

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

State of California, et al.,

Plaintiffs,

v.

U.S. Department of Health and Human
Services, et al.,

Defendants.

Case No.: 25-12118

**PLAINTIFFS’ OPPOSITION TO DEFENDANTS’ MOTION FOR A STAY IN LIGHT OF
LAPSE IN APPROPRIATIONS**

Plaintiff States respectfully oppose Defendants’ motion for an undefined and indefinite stay in light of the lapse in appropriations. Defendants’ requested relief would indefinitely delay the Court from hearing Plaintiff States’ recently filed Motion for Preliminary Injunction, which describes in depth the harms the challenged provision is currently imposing on the Plaintiff States and the Public. Further, the relief requested is unnecessary given the Department of Justice’s (“DOJ”) own contingency plan, and it would be particularly inequitable given that the Department of Medicaid is continuing to implement the challenged provision during the lapse in appropriations. This Court’s discretion to grant or deny a stay of proceedings “calls for the

exercise of judgment, which must weigh competing interests.” *Landis v. N. Am. Co.*, 299 U.S. 248, 254-55 (1936). Here, the balance of interests strongly counsels against granting a stay due to the significant harms a stay would impose on Plaintiff States and the public.

A stay at this stage of proceedings risks serious and irreparable harm to Plaintiff States. Plaintiff States challenge a provision (“Defund Provision”) of the recently enacted federal budget reconciliation bill that fully went into effect on October 1, 2025. The Defund Provision was designed to bar Planned Parenthood and Planned Parenthood affiliates from receiving federal Medicaid reimbursements. As detailed in Plaintiff States’ pending motion for a preliminary injunction, the Defund Provision is currently imposing unrecoverable administrative costs on Plaintiff States, disrupting established healthcare ecosystems, and causing substantial short- and long-term harms to the public. *See* Memo. in Supp. of Pls’ Mot. for a Prelim. Inj., Doc. No. 63, at 18. It has caused multiple Planned Parenthood Health Centers to close, health clinics across the country to turn away patients enrolled in Medicaid, and services to low-income patients to be drastically curtailed. *See id.* at 20-21. The risks of irreparable harms are especially high because it is unclear how long the lapse in appropriations will continue, meaning relief may not be available for months at which point numerous health centers will likely be forced to close due to a lack of funds, *see id.*

In their motion, Defendants do not claim that the lapse in appropriations will delay or otherwise interfere with their implementation and enforcement of the Defund Provision. Instead, they claim that “Department of Justice attorneys and employees of the federal Defendants are prohibited from working” during the lapse, “except in very limited circumstances.” Mot. for Stay, Doc. 67 at ¶2. Indeed, the DOJ’s own status report on the “the statutory implementation” of the Defund Provision, filed in Planned Parenthood’s sister case in the First Circuit, reveals

that despite the appropriations lapse, the Department of Health and Human Services is currently in the process of implementing the Defund Provision. *See* October 3, 2025 Status Report, *Planned Parenthood Federation of Am., Inc. v. Kennedy*, Case No. 25-1755, at 1-2 (1st Cir. Oct. 3, 2025). And, as the DOJ acknowledged in its status report, despite the lapse in annual appropriations, the Reconciliation Act of 2025 already appropriated funding to “the Administrator of the Centers for Medicare & Medicaid Services,” “[f]or the purposes of carrying out” the Defund Provision for the fiscal year 2026. *See id.*; *see also* Pub. L. No. 119-21, 139 Stat. 72, 300. As such, Defendants ask this Court to allow them to continue violating the Constitution during the lapse, causing direct and irreparable harm to Plaintiff States, while indefinitely preventing Plaintiff States from seeking an injunction to halt that unconstitutional conduct. The lapse in appropriations cannot—and should not—serve as a shield for Defendants’ unlawful conduct.

Further, the DOJ’s own guidance authorizes the DOJ to continue work on this matter despite the lapse in appropriations. On September 29, 2025, the DOJ issued a contingency plan setting forth its planned operations during a lapse in appropriations. *See* U.S. Dep’t of Justice, FY 2026 Contingency Plan (Sept. 29, 2025) (“Contingency Plan”), <https://www.justice.gov/jmd/media/1377216/dl>. For civil litigation, the DOJ instructs its attorneys to approach the courts and request that active cases be postponed until funding is resumed. *Id.* But if a court denies a stay, “the Government will comply with the court’s order, which would constitute express legal authorization for the activity to continue” within the meaning of 31 U.S.C. § 1342. *Id.*; *see also Order Denying Mot. to Stay, State of Rhode Island v. Trump, et al.*, No. 25-00128 at Doc. No. 84 (D. R.I. filed Oct. 3, 2025) (noting that “[t]he Court is required to continue its constitutional functions”); *Kornitzky Grp., LLC v. Elwell*, 912 F.3d

637, 638 (D.C. Cir. 2019) (J. Srinivasan concurring) (discussing the DOJ’s largely similar 2019 Contingency Plan). In other words, “[i]f a court denies a litigator’s request to postpone a case and orders it to continue, the litigation will become an excepted activity that can continue during the lapse.” *See* Contingency Plan at 7. Separately, both 31 U.S.C. § 1342 and the DOJ’s Contingency Plan establish that DOJ activities associated with “emergencies involving the safety of human life” may continue as “excepted” activities during a lapse of appropriations. *See* Contingency Plan at 1 (quoting 31 U.S.C. § 1342). Because federal law authorizes the payment of wages for “excepted activities” during a lapse in appropriations, any harm to Defendants’ counsel would be mitigated should this Court deny a stay. *See* 31 U.S.C. § 1341(c)(2); *see also* Contingency Plan at 3 (DOJ is required to maintain civil litigation staffing at the level necessary to continue activities in proceedings that are not stayed.). A stay risks irreparable harm to the health and safety of Plaintiff States’ residents. Considering the lack of harm to Defendants or their counsel, the balance of interests weighs heavily in favor of denying a stay.

Federal courts have often declined requests by the DOJ to stay proceedings due to a lapse of appropriations. For instance, “when federal appropriations lapsed in 2013, resulting in a ‘shutdown’ from October 1 to October 17, 2013, [the D.C. Circuit] received Government motions to stay oral argument in at least sixteen cases.” *Kornitzky Grp.*, 912 F.3d at 638. In “every one of those motions,” the government counsel cited the same statute that Defendants cite here, 31 U.S.C. § 1342, claiming that it prohibited them from working. *Id.* But the D.C. Circuit denied “every one of these motions,” even when a stay was unopposed, “and every time, the Government then participated in oral argument.” *Id.* This practice of denying motions to stay due to lapses of appropriations continued during the most recent government shutdown from December 22, 2018 to January 25, 2019. *Id.*

Multiple federal courts have already denied requests by the DOJ to stay proceedings during this current lapse of appropriations. For instance, in Planned Parenthood’s sister case challenging the Defund Provision, the First Circuit denied the DOJ’s motion to stay the status report deadline. *See Order, Planned Parenthood Federation of America v. Kennedy et al.*, No. 25-1755 (1st Cir. 2025 filed October 2, 2025). And the Ninth Circuit has ordered all DOJ attorneys to appear at every oral argument as scheduled, despite the lapse in appropriations. *See* Oct. 1, 2025 Supplemental Administrative Order, J. Murguia, <https://cdn.ca9.uscourts.gov/datastore/announcements/Final-Order.pdf>.

District courts have also repeatedly denied the DOJ’s motions for stays due to the current lapse of appropriations. *See Order Denying Mot. to Stay, Guerrero Orellana v. Moniz, et al.*, No. 25-12664 at Doc. No. 51 (D. Mass filed Oct. 2, 2025); Order Granting in Part and Denying in Part Mot. to Stay, *California et al v. United States Department of Agriculture et al*, No. 25-06310 at Doc. 97 (N.D. Cal. filed Oct. 3, 2025) (refusing to stay briefing on plaintiffs’ motion for preliminary injunction); Order Denying Mot. to Stay, *State of Rhode Island v. Trump, et al.*, No. 25-00128 at Doc. No. 84 (D. R.I. filed Oct. 3, 2025) (denying motion to stay and citing DOJ’s Contingency Plan); Order Denying Mot. to Stay, *New York, et al. v. Kennedy et. al.*, No. 25-00196 at Doc. No. 2 (D. R.I. filed Oct. 3, 2025); Order Denying Mot. to Stay, *United States v. State of Rhode Island, et. al.*, No. 14-00175 at Doc. No. 212 (D. R.I. filed Oct. 2, 2025); Order Denying Mot. to Stay, *J.P. Morgan Chase Bank v. Carver et al.*, No. 24-00478 at Doc. No. 17 (D. R.I. filed Oct. 3, 2025).

In short, this Court should exercise its discretion to deny Defendants’ motion to stay proceedings, due to the harms such a stay would cause. *See Landis*, 299 U.S. at 254–55.

Date: October 6, 2025

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I, Erica Connolly, certify that this document filed through the CM/ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing.

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