

**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

STATUS REPORT

The parties, by and through their undersigned counsel, respectfully submit this status report and propose additional case deadlines and relief below. The parties submit this status report consistent with their preceding Status Report and Joint Motion for Further Scheduling and Additional Relief, filed on April 17, 2026. ECF 105.

1. On April 1, 2025, Plaintiffs filed this case (ECF 1) and moved for a temporary restraining order (ECF 4), which the Court entered by text order on April 3, 2025, as well as on April 5, 2025 (ECF 54). Plaintiffs amended their complaint on April 8, 2025. ECF 59. The parties then filed initial and supplemental briefs concerning the Plaintiffs' preliminary-injunction motion between April 8 and 24, 2025. ECF 60, 68, 69, 80, 81.

2. On May 16, 2025, the Court granted Plaintiffs' motion for a preliminary injunction. ECF 84. Defendants have notified the Court (ECF 85) of their compliance with the Court's Preliminary Injunction Order, which remains in force through today.

3. On December 12, 2025, the parties jointly moved to stay this case (ECF 100), and have since submitted subsequent joint motions seeking to extend the stay through today, Tuesday, June 2, 2026. *E.g.*, ECF 105.

4. Consistent with the parties' previous status report, ECF 105, the Defendants produced the Administrative Record in this case on May 1, 2026. The parties' positions about the Administrative Record and the need for discovery differ.

Plaintiffs' Proposal for Next Steps

5. The Administrative Record produced by Defendants is substantially incomplete. Plaintiffs' claims challenge Defendants' overarching policy decision to terminate \$11 billion in congressionally appropriated public health funding. Defendants have offered multiple different explanations for this decision, including that the decision was motivated by the end of the pandemic (*see* ECF 68 at 23), concerns with funding for diversity, equity, and inclusion (*see* ECF 69 at 1), states' inability to use funds in a timely manner or for the purpose for which they were awarded (*see* ECF 68 at 26), and the possibility of reallocating the funds to other priorities (*see id.* at 19, 32). Yet the record contains no materials regarding that policy decision, let alone all records considered directly or indirectly in making that decision. Instead, the record is limited essentially to grant documentation (notice of funding opportunities, program descriptions, notices of awards, and related grant guidance) and termination notices.

6. Leaving aside these record inadequacies, Plaintiffs are entitled to discovery regarding their Separation of Powers, Spending Clause, and equitable *ultra vires* claims (*see* ECF 59 at 39-43), which are not limited to or constrained by Defendants' (incomplete) Administrative Record. Courts regularly permit discovery on constitutional and other non-APA claims even when APA claims are also present, particularly where, as here, the agency has not produced the materials necessary to understand a challenged policy decision. *Am. Fed'n of Gov't Emps., AFL-CIO v. Trump*, 155 F.4th 1082, 1093 (9th Cir. 2025) ("Review of an *ultra vires* challenge would not be limited to an administrative record."); *Am. Ass'n of Univ. Professors v. Rubio*, 802 F. Supp. 3d 120, 190 n. 46 (D. Mass.

2025); *Authors Guild v. Nat'l Endowment for the Humans.*, No. 25-CV-3657 (CM), 2025 WL 3678097 at *13-14 (S.D.N.Y. Dec. 18, 2025) (allowing discovery on constitutional claims where “the administrative record is demonstrably incomplete”). Defendants’ motivations regarding the public health funding decision are relevant to Plaintiffs’ non-APA claims that Defendants sought to impound funding in violation of the Constitution.

7. Discovery is especially appropriate because Defendants’ primary defense is that the Court *lacks* jurisdiction over the APA claims. ECF 68 at 9-14. If the Defendants were to succeed in this Court or on appeal, that would leave only the constitutional and *ultra vires* claims, none of which would be based on an administrative record. The Supreme Court addressed this situation in *Webster v. Doe*, 486 U.S. 592, 601 (1988), where, after concluding that the courts were precluded from reviewing the APA claims, the Court nevertheless permitted constitutional claims to proceed, recognizing that these claims involve “inquiry and discovery” and that the district court would have “latitude to control the discovery process” for such claims.¹ *Id.* at 604. So too here, Plaintiffs are entitled to discovery to prove Defendants’ constitutional violations.

8. But even if this case were limited only to APA claims, discovery would still be appropriate to complete the Administrative Record. Here, Defendants have not produced a single document about the policy decision they made to terminate public health funding, let alone all records considered directly or indirectly in making that decision. Instead, Defendants pretend that this policy

¹ Defendants suggest that this Court is unlikely to resolve Plaintiffs’ constitutional claims based on the constitutional avoidance doctrine articulated in *Ashwander v. Tenn. Valley Auth.*, 297 U.S. 288, 347 (1936), but that completely ignores that Defendants insist the Court has no jurisdiction over the APA claims. It also does not address the *ultra vires* claim. Nor is this argument a basis to deny Plaintiffs’ requested discovery here, where the Court has not yet resolved any claims on the merits.

decision never happened, and that one morning multiple different HHS component agencies decided at the same time to terminate \$11 billion in public health funding using similar boilerplate termination notices. Defendants have failed to disclose basic facts from the beginning, refusing in prior filings and hearings to reveal even the most basic information about this policy decision, including who made the decision. *See, e.g.*, ECF at 89, ll-18. Defendants' unlawful conduct continues now with a woefully incomplete record. Given the failure to produce any documents related to the policy decision challenged, Plaintiffs have easily met their burden to show "reasonable, non-speculative grounds to believe that materials considered in the decision-making process are not included in the record." *New York v. McMahon*, No. 25-10601-MJJ, 2026 WL 622484, at *3 (D. Mass. Feb. 11, 2026).

9. Plaintiffs seek tailored and proportional discovery. Plaintiffs propose to focus on their non-APA claims, which will likely narrow or resolve the problems with Defendants' incomplete Administrative Record. Specifically, Plaintiffs seek to serve no more than 15 interrogatories and 15 requests for production. 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 if additional discovery is necessary.

10. In the alternative, if the Court desires additional briefing, the parties can propose a briefing schedule to resolve Plaintiffs' request for discovery.

Defendants' Position on Extra-Record Discovery

11. Defendants respectfully submit that the Administrative Record is complete and provides sufficient evidence for the parties to present cross-motions for summary judgment that could be dispositive of the relief Plaintiffs seek in the

Amended Complaint (ECF 58). In APA cases, “summary judgment is simply a vehicle to tee up a case for judicial review and, thus, an inquiring court must review an agency action not to determine whether a dispute of fact remains but, rather, to determine whether the agency action was arbitrary and capricious.” *Boston Redev. Auth. v. Nat’l Park Serv.*, 838 F.3d 42, 47 (1st Cir. 2016) (cleaned up).

12. Although Plaintiffs also assert separation-of-powers and Spending Clause claims in their Amended Complaint (ECF 58), those claims overlap in substance with Plaintiffs’ claims under the APA that Defendants’ agency action is contrary to law. Moreover, the Court would almost certainly decide Plaintiffs’ APA claims first. That approach is consistent with the settled principle that federal courts avoid deciding constitutional questions unless absolutely necessary. *See, e.g., Ashwander v. Tenn. Valley Auth.*, 297 U.S. 288, 347 (1936) (Brandeis, J., concurring) (“If a case can be decided on either of two grounds, one involving a constitutional question, the other a question of statutory construction or general law, the Court will decide only the latter.”) (cleaned up). And it seems unlikely that there could be an inconsistent result on Plaintiffs’ APA and constitutional claims even if the Court reached the merits of both sets of claims.

13. Accordingly, rather than require the parties and the Court to expend time and resources litigating discovery disputes related to claims that might never need to be reached—and discovery Defendants oppose—Defendants respectfully request that the Court set a summary judgment schedule whereby Plaintiffs (who have the burden) would move for summary judgment; Defendants would file their cross-motion for summary judgment on the first business day at least 30 days after Plaintiffs’ opening brief; and the parties would then file successive reply briefs on the first business day at least 21 days after the opposing party’s prior filing.

14. In the alternative, Defendants request that the Court set a briefing schedule to address Plaintiffs' contention that they are entitled to extra-record discovery in this APA challenge or any other discovery before the case proceeds to summary judgment briefing.

Dated: June 2, 2026

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that, on June 2, 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 Rule Gen 304.

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