



RE: Violations of preliminary injunction in PFLAG v Trump, CV 25-337-BAH (D. Md.)

From [REDACTED] (CIV) [REDACTED]@usdoj.gov>

Date Fri 7/25/2025 4:58 PM

To Joshua Block - he/him/his <jblock@aclu.org>; Omar Gonzalez-Pagan <ogonzalez-pagan@lambdalegal.org>

Cc [REDACTED] (CIV) [REDACTED]@usdoj.gov>

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Josh,

Thank you for raising your concerns regarding the grant award terms. After discussing with our clients, they have concluded there are no grounds to revise the terms and conditions as requested. The language fully complies with the Court's preliminary injunction and does not create any reasonable apprehension of a violation. It requires certification of compliance with Title IX, including any applicable requirements from Executive Order 14168. As Plaintiffs have not challenged Title IX in this case, nor identified any Title IX requirement that would "condition[], withhold[], or terminat[e] federal funding ... based on the fact that a healthcare entity or health professional provides gender-affirming medical care to a patient under the age of nineteen" (ECF No. 116 at 1-2), we see no conflict. And the only relevant discussion in EO 14168 (section 3(f)) is not subject to the Court's preliminary injunction and does not address or discuss gender-affirming medical care.

As previously confirmed, the grant language does not prohibit grant recipients from providing "gender-affirming medical care to a patient under the age of nineteen." This representation should be sufficient to address your concerns.

Thank you.

--

[REDACTED]
Trial Attorney
U.S. Department of Justice, Civil Division
Federal Programs Branch
Office: [REDACTED]
Cell: [REDACTED]

From: [REDACTED] (CIV)

Sent: Thursday, July 10, 2025 6:02 PM

To: 'Joshua Block - he/him/his' <jblock@aclu.org>; 'Omar Gonzalez-Pagan' <ogonzalez-pagan@lambdalegal.org>

Cc: [REDACTED] (CIV) [REDACTED]@usdoj.gov>

Subject: RE: Violations of preliminary injunction in PFLAG v Trump, CV 25-337-BAH (D. Md.)

Josh,

The agency is still considering the issues Plaintiffs raised regarding the grant terms and conditions and we expect to have their position soon.

As soon as we receive it, we will let you know.

Thank you.

--

[REDACTED]
Trial Attorney
U.S. Department of Justice, Civil Division
Federal Programs Branch
Office: [REDACTED]
Cell: [REDACTED]

From: [REDACTED] (CIV)
Sent: Thursday, July 3, 2025 1:58 PM
To: Joshua Block - he/him/his <jblock@aclu.org>; Omar Gonzalez-Pagan <ogonzalez-pagan@lambdalegal.org>
Cc: [REDACTED] (CIV) [REDACTED] <[\[REDACTED\]@usdoj.gov](mailto:[REDACTED]@usdoj.gov)>
Subject: RE: Violations of preliminary injunction in PFLAG v Trump, CV 25-337-BAH (D. Md.)

Josh,

We have been discussing your email with the agency and wanted to update you that we anticipate we will have their position sometime next week.

We wanted to provide you an interim update before the holiday weekend since we last wrote you a week ago.

Thank you.

--

[REDACTED]
Trial Attorney
U.S. Department of Justice, Civil Division
Federal Programs Branch
Office: [REDACTED]
Cell: [REDACTED]

From: [REDACTED] (CIV) [REDACTED] <[\[REDACTED\]@usdoj.gov](mailto:[REDACTED]@usdoj.gov)>
Sent: Thursday, June 26, 2025 3:18 PM
To: Joshua Block - he/him/his [REDACTED]; Omar Gonzalez-Pagan [REDACTED]
Cc: [REDACTED] (CIV) [REDACTED] <[\[REDACTED\]@usdoj.gov](mailto:[REDACTED]@usdoj.gov)>
Subject: RE: Violations of preliminary injunction in PFLAG v Trump, CV 25-337-BAH (D. Md.)

Josh,

I was out of office yesterday (as was [REDACTED]), but I have received your email and am in the process of discussing Plaintiff's position with the agency. I will get back to you with the agency's position as promptly as I'm able.

Best,

[REDACTED]

--

[REDACTED]

Trial Attorney
U.S. Department of Justice, Civil Division
Federal Programs Branch
Office: [REDACTED]
Cell: [REDACTED]

From: Joshua Block - he/him/his [REDACTED]
Sent: Tuesday, June 24, 2025 7:45 PM
To: [REDACTED] (CIV) [REDACTED]@usdoj.gov; Omar Gonzalez-Pagan <ogonzalez-pagan@lambdalegal.org>
Cc: [REDACTED] (CIV) [REDACTED]@usdoj.gov
Subject: [EXTERNAL] Re: Violations of preliminary injunction in PFLAG v Trump, CV 25-337-BAH (D. Md.)

[REDACTED],

I am writing again in the hopes that we can resolve this issue without having to bring it before the Court. We appreciate your statement that you do not intend for the terms and conditions to prohibit grant recipients from providing "gender-affirming medical care to a patient under the age of nineteen." If that is the case, then the government should not have any objection to making that intention clear in the plain text of the terms and conditions.

Clarifying the plain text of the terms and conditions is critical because the terms and conditions require the recipient to acknowledge that compliance with Executive Order 14,168 is a material term that goes to "the essence of the agreement," and that failure to comply with Executive Order 14,168 will subject the recipient to liability under the False Claims Act, which can be enforced by third parties. In such litigation, recipients' liability will be determined by an objective reading of the terms and conditions.

You state in your email that because the terms and conditions reference Title IX, the only operative provision of Executive Order 14,168 for purposes of the terms and conditions is Section 3(f), which contains "the only substantive discussion of Title IX's requirements in EO 14168." With respect, that interpretation is not supported by the plain text of the Executive Order or the context in which these grants have been distributed.

First, our understanding is that many recipients of these letters are healthcare entities that are not affiliated with any educational program, and are thus not covered by Title IX at all. If the terms and conditions are limited to applications of Title IX, then why have these terms and conditions been included for recipients who are not subject to Title IX?

Second, Section 3(f) does not purport to impose any conditions on funding recipients. That section merely directs agencies to rescind previous guidance that interpreted Title IX to require "gender identity-based access to single-sex spaces." Section 3(f) does not purport to prohibit funding recipients from continuing on a voluntary basis to allow transgender students to use restrooms consistent with their gender identity.

We believe the more natural reading of the terms and conditions is that grant recipients must comply with Section 3(g), which is the only section that purports to impose any conditions on grant recipients. That provision states: "Federal funds shall not be used to promote gender ideology. Each agency shall assess grant conditions and grantee preferences and ensure grant funds do not promote gender ideology." And, as previously discussed, the government has taken the position that providing gender affirming medical care "promote[s] gender ideology."

For all these reasons, as currently drafted and without any acknowledgment of the PFLAG Injunction, the plain text of the terms and conditions appears to, at a minimum, create confusion for grant recipients as to whether they may continue to provide gender affirming medical care as a condition of federal funding, in violation of the preliminary injunction. The natural effect of the terms and conditions is that providers who do not wish to subject themselves to liability under the False Claims Act or criminal statutes will cease providing gender affirming medical care to transgender youth, including members of PFLAG.

We are happy to discuss ways to address this situation so that the plain text of the terms and conditions reflects the subjective intent set forth in your email. If you remain unwilling to alter the terms and conditions, please let us know whether Defendants oppose a status conference to discuss the issue with the Court.

Thanks,
Josh

Joshua Block
Pronouns: he, him

Senior Counsel
Jon L. Stryker and Slobodan Randjelović
LGBTQ & HIV Project
American Civil Liberties Union
125 Broad St., New York, NY 10004

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From: [REDACTED] (CIV) [REDACTED]@usdoj.gov
Sent: Friday, June 20, 2025 11:03 AM
To: Joshua Block - he/him/his <jblock@aclu.org>; Omar Gonzalez-Pagan <ogonzalez-pagan@lambdalegal.org>
Cc: [REDACTED] (CIV) [REDACTED]@usdoj.gov
Subject: RE: Violations of preliminary injunction in PFLAG v Trump, CV 25-337-BAH (D. Md.)

Josh,

Apologies, I overlooked that yesterday was a holiday when I previously stated our intent to respond by Thursday.

In response to your request, the award language you quote in your email requires that grant recipients certify that they are "compliant with Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. §§ 1681 et seq., including the requirements set forth in Presidential Executive Order 14168 titled Defending Women From Gender Ideology Extremism and Restoring Biological Truth to the Federal Government."

That language requests certification of compliance with Title IX, which Plaintiffs have not challenged in this case, and only references EO 14168 to the extent any requirements under the EO are "includ[ed]" under the requirements of Title IX. Moreover, Plaintiffs have not identified any requirement under Title IX that would "condition[], withhold[], or terminat[e] federal funding ... based on the fact that a healthcare entity or health professional provides gender-affirming medical care to a patient under the age of nineteen." ECF No. 116 at 1-2. Indeed, the only substantive discussion of Title IX's requirements in EO 14168 is in section 3(f), which is not subject to the Court's preliminary injunction and which does not discuss gender-affirming medical care.

As a result, Plaintiffs have not identified any basis to conclude that the quoted grant language violates the Court's preliminary injunction or creates a "reasonable fear" of such a violation, and Defendants do not plan to issue the revised grant terms and conditions that Plaintiffs demand. Defendants agree that the grant language quoted above does not prohibit grant recipients from providing "gender-affirming medical care to a patient under the age of nineteen."

Best,

[REDACTED]

—

[REDACTED]

Trial Attorney
U.S. Department of Justice, Civil Division
Federal Programs Branch
Office: [REDACTED]
Cell: [REDACTED]

From: [REDACTED] (CIV)
Sent: Monday, June 16, 2025 5:17 PM
To: Joshua Block - he/him/his <jblock@aclu.org>; Omar Gonzalez-Pagan <ogonzalez-pagan@lambdalegal.org>
Cc: [REDACTED] (CIV) [REDACTED] <[\[REDACTED\]@usdoj.gov](mailto:[REDACTED]@usdoj.gov)>
Subject: RE: Violations of preliminary injunction in PFLAG v Trump, CV 25-337-BAH (D. Md.)

Hi Josh,

We are in receipt of your email and intend to respond by this Thursday.

Best,

[REDACTED]

—

[REDACTED]

Trial Attorney
U.S. Department of Justice, Civil Division
Federal Programs Branch
Office: [REDACTED]
Cell: [REDACTED]

From: Joshua Block - he/him/his <jblock@aclu.org>
Sent: Monday, June 16, 2025 3:26 PM
To: Omar Gonzalez-Pagan <ogonzalez-pagan@lambdalegal.org>; [REDACTED] (CIV)
[REDACTED] <[\[REDACTED\]@usdoj.gov](mailto:[REDACTED]@usdoj.gov)>; [REDACTED] (CIV) [REDACTED] <[\[REDACTED\]@usdoj.gov](mailto:[REDACTED]@usdoj.gov)>
Subject: [EXTERNAL] Re: Violations of preliminary injunction in PFLAG v Trump, CV 25-337-BAH (D. Md.)

[REDACTED]; [REDACTED]:

I wanted to follow up on my message from Thursday. Do you know when we can expect a response from the government?

Thanks,
Josh

Joshua Block

Pronouns: he, him

Senior Counsel

Jon L. Stryker and Slobodan Randjelović

LGBTQ & HIV Project

American Civil Liberties Union

125 Broad St., New York, NY 10004

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From: Joshua Block - he/him/his <jblock@aclu.org>

Sent: Thursday, June 12, 2025 4:11 PM

To: [REDACTED] (CIV) [REDACTED] <[\[REDACTED\]@usdoj.gov](mailto:[REDACTED]@usdoj.gov)>; Omar Gonzalez-Pagan <ogonzalez-pagan@lambdalegal.org>

Cc: [REDACTED] (CIV) [REDACTED] <[\[REDACTED\]@usdoj.gov](mailto:[REDACTED]@usdoj.gov)>; [REDACTED] (CIV) [REDACTED] <[\[REDACTED\]@usdoj.gov](mailto:[REDACTED]@usdoj.gov)>

Subject: Violations of preliminary injunction in PFLAG v Trump, CV 25-337-BAH (D. Md.)

Counsel,

The preliminary injunction entered in our case enjoins Defendants "from conditioning, withholding, or terminating federal funding under Section 3(g) of Executive Order 14,168 . . . based on the fact that a healthcare entity or health professional provides gender-affirming medical care to a patient under the age of nineteen."

It has come to our attention that NIH and HRSA have recently issued a series of awards with a list of terms and conditions that violate the preliminary injunction. Specifically, the terms and conditions state:

By accepting this award, including the obligation, expenditure, or drawdown of award funds, recipients, whose programs are covered by Title IX, certify as follows:

Recipient is compliant with Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. §§ 1681 et seq., including the requirements set forth in Presidential Executive Order 14168 titled *Defending Women From Gender Ideology Extremism and Restoring Biological Truth to the Federal Government*, and Title VI of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000d et seq., and Recipient will remain compliant for the duration of the Agreement.

The above requirements are conditions of payment that go *[sic]* the essence of the Agreement and are therefore material terms of the Agreement.

Payments under the Agreement are predicated on compliance with the above requirements, and therefore Recipient is not eligible for funding under the Agreement or to retain any funding under the Agreement absent compliance with the above requirements.

Recipient acknowledges that this certification reflects a change in the government's position regarding the materiality of the foregoing requirements and therefore any prior payment of similar claims does not reflect the materiality of the foregoing requirements to this Agreement.

Recipient acknowledges that a knowing false statement relating to Recipient's compliance with the above requirements and/or eligibility for the Agreement may subject Recipient to liability under the False Claims Act, 31 U.S.C. § 3729, and/or criminal liability, including under 18 U.S.C. §§ 287 and 1001

(emphasis added).

These awards from HRSA and NIH violate the preliminary injunction by expressly "condition[ing]" the receipt of federal funds on an entity's "compliance with Executive Order 14,168." In its opinion granting a preliminary injunction, the district court explained that the text of Executive Order 14,168 (the "Gender Identity Order") unlawfully prohibits recipients of federal funding from providing gender affirming medical care to minors:

Section 3(g) of the Gender Identity Order is admittedly slightly vaguer than Section 4 of the Healthcare Order in that it only proscribes the use of "[f]ederal [grant] funds [to] promote gender ideology." The Gender Identity Order, appears, however, to deny the existence of transgender persons altogether. See Gender Identity Order § 1 (describing the purpose of the order as "defend[ing] women's rights and protect[ing] freedom of conscience by using clear and accurate language and policies that recognize women are biologically female, and men are biologically male"); id. § 2 ("It is the policy of the United States to recognize two sexes, male and female. These sexes are not changeable and are grounded in fundamental and incontrovertible reality."). The Court cannot fathom discrimination more direct than the plain pronouncement of a policy resting on the premise that the group to which the policy is directed does not exist. Thus, Section 3(g) of the Gender Identity Order can only be read as doing exactly what Section 4 of the Healthcare Order does—cease funding institutions, including medical institutions, that provide gender-affirming medical care to patients under the age of nineteen.

PFLAG, Inc. v. Trump, No. CV 25-337-BAH, 2025 WL 685124, at *23 (D. Md. Mar. 4, 2025) (footnote omitted). Indeed, Section 4(c) of the Gender Identity Order specifically identifies the provision of gender affirming medical care to prisoners as a form of "promoting gender ideology."

Thus, a healthcare entity that receives a federal grant subject to these terms and conditions would reasonably fear that the grant purports to prohibit the recipient from providing gender affirming medical care. And that fear is heightened by the fact that the terms and conditions require the recipient to acknowledge that failure to comply with Executive Order 14,168 would open up the recipient to liability under the False Claims Act.

We request that the Defendants immediately take the following steps to bring themselves in compliance with the preliminary injunction:

- Identify all grants with the foregoing terms and conditions that have been issued by any of the Defendant agencies or subagencies.
- Issue revised terms and conditions for all such grants specifically stating: "Pursuant to the preliminary Injunction issued in PFLAG, Inc. v. Trump, No. CV 25-337-BAH, 2025 WL 685124 (D. Md. Mar. 4, 2025), the foregoing terms and conditions do not prohibit the recipient from providing gender affirming medical care to a patient under the age of nineteen."

For purposes of issuing revised terms and conditions, it is not sufficient for Defendants to merely state that such conditions will not be enforced with respect to gender affirming medical care for minors while the preliminary injunction is in place. The preliminary injunction does not merely prohibit Defendants from enforcing such conditions; it prohibits Defendants from imposing such conditions in the first place. That is especially true because the terms and conditions purport to impose liability based on the False Claims Act, which can be enforced through private parties.

We look forward to your prompt response.

Josh

Joshua Block

Pronouns: he, him

Senior Counsel

Jon L. Stryker and Slobodan Randjelović

LGBTQ & HIV Project

American Civil Liberties Union

125 Broad St., New York, NY 10004

[REDACTED]

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