

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' NOTICE REGARDING THE JUNE 16 HEARING

The schedule for first-phase proceedings requires plaintiffs to submit a list, by today, of any exhibits or witnesses that plaintiffs intend to present at the June 16 hearing. *See* ECF No. 113, ¶2; ECF No. 119; ECF No. 123. Plaintiffs believe that all first-phase merits questions—*i.e.*, all questions pertaining to whether defendants lawfully adopted the Challenged Directives or terminated plaintiffs' grants—can be decided on the certified administrative record.¹ Accordingly, plaintiffs do not intend to introduce additional evidence or witnesses with respect to the merits of the first-phase issues at the June 16 hearing.

To the extent that the parties' dispute entails "issues separate from the merits"—including plaintiffs' standing and the propriety of injunctive relief—"consideration of extra-record evidence is appropriate." *Nat'l Ass'n for Gun Rights, Inc. v. Garland*, 741 F. Supp. 3d 568, 600 (N.D. Tex. 2024); *see* ECF No. 125, at 14–15, 30–31 (challenging plaintiffs' standing and the propriety of injunctive relief). On those separate issues, plaintiffs propose to submit the case for decision on

¹ That record must be completed. *See* ECF Nos. 124, 128. Additionally, plaintiffs are in the process of updating the demonstrative spreadsheet of terminated grants, which they will produce before the hearing. As plaintiffs have explained, the determination of the legality of any specific termination is largely ministerial, because it involves only the question whether any given termination was pursuant to a Challenged Directive (or pursuant to any order adopting the language of the Challenged Directives).

the materials that have already been filed, including the exhibits accompanying the Declaration of Chris Pappavaselio at ECF No. 77 and the exhibits accompanying plaintiffs' reply brief at ECF No. 101. Because defendants have not challenged plaintiffs' submissions as a factual matter—but instead dispute only whether that evidence satisfies the relevant legal standards—plaintiffs believe that the existing record is sufficient to allow the Court to resolve the parties' arguments on those non-merits issues. Defendants have indicated, however, that they object to proceeding on a case-stated basis as to these non-merits issues. Plaintiffs intend to meet and confer with defendants to discuss next steps on those issues.

June 10, 2025

Respectfully submitted.

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