

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

AMERICAN ACADEMY OF PEDIATRICS, *et al.*,

Plaintiffs,

vs.

ROBERT F. KENNEDY, JR., in his official
capacity as Secretary of the Department of Health
and Human Services, *et al.*,

Defendants.

Case No. 1:25-cv-11916

District Judge: Hon. William G. Young

Magistrate Judge: Hon. M. Page Kelley

**PLAINTIFFS' RESPONSE IN OPPOSITION TO JOSE PEREZ'S RULE 59(e) MOTION
TO VACATE THE JULY 31, 2025 ORDER DENYING THE MOTION TO INTERVENE**

Plaintiffs submit this response in opposition to Jose Perez's Rule 59(e) Motion to Vacate the July 31, 2025 Order Denying the Motion to Intervene (the "Motion for Reconsideration"), ECF No. 88.

I. The Court Properly Denied Perez's Requests to Intervene

The Court's July 31, 2025 Order, ECF No. 81, denying Perez's motions to intervene, ECF No. 57, 68, was appropriate and should not be reconsidered.

Reconsideration under Federal Rule of Civil Procedure 59(e) is reserved for "extraordinary circumstances," such as correcting a clearly erroneous order that, if uncorrected, would work a manifest injustice. *Genworth Life & Annuity Ins. Co. v. Kamal*, Case No. 24-cv-10851-NMG, 2025 WL 1135500, at *1 (D. Mass. Apr. 17, 2025). Rule 59(e) "does not allow the losing party to repeat old arguments previously considered and rejected, or to raise new legal theories that should have been raised earlier." *Dickey v. Kennedy*, 738 F.Supp.2d 222, 224 (D. Mass. 2010) (quoting *Nat'l Metal Finishing Co. v. BarclaysAmerican/Commercial, Inc.*, 899 F.2d 119, 123 (1st Cir. 1990)).

Perez supports his Motion for Reconsideration by incorporating his “Response in Opposition to Plaintiffs’ Opposition to Jose A. Perez’ Intervention and Jose A. Perez 2nd Motion to Intervene” (sic) (the “Second Motion to Intervene”), ECF No. 84. Neither Perez’s Second Motion to Intervene nor his Motion for Reconsideration identify previously unknown evidence; therefore, his request for reconsideration is based on a request to relitigate arguments he already articulated, and it should not be granted. Secondly, neither of Perez’s filings identify an erroneous order that would work a manifest injustice. As set forth in the Plaintiffs’ response in opposition to Perez’s Second Motion to Intervene as Defendant, the Court’s decision did not prejudice Perez in denying his motion to intervene. The Court has already authorized him to file an *amicus brief*, ECF No. 81, and to the extent he has claims against Defendants, he is free to pursue those causes of action in a separate lawsuit. Perez has not identified any “extraordinary circumstances” that justify reconsidering the Court’s July 31, 2025 Order.

II. Conclusion

For these reasons, Plaintiffs respectfully oppose Jose Perez’s Rule 59(e) Motion to Vacate the July 31, 2025 Order Denying the Motion to Intervene, ECF No. 88, and request that the Court deny the same and enter an order directing Jose Perez to refrain from filing further motions to intervene in the above-captioned matter.

Dated: August 14, 2025

Respectfully submitted,

By: /s/ James J. Oh (IL Bar No. 6196413)
 James J. Oh (*admitted pro hac vice*)
 Kathleen Barrett (*admitted pro hac vice*)
 Carolyn O. Boucek (*admitted pro hac vice*)
 Lydia Pincsak (*admitted pro hac vice*)
 EPSTEIN BECKER & GREEN, P.C.
 227 W. Monroe Street, Suite 4500
 Chicago, IL 60606
 Tel: 312.499.1400
 Fax: 312.845.1998
 Email: joh@ebglaw.com

kbarrett@ebglaw.com
cboucek@ebglaw.com
lpincsak@ebglaw.com

Elizabeth J. McEvoy (BBO No. 683191)
EPSTEIN BECKER & GREEN, P.C.
One Financial Center, Suite 1520
Boston, MA 02111
Tel: 617.603.1100
Fax: 617.249.1573
Email: emcevoy@ebglaw.com

Richard H. Hughes IV (*admitted pro hac vice*)
Stuart M. Gerson (*admitted pro hac vice*)
Robert Wanerman (*admitted pro hac vice*)
William Walters (*admitted pro hac vice*)
EPSTEIN BECKER & GREEN, P.C.
1227 25th Street, N.W., Suite 700
Washington, DC 20037
Tel: 202.861.0900
Fax: 202.296.2882
Email: rhhuges@ebglaw.com
sgerson@ebglaw.com
rwanerman@ebglaw.com
wwalters@ebglaw.com

Marguerite Stringer (*admitted pro hac vice*)
EPSTEIN BECKER & GREEN, P.C.
6000 Poplar Avenue, Suite 250
Memphis, TN 38119
Tel: 901.712.3200
Fax: 615.691.7715
Email: mstringer@ebglaw.com

Jeremy A. Avila (*admitted pro hac vice*)
EPSTEIN BECKER & GREEN, P.C.
57 Post Street, Suite 703
San Francisco, CA 94104
Tel: 415.398.3500
Fax: 415.398.0955
Email: javila@ebglaw.com

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that this document was filed and served through the ECF system upon the following parties on this 14th day of August 2025:

Robert F. Kennedy, Jr., in his official capacity
as Secretary of Health and Human Services

Marty Makary, in his official capacity as
Commissioner of the Food and Drug
Administration

Jay Bhattacharya, in his official capacity as
Director of the National Institutes of Health

Matthew Buzzelli, in his official capacity as
Acting Director Centers for Disease Control
and Prevention

c/o Leah Belaire Foley, US Attorney
Michael L. Fitzgerald
Office of the US Attorney for the District of Massachusetts
1 Courthouse Way, Suite 9200
Boston, Massachusetts 02210
michael.fitzgerald2@usdoj.gov

c/o Isaac Belfer
Trial Attorney
Consumer Protection Branch
U.S. Department of Justice
P.O. Box 386
Washington, D.C. 20044-0386
Isaac.C.Belfer@usdoj.gov

I hereby certify that this document was filed through the ECF system and served upon the following parties by submission to CM/ECF and email on this 14th day of August 2025:

Jose Perez
theaesculapius@gmail.com

/s/ James J. Oh
James J. Oh (IL Bar No. 6196413)