

**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-WGY
The Honorable William G. Young
Magistrate Judge: Hon M. Page Kelley

**PLAINTIFFS' MOTION TO LIFT STAY AND CONTINUE THIS CASE ON
SCHEDULE DURING THE FEDERAL GOVERNMENT SHUTDOWN**

Plaintiffs, American Academy of Pediatrics, *et al.*, by and through their attorneys, hereby move this honorable Court to lift the stay entered on October 2, 2025 (ECF # 122) and continue this case on schedule during the federal government shutdown. In support of their motion, Plaintiffs state as follows:

1. On Friday, October 17, 2025, the Administrative Office of the United States Courts announced that, as of Monday, October 20, 2025, the federal courts “will no longer have funding to sustain full, paid operations. Until the lapse in government funding is resolved, federal courts will maintain limited operations necessary to perform the Judiciary’s constitutional functions.”¹

¹ “Judiciary Funding Runs Out; Only Limited Operations to Continue,” <https://www.uscourts.gov/data-news/judiciary-news/2025/10/17/judiciary-funding-runs-out-only-limited-operations-continue> (the “Announcement”).

2. The Announcement further stated that “[f]ederal judges will continue to serve, in accordance with the Constitution, but court staff may only perform certain *excepted activities* permitted under the Anti-Deficiency Act.” *Id.* (emphasis added). The Announcement set forth examples of excepted activities, including “*activities necessary for the safety of human life.*” (Emphasis added). The Announcement gives each individual court the discretion to “determine which cases will continue on schedule, and which may be delayed.” *Id.*

3. At its core, this case is about the safety of human life. Plaintiffs here challenge a Secretarial Directive (“Directive”) dated May 19, 2025, signed by Defendant, Robert F. Kennedy, Jr., the Secretary of the United States Department of Health and Human Services (the “Secretary”), that ordered the Centers for Disease Control and Prevention (“CDC”) to remove from its immunization schedules the recommendation that pregnant women and children ages six months to 17 years of age receive the Covid-19 vaccine. The Secretary inexplicably issued this Directive six weeks *after* a meeting of the Advisory Committee on Immunization Practices (“ACIP”) at which a CDC official recommended that pregnant women continue to receive the Covid vaccine because pregnant women continue to face an increased risk of severe outcomes from contracting Covid. (Plaintiffs’ Second Amended Complaint (“SAC”), ECF # 99, ¶ 4). At that same meeting, another CDC official presented findings that, in the past year, 7,000 children were hospitalized with Covid, half of whom were previously healthy, and 152 had died from Covid. *Id.* The medical science demonstrated that continued protection against severe disease requires immune boosting, which provides protection against both infection risks and the development of long Covid. *Id.* In spite of this evidence, the Secretary, a mere six weeks later, posted a video on social media platform X in which he stated that he “*couldn’t be more pleased* to announce that, as of today, the

Covid vaccine for healthy children and healthy pregnant women has been removed from the CDC recommended immunization schedule.”²

4. The Directive threatens the safety of human life. It has sown “chaos and confusion” in doctors’ offices and pharmacies around the country as to whether health care providers can administer the Covid-19 vaccine to children or pregnant women. *See, e.g.*, Declaration of Mary Cassie-Shaw, MD, FAAP, ECF # 118-6, ¶ 6 (“The Directive has caused chaos and confusion at my practice on whether we can administer the COVID-19 vaccine to children and whether we can get it.”). The Directive sent “a message to parents discouraging them to vaccinate their children with the Covid-19 vaccine.” Declaration of Dr. Margie Andreae, ECF # 118-5, ¶ 9. The Directive made it difficult for Jane Does 1 and 2, who are/were pregnant, to get the Covid-19 vaccine. *See* Declaration of Jane Doe, MD, ECF # 118-1, ¶ 12 (“I have called several pharmacies and my employer’s health resources to try to figure out if I can get a Covid-19 vaccine during my pregnancy to protect myself and my baby ... but the pharmacies I have called could not make any guarantees that I could be able to get the vaccine there as a pregnant person”); Declaration of Jane Doe 2, ECF # 75-12, ¶ 8 (even though she had a prescription from her obstetrician, a pharmacist “refused to administer the Covid vaccine to me. The pharmacist stated that she could no longer administer the Covid vaccine due to the new CDC recommendations.”). The way to protect an infant less than six months old from Covid is for the mother to receive the vaccine during pregnancy, which results in the passing of antibodies to the fetus that are protective for months post birth. (SAC, ¶ 4). As stated in the amicus brief filed by the American College of Obstetricians & Gynecologists and 19 other national and state medical organizations, “[b]ecause newborns and infants in the first six months of life have immature immune systems and are not eligible for Covid

² <https://x.com/SecKennedy/status/1927368440811008138> (emphasis added).

vaccination, they also face exceptional risks from Covid infection. ... Volumes of resulting clinical and real-world evidence show that vaccination helps prevent severe Covid and is safe for pregnant individuals, fetuses, and infants. The Secretary's Directive ignores the proven safety and effectiveness of Covid vaccines in these categories of patients, needlessly placing them at greater risk of facing the severe adverse outcomes described above.”³

5. Plaintiffs are mindful of the burdens placed on this Court and other government employees involved in this case due to the lapse in funding. However, with no end to the shutdown in sight,⁴ Plaintiffs are compelled to ask the Court to lift the stay entered on October 2 (ECF # 122) and order that this case proceed with alacrity. Any further delay in resolving this case increases the risks to the health and safety of every American.⁵ “COVID has a summer peak, and then it wanes a little bit, and then ... what it has been doing is picking up again around Thanksgiving and Christmas, as people start gathering.”⁶ True subject-matter experts understand that now is when it is most important to “ensure maximum protection against COVID-19” by getting “updated seasonal Boosters” during the respiratory virus season, which has begun. Declaration of Shannon Scott-Vernaglia, M.D., ECF # 75-15, ¶ 16. A prompt outcome in this case can help clear up at least some of the confusion that the Directive has caused about Covid-19 boosters.

³ *Brief of the American College of Obstetricians & Gynecologists, et al. as Amici Curiae In Support of Plaintiffs*, ECF # 125-1, pp. 7-8 (October 9, 2025).

⁴ Luke Broadwater, *The Shutdown Is Stretching On. Trump Doesn't Seem to Mind*, New York Times (October 18, 2025), <https://www.nytimes.com/2025/10/18/us/politics/trump-democrats-shutdown-deal.html> (“Unlike past presidents, Mr. Trump appears to feel little urgency to strike a deal to reopen the government.”).

⁵ See, e.g., Norbert Goldfield, MD, *If RFK Jr. Won't Resign, What Can Healthcare Professionals Do?*, MedCentral News (September 12, 2025) (“The Secretary's action have and will continue to indirectly cause tens of thousands of premature deaths.”) <https://www.medcentral.com/biz-policy/if-rfk-jr-wont-resign-what-can-we-do>; Madeline Halpert, *Hundreds of federal health workers say RFK Jr has put Americans in danger*, BBC News (August 20, 2025) <https://www.bbc.com/news/articles/cvgv1ggrzzjo>.

⁶ Jillian Wilson, *COVID Cases Might Be Down, But Doctors Are Seeing An Increase In Another Respiratory Illness*, Huffington Post (October 14, 2025) https://www.huffpost.com/entry/covid-cases-lull-october-2025_1_68e7eb40e4b0a9f46d0c848d.

6. Although Defendants oppose this motion, Defendants cannot seriously dispute that this case is of great and immediate urgency. Plaintiffs have presented this Court with sworn testimony from multiple doctors and subject-matter experts around the country that the Directive endangers human life. An infectious disease doctor in Chicago and member of Plaintiff Infectious Disease Society of America attests: “I can assert confidently and without qualification that, based on my professional experience as a pediatric infectious disease specialist with more than 20 years of experience, more children in my practice will contract COVID-19 and experience severe COVID-19 symptoms, including long COVID, and even die of COVID-19 because of the May 19 HHS Directive that is now presently causing parents of my pediatric patients to doubt the safety of the COVID-19 vaccine and refuse COVID-19 vaccination.” Declaration of Dr. Ravi Jhaveri, ECF #, 75-14, ¶ 9. A member of the American Academy of Pediatrics and owner of two pediatric practices in Michigan believes the “Directive ... will, unfortunately and very likely, lead to more illness and death.” Declaration of Dr. Molly O’Shea, ECF # 118-8, ¶ 5. The current President of Plaintiff American College of Physicians who practices in Florida attests that the Directive “contradicts the evidence of the effectiveness of the COVID-19 vaccines that I helped establish as a COVID-19 Vaccines Work Group member and has caused and will continue to cause needless negative health outcomes and death for my ... patients.” Declaration of Dr. Jason M. Goldman, ECF # 75-18, ¶ 36. The pediatric medical director at the New Bedford Community Health Center in New Bedford, Massachusetts, declares that the Directive can lead to “bad patient care and places not only the patient but their family and household contacts at risk of severe morbidity and mortality.” Declaration of Jennifer Leaf Jaeger, MD, MPH, FAAP, ECF # 75-28, ¶ 5. A physician in Arkansas who conducts clinical care for pediatric and adult patients, including pregnant women,

believes that if the Directive is not vacated, “my patients will face preventable suffering and death.” Declaration of Robert H. Hopkins, Jr., MD, MACP, FAAP, ECF # 75-26, ¶ 37.

7. While Plaintiffs specifically challenge the lawfulness of the May 19 Directive regarding the Covid vaccine, larger issues swirl around this case. The measles outbreak that began in Texas earlier this year continues, with 1,596 measles cases reported in 42 jurisdictions in the United States as of October 14, 2025.⁷ The Secretary’s response to the measles outbreak was to downplay the effectiveness of getting vaccinated against measles and instead advocate that “good nutrition remains a best defense against most chronic and infectious illnesses.”⁸ Whooping cough (pertussis) cases have increased 81% in Florida this year over last year, which signals “waning immunity, gaps in vaccination coverage, or increased community spread, all of which put vulnerable populations at risk.”⁹ More than 750 current and former employees of the Department of Health and Human Services have gone on record that the Secretary’s “dangerous and deceitful statements” make him “complicit in dismantling America’s public health infrastructure and endangering the nation’s health by repeatedly spreading inaccurate information.”¹⁰

8. While the Secretary disclaimed during his confirmation process that he would not pursue an anti-vaccine agenda despite his previous virulently anti-vaccine positions,¹¹ the circumstantial evidence is strong that this is exactly what he is doing.¹² The Secretary’s pursuit of

⁷ *Measles Cases and Outbreaks* (October 15, 2025) <https://www.cdc.gov/measles/data-research/index.html>

⁸ See SAC, ECF # 99, ¶ 49.

⁹ Ana Goni-Lessan, *Whooping cough cases soar in Florida as pediatricians worry about vaccine rollback*, Tallahassee Democrat (October 8, 2025) <https://www.tallahassee.com/story/news/local/state/2025/10/08/florida-sees-sharp-rise-in-whooping-cough-infections/86551849007/>.

¹⁰ Madeline Halpert, *Hundreds of federal health workers say RFK Jr has put Americans in danger*, BBC News (August 20, 2025) <https://www.bbc.com/news/articles/cvgvlggrzzjo>.

¹¹ During his confirmation process to become Secretary of Health and Human Services, Mr. Kennedy stated: “If confirmed, I will do nothing as HHS secretary that makes it difficult or discourages people from taking vaccines.” https://www.finance.senate.gov/imo/media/doc/responses_to_questions_for_the_record_to_robert_f_kennedy_jrpart_2.pdf.

¹² See SAC, ¶¶ 45-82 (detailing multiple examples of the Secretary undermining trust in vaccines). In addition, since the filing of the Second Amended Complaint, the Secretary has taken other actions that demonstrate his anti-science, anti-vaccine agenda. For example, on August 27, 2025, the Secretary fired then Director of the CDC, Susan

this *sub rosa* agenda has thus far gone unexplained and unchecked. This lawsuit simply asks the Secretary to explain himself, which is what the Administrative Procedures Act requires. The Secretary should be required to explain why he “couldn’t be more pleased” to remove recommendations that pregnant women and children get a life-saving vaccine and why he is *not* putting the safety of human life at risk with his unilateral and unexplained changes to United States vaccine policy. If anything needs to be urgently addressed, it is the safety of human life. Accordingly, Plaintiff medical and public health associations implore the Court to lift the October 2 stay, keep this case active on its docket during the shutdown, and continue to move this case towards a final adjudication on the lawfulness of the Directive under the Administrative Procedures Act.

9. On September 30, the day before the shutdown began, the Court cancelled the hearing on the Motion to Dismiss that was scheduled for October 8. On October 1, 2025, the first day of the shutdown, counsel for Defendants sought Plaintiffs’ consent to stay the due date for Defendants’ reply brief in support of their Motion to Dismiss (then due two days later on October 3) due to the lapse in funding to the Department of Justice. Out of sympathy for counsel’s situation (*e.g.*, potentially not being paid during the shutdown), and in the hope that the shutdown would not last that long, Plaintiffs agreed at that time not to oppose the motion to stay. However, with

Monarez, who testified at a subsequent Senate hearing that the Secretary demanded that she pre-approve all ACIP recommendations sight unseen and terminate career staff involved in vaccine policy. She testified that “He just wanted blanket approval. Even under pressure, I could not replace evidence with ideology.”

<https://www.npr.org/sections/shots-health-news/2025/09/17/nx-s1-5544143/cdc-director-susan-monarez-testimony-rfk>.

At that same hearing, Dr. Debra Houry, the former Chief Medical Officer of the CDC, testified that she resigned “‘because Secretary Kennedy’s actions repeatedly censored CDC science, politicized our processes, and stripped agency leaders of the ability to protect the health of the American people.’” *Id.* Dr. Demetre Daskalakis, who also resigned from his position at CDC as Director of the National Center for Immunization and Respiratory Diseases when Dr. Monarez was fired, stated in his resignation letter posted on X that “[t]he data analyses that supported this decision [to change the adult and children’s immunization schedules, the action being challenged here] have never been shared with CDC despite my respectful requests to HHS and other leadership.”

https://x.com/dr_demetre/status/1960843433473376602.

the end of the current government shutdown nowhere in sight, Plaintiffs respectfully – and urgently – request that this Court enter an Order that:

- a. lifts the stay entered on October 2 that stayed the deadline for Defendants to file their reply brief in support of their Motion to Dismiss (ECF ## 102-104);
- b. sets a deadline for Defendants to file their reply brief in support of their Motion to Dismiss;
- c. sets a hearing date on Defendants' Motion to Dismiss; and
- d. grants other relief that is appropriate under the circumstances.

A Proposed Order is attached hereto as Exhibit A.

10. Counsel for Plaintiffs conferred by telephone with counsel for Defendants on October 20, 2025. Defendants oppose this motion. Plaintiffs' Local Rule 7.1 Certificate is attached hereto as Exhibit B.

Dated: October 20, 2025

Respectfully submitted,

By: /s/ James J. Oh
James J. Oh (*admitted pro hac vice*)
Kathleen Barrett (*admitted pro hac vice*)
Carolyn O. Boucek (*admitted pro hac vice*)
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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 20th day of October 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

Jim O'Neill, in his official capacity as Acting
Director Centers for Disease Control and
Prevention

c/o Leah Belaire Foley, US Attorney
Michael L. Fitzgerald
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/s/ James J. Oh

James J. Oh (IL Bar No. 6196413)

EXHIBIT A

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-WGY
The Honorable William G. Young
Magistrate Judge: Hon M. Page Kelley

[PROPOSED] ORDER

This matter comes before the Court on Plaintiffs' Motion to Lift Stay and to Continue this Case on Schedule During the Federal Government Shutdown (the "Motion"). Having reviewed the Motion, and for good cause shown, it is hereby ORDERED that the Motion is GRANTED. The stay entered on October 2, 2025 is lifted, and this case shall actively continue on the Court's schedule during the shutdown.

IT IS FURTHER ORDERED that:

(a) Defendants shall file their reply brief in support of their Motion to Dismiss by

_____;

(b) An in-court hearing on Defendants' Motion to Dismiss is scheduled for ____ am/pm on

_____.

SO ORDERED.

Dated: _____

HON. WILLIAM G. YOUNG
U.S. DISTRICT JUDGE

EXHIBIT B

**LOCAL RULE 7.1 CERTIFICATE REGARDING PLAINTIFFS' EXPEDITED
MOTION TO LIFT STAY AND CONTINUE THIS CASE ON SCHEDULE DURING
THE FEDERAL GOVERNMENT SHUTDOWN**

Per Local Rule 7.1, counsel for Plaintiffs states that he conferred with counsel for Defendants by telephone on October 20, 2025. In that conversation, counsel for Defendants stated that Defendants oppose Plaintiffs' Motion to Lift the Stay and Continue this Case on Schedule During the Federal Government Shutdown. The undersigned's email communications with counsel for Defendants regarding this motion are attached hereto.

/s/ James Oh

James J. Oh

From: James J. Oh
Sent: Monday, October 20, 2025 10:20 AM
To: Belfer, Isaac C.; Harlow, James W.; Fitzgerald, Michael (USAMA); Kelleher, Diane (CIV)
Cc: Richard H. Hughes IV; Kathleen Barrett; Robert Wanerman
Subject: RE: American Academy of Pediatrics, et al., v. Robert F. Kennedy, Jr., et al.

Isaac,

This will confirm the telephone conversation that you and I had just now about the motion that Plaintiffs intend to file today as described below. The motion is currently styled as a Motion to Continue This Case on Schedule During the Federal Government Shutdown, although you made a good point in our conversation that Plaintiffs essentially are also asking the Court to lift the stay entered on October 2 (ECF # 122). After you put me on hold while you conferred with someone in your office, you indicated to me that the Defendants would oppose the motion. You also indicated that you continue to have access to your email so that you will receive ECF notice of our filing and any order that the Court enters on Plaintiffs' motion.

As I stated in our call, I apologize to you (and anyone else in your office) for requesting that the Court activate this case, which may lead to you and others performing work without pay during the shutdown. Plaintiffs believe, however, that this case falls into the category of "excepted activities" because, at its core, this case is about the safety of human life. For the sake of the public's health, Plaintiffs urgently feel the need to continue to drive this case to a conclusion, whatever that outcome might be.

Jimmy

James J. Oh

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From: James J. Oh
Sent: Sunday, October 19, 2025 12:31 PM
To: Belfer, Isaac C. <isaac.c.belfer@usdoj.gov>; Harlow, James W. <james.w.harlow@usdoj.gov>; Fitzgerald, Michael (USAMA) <michael.fitzgerald2@usdoj.gov>; Kelleher, Diane (CIV) <diane.kelleher@usdoj.gov>

Cc: Richard H. Hughes IV <RHHughes@ebglaw.com>; Kathleen Barrett <KBarrett@ebglaw.com>; Robert Wanerman <rwanerman@ebglaw.com>

Subject: American Academy of Pediatrics, et al., v. Robert F. Kennedy, Jr., et al.

Dear Isaac, et al.,

As you know, on Friday, the Administrative Office of the United States Courts announced that the judicial branch as of tomorrow will no longer have funding to sustain full, paid operations. The announcement stated that court staff may perform “certain excepted activities,” which include “activities necessary for the safety of human life.” Plaintiffs believe that this case is an activity necessary for the safety of human life. Therefore, Plaintiffs intend to file a motion tomorrow with the Court to continue this case on schedule during the shutdown. I would appreciate hearing from DOJ by Noon, CT tomorrow (October 20) as to whether Defendants consent to or oppose the motion. If you would like to discuss, please let me know.

Thank you.

Jimmy

James J. Oh

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