

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

COMMONWEALTH OF  
MASSACHUSETTS, *et al.*,

*Plaintiffs,*

v.

ROBERT F. KENNEDY, JR., *et al.*,

*Defendants.*

No. 1:25-cv-10814-WGY

**JOINT STIPULATION AND PROPOSED  
ORDER CONCERNING OUTSTANDING CLAIMS**

All Plaintiffs<sup>1</sup> and all Defendants<sup>2</sup> in this action (collectively, the “Parties”) hereby stipulate to—and respectfully request that the Court order—the resolution of the outstanding claims in this litigation subject to the following terms and conditions.

**I. Background**

1. Plaintiffs’ Amended Complaint (ECF No. 75) alleges that Defendants violated the U.S. Constitution and the Administrative Procedure Act and engaged in *ultra vires* conduct by

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<sup>1</sup> “Plaintiffs” are the Commonwealth of Massachusetts and the States of California, Maryland, Washington, Arizona, Colorado, Delaware, Hawai‘i, Minnesota, Nevada, New Jersey, New Mexico, New York, Oregon, Rhode Island, and Wisconsin.

<sup>2</sup> “Defendants” are Robert F. Kennedy, Jr., in his official capacity as Secretary of Health and Human Services; the United States Department of Health and Human Services; Jayanta Bhattacharya, in his official capacity as Director of the National Institutes of Health; the National Institutes of Health (“NIH”); the National Cancer Institute; the National Eye Institute; the National Heart, Lung, and Blood Institute; the National Human Genome Research Institute; the National Institute on Aging; the National Institute on Alcohol Abuse and Alcoholism; the National Institute of Allergy and Infectious Diseases; the National Institute of Arthritis and Musculoskeletal and Skin Diseases; the National Institute of Biomedical Imaging and Bioengineering; the Eunice Kennedy Shriver National Institute of Child Health and Human Development; the National Institute on Deafness and Other Communication Disorders; the National Institute of Dental and Craniofacial Research; the National Institute of Diabetes and Digestive and Kidney Diseases; the National Institute on Drug Abuse; the National Institute of Environmental Health Sciences; the National Institute of General Medical Sciences; the National Institute of Mental Health; the National Institute on Minority Health and Health Disparities; the National Institute of Neurological Disorders and Stroke; the National Institute of Nursing Research; the National Library of Medicine; the National Center for Advancing Translational Sciences; the John E. Fogarty International Center for Advanced Study in the Health Sciences; the National Center for Complementary and Integrative Health; and the Center for Scientific Review.

refusing to consider and unreasonably delaying the review and disposition of applications for NIH grants submitted by Plaintiffs and Plaintiffs' subdivisions, instrumentalities, and institutions.

2. Defendants do not concede that Plaintiffs' claims are meritorious and do not admit any liability on those claims.

3. Notwithstanding the foregoing, Defendants will evaluate and render decisions on Plaintiffs' identified applications subject to the terms and conditions below. In exchange, Plaintiffs have agreed to the dismissal, without prejudice, of the outstanding claims described below, subject to the terms and conditions below.

## **II. Stipulation**

The Parties hereby stipulate and agree that:

1. This stipulation relates to grant applications identified in the list of "Phase Two" applications that Plaintiffs provided to Defendants on August 15, 2025, as well as any grant applications identified on supplemental lists that Plaintiffs provided to Defendants on September 29, 2025,<sup>3</sup> provided that such listed applications were submitted to NIH on or before July 1, 2025, in the case of non-competing renewal or continuation applications, or on or before June 23, 2025, in the case of all other applications (the "Applications"). As used herein, the term "Applications" refers to applications of any type, including, without limitation, new applications, renewal applications, competing revision applications, extension applications, noncompeting continuation applications, resubmission applications, and applications for a change of organization status, recipient, or institute/center. For the avoidance of doubt, the Applications include those listed Applications for which NIH has not yet made a decision to withdraw, deny, or award the

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<sup>3</sup> This stipulation does not apply to "Resulting Grant Terminations" listed in Exhibit A to the June 23, 2025, partial final judgment (ECF No. 151-1). Plaintiffs will not include any Resulting Grant Terminations listed in said Exhibit A in the lists that Plaintiffs have produced or will produce related to this stipulation.

Application; those listed Applications that were administratively withdrawn or denied pursuant to the withdrawal of a Notice of Funding Opportunity (“NOFO”); and those listed Applications that NIH considered but decided not to fund because of the Challenged Directives.<sup>4</sup>

2. Defendants will complete their consideration of the Applications in the ordinary course of NIH’s scientific review process, without applying the Challenged Directives. Defendants will evaluate each application individually and in good faith.

3. Defendants will make decisions on all of the Applications consistent with 42 C.F.R., Chapter I—including, specifically, 42 C.F.R. § 52.5(b)—and provide notice to Plaintiffs of those decisions no later than the following dates:

- a. For all Applications for non-competing renewal or continuation, Defendants will make a decision on the Application and provide notice to Plaintiffs of the decision by December 29, 2025, provided the proposed renewal date was on or before the date of entry of this stipulation.
- b. For all Applications that were administratively withdrawn and/or denied because of the Challenged Directives (“Withdrawn or Denied Applications”), Defendants will make a decision on the Application and provide notice to Plaintiffs of the decision as follows:
  - i. For all Withdrawn or Denied Applications that, as of the effective date of this stipulation and order, have already undergone both study-section and advisory-council review, or have undergone study-section review and do not require advisory-council review, Defendants will make a decision on the Application and provide notice to Plaintiffs by January 12, 2026.
  - ii. For all Withdrawn or Denied Applications that, as of the effective date of this stipulation and order, have already been scored by a study section and that require, but have not yet undergone, advisory-council review, Defendants will make a decision on the Application and provide notice to Plaintiffs by April 14, 2026.
  - iii. For all other Withdrawn or Denied Applications, Defendants will make a decision on the Application and provide notice to Plaintiffs by July 31, 2026.

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<sup>4</sup> The “Challenged Directives” are those directives named in, and vacated as stated in, the Rule 54(b) Final Judgment entered in this matter on June 23, 2025. *See* ECF No. 151, at 1 n. 1 and 2 ¶ I.

- c. For all extension Applications or Applications for a change of organization status, recipient, or institute/center, Defendants will make a decision on the application in the ordinary course of NIH's scientific review process.
- d. For all other Applications, the dates by which Defendants will make a decision on the Application and provide notice to Plaintiffs of their decision as follows:
  - i. For all Applications submitted on or before January 7, 2025, Defendants will make a decision on the Application within seven days of the filing of this Stipulation, and will provide notice to Plaintiffs of the decision by January 12, 2026;
  - ii. For all Applications submitted after January 7, 2025, and on or before May 7, 2025, Defendants will make a decision on the Application and provide notice to Plaintiffs of the decision by February 12, 2026; and
  - iii. For all Applications submitted after May 7, 2025, and on or before June 23, 2025, Defendants will make a decision on the Application and provide notice to Plaintiffs of the decision by April 14, 2026.
- 4. For any Applications that Defendants decide to grant, Defendants will inform the applicants of that grant through eRA Commons in the ordinary course.
- 5. To facilitate provision of notice, Plaintiffs provided Defendants with the application submission date, Advisory Council meeting date (if applicable), and the date of denial or withdrawal (if applicable) for Applications on October 14, 2025, to the extent that information was available to Plaintiffs by that date. The Notice Dates shall not apply to any Applications for which the Plaintiffs do not provide the preceding information.
- 6. Defendants stipulate and agree that the end of Federal Fiscal Year 2025 does not prevent Defendants from considering and/or awarding any of the Applications, subject to Congress's appropriation of funds to NIH.
- 7. Defendants will not deny any Application that was originally submitted to a NOFO that has since been unpublished because of the Challenged Directives on the basis that the NOFO has been unpublished.
- 8. Any Application submitted as an additional/alternative application to NIH

following the administrative withdrawal or denial of a listed Application, and which listed Application Defendants consider pursuant to this agreement, will not be penalized for being one of multiple simultaneously pending applications. Defendants will not deny any Application previously withdrawn or denied based on the Challenged Directives based on the applicant being time-barred for Early Stage Investigator status or any other time bars where the application was initially filed within proper time limits for the given NOFO.

9. Nothing in this stipulation commits NIH to ultimately award any specific Application, diminishes or enlarges NIH's discretion over the decision to award funding, or creates a final agency action where a final agency action would not otherwise exist. Nothing in this stipulation enlarges or diminishes any right or ability of any individual Plaintiff or applicant with respect to seeking review of the denial of any application.

10. On the basis of the Parties' stipulations, the Parties agree to the dismissal without prejudice of all outstanding claims that were not decided in the June 23, 2025, partial final judgment (ECF No. 151) and/or addressed in the July 2, 2025, findings of fact and conclusions of law (ECF No. 163). Notwithstanding the foregoing, the Parties agree that dismissal should issue and no further proceedings should occur with respect to the matters addressed in footnote 4 of the July 2, 2025, findings of fact and conclusions of law (ECF No. 163). Plaintiffs reserve the right to seek judgment on Counts 1 and/or 2 of the Amended Complaint consistent with Plaintiffs' view of the July 2, 2025, findings of fact and conclusions of law (ECF No. 163); Defendants reserve the right to oppose any such request for judgment.

11. The Parties will bear their own respective fees and costs.

12. The Court shall retain jurisdiction to enforce the terms of this stipulation, until such time as Defendants have considered and disposed of all Applications as stipulated.

### III. Request for Relief

The parties respectfully request that the Court adopt and order the foregoing terms and conditions as set forth in the attached proposed order.

December 29, 2025

Respectfully submitted.

**ANDREA JOY CAMPBELL**

*Attorney General of Massachusetts*

/s/ Gerard J. Cedrone

Gerard J. Cedrone (BBO No. 699674)

*Deputy State Solicitor*

Vanessa A. Arslanian (BBO No. 688099)

*State Trial Counsel*

Phoebe M. Lockhart (BBO No. 709411)

*Assistant Attorneys General*

One Ashburton Place, 20th Floor

Boston, MA 02108

(617) 963-2282

gerard.cedrone@mass.gov

*Counsel for the*

*Commonwealth of Massachusetts*

**BRETT A. SHUMATE**

Assistant Attorney General

Civil Division

**KIRK T. MANHARDT**

Director

**MICHAEL QUINN**

Senior Litigation Counsel

/s/ Zachary Semple

ZACHARY C. SEMPLE

Trial Attorney

United States Department of Justice

Civil Division

1100 L Street, NW

Washington, D.C. 20005

Tel: (202) 353-5555

Fax: (202) 514-9163

E-mail: Zachary.C.Semple@usdoj.gov

/s/Anuj Khetarpal

ANUJ KHETARPAL

Assistant United States Attorney

United States Attorney's Office

1 Courthouse Way, Suite 9200

Boston, MA 02210

Attorneys for the United States

**ROB BONTA**

*Attorney General of California*

/s/ Emilio Varanini

Neli Palma

*Senior Assistant Attorney General*

Emilio Varanini\*

Nimrod Pitsker Elias\*

*Supervising Deputy Attorneys General*

Daniel D. Ambar\*

Ketakee R. Kane\*

Sophia TonNu\*

Hilary Chan\*

*Deputy Attorneys General*

455 Golden Gate Avenue

San Francisco, CA 94102

(415) 510-3541

emilio.varanini@doj.ca.gov

*Counsel for the State of California*

**ANTHONY G. BROWN**

*Attorney General of Maryland*

/s/ James C. Luh

Michael Drezner\*

James C. Luh\*

*Senior Assistant Attorneys General*

200 Saint Paul Place, 20th Floor

Baltimore, MD 21202

(410) 576-6959

mdrezner@oag.state.md.us

*Counsel for the State of Maryland*

**NICHOLAS W. BROWN**

*Attorney General of Washington*

/s/ Andrew Hughes

Andrew Hughes\*

Tyler Roberts\*

*Assistant Attorneys General*

800 Fifth Avenue, Suite 2000

Seattle, WA 98104-3188

(206) 464-7744

andrew.hughes@atg.wa.gov

*Counsel for the State of Washington*

**KRISTIN K. MAYES**

*Attorney General of Arizona*

/s/ Joshua G. Nomkin

Joshua G. Nomkin\*

*Assistant Attorney General*

2005 N. Central Avenue

Phoenix, AZ 85004

(602) 542-3333

joshua.nomkin@azag.gov

*Counsel for the State of Arizona*

**PHILIP J. WEISER**

*Attorney General of Colorado*

/s/ Shannon Stevenson

Shannon Stevenson\*

*Solicitor General*

1300 Broadway, 10th Floor

Denver, CO 80203

(720) 508-6000

lauren.peach@coag.gov

*Counsel for the State of Colorado*



**KATHLEEN JENNINGS**

*Attorney General of Delaware*

/s/ Vanessa L. Kassab

Ian R. Liston\*

*Director of Impact Litigation*

Vanessa L. Kassab\*

*Deputy Attorney General*

820 N. French Street

Wilmington, DE 19801

(302) 683-8899

vanessa.kassab@delaware.gov

*Counsel for the State of Delaware*

**ANNE E. LOPEZ**

*Attorney General of Hawai‘i*

/s/ Kaliko‘onālani D. Fernandes

David D. Day\*

*Special Assistant to the Attorney General*

Kaliko‘onālani D. Fernandes\*

*Solicitor General*

425 Queen Street

Honolulu, HI 96813

(808) 586-1360

kaliko.d.fernandes@hawaii.gov

*Counsel for the State of Hawai‘i*

**KEITH ELLISON**

*Attorney General of Minnesota*

/s/ Pete Farrell

Peter J. Farrell\*

*Deputy Solicitor General*

445 Minnesota Street, Suite 600

St. Paul, Minnesota, 55101

(651) 757-1424

peter.farrell@ag.state.mn.us

*Counsel for the State of Minnesota*

**AARON D. FORD**

*Attorney General of Nevada*

/s/ Heidi Parry Stern

Heidi Parry Stern\*

*Solicitor General*

1 State of Nevada Way, Suite 100

Las Vegas, NV 89119

hstern@ag.nv.gov

*Counsel for the State of Nevada*

**MATTHEW J. PLATKIN**

*Attorney General of New Jersey*

/s/ Nancy Trasande

Nancy Trasande\*

Bryce Hurst\*

*Deputy Attorneys General*

124 Halsey Street, 5th Floor

Newark, NJ 07101

(609) 954-2368

nancy.trasande@law.njoag.gov

*Counsel for the State of New Jersey*

**RAÚL TORREZ**

*Attorney General of New Mexico*

/s/ Astrid Carrete

Astrid Carrete\*

*Assistant Attorney General*

408 Galisteo Street

Santa Fe, NM 87501

(505) 270-4332

acarrete@nm DOJ.gov

*Counsel for the State of New Mexico*

**LETITIA JAMES**

*Attorney General of New York*

/s/ Rabia Muqaddam

Rabia Muqaddam\*

*Special Counsel for Federal Initiatives*

Molly Thomas-Jensen\*

*Special Counsel*

28 Liberty Street

New York, NY 10005

(929) 638-0447

rabia.muqaddam@ag.ny.gov

*Counsel for the State of New York*

**DAN RAYFIELD**

*Attorney General of Oregon*

/s/ Christina L. Beatty-Walters

Christina L. Beatty-Walters\*

Leanne E. Hartmann (BBO No. 667852)

*Senior Assistant Attorneys General*

100 SW Market Street

Portland, OR 97201

(971) 673-1880

tina.beattywalters@doj.oregon.gov

*Counsel for the State of Oregon*

**PETER F. NERONHA**

*Attorney General of Rhode Island*

/s/ Jordan Broadbent

Jordan Broadbent\*

*Special Assistant Attorney General*

150 South Main Street

Providence, RI 02903

(401) 274-4400, Ext. 2060

jbroadbent@riag.ri.gov

*Counsel for the State of Rhode Island*

**JOSHUA L. KAUL**

*Attorney General of Wisconsin*

/s/ Lynn K. Lodahl

Lynn K. Lodahl\*

*Assistant Attorney General*

17 West Main Street

P.O. Box 7857

Madison, WI 53707

(608) 264-6219

lodahlk@doj.state.wi.us

*Counsel for the State of Wisconsin*

\*admitted *pro hac vice*