



THE COMMONWEALTH OF MASSACHUSETTS
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January 5, 2026

Anastasia Dubrovsky, Clerk of Court
U.S. Court of Appeals for the First Circuit
John Joseph Moakley U.S. Courthouse
One Courthouse Way, Suite 2500
Boston, MA 02210

Re: Response to Appellants' Notice of Supplemental Authority in Nos. 25-1611, *American Public Health Ass'n v. National Institutes of Health*, and 25-1612, *Commonwealth of Massachusetts v. Robert F. Kennedy, Jr.*

Ms. Dubrovsky:

I write on behalf of the plaintiff states in No. 25-1612 in response to defendants' January 2 letter.

The parties' district-court stipulation does not bear on any of the issues now before this Court; indeed, the stipulation expressly carves out any claims decided in the district court's partial final judgment and subsequent opinion. State Stipulation §II-10. Defendants' letter does not argue otherwise. That said, defendants continue to mischaracterize the scope of Phase 1, which was not limited to "issues concerning the termination of existing grants" (Defs.' Letter 1), but also addressed the legality of the Challenged Directives (States' Br. 18 n.12).

NIH's December 12 "Staff Guidance" likewise does not affect the outcome of the current appeal—and, again, defendants make no argument to the contrary. To the extent defendants offer the guidance to support their contention that the case is moot, that suggestion fails. By its own terms, the guidance "does not apply to any grant that is . . . the subject of litigation or court orders"—*i.e.*, the grants at issue in this case. Staff Guidance 1. And even if the guidance did apply, defendants have not shown (1) that it is "absolutely clear" that they have permanently abandoned their attempts to enforce the Challenged Directives (States' Br. 45-46), and (2) that they have "completely and irrevocably eradicated" plaintiffs' injuries (States' Br. 44-45).

To the contrary, the NIH director's recent public statements* make clear that defendants view any supposedly "new" guidance as just a continuation of—and of a piece with—the Challenged Directives.

For these reasons, and those set forth in our brief, the Court should affirm the judgment below.

Sincerely,

/s/ Gerard J. Cedrone

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cc: all counsel of record (via ECF)

* Oza, *NIH Director Says DEI-Related Grants That Were Restored Under a Court Order Won't Be Renewed*, STAT News (Dec. 31, 2025) (attached as Ex. A) ("I put [out] a director statement that says, 'Look, uh, we are not interested in funding DEI anymore.' So when [plaintiffs' grants] come up for renewal over the course of the year, we won't renew them."); *NIH Director Jay Bhattacharya End of Year Wrap Up* at 34:43-36:39, YouTube, <https://youtu.be/D9uJf4AqWrw> (Dec. 31, 2025).

POLITICS

NIH director says DEI-related grants that were restored under a court order won't be renewed

'We won't renew them' in 2026, Jay Bhattacharya tells a podcaster



NIH Director Jay Bhattacharya Ben Curtis/AP

By Anil Oza Dec. 31, 2025

General Assignment Reporter

Throughout the year, researchers have been heartened by legal decisions pushing back on directives from the National Institutes of Health to halt and deprioritize work it deems

related to diversity, equity, and inclusion.

In June, two suits filed against the Trump administration in federal court in Boston led to more than 2,000 terminated grants having their funding restored. And just this week, an agreement with the plaintiffs to reconsider DEI-related research applications led to the funding of more than a hundred grants whose reviews had been paused. But in comments made on a podcast posted Wednesday, NIH Director Jay Bhattacharya indicated the reprieve may be short-lived for the grants restored in June, and they could be terminated over the next year.

“As best I can understand the legal aspects of things, that for those grants that were paused — that they forced us to restore — we can’t cut them,” Bhattacharya said in an interview with journalist Paul Thacker. “But when it comes to renewal, those grants no longer meet NIH priorities. I put a director statement that says, ‘Look, uh, we are not interested in funding DEI anymore.’ So when they come up for renewal over the course of the year, we won’t renew them.”

It is unclear whether his comments include the stalled proposals that are currently being evaluated under the new agreement between the NIH and the plaintiffs; NIH hasn’t been forced to restore them. Asked for comment on Bhattacharya’s remarks, a spokesperson for the Department of Health and Human Services said, “NIH does not comment on grant determinations.”

In the early months of the Trump administration, it halted an unprecedented number of projects in a bid to reduce the NIH’s portfolio of research it decided was related to “DEI.” A slew of states attorneys general and professional organizations sued, calling those directives arbitrary and capricious. A federal district judge agreed, and went further in saying the directives were tantamount to discrimination, which led to the restoration of over 2,000 projects.

An appeal to the Supreme Court complicated the matter. The court issued an emergency ruling that the directives were likely illegal, but that the judge likely didn’t have the authority to reinstate the grants and that individual researchers would have to take their complaints to federal claims court. Regardless, the agency did not terminate the awards a second time.

This week, the NIH and plaintiffs reached an agreement over grant proposals that were stalled because of confusion over the directives, to “evaluate each application individually and in good faith.”

But, the process to approve NIH funding itself has become more influenced by political priorities in recent months. In August, Bhattacharya published a list of priorities for research going forward. In December, NIH program officers, who manage grants, were given instructions on how to make sure their portfolios aligned with that set of priorities.

Some projects that were not directly affected by litigation have also begun to change. Researchers and NIH staffers have renegotiated certain projects, in many cases to remove words that they believe are being flagged by political appointees. The December guidance to NIH staffers asserts that renegotiating projects should not just be “changing words.”

In the podcast, Bhattacharya said that DEI-related research projects fall into three buckets: grants that were renegotiated, grants that were terminated and unaffected by court decisions, and those that “the courts forced us to restore.”

That final bucket, he continued, “don’t meet our priorities and aren’t going to get renewed, in a way, because they don’t, we you know, we changed direction.”

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