

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

AMERICAN ACADEMY OF PEDIATRICS,
AMERICAN COLLEGE OF PHYSICIANS,
INC., AMERICAN PUBLIC HEALTH
ASSOCIATION, INFECTIOUS DISEASES
SOCIETY OF AMERICA, MASSACHUSETTS
PUBLIC HEALTH ASSOCIATION D/B/A
MASSACHUSETTS PUBLIC HEALTH
ALLIANCE, SOCIETY FOR MATERNAL-
FETAL MEDICINE, THE MASSACHUSETTS
CHAPTER OF THE AMERICAN ACADEMY
OF PEDIATRICS, JANE DOE 1, JANE DOE 2,
and JANE DOE 3,

Plaintiffs,

vs.

ROBERT F. KENNEDY, JR., in his official
capacity as Secretary of the Department of Health
and Human Services; UNITED STATES
DEPARTMENT OF HEALTH AND HUMAN
SERVICES; JIM O'NEILL, in his official capacity
as Acting Director of Centers for Disease Control
and Prevention; CENTERS FOR DISEASE
CONTROL AND PREVENTION; and DOES 1–
50, inclusive,

Defendants.

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

STATUS REPORT

Pursuant to the Court's Order of June 1, 2026 (ECF 321), the parties submit the following Status Report regarding the six Administrative Records ("ARs") in this case and a renewed motion to stay proceedings that Defendants intend to file.

Plaintiffs' Report

Defendants made a staggered production of the six ARs in this case, with the last of the six ARs produced in an initial round on May 12, 2026. Defendants represented in a Certification of

Administrative Record for AR # 1 (May 27, 2025, Secretarial Directive on Pediatric Covid Vaccines), # 2 (the CDC's decision to adopt the September 19, 2025, ACIP recommendation on the Covid vaccine), and # 6 (the ACIP's June 26, 2026, recommendation on thimerosal in seasonal flu vaccines) that these ARs were a "true, correct, and **complete** copy of the non-privileged information that was directly or indirectly considered" with regard to each challenged action. (Emphasis added).

With regard AR # 3 (ACIP reconstitution), #4 (CDC's adoption of revised Childhood and Adolescent Immunization Schedule), and #5 (CDC's decision to adopt the ACIP's December 5, 2025 recommendation for Hepatitis B immunization), the Certification of Administrative record stated that "[t]his **partial** record does not include documents that contain confidential information." (Emphasis added).

The parties thereafter negotiated a protective order, and on June 1, 2026, the Court granted the parties' motion to enter a Stipulated Protective Order. (ECF 320). Thereafter, on June 8, 2026, Defendants produced a Supplemental Administrative Record on ARs ## 3, 4, and 5. Noticeably absent from the Certification of Supplemental Administrative Record for these three ARs was the word "complete." Instead, each Certification of Supplemental Administrative Record for ARs ## 3, 4, and 5 stated: "I hereby certify that the documents listed on the attached Revised Administrative Record Index, which include the partial administrative record certified on [date], are to the best of my knowledge a true and correct copy of the non-privileged information that was directly or indirectly considered in connection with [challenged action]."

Accordingly, on June 19, 2026, counsel for Plaintiffs sent the email attached as Exhibit A to counsel for Defendants asking to meet and confer on two things: first, why the government did not state in the Certifications of Supplemental Administrative Record for ARs 3-5 that those ARs

were “complete;” and, second, why documents in the supplemental productions were stamped “CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER.” Plaintiffs’ position on these issues are stated in Exhibit A.

Plaintiffs previously identified other issues with the ARs produced in email correspondence. (See Exhibit B, May 26, 2026, email from Plaintiffs’ counsel to Defendants’ counsel). The main issue identified in the May 26 email was whether certain records, if they exist, properly are considered part of the administrative record. For example, as the Court knows, the Secretary announced the firing of ACIP members in a June 9, 2025, Wall Street Journal Commentary due to the ACIP allegedly having “persistent conflicts of interest.” (See ECF 245, Fourth Amended Complaint, ¶¶ 72-76). In a meet and confer call on May 21, 2026, defense counsel took the position that Office of Government Ethics 450 forms for the individuals whom the Secretary appointed to the ACIP, if any, were not properly considered part of AR # 3. (See Exhibit B). Plaintiffs disagree with Defendants’ position for the reasons stated in Exhibit B.

Counsel for Defendants responded by email on June 23 (attached as Exhibit C) to Plaintiffs’ June 19 email stating that Defendants would respond within five business days pursuant to the procedure set forth in paragraph 6 of the Stipulated Protective Order (ECF 320), which states:

Defendants will review the confidential designation and, within five business days, remove the designation ... or stand on the designation. The parties shall attempt to informally resolve any disputes over whether information is Confidential Information. If the parties are unable to informally resolve all disputes ... Plaintiffs may seek intervention by the Court within five business days after meet-and-confer efforts have been exhausted on all disputed documents ...

Pursuant to this procedure, Defendants’ response on the confidential designations is due on June 26. Due to counsel for Plaintiffs having a multi-day hearing next week (on June 30, July 1, and

possibly July 2) and the upcoming holiday weekend, the parties have scheduled a meet and confer session on July 6.

Defense counsel also represented in their June 23 email that “AR ## 3, 4 and 5 are complete.” (Exhibit C). Plaintiffs’ counsel requested that Defendants serve an Amended Certification of Supplemental Administrative Record that states that ARs ## 3, 4, and 5 are “complete.”

Plaintiffs propose that the parties file another status report on Friday, July 10, that will set forth a briefing schedule on any motion regarding the ARs.

Defendants’ Report

Defendants agree that they will respond to the confidentiality issues Plaintiffs raised on June 19, 2026, by June 26, 2026, pursuant to paragraph 6 of the Stipulated Protective Order, ECF No. 320. Defendants further agree that the parties will meet and confer on July 6, 2026, and file a joint status report on July 10, 2026. Although the parties have exchanged emails about other administrative record issues, the meet-and-confer process has not yet been exhausted as to any of those issues.

As Plaintiffs note, Defendants confirmed in writing that AR # 3, 4, and 5 are complete. Defendants agree to execute new certifications stating that those ARs are complete.

In light of several recent developments in the appeal of this Court’s preliminary relief order, Defendants intend to file a renewed motion to stay proceedings in this case, at least as to Count II (challenging the ACIP reconstitution under the Federal Advisory Committee Act of 1972), until the appeal of this Court’s preliminary relief order is resolved. Plaintiffs oppose that motion. The parties have agreed on the following briefing schedule: Defendants’ motion due July 7 and Plaintiffs’ opposition due July 21.

Although this Court previously declined to stay proceedings pending appeal, ECF No. 311, recent developments in the appeal warrant a stay. First, on June 12, 2026, Defendants moved to expedite the appeal, arguing that its resolution could narrow the case or at least clarify the applicable standard and the scope of the issues in further district court proceedings. Mot. to Expedite Appeal and for Expedited Briefing Schedule, at 5–7, *Am. Acad. of Pediatrics v. Kennedy*, No. 26-1503 (1st Cir. June 12, 2026). On June 16, 2026, the First Circuit granted expedition—over Plaintiffs’ objection—and directed Defendants to file their opening brief by June 17, 2026, Plaintiffs to file their response brief by July 16, 2026, and Defendants to file their reply brief within 11 days following service of Plaintiffs’ response brief. Order of Court, *Am. Acad. of Pediatrics*, No. 26-1503 (1st Cir. June 16, 2026). The First Circuit’s order stated that “[o]ral argument, to the extent deemed necessary, will be scheduled as soon as practicable after the completion of briefing, and this matter will be resolved without undue delay.” *Id.* Second, on June 17, 2026, Defendants filed their opening brief, which challenges only the preliminary relief on Count II. Defendants’ opening brief explains that Plaintiffs lack standing to challenge the ACIP appointments; the ACIP appointments are not final agency action reviewable under the APA; the wrong standard was applied in reviewing the ACIP appointments; and the preliminary relief was improper.

As Defendants will explain in their motion, the requested stay is supported by good cause because it will further judicial economy, have a reasonable duration, and not harm Plaintiffs. *See Marquis v. F.D.I.C.*, 965 F.2d 1148, 1154–55 (1st Cir. 1992); *Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936). And the notice of appeal divested this Court of control over the aspect of the case on appeal with respect to Count II, while the balance remains within its jurisdiction. *See Griggs v. Provident Consumer Discount Co.*, 459 U.S. 56, 58 (1982).

A stay would promote judicial economy because, if the First Circuit agrees with Defendants regarding Count II, there will be no need for the parties to brief or the Court to decide administrative record disputes or summary judgment motions regarding the ACIP reconstitution. Even if the First Circuit does not order Count II dismissed, its decision could inform the standard this Court applies in reviewing Count II. Moreover, the ACIP reconstitution claim overlaps with Plaintiffs' other claims. *See, e.g.*, ECF No. 291 at 43–45 (staying ACIP votes on the grounds that the ACIP was improperly constituted). A stay would also have a reasonable duration because appellate briefing will be completed next month, and any oral argument “will be scheduled as soon as practicable” thereafter. Order of Court, *Am. Acad. of Pediatrics*, No. 26-1503 (1st Cir. June 16, 2026).

Finally, a stay would not harm Plaintiffs (or the public) because the Court's preliminary relief order remains in full effect. *See* ECF No. 291 at 45. Plaintiffs opposed Defendants' request to expedite the appeal, confirming they face no irreparable harm while this Court's preliminary relief is in place. Indeed, Plaintiffs' positions appear to shift with the forum. Opposing a stay here, they urged that “this case must reach an adjudication of the merits as soon as possible” and called Defendants' conduct “delay tactics.” ECF No. 309, at 1. Opposing expedition on appeal, they urged that “ordinary appellate review is fully adequate” and that the questions “will remain justiciable” in the ordinary course. Plaintiffs-Appellees' Opp. to Appellants' Mot. to Expedite Appeal and for Expedited Briefing Schedule, at 5, 11, *Am. Acad. of Pediatrics*, No. 26-1503 (1st Cir. June 15, 2026). And a stay may avoid irreversible harm to non-parties: Plaintiffs press for public disclosure of non-party materials protected by the Privacy Act, *see* 5 U.S.C. § 552a, relating to a claim that may be resolved on appeal.

Respectfully submitted,

By: /s/ Isaac C. Belfer

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Attorney for Defendants

Dated: June 24, 2026

Respectfully submitted,

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

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Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that this document, filed through the CM/ECF system, will be sent via electronic mail to the registered participants as identified on the Notice of Electronic Filing.

June 24, 2026

/s/ Isaac C. Belfer
Isaac C. Belfer

EXHIBIT A

James J. Oh

From: James J. Oh
Sent: Friday, June 19, 2026 12:16 AM
To: Belfer, Isaac C.; Harlow, James W.
Cc: Richard H. Hughes IV; Kathleen Barrett; Daniella R. Lee; Elizabeth McEvoy; Robert Wanerman
Subject: Meet and Confer on Supplemental Administrative Records

Isaac,

We would like to meet and confer with you on Monday (6/22) or Tuesday (6/23) about the Confidential designations made in the supplemental productions for Administrative Records ##3, 4, and 5, since we have a status report due on June 24. We believe that most, if not all, of the documents that the government designated as Confidential are not Confidential under the Protective Order, especially if personal identifying information (PII) such as email addresses, addresses, and phone numbers are redacted.

We also have concerns about the Certifications of Supplemental Administrative Record produced with each of these ARs, which I address first:

Certifications of Supplemental Administrative Record

Defendants served by email on June 8, 2026, a “Certification of Supplemental Administrative Record” (“Supplemental Certification”) for each of the supplemental AR productions for ARs ## 3-5. The second sentence of each of these Certifications were the same except for the identification of the final agency action to which the Certification applied: “I hereby certify that the documents listed on the attached Revised Administrative Record Index, which include the partial administrative record certified on April 17, 2026, are to the best of my knowledge a true and correct copy of the non-privileged information that was directly or indirectly considered in connection with [final agency action].” Conspicuously missing from each of the Supplemental Certifications is the word “**complete**.” In other Administrative Procedure Act cases filed in the District of Massachusetts last year, when the government filed a Certification of Administrative Record, the signer of the Certification represented that the AR produced was “complete.” See, e.g., *AAU, et al., v. DOD, et al.*, Case No. 1:25-cv-11740-BEM, Dkt. No. 72-1, Designation and Certification of Administrative Record, ¶ 3 (“To the best of my knowledge, information, and belief, the document that have been labeled with Bates range ... constitute the **complete** administrative record for the analysis and rationale that supported the 15 percent indirect cost rates, as reflected in the Policy.”) (emphasis added); *APHA, et al., v. NIH, et al.*, Case No. 1:25-cv-10787-WGY, Dkt No. 85-1,

Designation and Certification of Administrative Record, ¶ 2 (“To the best of my knowledge, information, and belief, the records described below and shared with plaintiffs on June 2, 2025 constitute the true, accurate, and **complete** administrative records for the grant terminations challenged in this case ... the true, accurate, and **complete** administrative records for plaintiffs’ ‘Challenged Directives.’”) (emphasis added).

Please confirm that ARs ## 3, 4, and 5 are **complete** and provide Amended Certifications of Supplemental Administrative Record for these ARs so stating.

Supplemental AR # 3

Plaintiffs would appreciate an explanation as to why these documents have been designated Confidential:

1. Decision Memoranda and other HHS memoranda.
 - a. 6.9.25 Memo recommending termination of ACIP members (014712-15)
 - b. 4.9.25 Memo requesting designation of FDA representative to the ACIP (14739-40)
 - c. 4.9.25 Memo requesting designation of NIH representative to the ACIP (14741-42)
 - d. 6.25.25 Memos requesting appointments of ACIP members (14743-58)
 - e. 6.13.25 Memo requesting approval of 2025 ACIP nomination slate (14759-63)
 - f. 9.8.25 Memo requesting approval of 2025 ACIP nomination slate (14925-28)
 - g. 11.25.25 Memo requesting approval of 2025 ACIP nomination slate (15078-80)
 - h. 12.2.25 Memo requesting approval of 2025 ACIP nomination slate (15162-64)
 - i. 12.18.25 Memo requesting approval of new members for the ACIP (15222-25)
2. Documents re terminations of the 17 ACIP members (14716-38)
3. Department of Health and Human Services Request for Approval of Nominees for Public Advisory Committees
 - a. 15073, 15109, 15218-21, 15267, 15268, 15269, 15270,
4. Resumes, CVs, bios, emails, spreadsheets re candidates nominated for the ACIP
 - a. The public should be able to see who was nominated and not appointed to be able to compare to those who were appointed.
 - b. Plaintiffs would agree to redact PII such as addresses, phone numbers, and email addresses.

- c. I noted in my email to you of May 18, 2026, that “subsection (b)(11) of 5 U.S.C. § 552a ‘permits a court of competent jurisdiction to order disclosure of Privacy Act protected information that would otherwise be prohibited from disclosure without prior written consent of the individual to whom the record pertains.’ United States Department of Justice Overview of the Privacy Act of 1974, p. 119 (2020 edition).”

5. Emails from outside parties who recommended candidates for the ACIP

a. Aaron Siri law firm emails and attachments.

- i. Aaron Siri letter to the Secretary, 6.5.25, recommending additions of non-voting liaison representatives and the attachments thereto (015771-72)
- ii. Emails from Becca Claassen attaching a spreadsheet of ACIP candidates and a “preliminary analysis on ACIP Charter and FACA implications that Aaron Siri’s team provided us.” (15777).
 1. Spreadsheet of candidates from Siri’s law firm (15779-83).
 2. ACIP Charter Analysis (15785-96).
- iii. Email from Elizabeth Brehm attaching “a number of suggested individuals.” (15797-99) and attachment
- iv. There are only three emails to/from Siri’s law firm in the supplemental production. Plaintiffs find it hard to believe that only three emails exist between Siri’s law firm and Defendants regarding the ACIP.

b. Lyn Redwood emails and attachments.

- i. 4.6.25 email (15685-87)
- ii. 6.4.25 email to Reyn Archer attaching a document “prepared at the request of Mr. Kennedy earlier this year regarding ACIP that outlines the concerns I identified at the time ...” (015963-71). Plaintiffs would appreciate an explanation as to why these documents have been designated as Confidential.
- iii. 4.3.25 and 4.4.25 emails to William Boothby with recommendations for the ACIP and other positions.
- iv. 1.2.25 email from Vicky Pebsworth to Lyn Redwood recommending Brian Morse for the ACIP. (15991)
- v. 1.2.25 email from Vicky Pebsworth to Lyn Redwood recommending Jimmy Pagano for the ACIP. (15994)
- vi. 4.6.25 email from Lyn Redwood to William Boothby with ACIP recommendation of Sylvia Fogel. (15997)

- c. Debra Sheldon, Michael Ross, Bill Moses, James Lyons-Weiler emails with ACIP recommendations (15684, 15999, 16007, 16009, 16028, 16030)
6. Redacted documents: why are there redactions on these documents? We request that Defendants submit to the Court for *in camera* review.
 - a. 6.26.25 email from Shirley, Malia to Boothby, William is entirely redacted. (15778-79)
 - b. 6.10.25 email from Spear, Stefanie to Boothby, William (15588)

Supplemental AR #4

Plaintiffs request an explanation as to why any of the documents in Supplemental AR #4 are designated Confidential.

Supplemental AR #5

Plaintiffs request an explanation as to why the one document produced in Supplemental AR #5 was designated Confidential.

On Monday, June 22, I am available before 2 p.m. CT. On Tuesday, June 23, I am wide open.

Thank you.

Jimmy

James J. Oh

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EXHIBIT B

James J. Oh

From: James J. Oh
Sent: Tuesday, May 26, 2026 4:18 PM
To: Belfer, Isaac C.; Harlow, James W.
Cc: Richard H. Hughes IV; Kathleen Barrett; Daniella R. Lee; Elizabeth McEvoy; Robert Wanerman
Subject: RE: Administrative Records ## 3, 4, and 1
Attachments: AAP - Proposed Protective Order - 2026.05.21 Draft (JOH edits).docx

Isaac,

I write in anticipation of our meet and confer tomorrow at 1 p.m. CT about the Joint Status Report due this Friday.

AR #3 (ACIP reconstitution)

As you know, on June 9, 2025, the Secretary published a Commentary in the Wall Street Journal announcing the terminations of all ACIP members due to “persistent conflicts of interest.” The article linked here indicates that, on June 18, 2025, only a week after the Secretary announced new ACIP members in a June 11 post on X, an HHS spokesperson stated that ““Before starting work on ACIP, the new members’ ethics agreement will be made public. Every ACIP member will be vetted in accordance with their ethics agreement before they are permitted to participate in each meeting agenda item,” and “both the ethics agreements and the OGE 450s will be disclosed.”” https://www.statnews.com/2025/07/09/kennedy-conflict-of-interest-radical-transparency-acip-vaccine-experts/#:~:text=WASHINGTON%20%E2%80%94%20The%20Department%20of%20Health%20and%20Human%20Services%20is%20announcing%20the%20terminations%20of%20all%20ACIP%20members%20due%20to%20persistent%20conflicts%20of%20interest.&utm_source=statnews&utm_medium=article&utm_campaign=statnews On June 12, 2025, Robert Malone posted on X the following: “FYSA- i have already completed three months of ethics vetting and COI training by the appropriate officials.” <https://x.com/RWMaloneMD/status/1933216806338244828>

In our call last week, you took the position that information that postdates announcement of the appointments of the new ACIP members on June 11 (and on September 11, 2025) are not properly part of AR #3, apparently in reliance on 5 C.F.R. § 2634.903(b)(1), which provides that a new appointee to a federal advisory committee must “[n]ot later than 30 days after assuming a new position or office” file a confidential financial disclosure.” However, 5 C.F.R. § 2634.903(b)(3) provides that “agencies may at their discretion, require that prospective entrants into positions described in § 2634.904(a) file their new entrant confidential financial disclosure reports *prior* to serving in such positions, to ensure that there are no insurmountable ethics concerns.” (Emphasis added). Here, given the Secretary’s stated reason for terminating the ACIP in June of last year, one would think

that the Secretary would have wanted to “ensure that there are no insurmountable ethics concerns” before announcing the eight appointments to the ACIP on June 11, 2025. I would ask that you check whether conflicts disclosures were required of the appointees announced on June 11 and September 11, 2025, *before* their appointments were announced. If they were, then such documents should have been produced as part of AR #3. Indeed, Robert Malone’s admission on June 12, 2025, that he already had gone through three months of ethics vetting and COI training indicates that he completed an OGE 450 form before June 11. If Dr. Malone underwent this vetting and training before his appointment was announced, the other appointees announced on the same date and on September 11 must also have gone through such vetting and training before their appointments were announced.

I also note that “a special Government employee who has been appointed to serve on an advisory committee must file the required report before any advice is rendered by the employee to the agency, *or in no event, later than the first committee meeting.*” 5 CFR § 2634.903(b)(3) (emphasis added). If your position is that OGE 450 forms exist for all ACIP appointees last year but they are not properly part of AR #3, then the OGE 450 forms are properly part of the administrative records on the September, 2025, Covid vote (AR #2), the December, 2025, HepB vote (AR #5), and the June, 2025, thimerosal vote (AR # 6), as they should have been completed and filed with OGE before those meetings to make them eligible to vote at those meetings.

Finally, I take issue with your hyper-technical interpretation of these ethics regulations and the case law on what is properly considered to be part of an administrative record in an APA case. The intent and spirit of the federal government ethics laws and regulations is to “ensure that there are no insurmountable ethics concerns” with any SGE *before* they begin service on an advisory committee. Consistent with the Secretary’s repeated emphasis on “radical transparency,” I would ask that you produce all OGE 450 forms and other ethics and conflicts of interest disclosures made by all appointees to the ACIP last year, regardless of whether they were submitted before or after their appointments were announced. Alternatively, I would ask that you confirm that no OGE 450 forms and other conflicts of interest disclosures exist for any of the appointees to the ACIP last year.

I need definitive answers from you on these questions tomorrow so that I know if Plaintiffs need to move to complete the administrative records.

AR #4 (childhood schedule)

The January 5, 2026, Decision Memo re “Adopting Revised Childhood and Adolescent Immunization Schedule” states in the fourth paragraph on the first page that “You also discussed immunizations with CDC and Food and Drug Administration (FDA) officials with

duties and responsibilities related to vaccine safety and efficacy, respectively.” While meeting notes from conversations with health officials from Denmark, Germany, and Japan were produced in AR #4, no meeting notes were produced from Mr. O’Neill’s discussions with CDC and FDA officials. To be sure, if such meeting notes exist, they should have been produced in AR #4. Accordingly, please either confirm that Defendants will produce meeting notes of O’Neill’s discussions with CDC and FDA officials that predate the January 5, 2026, Decision Memo; or confirm that AR #4 is complete in this regard and that there is no documentation of what O’Neill discussed with CDC and FDA officials about revising the CDC’s childhood schedule.

In addition, I note that the Hoeg/Kulldorff Assessment of the U.S. childhood schedule dated January 2, 2026, states that the assessment was written “in consultation with experts at CDC, FDA, NIH, and CMS.” However, there is no mention in the Hoeg/Kulldorff assessment of what consultation CDC, FDA, NIH, and CMS experts provided about aligning the U.S. childhood schedule with that of peer nations. Accordingly, please confirm that Defendants will produce documentation of Hoeg and Kulldorff’s consultations with experts at CDC, FDA, NIH, and CMS; or confirm that AR #4 is complete in this regard and that no documentation exists of Hoeg and Kulldorff’s consultations with experts at CDC, FDA, NIH, and CMS.

In our call last week, you agreed to check with the agency to see if there were any written communications with countries other than Denmark, Germany, or Japan. I trust that you’ll be able to provide confirmation on this tomorrow.

Finally, footnote 2 to the AR #4 index states that “Defendants will provide this document at a later date.” Please confirm when that document will be produced.

Protective Order

For convenience, I reattach the redlined protective order I sent to you last week. Assuming that we reach agreement on the P.O. tomorrow, presumably the documents marked with an asterisk on the indexes for AR ## 3 and 4 are ready to be produced immediately. Please confirm tomorrow.

Thank you.

Jimmy

James J. Oh

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From: James J. Oh

Sent: Thursday, May 21, 2026 10:55 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: RE: Administrative Records ## 3, 4, and 1

Isaac,

This email follows-up on the meet and confer session you, Daniella, and I had today.

First, I agreed with you that it makes sense to file the ARs on the record once confidentiality issues have been resolved.

Second, attached is a redlined protective order. I'd like to be able to designate up to ten individuals at each of the Plaintiff Organizations who can receive and view documents marked as Confidential – Subject to Protective Order. Each would sign the Confidentiality Agreement. There are likely not to be up to 10 at each of the Plaintiff Organizations, but some of the larger organizations have more than a few who may have a reason to review documents that the government produces. In paragraph 6, to avoid going piecemeal to the Court to resolve disputes, I added a sentence that Plaintiffs may seek Court intervention within five business days after meet and confer efforts have been exhausted on all disputed documents. I also added a provision in paragraph 6 that once the parties agree on information to be redacted, then that document does not have to be filed under seal after redactions are made. I dated the document Wednesday, May 27. Hopefully, we can reach an agreement on the P.O. in time to inform the Court in the status report due May 29.

Third, in our discussion of AR #3, the ACIP Reconstitution, you took the position that OGE 450 forms are not part of the administrative record for the ACIP Reconstitution claim because they, in your view, are not documents that the Secretary would have considered in making the decision to appoint any of the new ACIP members. You refused to answer whether OGE 450 forms exist for any of the individuals whom the Secretary has appointed to the ACIP. Plaintiffs' position is that, since the Secretary justified terminating the entire ACIP because of conflicts of interest, whether his appointments completed OGE 450 forms or whether his appointments were required to disclose potential conflicts of interest at anytime before they participated in their first ACIP meeting should be part of the AR on this claim. Quite frankly, I am surprised that the government is taking the position that they do not have to produce the OGE 450 forms for the ACIP members appointed last year (assuming that they exist) when the Secretary justified terminating the ACIP in his June 9 WSJ Commentary because of "persistent conflicts of interest." This is inconsistent with the Secretary's alleged commitment to "Radical Transparency." See <https://www.hhs.gov/radical-transparency/index.html> ("HHS is empowering the public with information on ... potential conflicts of interest on committees.").

Fourth, with regard to AR #4, the Childhood Schedule, we discussed the document that I sent to you on May 18 that listed ten categories of documents that Plaintiffs contend are missing from this AR. You disagreed that any documents related to the presentation at the December 5, 2025, ACIP meeting on the childhood schedule, to the Presidential Memo released that same evening, “the event involving children’s health” that was scheduled for December 19 that was cancelled, or the off-the-record press conference conducted by HHS and that included the Secretary on the morning of January 5, 2026, should have been part of this AR. You disagreed with Plaintiffs’ position that these facts demonstrate a series of events, or a process, that culminated in the January 5, 2026, Decision Memo about the childhood schedule. Accordingly, Defendants are refusing to produce any documents from categories 1-6 in the document titled “Categories of Documents Missing from AR #4 (Childhood Immunization Schedule).”

Fifth, with regard to whether the CDC Director communicated with any peer countries other than Denmark, Germany, and Japan about their childhood schedules, you agreed to check with the agency to see if there were any written communications with countries other than Denmark, Germany, or Japan.

Sixth, with regard to item # 10 in the “Categories of Documents Missing from AR #4,” you would not agree that the recent reversion of the CDC’s childhood schedule to July 2, 2025, which, *inter alia*, confirmed that the Covid-19 vaccine for children was classified as SCDM, removed any question that the May 2025 Secretarial Directive regarding the Covid vaccine for children was a final agency action.

Thank you for sending an invite for Wednesday, May 27, at 1 p.m. CT to continue our conversation.

Hope you have a nice Memorial Day Weekend.

Jimmy

James J. Oh

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(312) 499-1470
joh@ebglaw.com

From: Belfer, Isaac C. <Isaac.C.Belfer@usdoj.gov>
Sent: Wednesday, May 20, 2026 4:11 PM
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: Administrative Records ## 3, 4, and 1

*** EXTERNAL EMAIL ***

One more point: If the Court would like us to file the ARs on the docket in addition to producing them to Plaintiffs, we would want to file the complete ARs rather than partial ARs. Thus, we think it makes sense to file the ARs on the docket after the confidentiality issues have been resolved and we are able to file complete ARs.

Isaac C. Belfer

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

From: Belfer, Isaac C.

Sent: Wednesday, May 20, 2026 5:05 PM

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: Administrative Records ## 3, 4, and 1

Hi Jimmy,

I could talk tomorrow, 5/21, at 1:00 p.m. CT. I will circulate a Teams invite.

We received the Court's order, ECF No. 315, and we plan to ask to be excused from the 5/22 deadline to file the ARs on the docket. Defendants have produced the nonconfidential parts of the ARs to Plaintiffs but have not yet produced documents containing confidential information because the parties are discussing a potential protective order. If the Court would like us to file the ARs on the docket in addition to producing them to Plaintiffs, we'd be happy to do so once we have resolved the confidentiality issue. We can provide an update on that issue in the 5/29 JSR. Additionally, the large size of the ARs could pose logistical challenges to filing them on the docket.

Would Plaintiffs consent to our request to be excused from the 5/22 deadline to file the ARs on the docket?

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, May 20, 2026 4:27 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: Administrative Records ## 3, 4, and 1

Isaac,

I'm available before 2 pm CT tomorrow. When are you available tomorrow?

EPSTEIN
BECKER
GREEN

James J. Oh | Bio

t 312.499.1470 | f 312.827.9525

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On May 18, 2026, at 10:47 AM, James J. Oh <JOH@ebglaw.com> wrote:

May 18, 2026

Isaac,

We appreciate that the government has met the deadlines for producing the six Administrative Records set forth in the Court's March 24, 2026, Order (ECF 296). Plaintiffs, however, do not believe that the ARs produced are complete and, as previously indicated, would like to meet and confer ASAP about the ARs produced. You indicated that you would be ready to talk mid-week this week. I am attending an out-of-town graduation this week, Monday-Wednesday, so can we please schedule a time on Thursday, May 21, to discuss? When we talk, Plaintiffs would like to prioritize discussion and completion of ARs #3, #4, and #1, in that order. For now, we can table discussion of the other ARs until we have reached the point of a resolution between the parties on these ARs or when we have exhausted efforts to meet and confer.

The issues for discussion on Thursday are as follows:

1. Documents Marked as Confidential in the Administrative Record Index for AR # 3 (ACIP Reconstitution) and Protective Order

In the Administrative Record Index for AR #3 served on Friday, April 17, footnote 1 states: "Index entries marked with an asterisk (*) indicate that some or all of the documents have been withheld as confidential." In an April 20, 2026, email to me, you indicated that "[w]hen the footnote in AR #3 index said certain documents were 'withheld as confidential,' that meant the documents contain information that would be designated as 'Confidential Information' under the proposed protective order. It did not refer to privileged information."

In an email a few days later, you indicated that the documents marked with an asterisk on AR #3 index were so marked because "The Privacy Act protects 'any item, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited to, his education ... and ... employment history.' 5. U.S.C. § 552a(a)(4)." (See your email of 4/23/2026 at 7:01 PM). By the title of the documents listed in the AR Index for AR #3, it is unclear how some of the documents could contain information on an individual's employment history. Nor can we readily identify any other category of

“Confidential Information” set forth in the proposed P.O. into which any of the documents marked with an asterisk in AR Index #3 might fall. Accordingly, Plaintiffs need to understand how any document marked with an asterisk in AR Index #3 contains information covered by the Privacy Act or falls into a “Confidential Information” category in the proposed P.O.

We also question whether a P.O. is necessary or appropriate in the first place in this case. The Secretary has been operating under the banner of “Radical Transparency” since his nomination and confirmation, and, therefore, we would think that Defendants would welcome all documents produced in the ARs in this case becoming part of the public record. We also are having difficulty understanding how documents such as the “Decision Memo re: Removal of Current and Prospective ACIP Members,” or the “June 24, 2025 Decision Memo re: Appointment of New Members to the ACIP, CDC,” or a “Financial Operating Plan” could contain either employment history or Confidential information. Furthermore, the Curricula Vitae of nominees to the ACIP have been withheld from production as Confidential, but they are at the very heart of this claim. We note that subsection (b)(11) of 5 U.S.C. § 552a “permits a court of competent jurisdiction to order disclosure of Privacy Act protected information that would otherwise be prohibited from disclosure without prior written consent of the individual to whom the record pertains.” United States Department of Justice Overview of the Privacy Act of 1974, p. 119 (2020 edition). When we meet, let’s discuss whether the parties can submit an Agreed Order to the Court to produce documents marked with an asterisk in the AR #3 index.

2. **Completeness of AR #3 (ACIP Reconstitution)**

Attached hereto is my email of Saturday, April 18, identifying categories of documents that Plaintiffs believe should have been produced in AR #3.

3. **Completeness of AR #4 (Childhood Schedule)**

Attached hereto is a list of categories of documents that Plaintiffs believe should have been produced in AR #4.

4. **Completeness of AR #1 (May 2025 Secretarial Directive)**

Attached hereto is my letter of March 31, 2026, identifying categories of documents that Plaintiffs believe should have been produced in AR #1. In an April 10, 2026, email, you stated that “having considered the issues raised in your letter, we are conducting additional searches to confirm that the administrative record for the May 2025 Secretarial Directive is complete. We will update you after we have finished reviewing the search results.” When we meet and confer, please provide an update.

For your convenience, I have attached a .pdf of this email and all attachments.

Please advise on a time we can schedule a call for this Thursday, May 21.

Thank you.

Jimmy

James J. Oh

Epstein Becker Green

227 W. Monroe

Suite 4500

Chicago, IL 60606

(312) 499-1470

joh@ebglaw.com

<mime-attachment>

<2026-03-31 Letter to DOJ re May Directive Administrative Record.pdf>

<Categories of Documents Missing From AR_4 5.18.26.pdf>

<2026-5-18 Correspondence to I. Belfer.pdf>

CONFIDENTIALITY NOTE: This communication is intended only for the person or entity to which it is addressed and may contain information that is privileged, confidential or otherwise protected from disclosure. Dissemination, distribution or copying of this communication or the information herein by anyone other than the intended recipient, or an employee or agent responsible for delivering the message to the intended recipient, is prohibited. If you have received this communication in error, please call the Help Desk of Epstein Becker & Green, P.C. at (212) 351-4701 and destroy the original message and all copies. Pursuant to the CAN-SPAM Act this communication may be considered an advertisement or solicitation. If you would prefer not to receive future marketing and promotional mailings, please submit your request via email to ebgus@ebglaw.com or via postal mail to Epstein Becker & Green, P.C. Attn: Marketing Department, 275 Third Avenue, New York, NY 10022. Be sure to include your email address if submitting your request via postal mail.

EXHIBIT C

James J. Oh

From: Belfer, Isaac C. <Isaac.C.Belfer@usdoj.gov>
Sent: Tuesday, June 23, 2026 1:28 PM
To: James J. Oh; Harlow, James W.
Cc: Richard H. Hughes IV; Kathleen Barrett; Daniella R. Lee; Elizabeth McEvoy; Robert Wanerman
Subject: RE: Meet and Confer on Supplemental Administrative Records

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

Jimmy,

Thanks for your emails. We will respond to the issues you raised regarding Defendants' confidentiality designations pursuant to paragraph 6 of the Stipulated Protective Order, ECF No. 320. The JSR due tomorrow can report that Plaintiffs raised challenges to Defendants' confidentiality designations on June 19, 2026; Defendants will respond within five business days pursuant to paragraph 6 of the Stipulated Protective Order; the parties will meet and confer regarding any outstanding issues; and the parties will then submit a further joint status report.

In response to your question, AR ## 3, 4, and 5 are complete.

Given that the First Circuit has expedited the appeal, and given the issues on appeal, Defendants intend to file a renewed motion to stay proceedings in this case, at least as to Count II, pending the resolution of the appeal. Would Plaintiffs agree to that request? If the motion is opposed, we would propose the following briefing schedule: Motion due July 2 and opposition due July 10.

If it would be helpful to discuss, my schedule is open for the next few hours.

Thanks,
Isaac

Isaac C. Belfer
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Civil Division | Federal Programs Branch
(202) 305-7134 | Isaac.C.Belfer@usdoj.gov

From: James J. Oh <JOh@ebglaw.com>
Sent: Tuesday, June 23, 2026 11:27 AM
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: Meet and Confer on Supplemental Administrative Records

Isaac,

The JSR is due tomorrow. I am available between now and 2:30 p.m. CT and after 4:30 CT to discuss the email below.

Jimmy

James J. Oh

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From: James J. Oh
Sent: Friday, June 19, 2026 12:16 AM
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: Meet and Confer on Supplemental Administrative Records

Isaac,

We would like to meet and confer with you on Monday (6/22) or Tuesday (6/23) about the Confidential designations made in the supplemental productions for Administrative Records ##3, 4, and 5, since we have a status report due on June 24. We believe that most, if not all, of the documents that the government designated as Confidential are not Confidential under the Protective Order, especially if personal identifying information (PII) such as email addresses, addresses, and phone numbers are redacted.

We also have concerns about the Certifications of Supplemental Administrative Record produced with each of these ARs, which I address first:

Certifications of Supplemental Administrative Record

Defendants served by email on June 8, 2026, a “Certification of Supplemental Administrative Record” (“Supplemental Certification”) for each of the supplemental AR productions for ARs ## 3-5. The second sentence of each of these Certifications were the same except for the identification of the final agency action to which the Certification applied: “I hereby certify that the documents listed on the attached Revised Administrative Record Index, which include the partial administrative record certified on April 17, 2026, are to the best of my knowledge a true and correct copy of the non-privileged information that was directly or indirectly considered in connection with [final agency action].” Conspicuously missing from each of the Supplemental Certifications is the word “**complete.**” In other Administrative Procedure Act cases filed in the District of Massachusetts last year, when the government filed a Certification of Administrative Record, the signer of the Certification represented that the AR produced was “complete.” See, e.g., *AAU, et al., v. DOD, et al.*, Case No. 1:25-cv-11740-BEM, Dkt. No. 72-1, Designation and Certification of Administrative Record, ¶ 3 (“To the best of my knowledge, information, and belief, the document that have been labeled with Bates range ... constitute the **complete** administrative record for the analysis and rationale that supported the 15 percent indirect cost rates, as reflected in the Policy.”) (emphasis added); *APHA, et al., v. NIH, et al.*, Case No. 1:25-cv-10787-WGY, Dkt No. 85-1, Designation and Certification of Administrative Record, ¶ 2 (“To the best of my knowledge, information, and belief, the records described below and shared with plaintiffs on June 2, 2025 constitute the true, accurate, and **complete** administrative records for the grant terminations challenged in this case ... the true, accurate, and **complete** administrative records for plaintiffs’ ‘Challenged Directives.’”) (emphasis added).

Please confirm that ARs ## 3, 4, and 5 are **complete** and provide Amended Certifications of Supplemental Administrative Record for these ARs so stating.

Supplemental AR # 3

Plaintiffs would appreciate an explanation as to why these documents have been designated Confidential:

1. Decision Memoranda and other HHS memoranda.
 - a. 6.9.25 Memo recommending termination of ACIP members (014712-15)
 - b. 4.9.25 Memo requesting designation of FDA representative to the ACIP (14739-40)
 - c. 4.9.25 Memo requesting designation of NIH representative to the ACIP (14741-42)
 - d. 6.25.25 Memos requesting appointments of ACIP members (14743-58)
 - e. 6.13.25 Memo requesting approval of 2025 ACIP nomination slate (14759-63)

- f. 9.8.25 Memo requesting approval of 2025 ACIP nomination slate (14925-28)
 - g. 11.25.25 Memo requesting approval of 2025 ACIP nomination slate (15078-80)
 - h. 12.2.25 Memo requesting approval of 2025 ACIP nomination slate (15162-64)
 - i. 12.18.25 Memo requesting approval of new members for the ACIP (15222-25)
2. Documents re terminations of the 17 ACIP members (14716-38)
 3. Department of Health and Human Services Request for Approval of Nominees for Public Advisory Committees
 - a. 15073, 15109, 15218-21, 15267, 15268, 15269, 15270,
 4. Resumes, CVs, bios, emails, spreadsheets re candidates nominated for the ACIP
 - a. The public should be able to see who was nominated and not appointed to be able to compare to those who were appointed.
 - b. Plaintiffs would agree to redact PII such as addresses, phone numbers, and email addresses.
 - c. I noted in my email to you of May 18, 2026, that “subsection (b)(11) of 5 U.S.C. § 552a ‘permits a court of competent jurisdiction to order disclosure of Privacy Act protected information that would otherwise be prohibited from disclosure without prior written consent of the individual to whom the record pertains.’ United States Department of Justice Overview of the Privacy Act of 1974, p. 119 (2020 edition).”
 5. Emails from outside parties who recommended candidates for the ACIP
 - a. Aaron Siri law firm emails and attachments.
 - i. Aaron Siri letter to the Secretary, 6.5.25, recommending additions of non-voting liaison representatives and the attachments thereto (015771-72)
 - ii. Emails from Becca Claassen attaching a spreadsheet of ACIP candidates and a “preliminary analysis on ACIP Charter and FACA implications that Aaron Siri’s team provided us.” (15777).
 1. Spreadsheet of candidates from Siri’s law firm (15779-83).
 2. ACIP Charter Analysis (15785-96).
 - iii. Email from Elizabeth Brehm attaching “a number of suggested individuals.” (15797-99) and attachment
 - iv. There are only three emails to/from Siri’s law firm in the supplemental production. Plaintiffs find it hard to believe that only three emails exist between Siri’s law firm and Defendants regarding the ACIP.

b. Lyn Redwood emails and attachments.

- i. 4.6.25 email (15685-87)
- ii. 6.4.25 email to Reyn Archer attaching a document “prepared at the request of Mr. Kennedy earlier this year regarding ACIP that outlines the concerns I identified at the time ...” (015963-71). Plaintiffs would appreciate an explanation as to why these documents have been designated as Confidential.
- iii. 4.3.25 and 4.4.25 emails to William Boothby with recommendations for the ACIP and other positions.
- iv. 1.2.25 email from Vicky Pebsworth to Lyn Redwood recommending Brian Morse for the ACIP. (15991)
- v. 1.2.25 email from Vicky Pebsworth to Lyn Redwood recommending Jimmy Pagano for the ACIP. (15994)
- vi. 4.6.25 email from Lyn Redwood to William Boothby with ACIP recommendation of Sylvia Fogel. (15997)

c. Debra Sheldon, Michael Ross, Bill Moses, James Lyons-Weiler emails with ACIP recommendations (15684, 15999, 16007, 16009, 16028, 16030)

6. Redacted documents: why are there redactions on these documents? We request that Defendants submit to the Court for *in camera* review.
- a. 6.26.25 email from Shirley, Malia to Boothby, William is entirely redacted. (15778-79)
 - b. 6.10.25 email from Spear, Stefanie to Boothby, Wiliam (15588)

Supplemental AR #4

Plaintiffs request an explanation as to why any of the documents in Supplemental AR #4 are designated Confidential.

Supplemental AR #5

Plaintiffs request an explanation as to why the one document produced in Supplemental AR #5 was designated Confidential.

On Monday, June 22, I am available before 2 p.m. CT. On Tuesday, June 23, I am wide open.

Thank you.

Jimmy

James J. Oh

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