

The Honorable Kymberly K. Evanson

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE**

STATE OF WASHINGTON, et al.,

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF
EDUCATION, et al.,

Defendants.

NO. 2:25-cv-01228-KKE

PLAINTIFFS' RESPONSE TO
DEFENDANTS' MOTION FOR
CLARIFICATION OF INJUNCTION

NOTED FOR HEARING:
JULY 24, 2026, 1:30 PM

TABLE OF CONTENTS

I.	INTRODUCTION.....	1
II.	BACKGROUND.....	2
	A. The Court’s Summary Judgment Orders and Permanent Injunction.....	2
	B. Defendants’ Recent Attempts to End Unlawfully Discontinued Grants Using 2 C.F.R. § 200.340(a)(4).....	4
III.	ARGUMENT	5
	A. Legal Standard	5
	B. The Court Should Reject Defendants’ Proposed, Overbroad “Clarification”	6
	C. The Court Should Make Clear that the Injunction Enjoins Terminating Grants that Purportedly Fail to Effectuate the Directive’s Unpublished Priorities	9
	D. Rule 62(d) Allows the Court to Modify the Injunction to Enforce Compliance and Maintain the Status Quo Pending Appeal	11
IV.	CONCLUSION	13

TABLE OF AUTHORITIES

Cases

<i>A&M Recs., Inc. v. Napster, Inc.</i> , 284 F.3d 1091 (9th Cir. 2002)	6, 12
<i>Beyond Blond Prods., LLC v. Heldman</i> , No. 2:20-cv-05581-DSF, 2020 WL 11886260 (C.D. Cal. Oct. 29, 2020)	6
<i>Council for Opp’y in Educ. v. U.S. Dep’t of Educ.</i> , No. 1:25-cv-03491-TSC, 2026 WL 120984 (D.D.C. Jan. 16, 2026).....	5
<i>Hoffman v. Beer Drivers & Salesmen’s Loc. Union No. 888</i> , 536 F.2d 1268 (9th Cir. 1976)	11, 12
<i>Inst. of Cetacean Rsch. v. Sea Shepherd Conservation Soc’y</i> , 774 F.3d 935 (9th Cir. 2014)	9, 11
<i>Inst. of Cetacean Rsch. v. Sea Shepherd Conservation Soc’y</i> , No. 2:11-cv-02043-JLR, 2017 WL 1057644 (W.D. Wash. Mar. 17, 2017).....	6, 7
<i>McClatchy Newspapers v. Cent. Valley Typographical Union No. 46</i> , 686 F.2d 731 (9th Cir. 1982)	12
<i>Nat. Res. Def. Council v. Sw. Marine Inc.</i> , 242 F.3d 1163 (9th Cir. 2001)	6, 12
<i>Nat’l Grange of the Ord. of Patrons of Husbandry v. California State Grange</i> , 182 F. Supp. 3d 1065 (E.D. Cal. 2016)	6
<i>Ocampo v. Holder</i> , 629 F.3d 923 (9th Cir. 2010)	8
<i>Regal Knitwear Co. v. N.L.R.B.</i> , 324 U.S. 9 (1945).....	6, 7
<i>Sys. Fed’n No. 91 v. Wright</i> , 364 U.S. 642 (1961).....	11, 12
<i>Thakur v. Trump</i> , 795 F. Supp. 3d 1168 (N.D. Cal. 2025).....	5, 6, 11
<i>Tucson v. City of Seattle</i> , No. 2:23-cv-00017-MJP, 2024 WL 4290297 (W.D. Wash. Sept. 25, 2024)	6, 7
<i>United States v. Philip Morris USA Inc.</i> , 793 F. Supp. 2d 164 (D.D.C. 2011).....	6, 7

Washington v. U.S. Dep’t of Educ.,
167 F.4th 1241 (9th Cir. 2026) passim

Other Authorities

Mirriam-Webster Dictionary,
<https://www.merriam-webster.com/dictionary/implement>
(last visited June 24, 2026) 10

Rules

Fed. R. Civ. P. 62(d) 6

Regulations

2 C.F.R. § 200.340(a)(2) 4

2 C.F.R. § 200.340(a)(3) 4

2 C.F.R. § 200.340(a)(4) 4

34 C.F.R. § 75.253 7

89 Fed. Reg. 30046 (Apr. 22, 2024) 4

I. INTRODUCTION

Yet again, Defendants have injected uncertainty as part of their ongoing campaign to end grant projects that are protected by this Court’s permanent injunction. In their newest gambit, Defendants claim—after a year of litigation—to have suddenly found authority to end the protected grants by simply terminating them. Defendants purport to seek clarification that the Court’s permanent injunction “does not restrict the Department’s separate authority to terminate grants under 2 C.F.R. § 200.340 . . . so that the Department can commence grant agreement terminations on July 31, 2026.” Dkt. 437 at 1.

But the injunction is clear: Defendants are permanently enjoined from “[i]mplementing or enforcing through any means the Directive procedure... with respect to any discontinued Grant within Plaintiff States.” Dkt. 269 at 35. This language does not restrict Defendants’ authority to *lawfully* end protected grants; indeed, Defendants have already lawfully terminated some grants under 2 C.F.R. § 200.340(a)(2) and/or (3) notwithstanding the injunction. But Defendants cannot use “any means” to end protected grants based on the *unlawful* Directive procedure, whether Defendants call those means a non-continuation, a discontinuance, a termination, a withholding, an indefinite suspension, an engineered lack of funds, or anything else.

Tellingly, Defendants do not explain what, precisely, they plan to do. Instead, Defendants seek broad license to terminate “some or all” of the protected grants, while keeping vague the specific means. But specificity is necessary, because some terminations under 2 C.F.R. § 200.340 might violate the injunction, and some might not. Courts regularly deny motions to clarify when the moving party does not provide concrete facts that would allow the court to construe the scope of an order.

If, as Plaintiffs anticipate, Defendants specifically intend to terminate the protected grants under the guise that they “no longer effectuate[] the program goals or agency priorities” under 2 C.F.R. § 200.340(a)(4)—as cited in the Grant Priorities Directive and as Defendants recently

1 did in another grant discontinuance lawsuit—Defendants should say so and the Court should
 2 clarify this act would violate the injunction. The Directive procedure, *i.e.*, applying new,
 3 unpublished priorities to re-review and end existing grants that are purportedly inconsistent with
 4 those priorities, is enjoined, regardless of whether Defendants implement it under 34 C.F.R.
 5 § 75.253(a)(5) or 2 C.F.R. § 200.340(a)(4). Either way, Defendants cannot use agency-made
 6 regulations to bypass the Directive procedure’s statutory notice and comment requirements, and
 7 the Court need not interpret either regulation to confirm this would violate the injunction. If
 8 modification is required to clarify the injunction enjoins Directive-based terminations, Fed. R.
 9 Civ. P. 62(d) recognizes the Court’s inherent authority to modify an injunction pending appeal
 10 to supervise Defendants’ compliance and maintain the status quo.

11 II. BACKGROUND

12 A. The Court’s Summary Judgment Orders and Permanent Injunction

13 In February 2025, the Department issued a new internal “Directive on Department Grant
 14 Priorities” that announced new priorities of “merit, fairness, and excellence in education” and
 15 “instruct[ed] Department personnel to

16 conduct an internal review of all new grant awards... and issued grants. Such
 17 review shall be limited to ensuring that Department grants do not fund
 18 discriminatory practices—including in the form of [diversity, equity, and
 19 inclusion]—that are either contrary to law or to the Department’s policy
 20 objectives, as well as to ensure that all grants are free from fraud, abuse, and
 21 duplication. ... Grants deemed inconsistent with these priorities shall, where
 permitted by applicable law, be terminated in compliance with all notice and
 procedural requirements in the relevant award, agreement, or other instrument.
See 2 C.F.R. § 200.340(a)(4)–341.”

22 Dkt. 202-1 at 80-81. Defendants applied the Directive by performing “an across-the-board re-
 23 view of Department grants, including those previously awarded, and measur[ing] them against
 24 new criteria, which resulted in the discontinuation of grants in Plaintiff States.” Dkt. 269 at
 25 27-28. Although the Directive itself cited 2 C.F.R. § 200.340(a)(4) and directed that grants be
 26 “terminated,” *id.* at 13, Defendants implemented the Directive procedure as to grants within

1 Plaintiff States by issuing discontinuation notices and letters denying reconsideration under
 2 34 C.F.R. § 75.253. *See id.* at 29-30. The Department did not publish the Directive procedure or
 3 its new priorities before discontinuing the grants based on their alleged failure to meet the new
 4 priorities. *See id.* at 27.

5 On December 19, 2025, the Court granted Plaintiffs’ motion for summary judgment,
 6 vacated the Directive procedure and discontinuances, and ordered Defendants to make lawful
 7 continuation determinations. *Id.* at 34-36. The Court also permanently enjoined Defendants from
 8 “[i]mplementing or enforcing through any means the Directive procedure, the discontinuation
 9 notices, or reconsideration denial letters, including recompeting Grant funds, with respect to any
 10 discontinued Grant within Plaintiff States.” *Id.* at 35. Among other things, the Court found the
 11 Directive procedure and its new priorities were contrary to law because Defendants were
 12 required to publicly promulgate them pursuant to Defendants’ statutory rulemaking
 13 responsibilities, but they had failed to do so. *See id.* at 26-27 (citing 20 U.S.C. §§ 1232(a)-(f),
 14 1221e-4). The Court rejected Defendants’ argument that they could bypass the rulemaking
 15 requirements by discontinuing the protected grants “under the guise of the 34 C.F.R.
 16 § 75.253(a)(5) ‘best interest’ determination,” finding that fact to be “of no consequence.” *Id.*
 17 at 28.

18 Defendants appealed the summary judgment order and sought an emergency motion to
 19 stay the permanent injunction. *See Washington v. U.S. Dep’t of Educ.*, 167 F.4th 1241, 1245
 20 (9th Cir. 2026). The Ninth Circuit denied the motion, holding Defendants had not made a strong
 21 showing that the Directive procedure was lawful under the Administrative Procedure Act. *See id.*
 22 The Ninth Circuit agreed with this Court that Defendants were required to engage in notice-and-
 23 comment rulemaking under the General Education Provisions Act (GEPA), which Defendants
 24 violated by issuing discontinuation notices “that were based upon unpublished priorities set out
 25 in an internal agency directive.” *Id.* Like this Court, the Ninth Circuit determined that the specific
 26 means Defendants used to implement the unpublished Directive, *i.e.*, 34 C.F.R. § 75.253, did not

1 matter. *See id.* at 1246. The Ninth Circuit explained that GEPA’s rulemaking requirements
 2 would still apply to the unpublished Directive procedure, and Defendants would still be unlikely
 3 to succeed on the merits, “even if the Department was correct in its broad interpretation of the
 4 ‘best interests’ § 75.253(a)(5) provision.” *Id.*

5 This Court then set new deadlines for Defendants to make new continuation decisions
 6 and any continuation awards resulting from those decisions. Dkt. 363. During this process,
 7 Defendants reported they continued 118 grants and discontinued 12 grants, and “[s]ix grantees
 8 voluntarily terminated their grants.” Dkt. 365 at 2. The termination regulation allows such
 9 voluntary terminations. *See* 2 C.F.R. § 200.340(a)(2), (3).

10 **B. Defendants’ Recent Attempts to End Unlawfully Discontinued Grants Using**
 11 **2 C.F.R. § 200.340(a)(4)**

12 Defendants have started invoking 2 C.F.R. § 200.340(a)(4) to end grants following
 13 unlawful (and unsuccessful) attempts to discontinue the same grants under 34 C.F.R. § 75.253,
 14 based on the same reasons. Section 200.340(a)(4) states: “The Federal award may be
 15 terminated . . . [b]y the Federal agency . . . pursuant to the terms and conditions of the Federal
 16 award, including, to the extent authorized by law, if an award no longer effectuates the program
 17 goals or agency priorities.” 2 C.F.R. § 200.340(a)(4). To use this provision, “[t]he Federal
 18 agency . . . must clearly and unambiguously specify” it “in the terms and conditions of the
 19 Federal award.” *Id.* § 200.340(a)(4); *see, e.g.*, Guidance for Federal Financial Assistance,
 20 89 Fed. Reg. 30046, 30089 (Apr. 22, 2024) (explaining “the language” of § 200.340(a)(4) needs
 21 to be included in the “terms and conditions of the award”). Defendants recently asserted they
 22 could use 2 C.F.R. § 200.340(a)(4) to end the protected grants, and that this would be “similar”
 23 to discontinuation under 34 C.F.R. § 75.253(a)(5). *See Washington v. U.S. Dep’t of Education*,
 24 No. 26-510, DktEntry 36.1 at 9-10 (9th Cir.) (*Appeal*).

25 Defendants’ actions in *Council for Opportunity in Education (COE)* preview their plan
 26 to terminate protected grants using the same unlawful (and enjoined) basis as the

discontinuances. In *COE*, Defendants discontinued “TRIO” grants whose purpose was to help students from disadvantaged backgrounds pursue higher education. *See Council for Opp’y in Educ. v. U.S. Dep’t of Educ.*, No. 1:25-cv-03491-TSC, 2026 WL 120984, at *1 (D.D.C. Jan. 16, 2026). Like the grants in this case, TRIO grants are governed by GEPA. *Id.* at *2. The TRIO discontinuance notices used language identical to the discontinuances in this case, stating:

The Department has undertaken a review of grants and determined that the grant specified above provides funding for programs that reflect the prior Administration's priorities and policy preferences and conflict with those of the current Administration, in that the programs: violate the letter or purpose of Federal civil rights law; conflict with the Department's policy of prioritizing merit, fairness, and excellence in education; undermine the well-being of the students these programs are intended to help; or constitute an inappropriate use of federal funds.

Id. at *3; *compare id.*, with Dkt. 269 at 7. The COE court entered a preliminary injunction and ordered Defendants to make new continuation determinations for dozens of unlawfully discontinued grants. *See* Range Decl. Ex. A ¶¶ 1-2. But instead, Defendants continued some grants, discontinued others, and *terminated* more than half. *Id.* ¶ 4. Defendants sent letters stating these already-discontinued grants were being terminated under 2 C.F.R. § 200.340(a)(4) because they “no longer effectuate the program goals or the Department’s priorities.” *Id.* Ex. B at 7; *see id.*, Ex. C (termination letters). The letters did not state what those goals or priorities were; they simply quoted a DEI-related passage from the grant application. *See id.*, Ex. B at 7-9; *id.*, Ex. C. According to COE, some of these quoted excerpts were the same or overlapped with the DEI-related passages that Defendants previously quoted as the basis for discontinuing the grant in the original notices of non-continuation. *See id.*, Ex. B at 8. COE’s motion to enforce is pending. *See generally id.*

III. ARGUMENT

A. Legal Standard

“[A] district court has jurisdiction to clarify the meaning of its orders even while an appeal is pending.” *Thakur v. Trump*, 795 F. Supp. 3d 1168, 1178 (N.D. Cal. 2025). However,

the request for clarification must involve “a concrete situation,” not “an abstract controversy.” *Regal Knitwear Co. v. N.L.R.B.*, 324 U.S. 9, 15 (1945). Accordingly, courts regularly reject motions to “clarify” where “there is . . . no evidence about what precisely [the movant] plan[s] to [do] and whether it might fall within the Court’s Injunction.” *Tucson v. City of Seattle*, No. 2:23-cv-00017-MJP, 2024 WL 4290297, at *1 (W.D. Wash. Sept. 25, 2024); *see, e.g., Inst. of Cetacean Rsch. v. Sea Shepherd Conservation Soc’y*, No. 2:11-cv-02043-JLR, 2017 WL 1057644, at *3 (W.D. Wash. Mar. 17, 2017) (*Cetacean I*) (rejecting requests where “the actions lack a sufficiently concrete context for the court to provide meaningful clarification”); *United States v. Philip Morris USA Inc.*, 793 F. Supp. 2d 164, 168-69 (D.D.C. 2011) (rejecting motion that “does not ask the Court to construe the scope of its Order by applying it in a concrete context or particular factual situation”); *Beyond Blond Prods., LLC v. Heldman*, No. 2:20-cv-05581-DSF, 2020 WL 11886260, at *2 (C.D. Cal. Oct. 29, 2020) (same).

Nonetheless, “[t]he Court, of course, retains jurisdiction to enforce [an injunction] during the pending appeal.” *Thakur*, 795 F. Supp. 3d at 1178. This includes the district court’s jurisdiction to make modifications “to clarify [the] injunction and supervise compliance in light of new facts.” *A&M Recs., Inc. v. Napster, Inc.*, 284 F.3d 1091, 1099 (9th Cir. 2002); *see, e.g., Nat’l Grange of the Ord. of Patrons of Husbandry v. California State Grange*, 182 F. Supp. 3d 1065, 1073-74 (E.D. Cal. 2016) (citing cases). Such modifications are permitted provided they “d[o] not materially alter the status of the . . . appeal” and “le[ave] unchanged the core questions before the appellate panel.” *Nat. Res. Def. Council v. Sw. Marine Inc.*, 242 F.3d 1163, 1166-67 (9th Cir. 2001) (*NRDC*); *see Fed. R. Civ. P. 62(d)*.

B. The Court Should Reject Defendants’ Proposed, Overbroad “Clarification”

Defendants seek an order stating “the termination of a grant agreement pursuant to 2 C.F.R. § 200.340 would not violate the Court’s December 19, 2025 injunction.” Dkt. 437-1. The Court should deny Defendants’ improper request.

1 The language at issue is the injunction against “[i]mplementing or enforcing through any
 2 means the Directive procedure.” Dkt. 437 at 7. However, Defendants do not provide a “concrete
 3 context or particular factual situation” that the Court could use to construe the scope of this
 4 language. *Philip Morris*, 793 F. Supp. 2d at 168-69. Defendants merely state, without
 5 elaboration, that “[t]he Department intends to terminate some or all of these grant agreements
 6 completely under separate authority, i.e., 2 C.F.R. § 200.340.” Dkt. 437 at 5. There are four
 7 permissible bases for termination under 2 C.F.R. § 200.340. Defendants do not say which grants
 8 they intend to terminate, which basis for termination they plan to apply, or what facts they would
 9 rely on to support termination. Without a concrete context, “[t]he Court cannot opine on whether
 10 this will or will not comply with the Court’s Injunction.” *Tucson*, 2024 WL 4290297, at *1;
 11 *Cetacean I*, 2017 WL 1057644, at *3 (concluding request “is too context-dependent for the
 12 court’s clarification to aid the parties in ‘avoiding unwitting contempts’”) (quoting *Regal*, 324
 13 U.S. at 15).

14 Indeed, Defendants do not actually seek clarification. They already know the injunction
 15 does not enjoin at least some types of termination under 2 C.F.R. § 200.340. Specifically,
 16 § 200.340(a)(2) allows an award to be terminated “[b]y the Federal agency . . . with the consent
 17 of the recipient,” and 2 C.F.R. § 200.340(a)(3) allows an award to be terminated “[b]y the
 18 recipient [.]” Defendants terminated six grantees under one or both of these provisions without
 19 any apparent concern about whether such terminations would violate the permanent injunction.
 20 See Dkt. 365 at 2.

21 Instead, Defendants seek a broad order that would give them cover to terminate protected
 22 grants by claiming the Court only construed the continuation regulation, 34 C.F.R. § 75.253, and
 23 never addressed “any issue related to the Department’s termination authority under Section
 24 200.340.” Dkt. 437 at 6. But whether the Court addressed the termination regulation is irrelevant.
 25 Defendants’ discussion of the Court’s summary judgment order, *id.* at 3-4, omits that the Court
 26 also held the underlying Directive procedure—under which Defendants “re-review[ed]...

1 Department grants . . . and measured them against new criteria”—was unlawful because
 2 Defendants failed to comply with statutory rulemaking requirements before applying the
 3 Directive and its new unpublished priorities. Dkt. 269 at 27-28. Although the Directive
 4 procedure “result[ed] in the discontinuation of grants in Plaintiff States,” this Court made clear
 5 that issues related to the continuation regulation were irrelevant to whether Defendants’ use of
 6 the unpublished Directive and its unpublished priorities was unlawful. *Id.* (holding it was of “no
 7 consequence” that Defendants “engaged in this process under the guise of [] 34 C.F.R.
 8 § 75.253(a)(5)”).

9 Similarly, the Ninth Circuit concluded that even under Defendants’ “broad interpretation
 10 of the ‘best interests’ § 75.253(a)(5) provision,” Defendants’ actions were likely unlawful
 11 because their determination was based on “unpublished priorities set out in an internal agency
 12 directive” that were subject to GEPA’s rulemaking requirements. *Washington*, 167 F.4th at
 13 1245-46. The unlawfulness of the Directive procedure and its unpublished priorities is not
 14 affected by which regulation Defendants purportedly used to implement it or Defendants’
 15 authority under that regulation. There is simply no world where Defendants’ regulations can
 16 override Congress’s statutory requirements. *See, e.g., Ocampo v. Holder*, 629 F.3d 923, 927 (9th
 17 Cir. 2010) (“[A] regulation may not serve to amend a statute.”).

18 The language of the permanent injunction supports the conclusion that Defendants are
 19 enjoined from terminating protected grants based on the Directive’s unpublished priorities just
 20 as much as they are enjoined from discontinuing protected grants for the same reasons. The
 21 injunction prohibits “implementing or enforcing through any means the Directive procedure . . .
 22 including recompeting Grant funds.” Dkt. 269 at 35. By including that example, the injunction
 23 makes clear that Defendants might use means other than discontinuation under 34 C.F.R.
 24 § 75.253(a)(5) to implement the unlawful Directive procedure, such as by recompeting Grant
 25 funds to prevent funding from being available for protected grants. These means could include,
 26 in some circumstances, a termination under 2 C.F.R. § 200.340. *See infra* § III.C.

Defendants’ use of the Directive procedure also supports this conclusion. The Directive instructed that grants inconsistent with its new unpublished priorities “be terminated in compliance with all notice and procedural requirements” and expressly cited 2 C.F.R. § 200.340(a)(4). Dkt. 202-1 at 81. However, instead of using the termination regulation, Defendants implemented the Directive procedure by discontinuing the protected grants “under the guise of the 34 C.F.R. § 75.253(a)(5) ‘best interest’ determination.” Dkt. 269 at 26; *see also* Dkt. 202-1 at 80-81 (providing Grant Priorities Directive in the administrative record). This confirms the Directive procedure could be implemented through multiple means, including termination. The injunction enjoins all of these means.

“The schemes available to those determined to evade injunctions are many and varied . . . and no injunction can explicitly prohibit every conceivable plan designed to defeat it.” *Inst. of Cetacean Rsch. v. Sea Shepherd Conservation Soc’y*, 774 F.3d 935, 954 (9th Cir. 2014) (*Cetacean II*). Because Defendants seek general authority to “terminate” grants rather than clarification about whether a concrete application of a specific subsection of the termination regulation would violate the injunction, the Court should reject Defendants’ proposed clarification.

C. The Court Should Make Clear that the Injunction Enjoins Terminating Grants that Purportedly Fail to Effectuate the Directive’s Unpublished Priorities

Defendants likely intend to apply the Directive’s unpublished priorities to terminate “some or all” protected grants under the guise that the grants “no longer effectuate[] the program goals or agency priorities” under 2 C.F.R. § 200.340(a)(4). *See supra* § II.B. Indeed, the Directive itself expressly cites this provision as a means of implementing the Directive procedure. Dkt. 202-1 at 81. While the injunction is clear that terminating protected grants for failure to effectuate the Directive’s unpublished program goals or agency priorities is prohibited, the Court should nonetheless provide Defendants with explicit instruction saying so given

1 Defendants' recent actions in *COE* and expressed intent to terminate "some or all" of the
2 protected grants.

3 Defendants *should* need no clarification because the language of the injunction clearly
4 prohibits any use of the unlawful Directive procedure to end protected grants. The Court enjoined
5 Defendants from "[i]mplementing or enforcing through any means the Directive procedure."
6 Dkt. 269 at 35. "Implement" means "to give practical effect to and ensure of actual fulfillment
7 by concrete measures."¹ The Directive procedure is the process under which "the Directive
8 ordered an across-the-board re-review of Department grants, including those previously
9 awarded, and measured them against new criteria, which resulted in the discontinuation of grants
10 in Plaintiff States." Dkt. 269 at 27-28. Both this Court and the Ninth Circuit expressly decoupled
11 the Directive procedure and its new unpublished priorities from the separate question of how to
12 interpret the continuation regulation or whether Defendants violated 34 C.F.R. § 75.253. *See id.*
13 at 27-29; *Washington*, 167 F.4th at 1246. As such, the injunction enjoins Defendants from
14 implementing the Directive procedure through "any means," because the Directive procedure
15 itself is unlawful.

16 Nonetheless, Plaintiffs respectfully request the Court clarify that its order enjoining
17 Defendants from "[i]mplementing or enforcing through any means the Directive procedure"
18 includes enjoining Defendants from terminating protected grants based on their purported failure
19 to effectuate the Directive's unpublished priorities under 2 C.F.R. § 200.340(a)(4). It is
20 immaterial that this Court has not expressly construed "the Department's termination authority
21 under Section 200.340." Dkt. 437 at 6. The issue addressed by this Court, applicable to
22 discontinuances and terminations alike, is Defendants' authority to re-review and end existing
23 grants "based upon unpublished priorities set out in an internal agency directive" when GEPA
24 requires that this procedure and those priorities go through notice and comment rulemaking.

25
26 ¹ *Implement*, Merriam-Webster Dictionary, <https://www.merriam-webster.com/dictionary/implement> (last visited June 24, 2026).

1 *Washington*, 167 F.4th at 1245. This is a statutory requirement that Defendants cannot regulate
 2 away. The Court need not construe 2 C.F.R. § 200.340(a)(4) to clarify and, if necessary, enforce
 3 this portion of the permanent injunction.

4 Defendants’ attempt to label this a “termination” rather than a “discontinuation” is also
 5 immaterial. This Court need not “describe every possible label” that Defendants could use in its
 6 permanent injunction. *Thakur*, 795 F. Supp.3d at 1175; *see id.* at 1172 (finding “no principled
 7 difference between a ‘termination’ and the immediate, indefinite, and ‘final’ ‘suspension’ of
 8 funding”). A termination based on the unlawful Directive procedure will “have the same effect”
 9 and be “based on the same type of deficient explanations” as a discontinuation based on the
 10 unlawful Directive procedure. *Id.*; *accord Cetacean II*, 774 F.3d at 949 (looking to “the spirit of
 11 the injunction” rather than “its strict letter” to determine breach). Indeed, in *COE*, Defendants
 12 are apparently attempting to use 2 C.F.R. § 200.340(a)(4) as a workaround for being unable to
 13 discontinue grants based on unpublished priorities, leading to the same result—ending grants
 14 that Defendants believe are inconsistent with the Directive’s unpublished priorities. *See supra*
 15 § II.B. The Court should make clear that Defendants cannot engage in such chicanery as to the
 16 protected grants in this case without violating the permanent injunction.

17 **D. Rule 62(d) Allows the Court to Modify the Injunction to Enforce Compliance and**
 18 **Maintain the Status Quo Pending Appeal**

19 As explained above, Plaintiffs’ requested clarification does not require modification of
 20 the permanent injunction and would not even be necessary if Defendants were not utilizing every
 21 available tool at their disposal to end grants this Court has protected. *Accord Thakur*, 795 F.
 22 Supp. 3d at 1175, 1178. However, even if it did, this Court retains jurisdiction to modify an order
 23 pending appeal under Rule 62(d) and the Court’s inherent authority under its “continuing duty
 24 to maintain a status quo,” including modifications where “new facts develop” requiring
 25 “additional supervisory action by the court.” *Hoffman v. Beer Drivers & Salesmen’s Loc. Union*
 26 *No. 888*, 536 F.2d 1268, 1276 (9th Cir. 1976); *see, e.g., Sys. Fed’n No. 91 v. Wright*, 364 U.S.

642, 647 (1961) (“The source of the power to modify is of course the fact that an injunction often requires continuing supervision by the issuing court and always a continuing willingness to apply its powers and processes on behalf of the party who obtained that equitable relief.”). Thus, a court could modify an injunction pending appeal to define “at the surface” as “the top 50 micrometers,” and “reasonably expeditious manner” as “within 18 months.” *NRDC*, 242 F.3d at 1167. A court could impose a fine previously suspended by an injunction pending appeal, *Hoffman*, 536 F.2d at 1276, or even “require use of [a] new filtering mechanism” to “counter [a defendant’s] inability to fully comply” with the injunction. *Napster*, 284 F.3d at 1098.

When determining the status quo, courts look to what the injunction required as of the filing of the appeal. *See, e.g., NRDC*, 242 F.3d at 1166; *cf. McClatchy Newspapers v. Cent. Valley Typographical Union No. 46*, 686 F.2d 731, 735 (9th Cir. 1982) (concluding district court exceeded authority because “ordering the publisher to reinstate employees who were not working when the appeal was filed . . . required a change from the status quo”). Here, the status quo prohibited Defendants from “[i]mplementing or enforcing through any means the Directive procedure” as to the protected grantees. Dkt. 269 at 35. Plaintiffs’ proposed clarification is, at most, a “minor adjustment[] that effectuate[s] the underlying purposes” of the Court’s injunction—to prohibit Defendants from unlawfully ending protected grants based on unpublished priorities. *NRDC*, 242 F.3d at 1167. It leaves unchanged the core questions on appeal: “[w]hether the Department’s grant continuation decisions are committed to agency discretion by law” and whether those decisions “withstand [APA] review.” *Appeal*, DktEntry 36.1 at 8. Plaintiffs’ requested clarification does not “materially alter the status” of the appeal, as the issue of whether GEPA required Defendants to engage in notice and comment rulemaking before implementing the Directive procedure remains live before the appellate panel. *See id.* at 31-32. Nor does it affect “substantial rights”; if the injunction “were ultimately reversed on appeal,” any modification to explicitly enjoin Directive-based terminations “would also effectively be reversed.” *NRDC*, 242 F.3d at 1167. The clarification merely ensures Defendants

1 understand that any attempt to implement the Directive procedure by terminating a protected
 2 grant for allegedly failing to effectuate the Directive's unpublished priorities would violate the
 3 permanent injunction.²

4 IV. CONCLUSION

5 The Court should clarify that the permanent injunction's prohibition against
 6 "implementing or enforcing by any means the Directive procedure" includes implementing the
 7 Directive procedure by terminating protected grants for purportedly failing to effectuate the
 8 Directive's priorities under 2 C.F.R. § 200.340(a)(4).

25 ² If anything, it is Defendants who seek to materially alter the appeal. They seek abeyance of their appeal,
 26 arguing that if they are permitted to terminate the protected grants, the appeal may become moot. *Appeal*, DktEntry
 30.1 at 3.

1 DATED this 25th day of June 2026.

I certify that this memorandum contains 4157 words in compliance with Local Civil Rules.

3 NICHOLAS W. BROWN
4 Attorney General of Washington

5 /s/ Ellen Range

6 ELLEN RANGE, WSBA #51334
7 JENNIFER K. CHUNG, WSBA #51583
8 LUCY WOLF, WSBA #59028
9 Assistant Attorneys General
10 WILLIAM MCGINTY, WSBA #41868
11 CYNTHIA ALEXANDER, WSBA #46019
12 Deputy Solicitors General
13 Complex Litigation Division
14 Washington State Office of the Attorney General
15 800 Fifth Avenue, Suite 2000
16 Seattle, WA 98104-3188
17 206-464-7744
18 Ellen.Range@atg.wa.gov
19 Jennifer.Chung@atg.wa.gov
20 Lucy.Wolf@atg.wa.gov
21 William.McGinty@atg.wa.gov
22 Cynthia.Alexander@atg.wa.gov

23 *Attorneys for State of Washington*

15 ROB BONTA
16 Attorney General of California

KATHLEEN JENNINGS
Attorney General of Delaware

17 /s/ Crystal Adams

18 CRYSTAL ADAMS*
19 Deputy Attorney General
20 NELI PALMA*
21 Senior Assistant Attorney General
22 KATHLEEN BOERGERS*
23 Supervising Deputy Attorney General
24 KATHERINE MILTON*
25 Deputy Attorney General
26 1300 I Street
Sacramento, CA 95814
916-210-7522
Crystal.Adams@doj.ca.gov
Neli.Palma@doj.ca.gov
Kathleen.Boergers@doj.ca.gov
Katherine.Milton@doj.ca.gov

Attorneys for State of California

17 /s/ Vanessa L. Kassab

18 IAN R. LISTON*
19 Director of Impact Litigation
20 JENNIFER-KATE AARONSON*
21 VANESSA L. KASSAB*
22 Deputy Attorneys General
23 Delaware Department of Justice
24 820 N. French Street
25 Wilmington, DE 19801
26 302-683-8899
Vanessa.Kassab@delaware.gov
Jennifer.Aaronson@delaware.gov
Ian.Liston@delaware.gov

Attorneys for State of Delaware

1 WILLIAM TONG
Attorney General of Connecticut

2 /s/ Andrew Ammirati
3 ANDREW AMMIRATI*
Assistant Attorney General
4 165 Capitol Ave
Hartford, CT 06106
5 860-808-5090
Andrew.Ammirati@ct.gov

6 *Attorney for State of Connecticut*
7

8
9 KWAME RAOUL
Attorney General of Illinois

10 /s/ Emily Hirsch
11 EMILY HIRSCH*
Assistant Attorney General
12 Office of the Illinois Attorney General
115 S. LaSalle St
13 Chicago, IL 60603
773-835-0148
14 Emily.Hirsch@ilag.gov

15 *Attorney for State of Illinois*
16

17 PHILIP J. WEISER
18 Attorney General of Colorado

19 /s/ Sarah H. Weiss
20 SARAH H. WEISS*
Senior Assistant Attorney General
Colorado Department of Law
21 Ralph L. Carr Judicial Center
1300 Broadway, 10th Floor
22 Denver, CO 80203
720-508-6000
23 Sarah.Weiss@coag.gov

24 *Attorney for State of Colorado*
25

ANTHONY G. BROWN
Attorney General of Maryland

/s/ Michael Drezner
MICHAEL DREZNER*
Senior Assistant Attorney General
Office of the Attorney General
200 Saint Paul Place, 20th Floor
Baltimore, Maryland 21202
410-576-6959
Mdrezner@oag.state.md.us

Attorney for State of Maryland
8

AARON M. FREY
Attorney General of Maine

/s/ Sarah A. Forster
SARAH A. FORSTER*
Assistant Attorney General
Office of the Attorney General
6 State House Station
Augusta, ME 04333-0006
207-626-8800
Sarah.Forster@maine.gov

Attorney for State of Maine
16

ANDREA JOY CAMPBELL
Attorney General of Massachusetts

/s/ Katherine Dirks
KATHERINE DIRKS*
Chief State Trial Counsel
Yael SHAVIT*
Chief, Consumer Protection Division
Office of the Massachusetts Attorney General
1 Ashburton Place Boston, MA 02108
617-963-2277
Katherine.Dirks@mass.gov
Yael.Shavit@mass.gov

Counsel for Commonwealth of Massachusetts
25

1 LETITIA JAMES
Attorney General of New York

2 /s/ Rabia Muqaddam
3 RABIA MUQADDAM*
Special Counsel for Federal Initiatives
4 MARK LADOV*
Special Counsel
5 28 Liberty Street
New York, NY 10005
6 212-416-8240
Rabia.Muqaddam@ag.ny.gov
7 Mark.Ladov@ag.ny.gov

8 *Attorneys for State of New York*

10 DANA NESSEL
Attorney General of Michigan

12 /s/ Neil Giovanatti
13 NEIL GIOVANATTI*
Assistant Attorney General
Michigan Department of Attorney General
14 525 W. Ottawa
Lansing, MI 48909
15 517-335-7603
GiovanattiN@michigan.gov

16 *Attorney for People of Michigan*

18 DAN RAYFIELD
Attorney General of Oregon

20 /s/ Coby Howell
21 COBY HOWELL*
Senior Assistant Attorney General
Trial Attorney
22 Oregon Department of Justice
100 SW Market St.
23 Portland, OR 97201
971-673-1880
24 Coby.Howell@doj.oregon.gov

25 *Attorney for State of Oregon*

RAÚL TORREZ
Attorney General of New Mexico

2 /s/ Aletheia V.P. Allen
3 ALETHEIA V.P. ALLEN*
Solicitor General
4 LAWRENCE M. MARCUS*
Assistant Solicitor General
5 New Mexico Department of Justice
201 Third St. NW, Suite 300
6 Albuquerque, NM 87102
505-527-2776
Aallen@nmdoj.gov
7 Imarcus@nmdoj.gov

8 *Attorneys for State of New Mexico*

10 AARON FORD
Attorney General of Nevada

12 /s/ Heidi Parry Stern
13 HEIDI PARRY STERN*
Solicitor General
Office of the Nevada Attorney General
14 1 State of Nevada Way, Suite 100
Las Vegas, NV 89119
15 702-486-3420
HStern@ag.nv.gov

16 *Attorney for State of Nevada*

18 PETER F. NERONHA
Attorney General of Rhode Island

20 /s/ Kyla Duffy
21 KYLA DUFFY*
Special Assistant Attorney General
150 South Main Street
22 Providence, RI 02903
401-274-4400, Ext. 2809
23 Kduffy@riag.ri.gov

24 *Attorney for State of Rhode Island*

1 JOSHUA L. KAUL
Attorney General of Wisconsin

2 /s/ Frances Reynolds Colbert

3 FRANCES REYNOLDS COLBERT*

4 Assistant Attorney General
Wisconsin Department of Justice
Post Office Box 7857
5 Madison, Wisconsin 53707-7857
608-266-9226
6 Frances.Colbert@wisdoj.gov

7 *Attorney for State of Wisconsin*

8 **Admitted pro hac vice*