

No. 25-1829

**UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT**

**THE FAMILY PLANNING ASSOCIATION OF MAINE
D/B/A MAINE FAMILY PLANNING,**
Plaintiff/Appellant,

v.

**UNITED STATES DEPARTMENT OF HEALTH AND HUMAN
SERVICES; ROBERT F. KENNEDY, JR., in his official capacity as
Secretary of Health and Human Services; CENTERS FOR MEDICARE &
MEDICAID SERVICES; MEHMET OZ, in his official capacity as
Administrator of the Centers for Medicare & Medicaid Services,**

Defendants/Appellees.

**On Appeal from the United States District Court
for the District of Maine**

**OPPOSITION TO APPELLEES' MOTION FOR
AN EXTENSION OF TIME TO FILE RESPONSE BRIEF
IN LIGHT OF THE LAPSE IN APPROPRIATIONS**

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Plaintiff Maine Family Planning (“MFP”) opposes Appellees’ Motion for An Extension of Time to File Response Brief in Light of the Lapse in Appropriations (“Defendants’ Motion”), Dkt. No. 00118356822, filed November 7, 2025, in the above-captioned case.

1. On September 12, 2025, this Court ordered MFP to submit its opening brief by October 22, 2025. Appellant’s Briefing Notice at 1, Dkt. No. 00118356822. Defendants’ brief is due 30 days after service of MFP’s opening brief. *Id.* (citing Fed. R. App. P. 31 and 1st Cir. R. 31.0).

2. On September 30, 2025, “the appropriations act that had been funding the Department of Justice expired and appropriations to the Department [of Justice] lapsed.” Defendants’ Motion at 1.

3. MFP timely filed its brief on October 22, 2025. Defendants’ brief is thus due November 21, 2025.

4. More than two weeks after being served with MFP’s brief, Defendants filed a motion on November 7 requesting an extension of time “until [30 days after] Congress has restored appropriations to the Department [of Justice],” asserting that its attorneys are prohibited from working except in “very limited circumstances.” *Id.* at 1–2.

5. Defendants’ Motion should be denied. First, Defendants offer no justification for why they waited more than two weeks after MFP filed its brief to

seek an extension, nor do they adequately explain why they need an additional 30 days after funding is restored to submit a response. And, as stated in Defendants’ Motion, “[t]he Department [of Justice] does not know when funding will be restored by Congress.” *Id.* at 1. Granting Defendants’ Motion thus works in practice as an indefinite stay of the briefing in this case.

6. Second, though Defendants’ counsel asserts that they cannot work during the funding lapse, *id.*, the Department of Justice’s own guidance authorizes attorneys to continue working pursuant to a court order during the 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>. The Department’s Contingency Plan for operations during the lapse in appropriations instructs attorneys in civil cases to “approach the courts and request that active cases . . . be postponed until funding is available.” *Id.* at 3. If a court denies the request, “the Government will comply with the court’s order, which would constitute express legal authorization for the activity to continue.” *Id.* 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.” *Id.* at 7. Indeed, several courts—including this one—have previously rejected the Department of Justice’s requests to delay proceedings based on the lapse in appropriations, including in two other cases challenging Section 71113 of

the “One Big Beautiful Bill Act,” Pub. L. No. 119-21, 139 Stat. 72, 300-01 (July 4, 2025) (“the Defunding Provision”). *See, e.g.*, Order of Court, *Planned Parenthood Fed’n of Am. v. Kennedy et al.*, No. 25-1755 (1st Cir. Oct. 2, 2025) (denying motion to stay status report deadline in appeal of preliminary injunction against enforcement of the Defunding Provision); Mem. and Order at 3, *California v. U.S. Dep’t of Health & Hum. Servs. et al.*, No. 1:25-cv-12118 (D. Mass. Oct. 8, 2025) (ECF No. 72) (finding, in another challenge to the Defunding Provision, that “Plaintiffs’ interest in proceeding in this case outweighs Defendants’ interest in a stay where counsel for Defendants may continue litigating during the lapse in funding pursuant to a court order”); Order on Mot. to Stay, *President & Fellows of Harvard Coll. v. U.S. Dep’t of Health & Hum. Servs. et al.*, No. 1:25-cv-11048 (D. Mass. Oct. 9, 2025) (ECF No. 245) (denying motion to stay filing deadline).

7. Here, too, MFP’s interest in proceeding far outweighs any interest that Defendants have in a stay. Delaying a determination as to whether MFP has made the requisite showing for preliminary injunctive relief would severely prejudice MFP. The Defunding Provision has already forced MFP to close its primary care practice, and MFP does not know for how much longer it can provide family planning services without reducing services. Decl. of Evelyn Kieltyka in Supp. Pl.’s Mot. for a TRO and/or Prelim. Inj. ¶ 22, JA48; Suppl. Decl. of Evelyn Kieltyka in Supp. Pl.’s Mot. for a TRO and/or Prelim. Inj. ¶ 8–9, JA64. Indeed, if

the Court were to grant Defendants’ Motion, Defendants would still be able to move forward with further implementing a law that is likely unconstitutional as applied to MFP even while MFP is delayed from having its appeal decided by this Court. *See* Joint Status Report, *Planned Parenthood Fed’n of Am., Inc. v. Kennedy et al.*, Case No. 25-1755, at 1–2 (1st Cir. Oct. 3, 2025) (noting that “[n]otwithstanding the recent lapse in appropriations, the Reconciliation Act of 2025 appropriates funds . . . for fiscal year 2026 ‘[f]or the purposes of carrying out’ Section 71113”) (quoting Pub. L. No. 119-21, 139 Stat. 72, 300).

8. Given the harm that a delay would impose on MFP, the Court should deny the Motion.

Dated: November 12, 2025

Respectfully submitted,

/s/ Meetra Mehdizadeh

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CERTIFICATE OF COMPLIANCE

This response to a motion complies with the length limits of Fed. R. App. P. 27(d)(2) because it contains 845 words, exclusive of the text exempted by Fed. R. App. P. 32(f).

This response to a motion complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the typestyle requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point Times New Roman Font.

/s/ Meetra Mehdizadeh
Meetra Mehdizadeh

CERTIFICATE OF SERVICE

I hereby certify that on 12th day of November, 2025, I filed the foregoing with the Clerk of Court for the United States Court of Appeals for the First Circuit via the CM/ECF system, which will serve copies on registered CM/ECF users.

/s/ Meetra Mehdizadeh
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