

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

STATE OF NEW YORK, et al.,

Plaintiffs,

v.

ROBERT F. KENNEDY, JR., in his official capacity
as SECRETARY OF THE U.S. DEPARTMENT OF
HEALTH AND HUMAN SERVICES, et al.

Defendants.

Case No. 1:25-Civ-00196

**PLAINTIFF STATES' RESPONSE TO
DEFENDANTS' SUPPLEMENTAL MEMORANDUM**

Plaintiff States write to respond to Defendants' Supplemental Memorandum, ECF No. 70, which notifies the Court that Defendants have rescinded the Reductions in Force (RIFs) of 467 CDC employees and argues that the rescissions justify denial of Plaintiff States' Motion for a Preliminary Injunction. While Plaintiff States welcome the news that some specific programs within CDC may soon become operational again, the rescission does not provide a basis for denying the motion for a preliminary injunction.

First, while Defendants scrupulously avoid using the term “mootness,” that is the legal doctrine that governs “intervening events” occurring after the filing of a complaint “that raise the question whether relief that once seemed possible and useful remains so”—exactly the issue Defendants' Supplemental Memorandum addresses. *See* 13.B Wright & Miller's Fed. Prac. & Proc. § 3533 (3d ed. 2025). Plaintiffs' claims are plainly not moot. “A case becomes moot only when it is impossible for a court to grant any effectual relief whatever to the prevailing party. As long as the parties have a concrete interest, however small, in the outcome of the litigation, the

case is not moot.” *Knox v. Serv. Emps. Int’l Union, Loc. 1000*, 567 U.S. 298, 307–08 (2012) (cleaned up). Here, Defendants have rescinded only *some* RIFs in *some* of the HHS offices challenged by Plaintiffs and at issue in the preliminary injunction motion, so Plaintiffs retain a stake in the controversy. In any event, “[t]he voluntary cessation of challenged conduct,” exactly what Defendants say they have done, “does not ordinarily render a case moot because a dismissal for mootness would permit a resumption of the challenged conduct as soon as the case is dismissed.” *Knox*, 567 at 307; *see also Already, LLC v. Nike, Inc.*, 568 U.S. 85, 91 (2013) (“Otherwise, a defendant could engage in unlawful conduct, stop when sued to have the case declared moot, then pick up where he left off, repeating this cycle until he achieves all his unlawful ends.”).

Second, the Supplemental Memorandum and its supporting declaration omit key facts. The declaration of Sara Patterson affirms that employees were notified that “they would be separated from HHS at the close of business on June 2, 2025,” and then notes that “on June 10, 2025” those same employees were notified that they would not be impacted by the RIF. ECF No. 70-1 at ¶¶ 2, 3. The Declaration skips over the reason that employees had not been separated from HHS on June 2, 2025, such that the RIF notices could still be withdrawn: an injunction in *Am. Fed’n of Gov’t Emps. v. Trump*, No. 3:25-cv-03698 (N.D. Cal. May 22, 2025) had stayed the RIFs. *See* Suppl. Authority, ECF No. 62-1. The declaration and supplemental brief both suggest that employees have returned to active status, but carefully avoid saying so. *See, e.g.*, ECF No. 70-1 at ¶ 3 (noting, in a declaration signed June 17, 2025, that “employees were expected to return to their previous positions on or about June 16, 2025”); ECF No. 70 at 1 (“Those employees were expected to return to their positions starting yesterday.”). Further, Defendants make no effort to address whether any other agencies at issue in the Plaintiffs’ Motion for a Preliminary Injunction have seen

reinstatements: the National Institute for Occupational Safety and Health, the National Center on Birth Defects and Developmental Disabilities, the CDC's Division of Reproductive Health, the CDC's Office on Smoking and Health, the FDA's Center for Tobacco Products, the Office of Head Start, or the team within the Office of the Assistant Secretary for Planning and Evaluation that managed the federal poverty guidelines. Defendants have not said nearly enough to show, as they claim, that the lawsuit and motion are "premature." ECF No. 70 at 1.

Third, Defendants claim that the rescissions "underline that the Department's decisionmaking is not final," ECF No. 70 at 3, but "*final* does not mean *permanent*." *Widakuswara v. Lake*, No. 1:25-CV-1015-RCL, 2025 WL 1166400, at *12 (D.D.C. Apr. 22, 2025) (emphasis in original); *see also Abbott Lab'ys v. Gardner*, 387 U.S. 136, 149–51 (1967) (The Court is to apply the "finality" requirement in a "flexible" and "pragmatic" fashion). The fact that HHS may now seek to undo past mistakes does not lessen the fact that the March 27 Directive was final agency action.

Fourth, Defendants argue that the rescissions "show why Plaintiffs' irreparable-harm theories fail across the board," because "Court intervention would only complicate and disrupt the steps that the Department is already taking" and "the Department has demonstrated that if it finds rescinding RIFs is appropriate to carry out functions, it will do so." ECF No. 70 at 3. Defendants have produced no evidence supporting their assertion that a preliminary injunction would interfere with rescission efforts, and in any event, the Department was able to rescind RIF notices, notwithstanding the injunction issued in *Am. Fed'n of Gov't Emps. v. Trump*, No. 3:25-cv-03698 (N.D. Cal. May 22, 2025); Suppl. Authority, ECF No. 62-1. Moreover, these arguments have no bearing on whether "denial of interim injunctive relief would cause irreparable harm," and Defendants have not disputed any of Plaintiff States' extensive record evidence of irreparable

harm. *Ross-Simons of Warwick, Inc. v. Baccarat*, 102 F.3d 12, 18 (1st Cir. 1996). To the contrary, Defendants implicitly concede that rescinding RIFs would ameliorate harm to Plaintiffs—exactly why Plaintiffs bring their claims and seek a preliminary injunction.

Finally, Defendants’ claim that the rescissions “will assist in restoring functionality to several CDC functions,” ECF No. 70 at 1, supports what Plaintiff States have argued: HHS and its agencies cannot perform their functions without the people Defendants noticed for termination. Defendants’ rescission of 467 RIF notices does not ameliorate the broad and damaging impacts of the March 27 Directive, which announced layoffs of 10,000 people across HHS (including 2,400 people at CDC). And while Defendants contend that the rescission shows that Plaintiff States moved prematurely, ECF No. 70 at 1 (note that Defendants also argued in their opposition brief that Plaintiff States delayed too long in filing their motion, ECF No. 52 at 2, 39–41), they cite no support for the notion that they are permitted to grind statutorily mandated programs to a halt as a part of this reorganization, nor could they. The March 27 Directive was arbitrary and capricious, contrary to law, ultra vires, and in violation of the separation of powers principles and Appropriations Clause of the U.S. Constitution.

Dated: June 18, 2025

Respectfully submitted,

NICHOLAS W. BROWN
Attorney General of Washington

LETITIA JAMES
Attorney General for the State of New York

By: /s/ Spencer W. Coates
Spencer W. Coates
Kelsey E. Endres
Assistant Attorneys General
Cynthia Alexander
William McGinty
Deputy Solicitors General
800 Fifth Avenue, Suite 2000
Seattle, WA 98104-3188
(206) 464-7744
spencer.coates@atg.wa.gov

By: /s/ Molly Thomas-Jensen
Molly Thomas-Jensen
Jessica Ranucci
Special Counsel
Rabia Muqaddam
Special Counsel for Federal Initiatives
Andres Ivan Navedo
Molly Brachfeld
Assistant Attorneys General
28 Liberty St.

kelsey.endres@atg.wa.gov
cynthia.alexander@atg.wa.gov
william.mcginty@atg.wa.gov

Counsel for the State of Washington

PETER F. NERONHA

Attorney General for the State of Rhode
Island

/s/ Sarah Rice

Kathryn M. Sabatini (RI Bar No. 8486)
Chief, Civil Division
Sarah Rice (RI Bar No. 10588)
Deputy Chief, Public Protection Bureau
Chandana Pandurangi (RI Bar No. 10922)
Special Assistant Attorney General
150 South Main Street
Providence, RI 02903
Phone: (401) 274-4400
Fax: (401) 222-2995
ksabatini@riag.ri.gov
srice@riag.ri.gov
cpandurangi@riag.ri.gov

Counsel for the State of Rhode Island

ROB BONTA

Attorney General for the State of California

By: */s/ Crystal Adams*

Crystal Adams
Deputy Attorney General
Michael L. Newman
Neli Palma
Senior Assistant Attorneys General
Kathleen Boergers
Virginia Corrigan
Srividya Panchalam
Supervising Deputy Attorneys General
Jesse Basbaum
Jeanelly Orozco Alcala

New York, NY 10005
(929) 638-0447
rabia.muqaddam@ag.ny.gov
molly.thomas-jensen@ag.ny.gov
jessica.ranucci@ag.ny.gov
ivan.navedo@ag.ny.gov
molly.brachfeld@ag.ny.gov

Counsel for the State of New York

KRISTIN K. MAYES

Attorney General for the State of Arizona

By: */s/ Alexa Salas*

Alexa Salas
Assistant Attorney General
2005 North Central Avenue
Phoenix, Arizona 85004
(602) 542-3333
Alexa.Salas@azag.gov
ACL@azag.gov

Counsel for the State of Arizona

PHILIP J. WEISER

Attorney General of Colorado

By: */s/ Tanya E. Wheeler*

Tanya E. Wheeler
Associate Chief Deputy Attorney General
1300 Broadway, #10
Denver, CO 80203
(720) 508-6000
tanja.wheeler@coag.gov

Counsel for the State of Colorado

Deputy Attorneys General

1515 Clay Street

Oakland, CA 94612-1499

(510) 879-3428

Crystal.Adams@doj.ca.gov

Michael.Newman@doj.ca.gov

Neli.Palma@doj.ca.gov

Kathleen.Boergers@doj.ca.gov

Virginia.Corrigan@doj.ca.gov

Srividya.Panchalam@doj.ca.gov

Jesse.Basbaum@doj.ca.gov

Jeanelly.OrozcoAlcala@doj.ca.gov

Counsel for the State of California

WILLIAM TONG

Attorney General of the State of
Connecticut

By: /s/ Michael K. Skold

Michael K. Skold

Solicitor General

165 Capitol Ave

Hartford, CT 06106

(860) 808-5020

Michael.skold@ct.gov

Counsel for the State of Connecticut

KATHLEEN JENNINGS

Attorney General of the State of Delaware

By: /s/ Vanessa L. Kassab

Ian R. Liston

Director of Impact Litigation

Vanessa L. Kassab

Deputy Attorney General

Delaware Department of Justice

820 N. French Street

Wilmington, DE 19801

(302) 683-8899

vanessa.kassab@delaware.gov

Counsel for the State of Delaware

BRIAN L. SCHWALB

Attorney General for the District of
Columbia

By: /s/ Andrew C. Mendrala

Andrew C. Mendrala
Assistant Attorney General
Public Advocacy Division
Office of the Attorney General for the
District of Columbia
400 Sixth Street, NW
Washington, D.C. 20001
(202) 724-9726
Andrew.mendrala@dc.gov

Counsel for the District of Columbia

KWAME RAOUL

Attorney General for the State of Illinois

By: /s/ Caitlyn G. McEllis

Caitlyn G. McEllis
Senior Policy Counsel
Katharine P. Roberts
Assistant Attorney General
Office of the Illinois Attorney General
115 S. Lasalle Street
Chicago, IL 60603
312-814-3000
Caitlyn.McEllis@ilag.gov

Counsel for the State of Illinois

ANTHONY G. BROWN

Attorney General for the State of Maryland

By: /s/ Michael Drezner

Michael Drezner
Senior Assistant Attorney General
Federal Accountability Unit
Office of the Attorney General
200 Saint Paul Place
Baltimore, Maryland 21202
(410) 576-6959
mdrezner@oag.state.md.us

ANNE E. LOPEZ

Attorney General for the State of Hawai'i

By: /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
david.d.day@hawaii.gov
kaliko.d.fernandes@hawaii.gov

Counsel for the State of Hawai'i

AARON M. FREY

Attorney General for the State of Maine

By: /s/ Margaret Machaiek

Margaret Machaiek
Assistant Attorney General
Office of the Attorney General
6 State House Station
August, ME 04333-0006
Tel.: 207-626-8800
Fax: 207-287-3145
margaret.machaiek@maine.gov

Counsel for the State of Maine

DANA NESSEL

Attorney General of Michigan

By: /s/ Neil Giovanatti

Neil Giovanatti
Danny Haidar
Assistant Attorneys General
Michigan Department of Attorney General
525 W. Ottawa
Lansing, MI 48909
(517) 335-7603
GiovanattiN@michigan.gov
HaidarD1@michigan.gov

Counsel for the State of Maryland

KEITH ELLISON

Attorney General for the State of
Minnesota

By: /s/ Lindsey E. Middlecamp

Lindsey E. Middlecamp
Special Counsel, Rule of Law
445 Minnesota Street, Suite 600
St. Paul, Minnesota, 55101
(651) 300-0711
Lindsey.middlecamp@ag.state.mn.us

Counsel for the State of Minnesota

RAÚL TORREZ

Attorney General of New Mexico

By: /s/ Astrid Carrete

Astrid Carrete
Impact Litigation Counsel
New Mexico Department of Justice
P.O. Drawer 1508
Santa Fe, NM 87504-1508
(505) 490-4060
acarrete@nmdoj.gov

Counsel for the State of New Mexico

CHARITY R. CLARK

Attorney General for the State of Vermont

By: /s/ Ryan P. Kane

Ryan P. Kane
Deputy Solicitor General
109 State Street
Montpelier, VT 05609
(802) 828-2153
Ryan.kane@vermont.gov

*Counsel for the People of the State of
Michigan*

MATTHEW J. PLATKIN

Attorney General of New Jersey

By: /s/ Justine M. Longa

Justine M. Longa
Jessica L. Palmer
Deputy Attorneys General
Office of the Attorney General
25 Market Street
Trenton, NJ 08625
(609) 696-4527
Justine.Longa@law.njoag.gov
Jessica.Palmer@law.njoag.gov

Counsel for the State of New Jersey

DAN RAYFIELD

Attorney General of the State of Oregon

By: /s/ Elleanor H. Chin

Elleanor H. Chin
Senior Assistant Attorney General
100 Market Street
Portland, OR 97201
Tel (971) 673-1880
Fax (971) 673-5000
elleanor.chin@doj.oregon.gov

Counsel for the State of Oregon

JOSHUA L. KAUL

Attorney General of Wisconsin

By: /s/ Charlotte Gibson

Charlotte Gibson
Assistant Attorney General
Wisconsin Department of Justice
Post Office Box 7857
Madison, Wisconsin 53707-7857
(608) 957-5218 (phone)
(608) 294-2907 (Fax)

Counsel for the State of Vermont

Charlie.Gibson@wisdoj.gov

Counsel for the State of Wisconsin