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

PLAINTIFFS' MOTION FOR TARGETED DISCOVERY AND TO SET A PHASE TWO CASE SCHEDULE AND TRIAL DATE

The end of the federal government's fiscal year is quickly approaching, and defendants' unreasonable delay in reviewing plaintiffs' pending grant applications makes it highly unlikely that—absent relief from this Court—NIH will close the gap and obligate its full budget in time. Plaintiffs are prepared to move swiftly to a trial on the merits of their unreasonable-delay claims, but the administrative record that defendants have produced is insufficient to resolve those claims. Plaintiffs therefore move the Court to permit targeted discovery on an accelerated basis. Plaintiffs already served a narrow set of Phase Two discovery requests in early June, which the Court directed defendants to consider in the intervening months. *See* ECF No. 121, at 19. The Court should now require defendants to respond to them. Courts routinely permit discovery in other cases proceeding under §706(1) of the APA, *see, e.g.*, *Cherokee Nation v. U.S. Dep't of the Interior,* 531 F. Supp. 3d 87, 97 (D.D.C. 2021), and such discovery would not unduly burden or prejudice defendants here. In addition, the Court should also enter the case schedule proposed below, which will allow the Court to promptly resolve Phase Two.

BACKGROUND

In Phase One of this case, the Court set aside defendants' Challenged Directives and the resulting grant terminations as unlawful under 5 U.S.C. §706(2). *See* ECF No. 151, at 1–2; ECF No. 75 ¶¶94–117, 144–58 (Am. Compl.). Phase Two of the litigation now involves claims for defendants' delay in reviewing pending applications for NIH research grants. *See* Am. Compl. ¶¶118–43. Relevant here, the amended complaint alleges unreasonable-delay claims for violations of 5 U.S.C. §706(1) (Count 7) and the U.S. Constitution (Counts 4 and 5), as well as *ultra vires* executive action (Count 6). *Id*. ¶¶241, 247–48, 250–69; ECF No. 162, at 2–6.

On June 2, Plaintiffs served narrow discovery requests related to these Phase Two claims. Those discovery requests, attached hereto, included six requests for production (Ex. A); eight interrogatories (Ex. B); a Rule 30(b)(6) deposition notice (Ex. C); and three individual deposition notices to Dr. Matthew Memoli, Dr. Jon Lorsch, and Rachel Riley (Exs. D–F). At a status conference on June 3, the Court set a schedule for production of the Phase Two administrative record but deferred any Phase Two discovery. Specifically, the Court ordered defendants to produce the Phase Two administrative record by July 9 and allowed plaintiffs until July 23 to move to complete or supplement the record or move for summary judgment. *See* ECF Nos. 113, 119. While the Court agreed with defense counsel that defendants did not need to respond to plaintiffs' discovery requests in the meantime, it gave the following admonition:

> THE COURT: I think that makes sense, but then we're not going to be waiting, so you'd better line those people up, and you'd better be thinking about the answers to interrogatories, because I will give a very short time for discovery. You understand?
>
> MR. PORTS: If the Court orders that discovery is appropriate.
>
> THE COURT: If we get there.
>
> MR. PORTS: Understood, your Honor.

THE COURT: Right. They told you what they want. Be thinking about it.

ECF No. 121, at 19.

Defendants served the administrative record in two volumes on July 9, certifying that the record "constitute[d] the true, accurate, and complete administrative records for Defendants' alleged delay in scheduling meetings and processing grant applications." ECF No. 165-1, at 2. The first volume consists of (1) meeting notices for various NIH institutes and centers, (2) the Notice Pause Directive,[1] (3) internal NIH memoranda on travel and external communications, and (4) a handful of emails. AR 1–1141.[2] The second volume consists of 84 pages, 78 of which are redacted in their entirety. AR 1142–1225. The six unredacted pages provide basic information about a single grant application identified in plaintiffs' amended complaint. AR 1142, 1208–1212.

ARGUMENT

The Court rightly recognized in adjudicating Phase One that "[t]his is a case in equity concerning health research already bought and paid for by the Congress of the United States through funds appropriated for expenditure and properly allocated during this fiscal year." ECF No. 160, at 5. Despite the fact that Congress has already allocated these funds to NIH, defendants have continued to unreasonably delay their review of grant applications. *See* ECF No. 162, at 2–6 (describing NIH's deviation from its predictable, timely grants process). As September draws nearer, plaintiffs want to move expeditiously towards trial on the merits for their unreasonable-delay claims. Yet the merits are inherently fact-dependent and premised on agency *inaction*: they concern what was "unlawfully withheld or unreasonably delayed." 5 U.S.C. §706(1). Defendants'

[1] As set forth in plaintiffs' previous filings, the "Notice Pause Directive" is a January 21, 2025, memorandum entitled "Immediate Pause on Issuing Documents and Public Communications." *See* Am. Compl. ¶¶103, 118–22; ECF No. 78, at 8.

[2] This brief cites the administrative record by Bates number, omitting, for readability, the "P2AR_" prefix and any leading zeroes. For example, the citation above corresponds to P2AR_00001 through 01141.

administrative record attempts to narrow the merits to an artificial universe of documents, even though there is "no final agency action to demarcate the limits" of such a record. *Friends of the Clearwater v. Dombeck*, 222 F.3d 552, 560 (9th Cir. 2000). As discussed in greater detail below, plaintiffs are entitled to seek discovery, limited in scope, to substantiate their unreasonable-delay claims.

I. Disposition of plaintiffs' unreasonable-delay claims requires discovery beyond the administrative record.

A. Plaintiffs are entitled to discovery on their §706(1) claims.

Plaintiffs seek discovery on their §706(1) claim, which alleges that defendants unreasonably delayed review of, and unlawfully withheld final decisions on, pending grant applications. Am. Compl. ¶¶258–69. These claims are necessarily fact-intensive and thus are not properly limited to the administrative record—even if defendants had produced a fulsome administrative record.

1. Plaintiffs' claims under §706(1) are not confined to the administrative record.

"[W]hen it comes to agency *inaction* under 5 U.S.C. §706(1)," discovery may be appropriate because "agency delay is not necessarily a discrete event resulting from a decision based upon some sort of administrative record[.]" *Nat'l Law. Ctr. on Homelessness & Poverty v. U.S. Dep't of Veterans Affairs*, 842 F. Supp. 2d 127, 130 (D.D.C. 2012); *see also Cherokee Nation*, 531 F. Supp. 3d at 97 (permitting discovery on claims related to withheld government action, because "[r]eview under [5 U.S.C. §706(1)] is not limited to the administrative record"); *Roe v. Mayorkas*, No. 22-cv-10808-ADB, 2024 WL 5198705, at *12 (D. Mass. Oct. 2, 2024) (recognizing that "courts may consider extra-record evidence" in resolving undue-delay claims under §706(1)). This principle makes good sense: as the Court recognized in bifurcating these proceedings, plaintiffs' §706(1) claim vindicates different legal rights—and seeks different forms of relief—

than their §706(2) claims. Specifically, plaintiffs' §706(1) claim challenges ongoing agency *inaction*. *See* Am. Compl. ¶¶118–43. "In such cases, review is not limited to the record as it existed at any single point in time, because there is no final agency action to demarcate the limits of the record." *Friends of the Clearwater*, 222 F.3d at 560. Accordingly, plaintiffs should be permitted to seek discovery outside the administrative record.

2. Defendants' production of the administrative record confirms why discovery is necessary.

A review of the Phase Two administrative record produced by defendants in this case reinforces why courts have permitted extra-record discovery for §706(1) claims.

Defendants produced the administrative record in two volumes. The first volume, which defendants identified as the "general" record, purports to address their failure "to hold meetings and to decide applications." ECF No. 165-1, at 2; AR 1–1141. The first 1,115 pages consist of meeting notices for the various institutes and centers of NIH, with no indication of which applications are—or, more importantly, are not—being reviewed at those meetings. What remains are a mere 26 pages, which consist of the Notice Pause Directive, internal NIH memoranda on travel and external communications, and a handful of emails. AR 1116–1141. The second volume, which consists of only 84 pages, is apparently directed to a specific application on Alzheimer's Disease identified in plaintiffs' amended complaint.[3] But of the 84 pages produced in the second volume, all but six are completely redacted. AR 1142–1225. Those six unredacted pages elucidate nothing more than basic information about the application, such as the proposed budget and "last

[3] This project is entitled "Elucidation of the mechanisms by which Ms4a genes regulate neurodegeneration in Alzheimer's Disease and related disorders." As alleged in plaintiffs' amended complaint, University of Massachusetts researchers submitted this application on July 9, 2024, with an anticipated start date of April 1, 2025. *See* Am. Compl. ¶162. Defendants' direction to paragraph 145 of plaintiffs' amended complaint in their certification appears to be a typographical error. *See* ECF No. 165-1 ¶4(a). Likewise, plaintiffs understand the Bates range for this volume to be AR 1142–1225, not AR 11412–1225 as set forth in the certification. *Id.*

status update date" of March 7, 2025. AR 1142, 1208–1212.

As with Phase One, the administrative record produced by defendants in Phase Two leaves many questions unanswered. In handpicking a narrow set of meeting notices and redacted emails, defendants ask the Court to engage in an artificial exercise, setting aside obvious and publicly known facts that bear on the core issues of defendants' unreasonable delay. Recent reporting shows, for example, that NIH will soon disinvite members of NIH's advisory councils—thereby compounding the widespread delays that already plague the agency's work. *See, e.g.*, Max Kozlov, *Exclusive: NIH to dismiss dozens of grant reviewers to align with Trump priorities,* NATURE (July 14, 2025), https://www.nature.com/articles/d41586-025-02221-6. Nor is there anything in the administrative record about how defendants directed NIH personnel to apply the Challenged Directives that this Court already found arbitrary and capricious to the review of new grant applications. It is implausible that NIH terminated hundreds of grants relating to the topics identified there, while continuing business as usual with regard to new grant applications on those same topics. *See, e.g.*, Stephanie M. Lee, *The Scientists Who Got Ghosted by the NIH*, CHRON. HIGHER EDUCATION (July 8, 2025), https://www.chronicle.com/article/the-scientists-who-got-ghosted-by-the-nih (reporting on applications that were removed from review and held in limbo indefinitely).

The administrative record also fails to align with the legal standard the Court will need to apply—including the so-called "*TRAC* factors" articulated in *Telecommunications Research & Action Ctr. v. FCC*, 750 F.2d 70 (D.C. Cir. 1984) ("*TRAC*"), and relied upon by the First Circuit. *See Town of Wellesley v. FERC*, 829 F.2d 275, 277 (1st Cir. 1987) (considering six *TRAC* factors

to evaluate petitioners' claims of unreasonable delay).[4] For example, the first *TRAC* factor is whether defendants' cancellation and postponement of study-section and advisory-council meetings, and their withholding of final decisions on applications and renewals, comports with any "rule of reason." *See TRAC*, 750 F.2d at 80. The record does not include any information regarding how the backlog of meetings and decisions at NIH and its many centers and institutes comports with NIH's own published timetables, which historically set a triannual schedule for review and disposition of applications. The record also provides no evidence bearing on the third, fourth, or fifth *TRAC* factors, reinforcing the need for extra-record discovery. *See Nio v. DHS*, 314 F. Supp. 3d 238, 242 (D.D.C. 2018) (reasoning that §706(1) claims require a "fact intensive inquiry, applying the factors set forth in [*TRAC*]" and judicial review of such claims "is not limited to the [administrative] record as it existed at any single point in time").

B. Plaintiffs are entitled to discovery on their constitutional and *ultra vires* claims.

Plaintiffs should also be permitted to seek discovery on their constitutional and *ultra vires* claims. Plaintiffs' constitutional claims allege that defendants' "pattern and policy of systematic delays" effectively impounded appropriated funds and unconstitutionally usurped Congress's powers to legislate and appropriate. Am. Compl. ¶¶241, 247–48. The amended complaint likewise alleges *ultra vires* executive action. *See id.* ¶¶250–57. Courts have permitted discovery outside the administrative record for "independent constitutional claims for which the record of the agency's decision making would not comprehensively address." *United Farm Workers v. Noem*, No. 1:25-CV-00246-JLT-CDB, 2025 WL 1490131, at *7 (E.D. Cal. May 23, 2025). The

[4] The *TRAC* factors include: (1) a "rule of reason" governing the time the agency takes to make decisions; (2) a "timetable or other indication of the speed" expected by Congress, if any; (3) the context or "sphere" in which the delays occurred, such as stakes for "human health and welfare"; (4) "the effect of expediting delayed action" given "a higher or competing priority"; (5) "the nature and extent of the interests prejudiced by delay"; and (6) "the court need not find any impropriety lurking behind agency lassitude" to find unreasonable delay. 750 F.2d at 80 (citations and quotation marks omitted).

administrative record produced by defendants for Phase Two is not an adequate evidentiary record for resolving these claims, and plaintiffs therefore seek the Court's leave to conduct discovery, including on their constitutional and *ultra vires* claims.

C. Plaintiffs' discovery requests are reasonable and appropriately tailored.

Plaintiffs' requests are modest and tailored to their unreasonable-delay claims: six requests for production and eight interrogatories.[5] These requests also seek information that would inform the Court's application of the *TRAC* factors, covering topics such as defendants' efforts to catch up and complete their review process before the end of the fiscal year (*e.g.*, Ex. B, Interrogatory No. 7), and impacts on applicants caused by defendants' unreasonable delay (*e.g.*, Ex. A, Request No. 4). Therefore, plaintiffs seek the Court's leave to move forward with these previously propounded requests.[6]

II. Plaintiffs respectfully request a discovery and trial schedule for their unreasonable-delay claims.

Finally, plaintiffs request that the Court set a prompt schedule for discovery and trial on Phase Two. As the Court noted in a prior status conference, "a very short time for discovery" is warranted here because plaintiffs put defendants on notice of their discovery requests more than a month ago. ECF No. 121, at 19. Plaintiffs' proposed timeline on Phase Two is set forth below:

[5] Plaintiffs do not intend to serve further discovery requests at this time, but reserve the right to seek limited supplemental discovery if necessary for completeness. As the parties bringing unreasonable-delay claims, plaintiffs have every incentive, and intend, to make any follow-up requests limited and to proceed expeditiously towards trial on the merits.

[6] Even if the Court were to determine that plaintiffs are not entitled to discovery on their Phase Two claims, for all the reasons stated above, plaintiffs are, at the very least, entitled to introduce their own evidence at trial outside the administrative record.

Event	Plaintiffs' Proposed Date
Plaintiffs' deadline to produce initial spreadsheet of Phase Two grants to defendants and the Court	August 8, 2025
Defendants' deadline to respond to plaintiffs' first set of interrogatories and first set of requests for production	August 15, 2025
Deadline for completion of all depositions noticed by plaintiffs	August 25, 2025
Pre-trial conference on Phase Two	August 28, 2025
Parties' opening pre-trial briefs (20 pages)	August 29, 2025
Parties' responsive pre-trial briefs (10 pages)	September 5, 2025
Plaintiffs' deadline to produce supplemental spreadsheet of Phase Two grants to defendants and the Court	September 5, 2025
Bench trial on Phase Two	September 8, 2025, or Court's earliest available trial date

CONCLUSION

Plaintiffs respectfully request that the Court grant them leave to conduct discovery, enter the proposed discovery schedule, and set a trial date for their unreasonable-delay claims.

July 23, 2025

Respectfully submitted.

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LOCAL RULE 7.1(a)(2) CERTIFICATE

I hereby certify pursuant to Local Rule 7.1(a)(2) that, before the filing of this motion, I met and conferred with counsel for the defendants and attempted in good faith to resolve or narrow the issues presented in this motion.

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EXHIBIT A

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

PLAINTIFFS' FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS

Pursuant to Rules 26 and 34 of the Federal Rules of Civil Procedure, plaintiffs in the above-captioned action, by and through their undersigned counsel, request that defendants produce for inspection and copying the documents described below. The requested documents are to be produced at a date to be set by the Court at the offices of the undersigned counsel.

DEFINITIONS

The words and phrases used herein shall have the meanings ascribed to them under the Federal Rules of Civil Procedure and Local Rule 26.5(c). In addition, the following terms shall have the meanings set forth below:

1. **"Advisory Council"** means a "national advisory council[] or board[]" as that term is used in 42 C.F.R. §52a.5 or an "Advisory Council/Board" as that term is used on the NIH website at https://grants.nih.gov/grants-process/review/second-level.

2. **"DOGE"** includes (1) the United States Department of Government Efficiency Service established by Executive Order 14158, (2) the United States Department of Government Efficiency Service Temporary Organization established by Executive Order 14158, and (3) all "DOGE Teams" as that term is defined in §3(c) of Executive Order 14158.

3. **"HHS"** means the United States Department of Health and Human Services, excluding NIH or its personnel.

4. **"NIH"** means the National Institutes of Health, including all of its constituent Institutes and Centers.

5. **"Personnel"** means all officers (including political appointees and acting officers), employees (including employees in the Senior Executive Service and special government employees), independent contractors, consultants, volunteers, and other persons acting or authorized to act on behalf of, or pursuant to the authority of, the named agency or office.

6. **"Study Section"** means a "peer review group" as that term is used in 42 C.F.R., part 52h, or a "scientific review group" as that term is used on the NIH website at https://grants.nih.gov/grants-process/review/first-level.

INSTRUCTIONS

1. These requests seek documents within the possession, custody, or control of defendants and their agents and employees.

2. Unless otherwise specified, the relevant time period for these requests is January 20, 2025, through the present.

3. Documents shall be produced in the same form and order in which they are kept in the ordinary course of business or organized and labeled to correspond to the categories in these requests.

4. Electronically stored information should be produced in native format where possible, or as searchable PDFs with intact metadata (including author, date created, and file path).

5. If any requested document has been lost, discarded, or destroyed, identify the document type, date of creation and destruction, author and recipients, and circumstances of destruction.

6. If any document is withheld under a claim of privilege or protection, a privilege log shall be provided that includes the document date and type, subject matter, authors and recipients, basis for withholding, and whether any portion was redacted or withheld in full.

7. These requests are continuing in nature. If you later become aware of additional responsive documents, they must be produced promptly.

REQUESTS FOR PRODUCTION

Request No. 1:

Documents identifying or reflecting any instructions or directions from HHS or its personnel or DOGE or its personnel to NIH or its personnel, or from personnel in the Office of the Director of NIH to other NIH personnel, that were acted upon, whether directly or indirectly, by NIH or its personnel, regarding whether and when to cancel, conduct, pause, resume, or reschedule meetings of NIH Advisory Councils or Study Sections.

Request No. 2:

Documents identifying or reflecting any instructions or directions from HHS or its personnel or DOGE or its personnel to NIH or its personnel, or from personnel in the Office of the Director of NIH to other NIH personnel, that were acted upon, whether directly or indirectly, by NIH or its personnel, regarding whether and when to (a) review NIH extramural grant applications or (b) issue NIH extramural awards, including competing and non-competing renewals.

Request No. 3:

Documents identifying or reflecting any actions defendants have taken or intend to take to mitigate the fiscal effects from the cancellation, rescheduling, delay, or deferral, on or after January 20, 2025, of (a) Study Section meetings, (b) Advisory Council meetings, (c) the consideration and disposition of grant applications from plaintiffs' institutions of higher education, instrumentalities, or subdivisions.

Request No. 4:

Documents identifying or reflecting defendants' consideration or evaluation of the impact on grantees or applicants from the cancellation, rescheduling, delay, or deferral, on or after January 20, 2025, of (a) Study Section meetings, (b) Advisory Council meetings, (c) the consideration and disposition of grant applications from plaintiffs' institutions of higher education, instrumentalities, or subdivisions.

Request No. 5:

Documents identifying or reflecting defendants' consideration or evaluation of the reliance of grantees or applicants on the "Standard Due Dates" for 2025 published by NIH.

Request No. 6:

Documents or data defendants generated or consulted when making, or intend to rely on to support, their assertion that "NIH is working overtime to boost the grant approval process" (ECF No. 95, at 33).

June 2, 2025

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* admitted *pro hac vice*
** application for *pro hac vice* admission forthcoming

EXHIBIT B

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

PLAINTIFFS' FIRST SET OF INTERROGATORIES

Pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure, plaintiffs in the above-captioned action, by and through their undersigned counsel, hereby serve the following Interrogatories on defendants. The requested answers are to be served on the undersigned counsel at a date to be set by the Court.

DEFINITIONS

The words and phrases used herein shall have the meanings ascribed to them under the Federal Rules of Civil Procedure and Local Rule 26.5(c). In addition, the following terms shall have the meanings set forth below:

1. **"Advisory Council"** means a "national advisory council[] or board[]" as that term is used in 42 C.F.R. §52a.5 or an "Advisory Council/Board" as that term is used on the NIH website at https://grants.nih.gov/grants-process/review/second-level.

2. **"Cycle I," "Cycle II,"** and **"Cycle III"** have the same meaning as used on the NIH website at https://grants.nih.gov/grants-process/submit/submission-policies/standard-due-dates.

3. **"HHS"** means the United States Department of Health and Human Services, excluding NIH or its personnel.

4. **"NIH"** means the National Institutes of Health, including all of its constituent Institutes and Centers.

5. **"Study Section"** means a "peer review group" as that term is used in 42 C.F.R., part 52h, or a "scientific review group" as that term is used on the NIH website at https://grants.nih.gov/grants-process/review/first-level.

INSTRUCTIONS

1. These interrogatories seek information known or reasonably available to defendants, including through review of agency records, data systems, and communications of relevant personnel.

2. Unless otherwise specified, the relevant time period for these interrogatories is January 20, 2025, through the present.

3. Each interrogatory must be answered separately and fully in writing under oath, to the extent it is not objected to. The answers must be signed by the person making them in accordance with Fed. R. Civ. P. 33(b)(5).

4. If any interrogatory is objected to, the objection must be stated with specificity and signed by the attorney making the objection.

5. If any information is withheld under a claim of privilege, you must (1) clearly state that the information is being withheld and (2) describe the nature of the information, communication, or fact withheld in sufficient detail to allow plaintiffs to assess the basis for the claim, consistent with Fed. R. Civ. P. 26(b)(5)(A).

6. These interrogatories are continuing in nature. If you obtain additional responsive information after serving your responses, you must supplement your answers promptly in accordance with Fed. R. Civ. P. 26(e).

INTERROGATORIES

Interrogatory No. 1:

State the total amount of NIH's Fiscal Year 2025 appropriations that NIH has budgeted for extramural research grant funds.

Interrogatory No. 2:

State how much of the amount identified in response to Interrogatory No. 1 NIH currently projects will be obligated by September 30, 2025.

Interrogatory No. 3:

Separately for each Fiscal Year from 2016 through 2025, and for each of Cycle I, Cycle II, and Cycle III in each year, state the date by which NIH (1) completed all Study Section meetings; (2) completed all Advisory Council meetings; and (3) reached a final disposition on all grants applications reviewed in that cycle. If such dates are not yet known for any part of Fiscal Year 2025, state when NIH reasonably anticipates those events will occur.

Interrogatory No. 4:

State whether NIH required, in Fiscal Year 2025, any additional review, clearance, or approval before issuance of a Notice of Award, aside from a favorable recommendation from a Study Section and/or Advisory Council, that was not required in Fiscal Year 2024. If so, identify each office and official involved in such review, clearance, or approval.

Interrogatory No. 5:

Describe the process NIH uses to assign grant applications to a review Cycle. Describe how, if at all, this process has changed since January 20, 2025.

Interrogatory No. 6:

Identify which grant applications, if any, had initially been scheduled for review in Cycle III of 2025 and were subsequently rescheduled for review in a later Cycle.

Interrogatory No. 7:

Describe with specificity all actions NIH has taken, is taking, or plans to take to ensure that the annual extramural grant review and award process, including Study Section meetings, Advisory Council meetings, and issuance of Notices of Award, is completed by the end of the fiscal year. In your answer, identify any internal targets, deadlines, capacity increases, or resource reallocations made to support the completion of extramural grant review and award by the end of the fiscal year.

Interrogatory No. 8:

State whether NIH considered the reliance interests of grant applicants, grantees, or institutions on the Standard Due Dates and published timelines for extramural grant review and award processes in Fiscal Year 2025, and if so, describe the substance and timing of any such consideration.

June 2, 2025

Respectfully submitted.

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EXHIBIT C

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

NOTICE OF RULE 30(b)(6) DEPOSITION

To: **National Institutes of Health**
c/o Thomas Ports, Esq.
United States Department of Justice, Civil Division
P.O. Box 875
Washington, D.C. 20044-0875

Please take notice that, pursuant to Federal Rule of Civil Procedure 30(b)(6), plaintiffs will take the deposition of defendant National Institutes of Health (NIH) at the Office of the Attorney General of Maryland at 200 Saint Paul Place, Baltimore, MD 21202, at 10:00 a.m. on Thursday, June 19, 2025.

The deposition will be upon oral examination pursuant to the applicable provisions of the Federal Rules of Civil Procedure and the Local Rules of the United States District Court for the District of Massachusetts. The deposition will be conducted before a Notary Public in and for the Commonwealth of Massachusetts, or before some other officer authorized to administer oaths. The deposition will be recorded stenographically and by means of sound and video recording. The deposition will continue from day to day until completed.

Pursuant to Rule 30(b)(6), NIH is instructed to designate a person or persons to testify on its behalf regarding the topics set forth on **Schedule A** hereto. The witness or witnesses designated

by NIH to testify should bring positive identification with them. Counsel of record are invited to attend and cross-examine.

June 2, 2025

Respectfully submitted.

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* admitted *pro hac vice*
** application for *pro hac vice* admission forthcoming

SCHEDULE A

I. Definitions

The words and phrases used herein shall have the meanings ascribed to them under the Federal Rules of Civil Procedure and Local Rule 26.5(c). In addition, the following terms shall have the meanings set forth below:

a. **"Advisory Council"** means a "national advisory council[] or board[]" as that term is used in 42 C.F.R. §52a.5 or an "Advisory Council/Board" as that term is used on the NIH website at https://grants.nih.gov/grants-process/review/second-level.

b. **"Challenged Directives"** has the same meaning as in plaintiffs' amended complaint (ECF No. 75) and the memorandum in support of plaintiffs' motion for a preliminary injunction (ECF No. 78).

c. **"NIH**" means the means the National Institutes of Health, including all of its constituent Institutes and Centers.

d. **"Personnel"** means all officers (including political appointees and acting officers), employees (including employees in the Senior Executive Service and special government employees), independent contractors, consultants, volunteers, and other persons acting on behalf of, or pursuant to the authority of, the named agency or office.

e. **"Study Section"** means a "peer review group" as that term is used in 42 C.F.R., part 52h, or a "scientific review group" as that term is used on the NIH website at https://grants.nih.gov/grants-process/review/first-level.

II. Topics for Examination

1. Instructions or policies in effect or communicated to NIH personnel on or after January 20, 2025, regarding:

    a. whether and when to publish notices in the Federal Register regarding Study Section meetings and/or Advisory Council meetings; and

    b. whether and when to conduct Study Section meetings and/or Advisory Council meetings.

2. Instructions or policies in effect or communicated to NIH personnel between October 1, 2017, and January 19, 2025, regarding:

    a. whether and when to publish notices in the Federal Register regarding Study Section meetings and/or Advisory Council meetings; and

    b. whether and when to conduct Study Section meetings and/or Advisory Council meetings.

3. Actions taken by NIH on or after January 20, 2025, that resulted in the deferral (whether communicated to plaintiffs or otherwise) of grant applications from plaintiffs' institutions of higher education, instrumentalities, or subdivisions.

4. The dollar amount of NIH's Fiscal Year 2025 appropriation for extramural research that has not been awarded or obligated as of the date of the deposition.

5. Actions that NIH has taken or intends to take to award or obligate NIH's Fiscal Year 2025 appropriations for extramural research before the end of the fiscal year, including projected timetables for any such intended actions.

6. The development and implementation of the Challenged Directives as related to the foregoing topics.

EXHIBIT D

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

NOTICE OF DEPOSITION OF MATHEW J. MEMOLI

TO: MATTHEW J. MEMOLI, M.D., M.S.,
Principal Deputy Director, National Institutes of Health

AND TO: THOMAS PORTS, Trial Attorney, U.S. Department of Justice;
ANUJ K. KHETARPAL, Assistant U.S. Attorney, U.S. Department of Justice

Please take notice that the testimony of the witness named above will be taken upon oral examination at the request of plaintiffs at the Office of the Attorney General of Maryland at 200 Saint Paul Place, Baltimore, MD 21202, at 10:00 a.m. on Friday, June 13, 2025. The deposition will be recorded stenographically and by means of sound and video recording. The deposition shall be taken pursuant to the Federal Rules of Civil Procedure and shall be subject to continuance until completed.

June 2, 2025

Respectfully submitted.

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EXHIBIT E

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

NOTICE OF DEPOSITION OF JOHN R. LORSCH

TO: JOHN R. LORSCH, Ph.D.,
Acting Deputy Director for Extramural Research, National Institutes of Health

AND TO: THOMAS PORTS, Trial Attorney, U.S. Department of Justice;
ANUJ K. KHETARPAL, Assistant U.S. Attorney, U.S. Department of Justice

Please take notice that the testimony of the witness named above will be taken upon oral examination at the request of plaintiffs at the Office of the Attorney General of Maryland at 200 Saint Paul Place, Baltimore, MD 21202, at 10:00 a.m. on Friday, June 13, 2025. The deposition will be recorded stenographically and by means of sound and video recording. The deposition shall be taken pursuant to the Federal Rules of Civil Procedure and shall be subject to continuance until completed.

June 2, 2025

Respectfully submitted.

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EXHIBIT F

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

NOTICE OF DEPOSITION OF RACHEL RILEY

TO: RACHEL RILEY, National Institutes of Health and Human Services

AND TO: THOMAS PORTS, Trial Attorney, U.S. Department of Justice;
ANUJ K. KHETARPAL, Assistant U.S. Attorney, U.S. Department of Justice

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