

**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 (BEM)

**PLANTIFFS' OPPOSITION TO DEFENDANTS'
MOTION TO STAY PROCEEDINGS PENDING THE RESOLUTION OF ANY APPEAL
OF THE MARCH 16, 2026 ORDER OF PRELIMINARY RELIEF**

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I. INTRODUCTION

With Defendants filing of a Notice of Appeal, ECF No. 306, in the evening of April 29, only six days after they filed the instant motion stating that Defendants “may” appeal, Defendants continue their delay tactics to postpone the production of complete Administrative Records (“ARs”) and to delay adjudication of claims on which the Court has ruled that Plaintiffs are likely to succeed on the merits. *See* ECF No. 291. If a stay of proceedings is granted, Plaintiffs and the public will suffer more irreparable harm from the Defendants’ arbitrary and capricious stewardship of the nation’s vaccine ecosystem. For the sake of public health, this case must reach an adjudication of the merits as soon as possible. Indeed, one would think that the nation’s chief health officer would be eager to defend his actions to change the Centers for Disease Control and Prevention’s (the “CDC’s”) immunization schedules on the merits sooner than later if he had legitimate defenses. Defendants’ Motion to Stay Proceedings Pending the Resolution of Any Appeals of the March 16, 2026, Order of Preliminary Relief (the “Motion to Stay Proceedings”), ECF No. 304, must be denied.

II. BACKGROUND FACTS

Ever since the first Case Management Conference (“CMC”) in this case on July 31, 2025, before Judge Young, Defendants have been delaying, deflecting, and avoiding producing the administrative record (the “AR”) on the actions challenged in this case. At the July 31 CMC, Judge Young opined that “I wouldn’t think that the administrative record in support of that changed recommendation is extensive or hard to ferret out.” Tr. of July 31, 2025 CMC at 8:2–5.¹ When counsel for Defendants stated that “the agency thinks that it can compile the records within 8

¹ At that time, the only action being challenged was the May 2025 Secretarial Directive changing the COVID-19 vaccine recommendation from routine to shared clinical decision making (“SCDM”) for pregnant women and children. *See* First Am. Compl., ECF No. 63.

weeks, Judge Young called that amount of time “extraordinary,” but allowed eight weeks, making September 25, 2025, the Defendants’ deadline to produce the AR on the May 2025 Directive. *Id.* at 9:2–3. Counsel for Defendants agreed “[t]hat would work for us.” *Id.* at 9:4. Defendants failed to produce the AR on the May 2025 Directive by Judge Young’s deadline. In fact, only after this Court entered an Order on January 22, 2026, ECF No. 182, setting a schedule for production of the six ARs in this case did Defendants produce the AR on the May 2025 Directive, on March 12, 2026, *five and a half months after* Defendants had originally promised to produce that AR.

After reassignment of this case, the first in-person hearing before this Court was on October 30, 2025, on Plaintiffs’ Motion to Lift Stay and Continue This Case on Schedule During the Federal Government Shutdown. ECF No. 127. During the hearing, the Court ruled: “I am going to lift the stay. I can tell you that *my policy on cases of national import is not to allow a stay.*” Tr. of October 31, 2025 Hearing at 16:21–23 (emphasis added). At that hearing, the parties also discussed production of the Administrative Record. The Court stated: “I don’t know what’s reasonable in terms of how long it takes you to produce the administrative record . . . I want to give you deadlines that are reasonable and conceivable” Tr. of October 31, 2025 Hr’g at 19:15–18.

At that point in time, the operative complaint was the Third Amended Complaint. ECF No. 139. The Defendants moved to dismiss the Third Amended Complaint on November 19, 2025, ECF No. 144, Plaintiffs opposed the motion to dismiss, ECF No. 146, a hearing was held on the motion to dismiss on December 17, 2025, and the Court denied the motion on January 6, 2026, ECF No. 168. Also on January 6, the Court ordered the parties to “file a Joint Status Report with a case management plan, including: 1) a proposed deadline for filing the administrative record” by January 9. ECF No. 169.

On January 5, 2026, the day before the Court's Order denying the motion to dismiss, Defendants announced changes to the CDC's childhood immunization schedules. The Parties' January 9, 2026, Joint Status Report proposed briefing schedules on both a motion for leave to file a Fourth Amended Complaint to challenge the January 5 schedule changes and on a preliminary injunction motion. ECF No. 175. The Court held another status conference on January 12, 2026, at which the parties were ordered to file another status report on the collection of the administrative record by January 21, 2026. *See* ECF No. 176.

Upon review of the January 21 status report, the Court entered the following order:

Having reviewed the parties' Joint Status Report, the Court ORDERS the following schedule for Defendants' production of the administrative record: Records related to the May 2025 Directive by March 12, 2026. Records related to the October 2025 changes to the COVID vaccine recommendation by March 23, 2026. Records related to the reconstitution of the ACIP by March 23, 2026. Should the Court grant Plaintiffs' motion for leave to amend the complaint, records related to actions challenged in the proposed 4th Amended Complaint will be due within 60 days of the Court's order on said motion. *The Court will grant extensions only upon a showing of good cause.* Any requests to amend the schedule should detail the efforts already made with specific dates of action, the status of those efforts, what work remains, and why more time is necessary.

ECF No. 182 (emphasis added).

Plaintiffs filed their Motion for Leave to File a Fourth Amended Complaint on January 19, 2026, and a Motion for Preliminary Injunction on January 26, 2026. ECF Nos. 180, 184. Defendants filed oppositions to both motions on February 9. ECF Nos. 232, 233. The Court bifurcated the preliminary injunction hearing at a status hearing on January 30, 2026, with the first hearing scheduled for February 13, 2026, and the second hearing scheduled for March 4, 2026. *See* ECF No. 190. At the February 13, 2026, hearing, the Court granted Plaintiffs leave to file the Fourth Amended Complaint, making the Administrative Record on the January 5, 2026, schedule changes due 60 days later. *See* ECF No. 182.

The Court granted in part Plaintiffs’ Motion for Preliminary Injunction on March 16, 2026. *See* ECF No. 291. A week after the Court’s March 16 Order, Defendants filed the unopposed Motion for Extension. ECF No. 295. In that motion, the Defendants noted that they had “produced the first AR, relating to the May 2025 Secretarial Directive, on March 12, 2026, in accordance with the Court’s schedule.” *Id.* at 1.² The Defendants proposed, and Plaintiffs agreed, to the following extensions on productions of the remaining ARs:

AR #	Challenged Action	Current Deadline	Defendants’ Proposed Deadline	Length of Requested Extension
2	CDC’s adoption of the ACIP’s September 2025 COVID-19 vaccine recommendation	March 23, 2026	April 13, 2026	21 days
3	Reconstitution of the ACIP	March 23, 2026	April 17, 2026	25 days
4	January 2026 changes to the CDC immunization schedule	April 14, 2026	May 1, 2026 ²	17 days
5	CDC’s adoption of the ACIP’s December 2025 Hepatitis B vaccine recommendation	April 14, 2026	May 5, 2026	21 days
6	HHS’s adoption of the ACIP’s June 2025 thimerosal recommendation	April 14, 2026	May 12, 2026	28 days

ECF No. 295 at 2. The Court so ordered Defendants’ proposed schedule. ECF No. 296.

² The Certification of Administrative Record for AR # 1 dated March 12, 2026, is attached as Exhibit 1 to the Declaration of James J. Oh (the “Oh Declaration”). Plaintiffs reserve the right to challenge the completeness of this and any of the other ARs.

Defendants supported their unopposed Motion for Extension with “summaries of Defendants’ diligent work on each AR . . . [that] the Court requested” in its January 22 Order. *See* ECF No. 295 at 3–6). Defendants reported that, as of March 23, 2026, they had made significant progress on collecting and reviewing electronically stored information (“ESI”) for production as follows:

- AR #3 (Reconstitution of the ACIP): Defendants reported that “ESI searches began on December 22, 2025, and [they had] collected over 17,500 documents spanning over 96,100 pages.” ECF No. 295 at 3. The review of those documents were “ongoing” as of March 23, and “Defendants expect to complete this work by April 17, 2026.” *Id.* at 3–4.
- AR #4 (January 2026 Changes to the CDC Immunization Schedule): Defendants reported that “[i]n February and March 2026, agency attorneys began collecting records from [multiple offices] and other CDC subject matter experts. The agency began running ESI searches on March 2, 2026 . . . ***Defendants expect to finish compiling this AR by May 1, 2026.***” *Id.* at 4 (emphasis added).
- AR #5 (CDC’s Adoption of the ACIP’s December 2025 Hepatitis B Vaccine Recommendation): Defendants reported that “[p]romptly after the Court granted leave to file the Fourth Amended Complaint on February 13, 2026, agency attorneys began collecting records” from multiple offices in March 2026, “CDC attorneys also requested materials from” another office, and “ESI searches began on March 11, 2026. . . . Defendants expect to finish compiling this AR by May 5, 2026.” *Id.* at 5.
- AR #6 (HHS’s Adoption of the ACIP’s June 2025 Thimerosal Recommendation): Defendants reported that “[p]romptly after the Court granted leave to file the Fourth Amended Complaint on February 13, 2026, agency attorneys began requesting records from” multiple offices, that “CDC attorneys also requested materials from” another office, and that ESI searches began on March 11, 2026. . . . Defendants expect to finish compiling this AR by May 12, 2026.” *Id.* at 5–6.

The Defendants produced an administrative record on the CDC’s adoption of the ACIP’s September 2025 COVID-19 vaccine recommendation (AR # 2) on April 13.³

³ The Certification of Administrative Record for AR # 2 dated April 13, 2026, is attached as Exhibit 2 to the Oh Declaration.

On the evening of April 17, the Defendants produced an administrative record on the reconstitution of the ACIP (AR #3).⁴ The next day, counsel for Plaintiffs sent counsel for the Defendants a meet and confer email about AR # 3. Three days later, Defendants responded with the following encouraging message:

Thank you for your patience, and apologies for the delay in responding. Defendants are actively considering all the issues raised in your emails, and there are ongoing discussions among several different government offices. James and I are working diligently to move these discussions forward and will *send you a substantive response as soon as possible*.

Although we're not in a position to have a meaningful discussion today, we're aiming to get back to you in the next day or two. Once we do so, *we're hopeful that the parties can resolve many of the issues you raised amongst themselves*.⁵

(emphasis added). The next day, however, the Defendants' "substantive response" was:

[T]omorrow, 4/23, Defendants intend to file a motion seeking to stay proceedings until the later of May 15, 2026 (the deadline to appeal the Court's preliminary relief order) or the resolution of any appeal taken by Defendants from the Court's preliminary relief order. The requested stay will promote judicial economy, conserve Court and party resources, and avoid the potential for inconsistent rulings because a decision on appeal could narrow the issues in dispute or provide guidance on how to resolve them. A stay of proceedings would not harm Plaintiffs because Defendants do not seek to stay the Court's preliminary relief order, and that order remains in full effect and continues to protect Plaintiffs against any irreparable harm.⁶

So much for the parties working out issues regarding the ARs amongst themselves.

Defendants predicated the Motion to Stay Proceedings on many "mays" and "ifs."

Defendants speculated in the Motion to Stay Proceedings that they "may" appeal the Court's

⁴ The Certification of Administrative Record for AR #3 dated April 17, 2026, is attached as Exhibit 3 to the Oh Declaration.

⁵ The email correspondence from Isaac C. Belfer to James J. Oh sent on Tuesday, April 21, 2026, at 5:50 p.m., is attached as Exhibit 4 to the Oh Declaration.

⁶ The email correspondence from Isaac C. Belfer to James J. Oh on Wednesday, April 22, 2026, at 9:05 p.m., is attached as Exhibit 5 to the Oh Declaration.

March 16 Order and, therefore, there *may* be work that can be avoided in collecting and producing the remaining ARs. *See* ECF No. 304. The Defendants further claimed that the First Circuit *may* narrow the issues in dispute *if* the Defendants appeals and *if* “the parties start briefing cross-motions for summary judgment before Defendants’ time to appeal has run,” because “there is a significant *potential* for wasted time and resources.” *Id.* at 1.

Six days after expressing uncertainty as to whether they would appeal, Defendants filed a Notice of Appeal at 7:14 p.m. EDT on Wednesday, April 29, two days before this brief was due. *See* ECF No. 306. AR # 4 is due today, May 1, per the Court’s March 24 Order. *See* ECF No. 296. In an email from counsel for Defendants on April 30 at 5:21 p.m. CT, Defendants confirmed that they “will produce AR #4 tomorrow if the Court has not granted our motion to stay proceedings.”⁷

III. DEFENDANTS HAVE FAILED TO SHOW GOOD CAUSE FOR A STAY

The law in this circuit is that “[a]n appeal from the grant or denial of a preliminary injunction does not divest the trial court of jurisdiction or prevent it from taking other steps in the litigation while the appeal is pending.” *Contour Design, Inc. v. Chance Mold Steel Co.*, 649 F.3d 31, 34 (1st Cir. 2011) (citation omitted). Thus, “absent a stay, further proceedings in the same controversy often may continue in the district court while an appeal in an earlier phase is pending. To conduct a trial and grant or deny a permanent injunction based on that trial is standard practice.” *Id.* (citations omitted) (holding that district court remained free to proceed toward permanent relief while preliminary-injunction appeal was pending).

Defendants have failed to demonstrate good cause for a stay. While they claim that a stay “avoids imposing *potentially* unnecessary burdens on Defendants,” they offer only speculation to

⁷ Email correspondence from Isaac Belfer to James J. Oh sent on Thursday, April 30, 2026, at 5:21 p.m., is attached as Exhibit 6 to the Oh Declaration.

support this assertion. ECF No. 304 at 1 (emphasis added). For example, Defendants claim that “agency employees *may* be diverted from other important responsibilities in furtherance of the public health,” but they do not identify who would be diverted from what responsibilities on what public health efforts. *Id.* (emphasis added). Moreover, in their Motion for Extension to produce the administrative records, ECF No. 295, Defendants stated that “Defendants have added four contract attorneys and a staff attorney to this matter to expedite review,” ECF No. 294 at 4, thus undermining their own claim that agency employees *may* be diverted from public health responsibilities.

Defendants also make the conclusory, speculative assertions that a stay “serves the interests of judicial economy” and that “a First Circuit decision on any appeal could narrow the issues in dispute and provide guidance on how to resolve any remaining issues.” These are dubious propositions, given that the Court granted only preliminary stays, not injunctions, of the January 2026 memo revising the CDC’s childhood immunization schedule, the appointments of thirteen ACIP members, and the votes taken by the now-stayed ACIP. The best Defendants can do at the First Circuit is a ruling that one or more of the stays were improvidently granted. The First Circuit cannot narrow—*i.e.*, dismiss—any of the claims, given the preliminary nature of the relief granted and the fact that no dispositive motions have been filed.⁸ Moreover, a First Circuit decision in favor of the Defendants is unlikely to eliminate the obligation of Defendants to produce any of the remaining ARs.

Judicial economy will be better served by continuing with the proceedings before this Court while an appeal is pending. When Defendants moved for an extension of the deadlines to produce

⁸ While Defendants assert that they may “appeal on jurisdictional grounds, “[a]s a general rule, we do not grant interlocutory appeals from a denial of a motion to dismiss.” *Caraballo-Seda v. Mun. of Hormigueros*, 395 F.3d 7, 9 (1st Cir. 2005).

the ARs, Defendants reported substantial progress in compiling all of the ARs and that they “expect” to meet the deadlines in the Court’s January 22 Order. ECF No. 182. That was more than a month ago, and, since then, Defendants have admittedly made progress, since Defendants represented that they will produce AR # 4 today if the Court does not grant a stay today. The deadlines for production of ARs ## 5 and 6 are near—May 5 and May 12. Defendants have not requested an extension of those deadlines, and the filing of the Motion to Stay Proceedings does not excuse Defendants from complying with those deadlines. If Defendants in fact prosecute an appeal, the efficient path forward for this case is to continue advancing the matter to a resolution on the merits, including by production of the ARs, while the First Circuit decides the appeal. *See Landis v. N. Am. Co.*, 299 U.S. 248, 254–55 (1936) (explaining that docket-control stays require judgment that weighs competing interests and that a stay proponent must make a clear showing of hardship if there is a fair possibility of damage to another party); *Marquis v. F.D.I.C.*, 965 F.2d 1148, 1155 (1st Cir. 1992) (cautioning that stays “cannot be cavalierly dispensed” and must be supported by good cause, reasonable in duration, and based on a balancing of competing equities); *Clinton v. Jones*, 520 U.S. 681, 707-08 (1997) (recognizing a district court’s discretion to manage proceedings and holding that a stay was premature where the record did not establish the need for postponement).⁹

⁹ The Defendants’ reliance on *Taunton Gardens Co. v. Hills* is misplaced. ECF No. 304 at 4. There, a stay was granted and affirmed because plaintiffs were members of a separate class action case, and a final judgment would be *res judicata* as to plaintiffs in that case. *Taunton Gardens Co. v. Hills*, 421 F.Supp. 524, 526 (D. Mass. 1976), *aff’d*, 557 F.2d 877, 878 (1st Cir. 1977).

IV. CONCLUSION

Defendants' Motion to Stay Proceedings should be denied.

Dated: May 1, 2026

Respectfully submitted,

By: /s/ James J. Oh (IL Bar No. 6196413)
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CERTIFICATE OF SERVICE

I hereby certify that this document was filed and served through the ECF system upon the following parties on this 1st day of May 2026:

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as Secretary of Health and Human Services

Jay Bhattacharya, MD, PhD, in his official
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James J. Oh

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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 (BEM)

District Judge: Hon. Brian E. Murphy

DECLARATION OF JAMES J. OH

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the following is true and correct:

1. I am lead trial counsel for Plaintiffs in the above-titled action.
2. Attached hereto as Exhibit 1 is the Certification of Administrative Record and the Administrative Record Index that Defendants served on Plaintiffs on March 12, 2026, regarding the May 27, 2025 Secretarial Directive on Pediatric COVID-19 Vaccines for Children Less Than 18 Years of Age and Pregnant Women.
3. Attached hereto as Exhibit 2 is the Certification of Administrative Record and the Administrative Record Index that Defendants served on Plaintiffs on April 13, 2026, regarding the CDC's decision to adopt the ACIP's September 19, 2025 recommendation for COVID-19 immunizations.
4. Attached hereto as Exhibit 3 is the Certification of a "partial" Administrative Record and the index for that partial Administrative that Defendants served on Plaintiffs on April

17, 2026, regarding “HHS’s reconstitution of the Advisory Committee on Immunization Practices.”

5. Attached hereto as Exhibit 4 is an email from Isaac Belfer to me on April 21, 2026, at 5:50 pm.

6. Attached hereto as Exhibit 5 is an email from Isaac Belfer to me on April 22, 2026, at 9:05 p.m.

7. Attached hereto as Exhibit 6 is an email from Isaac Belfer to me on April 30, 2026, at 5:21 p.m. CT.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on May 1, 2026.

/s/ James J. Oh _____
James J. Oh

EXHIBIT 1

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

AMERICAN ACADEMY OF PEDIATRICS,

et al.,

Plaintiffs,

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ROBERT F. KENNEDY, JR., *et al.*,

Defendants.

Case No. 1:25-cv-11916-BEM

CERTIFICATION OF ADMINISTRATIVE RECORD

I, Matthew Zorn, Deputy General Counsel, of the United States Department of Health and Human Services, certify that the attached administrative record is to the best of my knowledge a true, correct, and complete copy of the non-privileged information that was directly or indirectly considered in connection with the May 27, 2025 Secretarial Directive on Pediatric COVID-19 Vaccines for Children Less Than 18 Years of Age and Pregnant Women and the implementation of that directive.

Executed this 12th day of March, 2026 in Washington, D.C.

**MATTHEW C.
ZORN -S**

Matthew Zorn
Deputy General Counsel
Immediate Office of the General Counsel
U.S. Department of Health and Human Services

Digitally signed by MATTHEW C.
ZORN -S
Date: 2026.03.12 13:28:38 -04'00'

AAP v. Kennedy, No. 1:25-cv-11916 (D. Mass.)
May 27, 2025 Secretarial COVID-19 Vaccination Directive
Administrative Record Index

Document(s)	Bates Range
February 13, 2025 Presidential Action Establishing the Make America Health Again Commission	HHS_AAP 000001 - HHS_AAP 000005
The MAHA Report: Make Our Children Healthy Again Assessment	HHS_AAP 000006 - HHS_AAP 000078
May 23, 2025 Executive Order on Restoring Gold Standard Science	HHS_AAP 000079 - HHS_AAP 000090
May 27, 2025 Final Secretarial Directive on Pediatric COVID-19 Vaccines for Children Less Than 18 Years of Age and Pregnant Women	HHS_AAP 000091 - HHS_AAP 000091
May 27, 2025 Decision Memo re: Recission of CDC Recommendations for COVID-19 Vaccines for Healthy Children and Pregnant Women	HHS_AAP 000092 - HHS_AAP 000093
May 12, 2025 Memo re: Covid-19 Vaccine Safety in Pregnant Women	HHS_AAP 000094 - HHS_AAP 000097
Pfizer and BioNTech Commence Global Clinical Trial to Evaluate COVID-19 Vaccine in Pregnant Women	HHS_AAP 000098 - HHS_AAP 000102
Pfizer-BioNTech Announce Positive Topline Results of Pivotal COVID-19 Vaccine Study in Adolescents	HHS_AAP 000103 - HHS_AAP 000108
Mother to Baby Fact Sheet: Critical Periods of Development	HHS_AAP 000109 - HHS_AAP 000111
Tom T. Shumbabukuro et al., <i>Safety monitoring in the Vaccine Adverse Event Reporting System (VAERS)</i> , 33 Vaccine 4398–405 (2015)	HHS_AAP 000112 - HHS_AAP 000130
Tracy B. Høeg et al., Letter to the editor, <i>Potential "Healthy Vaccinee Bias" in a Study of BNT162b2 Vaccine against Covid-19</i> , 389 N. Eng. J. Med. 284-85 (2023)	HHS_AAP 000131 - HHS_AAP 000133
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Cornelius Remschmidt et al., <i>Frequency and impact of confounding by indication and healthy vaccinee bias in observational studies assessing influenza vaccine effectiveness: a systematic review</i> , 15 BMC Infect. Dis. 1-15 (2015)	HHS_AAP 000192 - HHS_AAP 000206
Uwe Riedmann et al., <i>Underlying health biases in previously-infected SARS-CoV-2 vaccination recipients: a cohort study</i> , 90 J. Infection 1-9 (2025)	HHS_AAP 000207 - HHS_AAP 000215
Maria P. Velez et al., <i>Miscarriage after SARSCoV-2 vaccination: A population-based cohort study</i> , 131 BJOG 415-22 (2024)	HHS_AAP 000216 - HHS_AAP 000223
Aharon Dick et al., <i>Safety of SARS-CoV-2 vaccination during pregnancy-obstetric outcomes from a large cohort study</i> , 22 BMC Pregnancy Childbirth 166 (2022)	HHS_AAP 000224 - HHS_AAP 000230
Devora Aharon et al., <i>In Vitro Fertilization and Early Pregnancy Outcomes After Coronavirus Disease 2019 (COVID-19) Vaccination</i> , 139 Obstet. & Gyn. 490-97 (2022)	HHS_AAP 000231 - HHS_AAP 000238
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¹ The initial version of the Directive that was distributed for implementation was mistakenly dated May 19, 2025, despite being executed on May 27, 2025. However, the Secretary executed another copy correctly dated May 27, 2025.

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EXHIBIT 2

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

AMERICAN ACADEMY OF PEDIATRICS,

et al.,

Plaintiffs,

v.

ROBERT F. KENNEDY, JR., *et al.*,

Defendants.

Case No. 1:25-cv-11916-BEM

CERTIFICATION OF ADMINISTRATIVE RECORD

I, Matthew Zorn, Deputy General Counsel, of the United States Department of Health and Human Services, certify that the attached administrative record is to the best of my knowledge a true, correct, and complete copy of the non-privileged information that was directly or indirectly considered in connection with the CDC's decision to adopt the ACIP's September 19, 2025 recommendation for COVID-19 immunizations.

Executed this 13th day of April, 2026 in Washington, D.C.

MATTHEW C.
ZORN -S

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Matthew Zorn
Deputy General Counsel
Immediate Office of the General Counsel
U.S. Department of Health and Human Services

***AAP v. Kennedy*, No. 1:25-cv-11916 (D. Mass.)
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COVID-19 Bivalent Booster Vaccination Coverage and Intent to Receive Booster Vaccination Among Adolescents and Adults — United States, November–December 2022	HHS_AAP 002347 - HHS_AAP 002355
Letter to ACIP members, September 19, 2025	HHS_AAP 002356 - HHS_AAP 002357; HHS_AAP 002358 - HHS_AAP 002360
Summary of anticipated votes, September 19, 2025	HHS_AAP 002361 - HHS_AAP 002362
Draft meeting agendas, September 12-18, 2025	HHS_AAP 002363 - HHS_AAP 002364; HHS_AAP 002365 - HHS_AAP 002367
August 2025 Federal Register Notice of the ACIP meeting and written public comments	HHS_AAP 002368 - HHS_AAP 002369; HHS_AAP 002370 - HHS_AAP 003324
AI Summary of written public comments	HHS_AAP 003325 - HHS_AAP 003327
Emails regarding the COVID-19 vaccine manufacturers' statements at the ACIP meeting	HHS_AAP 003328 - HHS_AAP 003331; HHS_AAP 003332 - HHS_AAP 003334; HHS_AAP 003335 - HHS_AAP 003335; HHS_AAP 003336 - HHS_AAP 003341; HHS_AAP 003342 - HHS_AAP 003346; HHS_AAP 003347 - HHS_AAP 003348
COVID-19 Vaccine Materials, ACIP Meeting, June 25-26, 2025	
Final Agenda for ACIP Meeting, June 25-26, 2025	HHS_AAP 003349 - HHS_AAP 003350
ACIP Meeting Minutes Summary, June 25-26, 2025	HHS_AAP 003351 - HHS_AAP 003438
COVID-19 Session, Dr. A. MacNeil (CDC/NCIRD)	HHS_AAP 003439 - HHS_AAP 003445
Current Epidemiology of COVID-19, Dr. A. MacNeil (CDC/NCIRD)	HHS_AAP 003446 - HHS_AAP 003503
Updates to COVID-19 Vaccine Effectiveness, Dr. A. MacNeil (CDC/NCIRD)	HHS_AAP 003504 - HHS_AAP 003544
Update on CDC's COVID-19 Vaccine Safety Monitoring, Dr. S. Meyer (CDC/ISO)	HHS_AAP 003545 - HHS_AAP 003585
COVID-19 Vaccination Implementation, Dr. G. Peacock (CDC/NCIRD)	HHS_AAP 003586 - HHS_AAP 003594
Evidence to Recommendations (partial) for 2025-2026 COVID-19 Vaccination, Dr. A. MacNeil (CDC/NCIRD)	HHS_AAP 003595 - HHS_AAP 003600

EXHIBIT 3

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

AMERICAN ACADEMY OF PEDIATRICS,

et al.,

Plaintiffs,

v.

ROBERT F. KENNEDY, JR., *et al.*,

Defendants.

Case No. 1:25-cv-11916-BEM

CERTIFICATION OF ADMINISTRATIVE RECORD

I, Matthew Zorn, Deputy General Counsel, of the United States Department of Health and Human Services (HHS), certify that the attached partial administrative record is to the best of my knowledge a true and correct copy of the non-privileged and non-confidential information that was directly or indirectly considered in connection with HHS's reconstitution of the Advisory Committee on Immunization Practices (ACIP) through January 13, 2026. This partial record does not include documents that contain confidential information.

Executed this 17th day of April, 2026 in Washington, D.C.

MATTHEW C.

ZORN -S

Matthew Zorn

Deputy General Counsel

Immediate Office of the General Counsel

U.S. Department of Health and Human Services

Digitally signed by MATTHEW C.
ZORN -S
Date: 2026.04.17 20:34:49 -04'00'

***AAP v. Kennedy*, No. 1:25-cv-11916 (D. Mass.)
Reconstitution of the Advisory Committee on Immunization Practices (ACIP)
Administrative Record Index**

Document(s) ¹	Bates Range
May 23, 2025 Executive Order on Restoring Gold Standard Science	HHS_AAP 003601 - HHS_AAP 003612
June 9, 2025 Press Release	HHS_AAP 003613 - HHS_AAP 003615
June 9, 2025 Decision Memo re: Termination of Current Advisory Committee on Immunization Practices (ACIP)	HHS_AAP 003616 - HHS_AAP 003616 HHS_AAP 003617 - HHS_AAP 003617
June 9, 2025 Decision Memo re: Removal of Current and Prospective ACIP Members*	
June 9, 2025 Wall Street Journal Op-Ed by HHS Secretary Robert F. Kennedy, Jr.	HHS_AAP 003618 - HHS_AAP 003620
July 21, 2003 United Press International Article, "The Vaccine Conflict"	HHS_AAP 003621 - HHS_AAP 003638
August 21, 2000 House Committee on Government Reform Report on Conflicts of Interest in Vaccine Policy Making	HHS_AAP 003639 - HHS_AAP 003684
December 2009 HHS Office of the Inspector General Report re: CDC's Ethics Program for Special Government Employees on Federal Advisory Committees	HHS_AAP 003685 - HHS_AAP 003737
June 9, 2025 Notification of ACIP terminations and DFO Appointment*	
June 9, 2025 Notification Letters of ACIP Termination*	
June 11, 2025 X Post by Secretary Kennedy	HHS_AAP 003738 - HHS_AAP 003740
ACIP Member Information	HHS_AAP 003741 - HHS_AAP 003751
ACIP Reference Manual	HHS_AAP 003752 - HHS_AAP 003882
Congressional Research Service ACIP Fact Sheet	HHS_AAP 003883 - HHS_AAP 003885
ACIP Overview Presentation	HHS_AAP 003886 - HHS_AAP 003899
Requests for Designation of Agency Representatives to the ACIP*	
June 24, 2025 Decision Memos re: Appointment of New Members to the ACIP, CDC*	
June 24, 2025 Decision Memo re: Nominations to the ACIP*	
Attachment A - ACIP Charter	HHS_AAP 003900 - HHS_AAP 003904
Attachment B - Membership Balance Plan	HHS_AAP 003905 - HHS_AAP 003908
Attachment C - ACIP Membership Roster	HHS_AAP 003909 - HHS_AAP 003915
Attachment D - Financial Operating Plan*	

¹ Index entries marked with an asterisk (*) indicate that some or all of the documents have been withheld as confidential.

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Attachment E – Curricula Vitae of the Nominees*	
Attachment F- HS-532 Requests for Approval of June Nominees for Public Advisory Committees*	
June 25, 2025 Michael Ross ACIP Withdrawal*	
September 10, 2025 Decision Memo re: Nominations to the ACIP*	
Attachment A - ACIP Charter	HHS_AAP 003916 - HHS_AAP 003920
Attachment B - Membership Balance Plan	HHS_AAP 003921 - HHS_AAP 003924
Attachment C - ACIP Membership Roster	HHS_AAP 003925 - HHS_AAP 003932
Attachment D - Financial Operating Plan*	
Attachment E - Curricula Vitae of Nominees*	
Attachment F - HS-532 Requests for Approval of Nominees for Public Advisory Committees*	
September 15, 2025 Press Release	HHS_AAP 003933 - HHS_AAP 003936
November 26, 2025 Decision Memo re: Nomination to the ACIP*	
Attachment A - ACIP Charter	HHS_AAP 003937 - HHS_AAP 003941
Attachment B - Membership Balance Plan	HHS_AAP 003942 - HHS_AAP 003945
Attachment C - ACIP Membership Roster	HHS_AAP 003946 - HHS_AAP 003953
Attachment D - Financial Operating Plan*	
Attachment E - Curriculum Vitae of Nominee*	
Attachment F - HS-532 Request for Approval of Nominees for Public Advisory Committees*	
December 3, 2025 Decision Memo Re: Request to Amend the Charter of the CDC's ACIP	HHS_AAP 003954 - HHS_AAP 003956
Amendment to the Charter of the ACIP	HHS_AAP 003957 - HHS_AAP 003961
CDC OSBI Email	HHS_AAP 003962 - HHS_AAP 003964
December 3, 2025 Decision Memo re: Chair and Vice Chair Nominations to the ACIP*	
Attachment A - ACIP Charter	HHS_AAP 003965 - HHS_AAP 003969
Attachment B - Membership Balance Plan	HHS_AAP 003970 - HHS_AAP 003973
Attachment C - ACIP Membership Roster	HHS_AAP 003974 - HHS_AAP 003981
Attachment D - Financial Operating Plan*	
Attachment E - Curricula Vitae of Nominees*	
Attachment F - HS-532 Requests for Approval of Nominees for Public Advisory Committees*	

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December 23, 2025 Decision Memo re: Nominations to the ACIP*	
Attachment A - ACIP Charter	HHS_AAP 003982 - HHS_AAP 003986
Attachment B - Membership Balance Plan	HHS_AAP 003987 - HHS_AAP 003990
Attachment C - ACIP Membership Roster	HHS_AAP 003991- HHS_AAP 003998
Attachment D - Financial Operating Plan*	
Attachment E - Curricula Vitae of Nominees*	
Attachment F - HS-532 Requests for Approval of Nominees for Public Advisory Committees*	
January 13, 2026 Press Release	HHS_AAP 003999 - HHS_AAP 004002
Biographies of ACIP Candidates*	
HHS Communications re: ACIP Charter	HHS_AAP 004003 - HHS_AAP 004003
HHS Communications re: FACA and PHSA	HHS_AAP 004004 - HHS_AAP 004004
Communications between HHS and Potential ACIP Nominees*	
HHS Correspondence re: Potential ACIP Nominees*	
ACIP Nominations Submitted to the CDC Website and Resource Mailbox*	
HHS Correspondence with External Stakeholders re: ACIP Reform and Committee Nominations*	
HHS Meeting re: Potential ACIP Nominees*	
Public and Congressional Comments on ACIP Reconstitution*	HHS_AAP 004005 - HHS_AAP 004011
	HHS_AAP 004012 - HHS_AAP 004017
	HHS_AAP 004018 - HHS_AAP 004021
	HHS_AAP 004022 - HHS_AAP 004033
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	HHS_AAP 004045 - HHS_AAP 004053
	HHS_AAP 004054 - HHS_AAP 004054
	HHS_AAP 004055 - HHS_AAP 004060
	HHS_AAP 004061 - HHS_AAP 004064
HHS_AAP 004065 - HHS_AAP 004065	

EXHIBIT 4

From: Belfer, Isaac C. <Isaac.C.Belfer@usdoj.gov>
Sent: Tuesday, April 21, 2026 5:50 PM
To: James J. Oh
Cc: Robert Wanerman; Elizabeth McEvoy; Daniella R. Lee; Kathleen Barrett; Harlow, James W.
Subject: RE: AAP AR #3 - Request to Meet and Confer

***** EXTERNAL EMAIL *****

Hi Jimmy,

Thank you for your patience, and apologies for the delay in responding. Defendants are actively considering all the issues raised in your emails, and there are ongoing discussions among several different government offices. James and I are working diligently to move these discussions forward and send you a substantive response as soon as possible.

Although we're not in a position to have a meaningful discussion today, we're aiming to get back to you in the next day or two. Once we do so, we're hopeful that the parties can resolve many of the issues you raised amongst themselves.

Thanks,
Isaac

Isaac C. Belfer
U.S. Department of Justice
Civil Division | Federal Programs Branch
(202) 305-7134 | Isaac.C.Belfer@usdoj.gov

EXHIBIT 5

From: Belfer, Isaac C. <Isaac.C.Belfer@usdoj.gov>
Sent: Wednesday, April 22, 2026 9:05 PM
To: James J. Oh; Kathleen Barrett
Cc: Daniella R. Lee; Elizabeth McEvoy; Richard H. Hughes IV; Harlow, James W.
Subject: RE: AAP Proposed Protective Order
Attachments: AAP - Proposed Protective Order - 2026.04.08 Draft - DOJ revisions.docx

*** EXTERNAL EMAIL ***

Jimmy,

In the attached draft, we revised the proposed protective order in tracked changes based on your comments. Our responses to your comments are below in red. If you have any questions, please let us know.

Additionally, tomorrow, 4/23, Defendants intend to file a motion seeking to stay proceedings until the later of May 15, 2026 (the deadline to appeal the Court's preliminary relief order) or the resolution of any appeal taken by Defendants from the Court's preliminary relief order. The requested stay will promote judicial economy, conserve Court and party resources, and avoid the potential for inconsistent rulings because a decision on appeal could narrow the issues in dispute or provide guidance on how to resolve them. A stay of proceedings would not harm Plaintiffs because Defendants do not seek to stay the Court's preliminary relief order, and that order remains in full effect and continues to protect Plaintiffs against any irreparable harm.

Would you please let us know Plaintiffs' position on this stay motion? If the motion is opposed, we plan to ask the Court to order expedited briefing on the motion and decide it as soon as practicable.

Thanks,
Isaac

Isaac C. Belfer
U.S. Department of Justice
Civil Division | Federal Programs Branch
(202) 305-7134 | Isaac.C.Belfer@usdoj.gov

EXHIBIT 6

From: Belfer, Isaac C. <Isaac.C.Belfer@usdoj.gov>
Sent: Thursday, April 30, 2026 5:21 PM
To: James J. Oh; Harlow, James W.
Cc: Richard H. Hughes IV; Kathleen Barrett; Daniella R. Lee; Elizabeth McEvoy; Robert Wanerman
Subject: RE: Defendants' Motion to Stay Proceedings

*** EXTERNAL EMAIL ***

Hi Jimmy,

We will produce AR #4 tomorrow if the Court has not granted our motion to stay proceedings.

Thanks,
Isaac

Isaac C. Belfer

U.S. Department of Justice
Civil Division | Federal Programs Branch
(202) 305-7134 | Isaac.C.Belfer@usdoj.gov

From: James J. Oh <JOh@ebglaw.com>
Sent: Thursday, April 30, 2026 1:07 PM
To: Belfer, Isaac C. <Isaac.C.Belfer@usdoj.gov>; Harlow, James W. <James.W.Harlow@usdoj.gov>
Cc: Richard H. Hughes IV <RHHughes@ebglaw.com>; Kathleen Barrett <KBarrett@ebglaw.com>; Daniella R. Lee <DLee@ebglaw.com>; Elizabeth McEvoy <EMcEvoy@ebglaw.com>; Robert Wanerman <RWanerman@ebglaw.com>
Subject: [EXTERNAL] RE: Defendants' Motion to Stay Proceedings

Hi, Isaac.

So I guess the answer to my question is no, Defendants are not going to withdraw their motion.

What about my other question? Are you producing AR #4 tomorrow? Inquiring minds want to know.

Thanks.

Jimmy

James J. Oh

Epstein Becker Green
227 W. Monroe
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Chicago, IL 60606
(312) 499-1470

joh@ebglaw.com

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t 312.499.1470 | f 312.827.9525

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227 W. Monroe Street, Suite 4500 | Chicago, IL 60606

t 312.499.1400 | www.ebglaw.com

From: Belfer, Isaac C. <Isaac.C.Belfer@usdoj.gov>

Sent: Thursday, April 30, 2026 11:39 AM

To: James J. Oh <JOh@ebglaw.com>; Harlow, James W. <James.W.Harlow@usdoj.gov>

Cc: Richard H. Hughes IV <RHHughes@ebglaw.com>; Kathleen Barrett <KBarrett@ebglaw.com>; Daniella R. Lee

<DLee@ebglaw.com>; Elizabeth McEvoy <EMcEvoy@ebglaw.com>; Robert Wanerman <RWanerman@ebglaw.com>

Subject: RE: Defendants' Motion to Stay Proceedings

*** EXTERNAL EMAIL ***

Hi Jimmy,

We are not aware of any inaccuracies in our stay motion. Would you please let us know which statements in our motion you believe are now inaccurate?

Thanks,

Isaac

Isaac C. Belfer

U.S. Department of Justice

Civil Division | Federal Programs Branch

(202) 305-7134 | Isaac.C.Belfer@usdoj.gov

From: James J. Oh <JOh@ebglaw.com>

Sent: Wednesday, April 29, 2026 8:53 PM

To: Belfer, Isaac C. <Isaac.C.Belfer@usdoj.gov>; Harlow, James W. <James.W.Harlow@usdoj.gov>

Cc: Richard H. Hughes IV <RHHughes@ebglaw.com>; Kathleen Barrett <KBarrett@ebglaw.com>; Daniella R. Lee

<DLee@ebglaw.com>; Elizabeth McEvoy <EMcEvoy@ebglaw.com>; Robert Wanerman <RWanerman@ebglaw.com>

Subject: [EXTERNAL] Defendants' Motion to Stay Proceedings

Isaac and James,

Do Defendants intend to withdraw their Motion to Stay Proceedings as it no longer accurately states the procedural posture of this case now that Defendants have filed a Notice of Appeal?

Regardless, I note that AR # 4 on the January 2026 changes to the CDC immunization schedule is due this Friday, May 1. Please confirm that Defendants will be complying with that Court-ordered deadline, as there is no stay yet and Defendants have not requested an extension or modification of that deadline.

Jimmy

James J. Oh

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