

**UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND**

STATE OF COLORADO, *et al.*,

Plaintiffs,

v.

U.S. DEPARTMENT OF HEALTH AND
HUMAN SERVICES, *et al.*,

Defendants.

Civil Action No.
25cv121-MSM-AEM

PLAINTIFFS' BRIEF IN SUPPORT OF DISCOVERY

INTRODUCTION

Defendants terminated more than \$11 billion in congressionally appropriated public-health funding—critical funding supporting epidemiology, disease surveillance, and emergency preparedness. Defendants have offered multiple, conflicting explanations for this sweeping policy decision: the pandemic was “over” (ECF 69 at 1); concerns about “DEI” (*id.*); perceived delays in state spending (ECF 68 at 26); or potential reallocation of funds to other priorities (*id.* at 19, 32).¹ Yet despite the magnitude of these cuts, Defendants produced an Administrative Record limited to grant documentation (notices of funding opportunity, program descriptions, notices of awards, and grant guidance) and termination notices. *See* Ex. 1, Administrative Record Index. Markedly absent were materials about the policy decision itself, including who made the decision and what materials informed the decision. This decision frames each of the three issues the Court directed the parties to address (*see* July 20, 2026 Text Order), and these omissions underscore Plaintiffs’ need for discovery.

First, Plaintiffs are entitled to discovery on their constitutional and equitable *ultra vires* claims. These claims challenge Defendants’ attempt to impound billions in appropriated public health funds in violation of separation-of-powers principles and the Spending Clause. They do not depend on the Administrative Record Defendants chose to produce. Courts routinely allow discovery on constitutional and other non-APA claims—even when APA claims are also present. This is particularly true where, as here, (1) constitutional and non-APA claims raise distinct legal and factual issues from APA claims, and (2) the agency has not produced the materials necessary to understand a challenged policy decision. Discovery is especially appropriate because Defendants’ primary defense is that the Court lacks jurisdiction over the APA claims—an

¹ All ECF citations that include a page number reference the document’s page numbering.

argument that, if successful, would leave only Plaintiffs’ constitutional and *ultra vires* claims, none of which would be based on an administrative record.

Second, discovery to complete and supplement the record is necessary for Plaintiffs’ APA claims. The record is devoid of any documents reflecting who made this multi-billion dollar policy decision, what factors they considered or information they reviewed, or what instructions they provided to the Department of Health and Human Services (HHS) components to implement the decision. This easily meets Plaintiffs’ burden to show the record is incomplete. The Administrative Record lacks the materials required for this Court to evaluate if Defendants engaged in reasoned decision-making.

Third, Plaintiffs seek to serve 10 interrogatories (Ex. 2) and 8 requests for production (Ex. 3) that are tailored to filling these gaps. If Defendants’ responses indicate the need for follow-on discovery (e.g., depositions), Plaintiffs will file a status report identifying next steps.

ARGUMENT

I. The Court should permit discovery on the constitutional and *ultra vires* claims.

Courts regularly permit discovery on constitutional and equitable *ultra vires* claims, even when APA claims are simultaneously pending. *Am. Fed’n of Gov’t Emps. v. Trump*, 155 F.4th 1082, 1093 (9th Cir. 2025) (“Review of an *ultra vires* challenge would not be limited to an administrative record.”); *Bos. All. of Gay, Lesbian, Bisexual & Transgender Youth v. U.S. Dep’t of Health & Hum. Servs.*, 557 F. Supp. 3d 224 (D. Mass. 2021) (“The Court’s scope of review on the constitutional claims . . . is not limited to the administrative record.”).

Constitutional and *ultra vires* claims are not brought pursuant to the APA cause of action; the standard of review is not governed by the APA; and they do not rely upon the APA waiver of sovereign immunity. On their own, constitutional and *ultra vires* claims are clearly subject to the

same discovery available for any other case under the Federal Rules of Civil Procedure. The mere presence of an APA claim does not change that outcome, especially here where Defendants’ central argument is that the Court lacks jurisdiction over the APA claims. ECF 68 at 9-14. Should Defendants succeed on these arguments here or on appeal, that would leave only Plaintiffs’ constitutional and *ultra vires* claims, none of which would be based on the administrative record. The Supreme Court addressed this situation in *Webster v. Doe*, 486 U.S. 592, 601 (1988). There, the Court concluded that the plaintiff’s claims were precluded from review under the APA but nonetheless permitted discovery to proceed on the remaining constitutional claims. *Id.* at 604. The defendant agency argued that allowing discovery would entail unnecessary “rummaging” into its affairs, but the Court rejected that argument, noting that such “inquiry and discovery” were routine parts of adjudicating constitutional claims and that district courts possessed “the latitude to control any discovery process” for such claims. *Id.* The same holds here: Plaintiffs are entitled to discovery on their constitutional claims, especially given Defendants’ contention that this Court lacks jurisdiction over their APA claims.²

Discovery on constitutional claims is particularly appropriate in this case where Plaintiffs’ “constitutional claims d[o] not totally overlap with their APA claim.” *Am. Ass’n of Univ. Professors v. Rubio*, 802 F. Supp. 3d 120, 190 n.46 (D. Mass. 2025). Here, Plaintiffs’ APA

² Defendants have suggested that discovery is unnecessary based on the constitutional avoidance doctrine articulated in *Ashwander v. Tenn. Valley Auth.*, 297 U.S. 288, 347 (1936). *See* ECF 107 at 5. But constitutional avoidance is not a basis to deny discovery. *See, e.g., Jud. Watch, Inc. v. Nat’l Energy Pol’y Dev. Grp.*, 219 F. Supp. 2d 20, 54 (D.D.C. 2002) (rejecting as “conclusory and belied by precedent” defendant federal officials’ argument that the court should deny discovery because plaintiffs’ claims would raise sufficiently troubling constitutional problems to warrant application of the well-settled canon of constitutional avoidance). Further, Defendants’ assertion regarding constitutional avoidance is at odds with their repeated arguments that the Court lacks jurisdiction over Plaintiffs’ APA claims, ECF 68 at 9-14, in which case the doctrine of constitutional avoidance would be inapplicable. And regardless, it would not bar discovery on Plaintiffs’ *ultra vires* claim. *Am. Fed’n of Gov’t Emps.*, 155 F.4th at 1093 (“Review of an *ultra vires* challenge would not be limited to an administrative record.”).

claims allege that Defendants’ policy decision and implementation were contrary to law because they exceeded statutory authority and violated statutory and regulatory requirements. *See, e.g.*, ECF 59 (“Am. Compl.”) ¶¶ 3-4, 98-104. Likewise, Plaintiffs allege the policy decision and implementation were arbitrary and capricious for failure to engage in reasoned decision-making. *Id.* ¶¶ 5, 134-142. These are conventional APA claims. By contrast, Plaintiffs’ constitutional claims focus on Defendants’ motivations — seeking to override “the careful judgments of Congress” by impounding the funds in violation of “separation-of-powers constraints.” *Id.* at ¶ 150. Further, Plaintiffs allege that Defendants “altered the terms upon which grants were obligated and disbursed” in violation of the Spending Clause. *Id.* at ¶¶ 157-158.

Put differently, the constitutional and *ultra vires* claims address distinct components of Defendants’ unlawful conduct. *United Farm Workers v. Noem*, No. 1:25-CV-00246-JLT-CDB, 2025 WL 1490131 (E.D. Cal. May 23, 2025) (“To determine whether claims fundamentally overlap, a court must examine the particular facts of the claims involved and the discovery requested.”) (citation modified). As a federal agency, HHS “can spend, award, or suspend money based only on the power Congress has given to them—they have no other spending power.” *New York v. Trump*, 769 F. Supp. 3d 119, 127 (D.R.I. 2025). As a result, Defendants’ motivations in making the policy decision to terminate public health funding are directly relevant to Plaintiffs’ claims that Defendants violated separation-of-powers principles and sought to impound funding in violation of the Spending Clause, which bars the Executive Branch from “refus[ing] to disperse [] federal grants . . . without congressional authorization.” *City & Cnty. of San Francisco v. Trump*, 897 F.3d 1225, 1231 (9th Cir. 2018); *see also Biden v. Nebraska*, 600 U.S. 477, 505 (2023) (“Among Congress’s most important authorities is its control of the purse.”). Plaintiffs’ proposed discovery is aimed at uncovering these motivations, including by probing

Defendants' communications both internally and with the Department of Governmental Efficiency (DOGE); by identifying decisionmakers and the factors they considered; and by shedding light on efforts by Defendants to avoid spending appropriations.

Finally, discovery is needed here because of the significant deficiencies in Defendants' Administrative Record. *See infra* at 5-8. Where "the administrative record is demonstrably incomplete, the presence of a constitutional claim makes it all the more imperative that the record be completed to include the materials relied upon by all agencies and officials who participated in the ultimate decision," which includes "access to the sequence of events and the contemporaneous communications of agency decisionmakers." *Authors Guild v. Nat'l Endowment for the Humans.*, No. 1:25-cv-03657-CM, 2025 WL 3678097 (S.D.N.Y. Dec. 18, 2025).

II. Discovery is also appropriate to complete the Administrative Record.

Even if this case were limited only to Plaintiffs' APA claims, discovery would still be appropriate to complete and supplement the Administrative Record. "Federal administrative agencies are required to engage in reasoned decisionmaking." *Michigan v. E.P.A.*, 576 U.S. 743, 750 (2015) (citation modified). "The reasoned explanation requirement of administrative law . . . is meant to ensure that agencies offer genuine justifications for important decisions, reasons that can be scrutinized by courts and the interested public." *Dep't of Com. v. New York*, 588 U.S. 752, 785 (2019). To enable such scrutiny, a court's review of agency action under the APA is generally based on "the existing administrative record." *Atieh v. Riordan*, 727 F.3d 73, 76 (1st Cir. 2013). The record must contain "all documents and materials directly or indirectly considered by the agency." *New York v. McMahon*, 826 F. Supp. 3d 184, 194 (D. Mass. 2026) (quotation omitted). "When a showing is made that the record may not be complete, limited discovery is appropriate to resolve that question." *Id.* at 195 (citation modified).

Plaintiffs challenge Defendants’ overarching policy decision to terminate \$11 billion in congressionally appropriated public health funding. *See, e.g., Am. Compl.* ¶¶ 3-5. But the Administrative Record that Defendants produced does not contain a single document, let alone all records, considered directly or indirectly in making that policy decision. *See McMahon*, 826 F. Supp. 3d at 194. Instead, their record is limited to grant documentation, such as notices of funding opportunity, program descriptions, notices of awards, and related grant guidance, as well as post hoc termination notices. *See Ex. 1.*

By any reasonable measure, Defendants’ certified administrative record is not just incomplete—it is a “sham.” *See, e.g., Am. Fed’n of Gov’t Emps. v. Trump*, 799 F. Supp. 3d 967, 979 (N.D. Cal. 2025) (describing administrative record as a “sham,” including because it relied on “post hoc statements” and “pages of irrelevant documents” but was “silent” on the “calls, discussions, documents, and decisions that underpin” the government’s actions), appealed on other grounds, No. 25-5875 (9th Cir.). It omits any internal or inter-agency materials directly or indirectly considered by Defendants in making the decision to terminate \$11 billion in public health funding. Nor does the record provide any contemporaneous documentation to explain or justify any of Defendants’ shifting rationales for these decisions or instructions to component agencies as to how to implement the decision. The most the record contains is post-hoc, cursory boilerplate contained in the grant termination notices that Defendants used as a means to paper over their prior policy decision. *See, e.g., McMahon*, 826 F.Supp.3d at 199 (ordering supplementation of record where “[a]s the AR currently stands, there is virtually *no* reasoning backing the agency’s decision-making process reflected in the record”); *Authors Guild*, 2025 WL 3678097 at *9 (explaining that when the record “is barren of a reasoned explanation linking the facts found to the choice made, review on the existing record collapses . . . because it lacks the

materials necessary to assess whether the agency engaged in reasoned decision-making at all”). Merely collecting routine grant documentation with no bearing on the decision-making process, such as “Program Descriptions” and “Application Guidance,” *see* Ex. 1, provides no insight into the factors Defendants considered (or failed to consider) in reaching this policy decision. And it strains credulity that no additional correspondence or analysis exists to support a decision of this magnitude. These glaring omissions rebut any presumption that Defendants’ submissions constitute the “whole administrative record,” including “everything that was before the agency pertaining to the merits of its decision,” as required for the Court to adjudicate Plaintiffs’ claims. *Doe v. Trump*, No. 3:19-CV-1743-SI, 2020 WL 1853657, at *2 (D. Or. Apr. 13, 2020); *see also Illinois v. Vought*, No. 26-CV-1566, 2026 WL 962382, at *1 (N.D. Ill. Feb. 25, 2026) (granting the plaintiffs’ motion for expedited discovery where “[t]he administrative record filed by the government does not adequately explain how plaintiffs found themselves subject to the specific grant reviews leading to the notifications of grant termination included in the administrative record”).

At bottom, Defendants pretend that the agency-wide policy decision never happened, and that one morning multiple HHS component agencies all decided at the exact same time to terminate \$11 billion in public health funding. Defendants have failed to disclose basic facts from the beginning, refusing in prior filings and hearings to reveal even the most rudimentary information about this policy decision, including who made the decision. *See, e.g.*, ECF 77 at 89:11-18; ECF 80 at 3-15 (referring to HHS’s decisions and terminations, without identifying responsible individuals). Plaintiffs have clearly demonstrated “reasonable, non-speculative grounds to believe that materials considered in the decision-making process are not included in

the record.” *McMahon*, 826 F. Supp. 3d at 195 (quotation omitted). They should thus be permitted to conduct discovery to complete and supplement the administrative record.

III. Plaintiffs’ proposed discovery is limited in scope.

Plaintiffs’ proposed discovery requests are carefully tailored to obtain core factual information that is absent from Defendants’ Administrative Record and that is essential to adjudicate Plaintiffs’ separation-of-powers, Spending Clause, APA, and *ultra vires* claims. *See* Exs. 2 and 3.

Interrogatories 1-4 seek foundational information that the Administrative Record does not provide. *See* Ex. 2. These interrogatories focus on (1) how the policy decision was made to terminate public health funding, (2) what analyses Defendants conducted regarding impacted grantees, (3) what analyses Defendants conducted regarding congressional appropriations and statutory obligations, and (4) whether and how Defendants reallocated terminated funds to other programs. This information is directly relevant to Plaintiffs’ constitutional and *ultra vires* claims, which require evidence of Defendants’ motivations. It is also necessary to fill in holes in the Administrative Record, which should have included all materials directly or indirectly considered in reaching the decision.

Interrogatories 5-10 seek information about who made the policy decision to terminate public health funding, how they communicated about it, and whether their communications and documentation were preserved. These interrogatories address two critical issues: (1) decisionmaker identification and contemporaneous communications, which are necessary to evaluate whether Defendants engaged in reasoned decision-making under the APA and are highly relevant to Plaintiffs’ constitutional claims concerning improper motives; and (2) record-preservation practices, which are necessary to determine whether Defendants failed to maintain records or destroyed relevant materials. This latter information is vital to determining whether

depositions are necessary. For example, in numerous prior cases, discovery revealed that decisionmakers were utilizing Signal in order to avoid preserving records. *See, e.g., Am. Fed’n of Gov’t Emps. v. Trump*, No. 3:25-cv-03698-SI (N.D. Cal.), ECF No. 380 (ordering preservation of Signal communications after discovery revealed high-level government officials using Signal for official duties and setting messages to disappear); *Am. Oversight v. Hegseth*, 788 F. Supp. 3d 14, 26-27 (D.D.C. 2025) (finding that plaintiff is “likely to succeed in showing” defendant administration official had “[Federal Records Act]-noncompliant Signal chats” and “neglected to fulfill” recordkeeping obligations under that statute); *Citizens for Responsibility and Ethics in Washington v. U.S. DOGE Service*, 769 F. Supp. 3d 8, 30-31 (D.D.C. 2025) (ordering preservation of Signal communications where “USDS employees acknowledged using Signal, an encrypted messaging app with an auto-delete function,” including for official duties).

Plaintiffs’ Requests for Production largely track and request documents pertaining to these same topics. *See* Ex. 3. Request for Production No. 8 also specifically asks for documents or communications with the DOGE regarding the decision to terminate public health funding.³ At the time of the decision, DOGE’s own website listed the thousands of HHS grants covered by this \$11 billion decision on its “Wall of Receipts,” purportedly accounting at that time for over 1/3 of all grant “savings” across the federal government. Dep’t of Government Efficiency, *Savings* (updated March 24, 2025), available from the Internet Archive at <https://web.archive.org/web/20250328002030/https://doge.gov/savings>. As another district court correctly recognized, “the administrative record is not complete,” and discovery is warranted, where DOGE participated in the decision-making process to terminate funding, yet the

³ The discovery requests also define “Defendants” and “you” to include individuals in the Department of Government Efficiency (DOGE) acting on Defendants’ behalf.

government failed to include any DOGE-related documents or communications in the administrative record. *Authors Guild*, 2025 WL 3678097 at *9.

These discovery requests are proportional and tailored to the missing information needed to adjudicate Plaintiffs' claims. They are focused on the challenged overarching policy decision, the analyses underlying it, the individuals involved, and the contemporaneous communications that are absent from the record Defendants provided.

Depending on Defendants' responses to these requests, Plaintiffs may obtain all necessary information from written discovery alone or may need limited follow-on discovery, such as depositions. Plaintiffs propose to file a further status report once initial discovery, including any privilege issues, is completed and resolved. That status report will identify proposed next steps, including any additional discovery.

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court order that: 1) Plaintiffs are entitled to discovery on their constitutional and *ultra vires* claims and that record-completion and supplementation discovery is warranted given the clear gaps in the produced Administrative Record, and 2) Defendants are required to respond to Plaintiffs' interrogatories (Ex. 2) and requests for production (Ex. 3); and 3) the parties file a status update, addressing any unresolved discovery issues and whether any additional discovery is warranted, within 30 days after completion of Defendants' responses to the interrogatories and requests for production, including the resolution of any discovery and privilege disputes.

Dated: August 3, 2026

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that, on August 3, 2026, I filed the foregoing document through this Court's Electronic Case Filing (ECF) system, thereby serving it upon all registered users in accordance with Federal Rule of Civil Procedure 5(b)(2)(E) and Local Rules Gen 304.

/s/ David Moskowitz

Deputy Solicitor General

Exhibit 1

Colorado v. HHS
Administrative Record Index

Document(s)	Bates Range/DOC ID
CDC NoAs, NoFOs, Guidance	
Arizona	AR_000001 - AR_001021
California	AR_001022- AR_003167
Colorado	AR_003168 - AR_004535
Connecticut	AR_004536 - AR_005697
District of Columbia	AR_005698 - AR_005833
Delaware	AR_005834 - AR_006282
Hawaii	AR_006283 - AR_007211
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Maryland	AR_009547 - AR_010122
Massachusetts	AR_010123 - AR_011981
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Exhibit 2

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND**

STATE OF COLORADO, et al.,

Plaintiffs,

v.

U.S. DEPARTMENT OF HEALTH AND
HUMAN SERVICES, et al.,

Defendants.

Case No. 1:25-cv-00121

PLAINTIFFS' FIRST SET OF INTERROGATORIES

Pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure, Plaintiff States hereby serve their first set of interrogatories on Defendants. Each interrogatory is to be answered separately and fully in writing and under oath within 30 days of service of these interrogatories.

DEFINITIONS

1. “Defendants,” “you,” and “your” means the U.S. Department of Health and Human Services, Secretary Robert F. Kennedy, in his official capacity, as well as any of their employees, personnel, agents, consultants, experts, representatives, or other persons or entities acting or who have acted on their behalf, such as contractors or personnel from other agencies, including individuals in the Department of Government Efficiency (DOGE).

2. The term “Public Health Funding Decision” references U.S. Department of Health and Human Services’ decision to terminate numerous health programs and appropriations responsible for \$11 billion of federal financial assistance, on or about March 24, 2025, including as referenced in the operative complaint.

INSTRUCTIONS

3. Unless otherwise indicated, the relevant time period for purposes of these interrogatories is from January 1, 2025 to the present.

4. When an interrogatory requests you to “identify” an individual, the verb “identify” means to state that person’s full name, business affiliation and title, his or her business and e-mail address, and his or her telephone number.

5. When an interrogatory requests you to “identify” a communication, the verb “identify” means to state the parties, date, form (e-mail, telephone call, meeting, etc.) and content of the communication.

6. The term “describe in detail,” as used in these interrogatories, requires you to state all facts known to you that are discoverable under the Federal Rules of Civil Procedure and that are responsive to the interrogatory and to identify the source of your information or knowledge regarding each such fact.

7. The terms “all” and “any” shall both be construed as all, any, each, and every.

8. The connectives “and” and “or” shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the discovery requests all answers that might otherwise be construed to be outside the scope.

9. Each interrogatory operates and shall be responded to independently, and unless otherwise indicated, no interrogatory limits the scope of any other interrogatory.

10. If an objection is made to any part of an interrogatory, the response shall state that there is an objection to the interrogatory and the legal and factual basis for such objection. No part of an interrogatory shall be left unanswered merely because an objection is made to another part of the interrogatory.

11. If any interrogatory demands an answer that the Defendants claim may be withheld due to privilege, work product or any other privilege or immunity from disclosure, Defendants shall answer any portion of the interrogatory that is not subject to such a claim, and shall indicate with specificity and particularity the basis of said withholding, including:

- a. the identity of the person(s) having knowledge of the information;
- b. the identity of all persons to whom the information was communicated or otherwise made available;
- c. the job title or position of every person identified in response to subparagraphs (a) and (b);
- d. the date(s) on which the information was received or became known by each person having knowledge of its existence;
- e. a brief description of the nature and subject matter of the information; and
- f. the statute, rule or decision that is claimed to give rise to the privilege.

12. If the response to any interrogatory consists in whole or in part of an objection based upon undue burden, then with respect to such response:

- a. provide such information as can be ascertained without undue burden; and
- b. state with particularity the basis for such objection, including a description of the process or method required to obtain the response to the interrogatory and the estimated cost and time required to obtain the response to the interrogatory.

13. If the Defendants cannot answer any interrogatory in full after exercising due diligence to secure the information to do so, please so state and answer the interrogatory to the extent possible, explaining any inability to answer the remainder of any such interrogatory and

stating all information or knowledge presently available to Defendants concerning the unanswered portion of said interrogatory.

14. The interrogatories are continuing in nature. In accordance with Rule 26(e) of the Federal Rules of Civil Procedure, Defendants are required promptly to serve supplementary responses and produce additional documents if the Defendants obtain further or different information.

INTERROGATORIES

INTERROGATORY NO. 1: Describe in detail how Defendants decided to make the Public Health Funding Decision, including when, how, and why Defendants began to consider each action taken pursuant to the Public Health Funding Decision and all facts and considerations taken into account in making the decision.

INTERROGATORY NO. 2: Describe in detail all analyses that Defendants conducted into grant recipients that would be or were affected by the Public Health Funding Decision, including the program purposes facilitated by the grants, whether the grant recipients were compliant with all terms and conditions for federal funding, whether the grant recipients had fully used all funds made available to them, and whether cause existed for the Public Health Funding Decision and/or for termination of any grant awards.

INTERROGATORY NO. 3: Describe in detail all analyses that Defendants conducted into congressional funding and instructions for grants that would be affected by the Public Health Funding Decision (*see, e.g.*, ECF 80 at 14-15), including but not limited to appropriations legislation, committee reports, agency guidance, or other congressional communications, and the dates during which such funding was required to be available or obligated by Defendants.

INTERROGATORY NO. 4: Describe in detail all instances in which funding terminated by the Public Health Funding Decision was reallocated to other programs, including the specific programs to which funds were reallocated and the date and amount of such reallocation, including all facts and considerations taken into account in making the decision.

INTERROGATORY NO. 5: Explain whether and how artificial intelligence (AI) tools (e.g., Grok, Chat GPT, Claude) were used in any of the decisions or analyses identified in response to Interrogatory Nos. 1, 2, 3, and 4, including the software version of the AI tool used, date(s) used, any prompts/inputs and outputs, whether any software tracked use of the AI tool, and whether and when any steps were taken to collect and preserve such use of any AI tool.

INTERROGATORY NO. 6: Identify all individuals that had any role in making, adopting, approving, implementing, conducting, being briefed on and/or attending meetings regarding the decisions, analyses, and instances described in your responses to Interrogatory Nos. 1, 2, 3, and 4, including their role in and/or how they contributed to the decisions, analyses, and instances, and the dates of their involvement.

INTERROGATORY NO. 7: For each individual identified in response to Interrogatory No. 6, identify all means of communications that such individual used and/or uses in their work with Defendants, regardless of whether on a personal or Defendant-issued device, including instant messaging apps (e.g., iMessage, Signal, Teams, WhatsApp), email applications, phone, social media, and/or oral and written communications, and where applicable, the name, number, and/or address that the individual uses to identify themselves with that means of communication, and whether and when steps were taken to collect and preserve such communications.

INTERROGATORY NO. 8: For each individual identified in response to Interrogatory No. 6, identify all their communications regarding the decisions, analyses, and instances described in your responses to Nos. 1, 2, 3, and 4, regardless of whether such communication was part of the decision-making process or occurred after the fact.

INTERROGATORY NO. 9: For each individual identified in your response to Interrogatory No. 6, describe all steps taken to ensure they comply with the Federal Records Act with respect to any communication identified in any interrogatory response, including the dates and content of any training received, and safeguards taken by the individual or IT personnel for each means of communication that the individual uses for their work with Defendants.

INTERROGATORY NO. 10: Describe in detail all steps Defendants took to retain documents relating to the allegations in this action since its filing on April 1, 2025, including the identity of each employee that was told to maintain documents relating to the allegations in this action, the date of such communication, what documents they were informed to maintain, whether any automatic deletion of certain types of documents (e.g., email, iMessage, Teams, Slack, Signal etc.) was disabled for that employee, and whether any documents responsive to the requests for production were deleted.

Exhibit 3

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND**

STATE OF COLORADO, et al.,

Plaintiffs,

v.

U.S. DEPARTMENT OF HEALTH AND
HUMAN SERVICES, et al.,

Defendants.

Case No. 1:25-cv-00121

PLAINTIFFS' FIRST REQUESTS FOR PRODUCTION

Pursuant to Rules 26 and 34 of the Federal Rules of Civil Procedure, Plaintiff States hereby serve their first set of requests for production of documents on Defendants. Please produce the requested documents, electronically stored information, and tangible things via email or another secure method of electronic transfer to the undersigned counsel within 30 days of service of these requests.

DEFINITIONS

1. "Defendants," "you," and "your" means the U.S. Department of Health and Human Services, Secretary Robert F. Kennedy, in his official capacity, as well as any of their employees, personnel, agents, consultants, experts, representatives, or other persons or entities acting or who have acted on their behalf, such as contractors or personnel from other agencies, including individuals in the Department of Government Efficiency (DOGE).

2. "Document" is defined to be synonymous in meaning and equal in scope to the usage of the term "documents or electronically stored information" in Rule 34(a)(1)(A) of the

Federal Rules of Civil Procedure. A draft or non-identical copy is a separate document within the meaning of this term.

3. The term “Public Health Funding Decision” references U.S. Department of Health and Human Services’ decision to terminate health programs and appropriations responsible for \$11 billion of federal financial assistance, on or about March 24, 2025, including as referenced in the operative complaint.

INSTRUCTIONS

1. Produce all documents in your possession, custody or control or in the possession, custody, or control of your representatives or agents.

2. If an objection is made to any part of a request, the response shall state that there is an objection to the request and the legal and factual basis for such objection. No part of a request shall be unanswered merely because an objection is made to another part of the request.

3. If Defendants claim any responsive records, or portion thereof, may be withheld due to privilege, work product or any other privilege or immunity from disclosure, Defendants shall produce any record or portion thereof that is not subject to such a claim, and shall, simultaneous with production, indicate with specificity and particularity the basis of said withholding, including:

- a. the identity of the person(s) having knowledge of the information;
- b. the identity of all persons to whom the information was communicated or otherwise made available;
- c. the job title or position of every person identified in response to subparagraphs (a) and (b);

- d. the date(s) on which the information was received or became known by each person having knowledge of its existence;
- e. a brief description of the nature and subject matter of the information; and
- f. the statute, rule or decision that is claimed to give rise to the privilege.

4. If any responsive document or object was in your possession, custody, or control but is now in the possession, custody, or control of any other person or entity, or has been disposed of, lost, discarded, or destroyed, identify each such document or object by specifying: (a) the document's date, author, and addressee or recipient; (b) the contents of the document or the nature of the object; (c) the name, address, and job title of those to whom the document or object was given, shown, or sent; (d) the name and address of the document's or object's current custodian, if any, or the date of its disposition and the name, address, and job title of the person responsible for it; (e) the date when the document or object was last in your possession, custody, or control; and (f) if known, the reason the document or object was disposed of, lost, discarded, or destroyed. If you content that any document or thing requested has been destroyed, set forth the date of its destruction and the name of the person who authorized its destruction.

5. All documents must be produced as they are kept in the ordinary course of business or be organized and labeled to correspond to the specific request to which they are responsive. The integrity and internal sequence of the requested documents within each file or folder shall not be disturbed, nor shall the contents of any file or folder be commingled with the contents of another file or folder. Documents shall be produced in their native and searchable format, including all associated metadata. Emails shall be produced in native .PST or .MSG format, with full metadata and accompanying load files. Spreadsheets such as Excel files shall be

produced in native .XLSX format. Documents that do not exist in native format may be produced as individual, text-searchable PDFs.

6. If Defendants object to any request based upon undue burden, then with respect to such response, Defendants shall:

- a. provide such information as can be ascertained without undue burden; and
- b. state with particularity the basis for such objection, including a description of the process or method required to respond to the Request and the estimated cost and time required to obtain the response.

7. These requests are continuing in nature. In accordance with Rule 26(e) of the Federal Rules of Civil Procedure, Defendants are required promptly to serve supplementary responses and produce additional documents if the Defendants obtain further or different information.

8. If, following a reasonable search, you conclude that no responsive documents exist for a particular request, please expressly indicate so in your response.

REQUESTS FOR PRODUCTION

REQUEST FOR PRODUCTION NO. 1: All documents and communications regarding the Public Health Funding Decision, whether dated before or after the decision, including but not limited to a copy of the decision, documents reflecting how and why Defendants made the decision, the timing of each action relating to the decision, and the implementation of the decision.

REQUEST FOR PRODUCTION NO. 2: All documents and communications regarding all analyses identified in response to Interrogatory No. 2, whether dated before or after the analyses.

REQUEST FOR PRODUCTION NO. 3: All documents and communications regarding all analyses identified in response to Interrogatory No. 3, whether dated before or after the analyses.

REQUEST FOR PRODUCTION NO. 4: All documents and communications regarding all reallocations of funding identified in response to Interrogatory No. 4.

REQUEST FOR PRODUCTION NO. 5: All documents and communications regarding Defendants' use of artificial intelligence (AI) tools (e.g., Grok, Chat GPT, Claude) relating to the Public Health Funding Decision, including the decisions, analyses and instances identified in response to Interrogatory Nos. 1, 2, 3, and 4, including training materials, guidance documents, documents reflecting the software version of the AI tool used, date(s) used, inputs and outputs, any software tracking information, and any efforts to preserve records related to the use of those AI tools or the inputs and outputs submitted to the AI tools.

REQUEST FOR PRODUCTION NO. 6: All documents and communications used, referenced, or consulted by Defendants in responding to any Interrogatory.

REQUEST FOR PRODUCTION NO. 7: All documents and communications regarding Defendants' retention of documents responsive to these document requests.

REQUEST FOR PRODUCTION NO. 8: All documents and communications between Defendants and the Department of Government Efficiency, or any person affiliated with the Department of Government Efficiency, regarding any effort, intent or desire to terminate, withdraw, suspend, freeze, deobligate, or reallocate any of Defendants' grant funding, including but not limited to the Public Health Funding Decision.