evidence or plan for providing these services after gutting over 60 percent of OHS—creating, in the words of the Acting Director, "major holes." *See McMahon*, 2025 WL 1463009, at *22 (mass termination of approximately fifty percent of Department of Education staff and closure of offices violated Executive's "duties to expend funds that Congress has authorized it to appropriate"). Moreover, even absent a statutory duty to provide

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specific services, Defendants cannot act in a way that systematically disrupts the operation of Head Start agencies. Defendants have established a system where Head Start agencies must be in near-constant contact with HHS staff; agencies must obtain HHS approval to draw down funds, make building repairs, and fill key staffing vacancies. The mass cuts mean that agencies cannot obtain necessary services and approvals to continue functioning.

Nor can the boilerplate caveat that Defendants must act "consistent with applicable law" insulate Defendants' actions. *See AFGE*, 2025 WL 1541714, at *9 ("Any language in the Executive Order or Memorandum purporting to limit their directives to what is statutorily authorized is belied by other language in these documents").

3. Defendants' Actions are Arbitrary and Capricious in Violation of the APA.

Defendants' abrupt mass cuts are arbitrary and capricious because they failed to consider how OHS will be able to administer the Head Start program, the significant costs for agencies and families they serve, and reliance interests. Br. 26-27. Defendants' generalized "cost-saving" justification, Opp. 14, does not satisfy their obligation to consider the factors required under textbook APA law.

Defendants offer no support for their assertion that the mass cuts, which have had a "'direct and immediate effect on the day-to-day operations' of the subject party," *Ore. Nat. Desert Ass'n*, 465 F.3d at 977 (quoting *Indus. Customers of NW Utils,* 408 F.3d 638, 646 (9th Cir. 2005)), are "quintessentially non-final." Opp. 12. Further, whether this reorganization may be "subject to changes based on circumstances," *id.*, is irrelevant to whether actions Defendants have already taken are final and subject to APA review. *See Widakuswara v. Lake*, No. 25-CV-1015, 2025 WL 1166400, at *12 (D.D.C. Apr. 22, 2025) ("*final* does not mean permanent"). The government cannot evade APA review by suggesting that it may change course in the future. *See McMahon*, 2025 WL 1463009, at *24 (finding "the mass terminations of half the Department of Education, and the transfer of certain programs out of the Department" were final agency actions subject to judicial review).

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Defendants also fail to demonstrate that the challenged actions fall within the "rare" and "limited category" of actions "committed to agency discretion by law." *Dep't of Homeland Sec. v. Regents of the Univ. of Cal.*, 591 U.S. 1, 17 (2020). In *Lincoln v. Vigil*, on which Defendants rely, plaintiffs challenged discontinuation of a program that had never been referred to by Congress in statute or appropriations. 508 U.S. 182, 193-94 (1993). As the *Lincoln* Court warned, "an agency is not free simply to disregard statutory responsibilities: Congress may always circumscribe agency discretion to allocate resources by putting restrictions in the operative statutes." *Id.* at 193. That is exactly what Congress did when it passed the Head Start Act and made appropriations pursuant to that Act. Additionally, "[t]he fact that the Department's actions prevent the effectuation of Congressionally mandated obligations itself demonstrates that these actions are not discretionary." *McMahon*, 2025 WL 1463009, at *25 n.19. Defendants do not have discretion to take unlawful action.

III. The Equities and Public Interest Favor the Plaintiffs.

The equities sharply favor Plaintiffs, Br. 31-32, and Defendants' argument that preliminarily enjoining the DEIA Ban would "hamstring" HHS, Opp. 31-32, is wholly contrary to their position that the DEIA Ban is merely coextensive with federal antidiscrimination law. And "dispersing congressionally appropriated funds for statutorily mandated purposes," does not cause Defendants' harm. *See Cmty. Legal Servs. in E. Palo Alto v. U.S. Dep't of Health & Hum. Servs*., 137 F.4th 932, 942 (9th Cir. 2025).

IV. The Scope of the Proposed Preliminary Injunction is Appropriate.

Defendants did not respond to Plaintiffs' arguments that nationwide relief is necessary and that vacatur that returns to the status quo is appropriate under the APA. Br. 32. Defendants' boilerplate assertions that relief "should be significantly narrowed," Opp. 33, are completely unsupported and should be rejected. Defendants' request for a stay is also premature and substantively without merit.

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V. A Bond Is Not Appropriate.

Defendants have not established a valid basis for a bond or identified a single expense they would incur from an injunction. The Court should forgo or require only a nominal bond. *See, e.g.*, *Barahona-Gomez v. Reno*, 167 F.3d 1228, 1237 (9th Cir. 1999) (holding nominal bond was not abuse of discretion in light of the "public interest underlying the litigation" and the government's failure to submit evidence that injunction would impose substantial cost); *Pacito v. Trump*, No. 2:25-CV-255-JNW, 2025 WL 893530, at *15 (W.D. Wash. Mar. 24, 2025) ("no security bond is necessary"); *Washington v. Trump*, No. 2:25-CV-00244-LK, 2025 WL 659057, at *28 (W.D. Wash. Feb. 28, 2025) ("[n]o security bond is required").

CONCLUSION

Plaintiffs respectfully request that the Court hold a hearing as soon as practicable and grant their Motion for Preliminary Injunction.

***

The undersigned certifies that this motion contains 4,982 words, in compliance with the Local Civil Rules and the Court's Order, ECF No. 58.

Dated: June 13, 2025

Respectfully submitted,

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