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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
EUGENE DIVISION**

STATE OF OREGON, et al.,

Plaintiffs,

v.

ROBERT F. KENNEDY, JR., in his official
capacity as the Secretary of the Department
of Health and Human Services, et al.,

Defendants.

No. 6:25-cv-02409-MTK

PLAINTIFFS' SUPPLEMENTAL
BRIEFING ON INJUNCTIVE RELIEF

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I. INTRODUCTION

In addition to the vacatur and declaratory relief this Court has already determined appropriate, this Court should enter permanent injunctive relief. At the hearing on the parties' cross-dispositive motions, the Court indicated that it will grant Plaintiff States' motion for summary judgment, deny Defendants' motion to dismiss, hold unlawful and set aside the Kennedy Declaration, and declare that "defendants lack authority to establish superseding standards of care to exclude providers from federal healthcare programs." Decl. of William McGinty (McGinty Decl.), Ex. A at 144:11-18. The Court requested supplemental briefing on the Plaintiff States' request for permanent injunctive relief. *Id.* at 144:19-145:8. Accordingly, this brief focuses on why a permanent injunction is necessary to give Plaintiff States complete relief.

Plaintiff States easily meet the test for a permanent injunction because they actually succeeded on the merits of their claims and because Defendants, if not enjoined, will irreparably harm Plaintiff States' Medicaid provider networks and their fundamental authority to regulate the practice of medicine. By contrast, Defendants will suffer no injuries from being enjoined from taking actions they have no legal authority to take, making balancing the equities a straightforward exercise.

In addition, injunctive relief would not be duplicative of vacatur and declaratory judgment. Unlike other forms of relief, an injunction is enforceable through motions to enforce, motions for contempt, or other post-judgment motions, which this Court would have jurisdiction to decide. Thus, the narrow injunctive relief that Plaintiff States have requested will ensure that Defendants do not simply re-adopt the reasoning of the Kennedy Declaration—or its illegal attempt to supersede the relevant standards of care in Plaintiff States—under a different name or via a different instrument. Last, the injunctive relief Plaintiff States request, including as to any substantially similar policy, is a usual and routine form of remedy to ensure the federal government does not reimplement a challenged policy through other means. Indeed, this Court has entered such relief. See [New York v. Dep't of Energy, No. 6:25-cv-01458-MTK, 2025 WL 3140578, at *18 \(D.](#)

[Or. Nov. 10, 2025](#)) (granting a permanent injunction to prevent the federal government from implementing a “substantially similar policy”). And the relief that Plaintiff States request is fully compliant with Rule 65, including its requirements for specificity.

Accordingly, to provide Plaintiffs with complete relief, this Court should enter partial final judgment in favor of Plaintiffs on Counts I through IV, vacate the Kennedy Declaration, enter a declaratory judgment that Defendants have no authority to establish standards of care that supersede the relevant standards of care for the provision of gender-affirming care recognized in the Plaintiff States or to exclude providers from federal health care programs solely based on their provision of gender-affirming care in the Plaintiff States, and permanently enjoin Defendants from enforcing or implementing the Kennedy Declaration or a substantially similar policy.

II. ARGUMENT

A. Permanent Injunctive Relief Is Warranted

As Plaintiff States previously established, because the Secretary of HHS does not have any legal authority to supersede the relevant standards of care prevailing in the Plaintiff States, and because imposing such a superseding standard of care impairs the Plaintiff States’ Medicaid provider networks as well as the Plaintiff States’ sovereign interests in regulating the practice of medicine, entering a permanent injunction is entirely appropriate. *See* ECF 77 at 39-43.

To warrant a permanent injunction, “[a] plaintiff must demonstrate: (1) that it has suffered an irreparable injury; (2) that remedies available at law, such as monetary damages, are inadequate to compensate for that injury; (3) that, considering the balance of hardships between the plaintiff and defendant, a remedy in equity is warranted; and (4) that the public interest would not be disserved by a permanent injunction.” [eBay Inc. v. MercExchange, LLC, 547 U.S. 388, 391 \(2006\)](#). The final two factors merge when the government is the opposing party. [Galvez v. Jaddou, 52 F.4th 821, 831 \(9th Cir. 2022\)](#). Notably, Defendants have not seriously disputed that Plaintiffs have satisfied the permanent injunction factors. *See* ECF 86 at 22-26. Nor could they.

With regard to irreparable harm, the Plaintiff States submitted extensive evidence detailing the irreparable injury to their proprietary interests in operating a viable Medicaid provider network. Plaintiff States explained, for instance, that as the number of providers of transgender health care continues to dwindle due to mounting fear of exclusion from federal health care programs, including fear stemming from targeted threats of exclusion based on the Kennedy Declaration, it has become increasingly difficult for Plaintiff States to ensure such care is available, notwithstanding their obligations to ensure access to such medically necessary care under state law and to maintain an adequate network of providers to meet the needs of Medicaid enrollees under federal law. ECF 77 at 40-41 (citing declarations).

Defendants do not dispute the existence of these proprietary harms, nor that they would be radically compounded if major providers of pediatric care in Plaintiff States—including at least 13 major hospitals that have been referred for exclusion to the Office of Inspector General (HHS-OIG) based on the Kennedy Declaration—were excluded from federal health care programs due to their provision of medical treatment for gender dysphoria. *Id.* at 41-42. Indeed, Plaintiff States submitted evidence demonstrating their inability to provide critical healthcare services, particularly in highly specialized areas such as pediatric organ transplants, genetic and neurological disorders, and childhood cancer treatments, if the referred hospitals were in fact excluded by HHS-OIG. *Id.* Based on this undisputed evidence, there can be no doubt that exclusion of major hospitals would irreparably harm Plaintiff States' ability to run a functioning Medicaid system and result in the catastrophic elimination of specialized medical care for children in Plaintiff States. *Id.* at 14-16, 41-42; *see also* ECF 62 ¶ 12; ECF 78 ¶ 9; ECF 79 ¶ 5; ECF 81 ¶¶ 6-8; ECF 82 ¶¶ 17, 20-21.

Further, Defendants' representations in their briefing and at the March 19 hearing made it plain that, unless they are enjoined from relying, in whole or in part, on the Kennedy Declaration or a materially similar policy, Defendants will continue to regard medical treatments to minors for gender dysphoria as categorically falling below professionally recognized standards of care and

will simply disguise their policy through exclusion determinations made by HHS-OIG. *See* ECF 73 at 35 (arguing that providers could still be excluded “in the absence of the Declaration”); *see also* McGinty Decl., Ex. A at 96:17-18 (“If the Kennedy Declaration did not exist, there would still be this substantive legal standard in the statute.”).¹

Separately, Defendants’ representations at the March 19 hearing also suggest that Defendants could use notices of intent to exclude (NOI) to inflict these same harms on Plaintiff States, even if no exclusion determination is made. Defendants represented at the hearing that the inception of the exclusion process (i.e., the issuance of an NOI) is merely “a determination to open up an investigation,” *Id.* at 11:2-4, and an “investigative period,” *id.* at 16:7. That representation is incorrect: it minimizes the significance and real-world consequences of an NOI. In reality, NOIs are issued only when the agency already “proposes to exclude an individual or entity.” 42 C.F.R. § 1001.2001(a). HHS’s prior practices confirm that NOIs are typically issued *after* the agency has conducted a thorough investigation and come to the conclusion that exclusion is appropriate. *See* 63 Fed. Reg. 46682 (Sept. 2, 1998) (“the vast majority of cases involving a proposal to exclude are medical in nature, with the OIG relying on a Medicare intermediary or carrier, a peer review organization or other medical reviewer to provide medical review of a case prior to it being referred by the OIG”); *see also infra* n.2 (discussing issuance of an NOI to a medical center for “unnecessary and substandard invasive cardiology services” following a \$54 million False Claims Act settlement with the Department of Justice related to the same conduct). Accordingly, should HHS make good on its threat to begin issuing NOIs to providers in the Plaintiff States simply based on their provision of transgender health care, it would be all but certain to lead providers to stop providing transgender health care for youth and adolescents given the significant consequences

¹ Given these representations, Defendants’ complaint that Plaintiff States waived a request for injunctive relief beyond the four corners of the Kennedy Declaration falls flat. Plaintiffs made this request in direct response to Defendants’ position, and Defendants have had the opportunity to respond, twice now, obviating any potential prejudice. Further, Defendants included a request for permanent injunctive relief against the “Kennedy Declaration in any form” in their amended complaint, ECF 28 at 35, which is consistent with the request for permanent injunctive relief that Plaintiff States are seeking here.

associated with potential exclusion. *See* ECF 34 ¶ 19 (Washington’s chief medical officer explaining exclusion from participation on federal health care programs “constitutes a de facto bar on the practice of medicine”); *see also* ECF 77 at 10-16 (discussing institutions that stopped providing transgender health care following referral to HHS-OIG, as well as institutions that stopped providing care based on the fear of referral or other retribution from the federal government); ECF 35 ¶ 34.²

In addition, the impairment of the Plaintiff States’ government interest in regulating the practice of medicine is straightforwardly irreparable injury, as it is a prerogative that states have enjoyed since “time immemorial.” *Dent v. West Virginia*, 129 U.S. 114, 122 (1889); *cf.* *Trump v. CASA, Inc.*, 606 U.S. 831, 859 (2025) (holding that the improper intrusion “on a coordinate branch of Government” constitutes irreparable harm (quoting *INS v. Legalization Assistance Project of L.A. Cnty. Fed’n of Labor*, 510 U.S. 1301, 1306 (1993) (O’Connor, J., in chambers) (citation modified))).

² The immediate and dire consequences that accompany a hospital’s receipt of an NOI are reflected on HHS-OIG’s own website. For example, Redding Medical Center, a 269-bed acute care facility in Redding, California, was issued an NOI “based upon unnecessary and substandard invasive cardiology services provided at the hospital” after the entity entered into a \$54 million False Claims Act settlement with the Department of Justice related to the same conduct. *See* McGinty Decl., Ex. B, Press Release, Department of Health and Human Services, Office of Inspector General, OIG and Tenet Healthcare Corporation Reach Divestiture Agreement To Address Exclusion of Redding Medical Center (Dec. 11, 2003), available at <https://oig.hhs.gov/newsroom/news-releases-articles/oig-and-tenet-healthcare-corporation-reach-divestiture-agreement-address-exclusion-redding-medical-center/>. Just three months after the NOI was issued, the medical center’s owner agreed to divest the medical center to an unrelated party in exchange for OIG agreeing to withhold issuing a formal notice of exclusion. As HHS-OIG explained in its press release, “[h]ad an agreement not been finalized . . . , the next step in the process would have been for the OIG to issue a notice of exclusion to the hospital, after which the exclusion would have gone into effect in 20 days.” This, in turn, would have prevented the medical center from “bill[ing] Medicare, Medicaid or another other Federal health care program for items or services furnished to beneficiaries of those programs.” As this example demonstrates, given the devastating financial consequences associated with exclusion from federal healthcare programs, medical entities effectively have no option other than to enter into an agreement with the federal government after receipt of an NOI in order to avoid having a final exclusion notice issued. The same would be true for the hospitals referred to HHS-OIG for exclusion in Plaintiff States, as federal health care programs are major payors of these entities. *See* ECF 77 at 14-16.

Finally, the balance of equities and public interest clearly favor an injunction here, where the Secretary’s Declaration has no grounding in lawful authority whatsoever. *See Washington v. Trump*, 145 F.4th 1013, 1037 (9th Cir. 2025) (holding injunctive relief served the public interest where it enjoined government action that was “beyond its authority”).

B. Permanent Injunctive Relief Is Needed to Provide Complete Relief to the Plaintiffs

In addition to vacatur and declaratory relief, injunctive relief is needed to provide the Plaintiff States complete relief. “A district court has ‘broad latitude in fashioning equitable relief when necessary to remedy an established wrong.’” *N. Cheyenne Tribe v. Norton*, 503 F.3d 836, 843 (9th Cir. 2007) (quoting *High Sierra Hikers Ass’n v. Blackwell*, 390 F.3d 630, 641 (9th Cir. 2004)); *cf. CASA*, 606 U.S. at 851-52 (recognizing the complete-relief principle “has deep roots in equity” and focuses on whether an injunction “will offer complete relief to the plaintiffs before the court”).

Here, a permanent injunction is needed to ensure Defendants do not simply adopt the reasoning of the Kennedy Declaration—or its illegal attempt to supersede the relevant standards of care for transgender health care in Plaintiff States—under a different name or via a different instrument. Only a permanent injunction will provide Plaintiff States with certainty that their providers will not be targeted for exclusion from federal healthcare programs based solely on their provision of lawful transgender health care. Notably, courts in this circuit, including this Court, have recognized the same need for complete relief in analogous circumstances. *See, e.g., New York v. Dep’t of Energy*, 2025 WL 3140578, at *18 (granting a permanent injunction where plaintiff States sought an injunction to prevent government from implementing a “substantially similar policy” of capping indirect costs in federal grants; finding that such relief “is not encompassed by other relief ordered”); *Washington v. Dep’t of Educ.*, No. C25-1228-KKE, 2025 WL 3690779, at *17 (W.D. Wash. Dec. 19, 2025), *stay pending appeal denied by* 167 F.4th 1241 (9th Cir. 2026) (granting permanent injunctive relief as to all grantees within plaintiff States’ borders preventing premature discontinuation of multi-year school-based mental health grants without reasoned

decision making, in addition to vacatur and declaratory judgment); *see also* [Washington v. FEMA, No. 25-12006-RGS, 2025 WL 3551751 \(D. Mass. Dec. 11, 2025\)](#) (granting permanent injunctive relief preventing termination of pre-disaster resiliency and mitigation grants mandated by Congress, in addition to vacatur and declaratory judgment).

Further, while declaratory relief is necessary to determine the rights of the parties in this dispute, it is not sufficient to provide the Plaintiff States full relief. As the Ninth Circuit has observed, “declaratory relief ‘is a much milder form’ of relief because it is not backed by the power of contempt.” [United Aeronautical Corp. v. Air Force, 80 F.4th 1017, 1031 \(9th Cir. 2023\)](#) (citing [Steffel v. Thompson, 415 U.S. 452, 471 \(1974\)](#)). While vacatur and declaratory relief *should* theoretically be sufficient to stop Defendants from implementing a substantially similar Declaration or policy, a permanent injunction will provide the Plaintiff States with an enforceable form of relief in the event HHS attempts to exclude providers in Plaintiff States from federal health care programs pursuant to the same categorical position of the Kennedy Declaration (i.e., that offering medical treatment to minors for gender dysphoria is inconsistent with professionally recognized standards of care). *See, e.g.,* [Dep’t of Educ., 2025 WL 3690779, at *18](#) (entering final judgment but retaining jurisdiction to enforce the court’s injunction and judgment); Summary Judgment Order, *Washington v. FEMA*, No. 25-12006-RGS (D. Mass. Dec. 11, 2025), ECF 130 (McGinty Decl., Ex. C) (same). And as recent litigation between the Plaintiff States and the federal government has unfortunately demonstrated, having an enforceable order has remained critical to states (and other parties) obtaining complete relief. *See, e.g.,* Order to Enforce the Court’s Summary Judgment Order, *Washington v. FEMA*, No. 25-12006-RGS (D. Mass. Mar. 6, 2026), ECF 137 (McGinty Decl., Ex. D) (granting Plaintiff States’ motion to enforce and ordering relief after defendants failed to reinstitute terminated grant program); [New York v. Trump, 777 F. Supp. 3d 112, 119-20 \(D.R.I. 2025\)](#), *aff’d*, No. 25-1236, 25-1413, 2026 WL 734941 (1st Cir. Mar. 16, 2026) (granting Plaintiff States’ motion to enforce and finding FEMA’s institution of lengthy, manual review process for grants in violation of the court’s preliminary injunction order); *see also*

Memorandum in Support of Plaintiffs’ Motion to Enforce the Preliminary Injunction, *Am. Fed’n of Gov’t Emps Nat’l VA Council v. Dep’t of Veterans Affairs*, No. 25-cv-583 (D.R.I. Mar. 20, 2026), ECF 33-1 (McGinty Decl., Ex. E) (moving to enforce preliminary injunction requiring agency to reinstate collective bargaining agreement, where agency formally reinstated agreement but represented in court filing that it did not intend to abide by agreement’s terms and continued to violate agreement’s terms regarding, inter alia, parental leave); Contempt Motion Stipulation and Order, *Barco Mercado v. Noem*, No. 25-cv-06568 (S.D.N.Y. Mar. 2, 2026), ECF 141 (McGinty Decl., Ex. F) (voluntarily resolving motion for contempt after ICE official admitted in deposition that ICE was skirting order enjoining ICE from holding noncitizens on tenth floor of federal building by instead holding noncitizens on ninth floor of federal building);³ Order, *Tobay Robles v. Noem*, No. 26-cv-107 (D. Minn. Jan. 28, 2026), ECF 10 (McGinty Decl., Ex. G) (attaching appendix of 96 court orders that ICE had violated in 74 cases).

Additionally, as discussed above, a permanent injunction is needed to prevent HHS from abusing the exclusion process. Defendants argued at the March 19 hearing that OIG uses “multiple sources of information to determine both what the standard of care is and whether a provider has violated it.” McGinty Decl., Ex. A at 127:22-25; *see also* 136:5-7 (“exclusion regulations do not treat standards of care as fixed”). That is, according to Defendants, HHS-OIG gets to decide the standard of care. *Id.* at 129:6-24 (analogizing professionally recognized standards of care to a speed limit); *id.* at 137:10-12 (arguing that state laws pertaining to the standard of care are not dispositive on HHS-OIG determinations). But this is wrong, because medical treatment for gender dysphoria is plainly within the professionally recognized standards of care in the Plaintiff States. *See, e.g.*, ECF 32 at 12-14 (summarizing state laws protecting medical treatment of gender dysphoria); *see also* 42 C.F.R. § 1001.2 (defining professionally recognized standards of care as those that apply

³ *See also* Gwynn Hogan, *ICE moved detainees to previously undisclosed floor of 26 Federal Plaza*, MSN.com (Feb. 9, 2026) available at: <https://www.msn.com/en-us/politics/government/ice-moved-detainees-to-previously-undisclosed-floor-of-26-federal-plaza/ar-AA1W14Uu?ocid=BingNewsVerp>.

“within a State”). Defendants’ position highlights a substantial risk that they will simply launder their categorical policy through a series of pre-ordained exclusion proceedings, effectively applying a categorical ban. *See* ECF 73 at 35 (arguing that providers could still be excluded “in the absence of the Declaration”); *see also* McGinty Decl., Ex. A at 96:17-18 (“If the Kennedy Declaration did not exist, there would still be this substantive legal standard in the statute.”). Enjoining Defendants from enforcing not only the Kennedy Declaration itself, but also any materially similar policy under which the federal government seeks to apply a categorical ban on medically necessary health care for youth with gender dysphoria, is thus vital to protect Plaintiff States from irreparable injury.

In other words, absent an injunction, HHS could begin issuing NOIs to providers in Plaintiff States based on the same categorical position taken in the Kennedy Declaration that the provision of transgender health care to minors, alone, is inconsistent with professionally recognized standards of care, without *any* investigation into whether the providers furnished services *of a quality* that failed to meet the relevant standard of care in Plaintiff States. Such a notice of intent to exclude would all but erase the role of professional standards organizations and medical experts in determining whether the quality of care provided to an individual patient met the appropriate standards set in Plaintiff States. It was this effort to establish a categorical exclusion rule that the Court correctly observed was as “clear proof of claim [of *ultra vires*] as there can be.” McGinty Decl., Ex. A at 144. Indeed, given the practical impacts of an NOI, *see supra* at 4-5, coupled with the government’s position that an NOI is not final agency action, McGinty Decl., Ex. A at 11:7-11, an injunction from this Court may be the Plaintiff States’ only stopgap prior to hospitals in the Plaintiff States ending the provision of gender-affirming care permanently.

Thus, given the irreparable harms that will occur in Plaintiff States if Defendants initiate exclusion proceedings pursuant to the Kennedy Declaration or a substantially similar policy, *supra* at II.A, permanent injunctive relief is needed to provide Plaintiff States full relief.

C. Plaintiffs’ Requested Injunction Is Appropriately Tailored

The request that this Court enjoin Defendants from giving effect to the Kennedy Declaration or a materially similar policy is appropriately tailored to remedy the harm to Plaintiff States. The requested injunction is no broader than necessary and limited to the Plaintiff States’ irreparable injuries. This Court and many others around the country have ordered comparable injunctive relief, and the cases involving vacated or modified injunctions that Defendants rely on are inapposite.

As this Court noted at the summary judgment hearing, this Court has enjoined a federal agency from enforcing a challenged policy and substantially similar policies. *See id.* at 140:22-141:2. Specifically, this Court entered such relief against a challenged Department of Energy policy that limited the payment or reimbursement of indirect costs. *See Judgment, New York v. Dep’t of Energy*, No. 6:25-cv-01458-MTK (D. Or. Nov. 10, 2025), ECF 84 (McGinty Decl., Ex. H) (“The Court permanently enjoins Defendants and their officers and agents from implementing the Policy Flash *or a substantially similar policy* that categorically caps states and local government reimbursement of indirect and/or fringe costs in Plaintiff States.”) (emphasis added). As this Court recognized in that case, an injunction was needed, in part, because the Department of Energy indicated it would effectuate the challenged policy without reference to that specific policy through other means. *See New York v. Dep’t Energy*, 2025 WL 3140578, at *17–18. Likewise, here, Defendants assert the authority to exclude providers from federal health care programs, including Medicaid and Medicare, for the mere provision of transgender health care to adolescents “even in the absence of the Declaration[.]” ECF 73 at 21. Plaintiffs are thus justified in asking the Court to enjoin the Declaration and materially similar policies that likewise purport to supersede the relevant professionally recognized standards of care that exist in Plaintiff States.

For judicial efficiency and to prevent games of legal whack-a-mole, courts around the country have regularly entered injunctions against challenged policies as well as materially or substantially similar policies—in order to prevent federal defendants from implementing the

enjoined policies by other means. *See, e.g., New York v. Trump*, 2026 WL 734941, at *5 (largely affirming a preliminary injunction enjoining federal agency defendants from freezing federal funds based on an Office of Management and Budget directive “or any other materially similar order, memorandum, directive, policy, or practice under which the federal government imposes or applies a categorical pause or freeze of funding appropriated by Congress”) (emphasis added); *Washington v. Dep’t of Health & Hum. Servs.*, No. 6:25-cv-01748-AA, 2025 WL 3002366, at *31 (D. Or. Oct. 27, 2025) (enjoining HHS from enforcing challenged conditions “or any materially similar terms or conditions” as to specific funds awarded to plaintiff states); *R.I. Coal. Against Domestic Violence v. Kennedy*, No. 25-cv-342-MRD-PAS, 2025 WL 2988705, at *14 (D.R.I. Oct. 23, 2025) (entering injunction enjoining defendants from enforcing challenged requirements “or any substantially similar requirement”); *Illinois v. Noem*, No. 1:25-cv-00495-MSM-PAS, 2025 WL 3707011, at *19 (D.R.I. Dec. 22, 2025) (enjoining FEMA “from enforcing by any means against Plaintiffs and their instrumentalities and subdivisions” challenged grant award terms “or any materially similar terms”); *Martin Luther King, Jr. Cnty. v. Turner*, 798 F. Supp. 3d 1224, 1240 (W.D. Wash. 2025) (enjoining HUD from imposing or enforcing challenged funding conditions “or any materially similar terms or conditions”); *Hous. Auth. of City & Cnty. of San Francisco v. Turner*, No. 25-cv-08859-JST, 2025 WL 2961794, at *2 (N.D. Cal. Oct. 18, 2025) (similar).

The cases Defendants rely on for their argument that inclusion of the term “materially similar policies” would render the injunction impermissibly broad offer no support. *See* ECF 86 at 24–25. For example, in *Church of the Holy Light of the Queen v. Holder*, the Ninth Circuit vacated an injunction it determined was overbroad because the injunction “reach[ed] more conduct than that which the district court held violated [Religious Freedom Restoration Act].” 443 F. App’x 302, 303 (9th Cir. 2011). There, the district court’s injunction enjoined the federal government from enforcing certain regulations in the Controlled Substances Act, though “plaintiffs repeatedly represented to the court and in discovery that they were not challenging any CSA regulations and had ‘not alleged in the Complaint that the CSA violates their rights.’” *Id.* A comparable issue arose

in *Flathead-Lolo-Bitterroot Citizen Task Force v. Montana*, where the district court enjoined a state agency from authorizing wolf trapping and snaring for recreational purposes within a specific geographical area and time period. [98 F.4th 1180, 1184 \(9th Cir. 2024\)](#). On appeal, the plaintiffs agreed that the injunction could be clarified to establish that it wasn't meant to cover wolf trapping and snaring for government research, and so the Ninth Circuit vacated the injunction "to the extent that it prevents the State from trapping and snaring wolves for research purposes." [Id. at 1197](#); [see id. at 1187](#). By contrast, here, Plaintiff States explicitly challenged the Kennedy Declaration, this Court has determined that the Declaration violates the APA several times over, and so Plaintiffs ask this Court to enjoin Defendants from giving any effect to the Declaration and materially similar policies that would also purport to supersede standards of care for provision of transgender health care to youth and adolescents recognized in the Plaintiff States. Plaintiff States do not ask this Court to enjoin unchallenged regulations or unrelated conduct—but instead to enjoin the *same* policy already declared to be outside of the agency's authority from being effectuated in a different guise.

[Meinhold v. Department of Defense, 34 F.3d 1469 \(9th Cir. 1994\)](#), and [Gulf Oil Corp. v. Brock, 778 F.2d 834 \(D.C. Cir. 1985\)](#), fare no better. *Meinhold* addressed a nationwide injunction against the Department of Defense, which the Ninth Circuit vacated because the case was "not a class action," and the plaintiff "sought only to have his discharge voided and to be reinstated." [34 F.3d at 1480](#). Here, however, Plaintiffs ask for a permanent injunction limited to the Plaintiff States—an injunction "no more burdensome to the defendant than necessary to provide complete relief to the plaintiffs." [Califano v. Yamasaki, 442 U.S. 682, 702 \(1979\)](#); [see supra](#) II.B. Similarly, in *Gulf Oil*, a government contractor sued to prevent the FOIA disclosure of a specific affirmative action plan, the district court enjoined disclosure of that document and all "substantially similar documents," and the requesting party later withdrew its request for the specific plan. [778 F.2d at 835](#). The D.C. Circuit concluded the case was moot and the injunction was overbroad because the dispute wasn't about the agency's disclosure regulation but the application of that regulation to a

particular document that was no longer being requested. *Id.* at 842-43. Here, by contrast, the requested injunction is tailored to remedy the threat of ongoing harm established by Plaintiffs: injury to operating viable Medicaid provider networks and regulating the practice of medicine. *See* ECF 77 at 40–42.

Plaintiffs are entitled to an injunction against the Kennedy Declaration and materially similar policies that purport to supersede the relevant professionally recognized standards of care that exist in the Plaintiff States.

D. Plaintiffs’ Requested Injunction Meets the Specificity Requirements of Rule 65

Plaintiffs’ requested injunction is more than sufficient to give the parties reasonable notice of what is prohibited. Defendants can’t enforce or implement the Kennedy Declaration, or something substantially similar, by deciding that medical interventions such as puberty blockers and hormone therapy for the treatment of gender dysphoria in minors categorically fall below the professionally recognized standards of care in Plaintiff States. As this Court has already held, Defendants lack any authority to do so. While Plaintiff States’ originally requested language suffices for the purposes of Rule 65, they now propose additionally clarifying language for the avoidance of any doubt.

Rule 65(d) requires that an injunction “state its terms specifically; and describe in reasonable detail—and not by referring to the complaint or other document—the act or acts restrained or required.” In construing the meaning of an injunction courts “are not limited to the language of the injunction.” *Fed. Election Comm’n v. Furgatch*, 869 F.2d 1256, 1263 (9th Cir. 1989). Instead, the acts prohibited or required are informed by “the circumstances surrounding the injunction’s entry: the relief sought by the moving party, the evidence produced at the hearing of the injunction, and the mischief that the injunction sought to prevent.” *Id.* (quoting *United States v. Christie Indus., Inc.*, 465 F.2d 1000, 1007 (3d Cir.1971)) (citation modified). At the same time, courts are not required to give enjoined parties “a cookbook on the specifics of complying with the injunction,” *In re Google Play Store Antitrust Litig.*, 147 F.4th 917, 953 (9th Cir. 2025), *cert.*

dismissed sub nom. Google LLC v. Epic Games, Inc., No. 25-521, 2026 WL 682610 (U.S. Mar. 10, 2026), and “[i]njunctive orders are not set aside under rule 65(d) [] unless they are so vague that they have no reasonably specific meaning,” United States v. Holtzman, 762 F.2d 720, 726 (9th Cir. 1985).

Here, as this Court indicated at the hearing on the cross dispositive motions: “defendants lack authority to establish superseding standards of care to exclude providers from federal healthcare programs.” McGinty Decl., Ex. A at 144:16-18. The injunction Plaintiff States requested would appropriately bar them from doing precisely that. Defendants plead ignorance as to the professionally recognized standards that they are prohibited from superseding. ECF 86 at 26 (claiming confusion about the term “‘statewide standards,’ whatever Plaintiffs mean by that”). And they complain that they cannot identify what would make a policy “materially similar” to the Kennedy Declaration such that it would be subject to the injunction. *See id.*; *see also* ECF 77 at 43 (articulating Plaintiff States’ requested injunction). These arguments do not withstand scrutiny.⁴ The Kennedy Declaration straightforwardly purports to declare that medical interventions such as puberty blockers or hormone therapy for the treatment of gender dysphoria in minors are inconsistent with professionally recognized standards of care, such that medical professionals who provide such services are subject to exclusion from federal health care programs regardless of the quality of the services provided and regardless of what the relevant standards of care are in the states in which those professionals practice medicine. *See* ECF 1-1 at 10; *see also* 42 C.F.R. § 1001.2 (defining “professionally recognized standards of care”); 42 U.S.C. § 1320a-7(b)(6)(B) (permitting exclusion for a provider who “furnished or caused to be furnished items or services to patients . . . of a quality which fails to meet professional recognized standards of health care”). Materially similar policies are, accordingly, policies that also target providers based solely on their provision of transgender health care in the Plaintiff States. In light of “the relief sought by the

⁴ Defendants’ claimed ignorance is belied by their own arguments describing exclusion proceedings at oral argument. *E.g.*, McGinty Decl., Ex. A at 125:18-126:5 (acknowledging that HHS-OIG must determine the “statewide standard” in any exclusion proceeding).

moving party, the evidence produced at the hearing of the injunction, and the mischief that the injunction sought to prevent,” Plaintiff States’ requested injunction easily meets the specificity requirements of Rule 65(d). *See Fed. Election Comm’n*, 869 F.2d at 1263.

Furthermore, given Defendants’ position that issuing an NOI is merely a preliminary investigatory step (*see supra* II.A), they should be enjoined from initiating any enforcement action in reliance on the Kennedy Declaration or a materially similar policy as set forth below (with new language in bold):

The Court permanently enjoins Defendants and their officers, agents, servants, employees, and attorneys, including those at HHS-OIG, **from initiating enforcement action**, enforcing, implementing, giving intent to, or relying, in whole or in part, on the Kennedy Declaration—or **any** materially similar policy which supersedes or purports to supersede the professionally recognized standards of care **for gender-affirming care** that exist in the Plaintiff States—against any provider in the Plaintiff States.

Such an injunction would satisfy Rule 65(d) by any standard.

E. The Court Should Direct Entry of a Final Judgment

Plaintiff States moved for summary judgment only on Counts I-IV alleged in their Amended Complaint. *Compare* ECF 28 *with* ECF 32. The last count (Count V), alleging arbitrary and capricious agency action, was left for further litigation. *See id.* But the Court’s ruling indicated that Plaintiff States will prevail on at least Counts I through III, with the disposition of Count IV to await the Court’s written opinion.⁵ McGinty Decl., Ex. A at 143:21-144:10. Particularly, Plaintiff States will be granted summary judgment on Count I, that the Kennedy Declaration exceeds Secretary Kennedy’s statutory authority because “defendants lack authority to establish superseding standards of care to exclude providers from federal healthcare programs.” *Id.* at 144:16-18; *see also id.* at 144:6-7 (the claim that the Kennedy Declaration is *ultra vires* is “on its face is about as clear [as a] clear proof of claim as there can be”).

⁵ For the avoidance of doubt, none of Plaintiff States’ requested relief, including injunctive relief, depends upon their prevailing on Count IV of their complaint.

In these circumstances, the Court should direct entry of a final judgment on Counts I-IV because there is no just reason for delay under Rule 54(b). Entering final judgment under Rule 54(b) is “exclusively within the discretion of the district court.” [*Dannenberg v. Software Toolworks, Inc.*, 16 F.3d 1073, 1078 \(9th Cir. 1994\)](#).

In this case, the claims Plaintiff States have moved on, and this Court has stated it would decide, are legally and factually distinct from the single, unmoved claim. The question of Defendants’ statutory authority to enact the Kennedy Declaration is sufficiently separate from whether Defendants appropriately exercised reasoned decision making. The ruling entered by this Court does not depend on the administrative record, which would be necessary to ultimately decide whether Defendants actions are arbitrary and capricious under Count V. So, while all claims challenge the same agency action—the Kennedy Declaration—Claims I-IV and V are legally and factually different, such that there is no risk of piecemeal appeals. See [*Curtiss-Wright Corp. v. General Elec. Co.*, 446 U.S. 1, 11 \(1980\)](#); see also [*Wood v. GCC Bend, LLC*, 422 F.3d 873, 881 \(9th Cir. 2005\)](#) (Rule 54(b) certification may be appropriate when “there is an important or controlling legal issue”). Therefore, there is no just reason for delay, and the Court should certify its judgment under Rule 54(b).⁶

III. CONCLUSION

Plaintiff States respectfully request that this Court enter partial final judgment by granting summary judgment to the Plaintiff States on Counts I, II, III, and IV of its Amended Complaint and giving Plaintiff States all requested remedies, including injunctive relief.

DATED this 2nd day of April 2026.

⁶ If the Court prefers not to enter partial final judgment under Rule 54(b), the Court can simply enter final judgment, dismissing any remaining counts without prejudice.

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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
EUGENE DIVISION**

STATE OF OREGON, et al.,

Plaintiffs,

v.

ROBERT F. KENNEDY, JR., in his official
capacity as the Secretary of the Department
of Health and Human Services, et al.,

Defendants.

No. 6:25-cv-02409-MTK

DECLARATION OF WILLIAM
MCGINTY IN SUPPORT OF
PLAINTIFFS' SUPPLEMENTAL
BRIEFING ON INJUNCTIVE RELIEF

DECLARATION OF WILLIAM MCGINTY

I, William McGinty, pursuant to 28 U.S.C. § 1746, declare as follows:

1. I am a Deputy Solicitor General at the Washington Attorney General’s Office. I am one of the attorneys representing the State of Washington in this case.

2. Attached as **Exhibit A** is a true and correct copy of excerpts of the United States District Court District Court for the District of Oregon Eugene Division’s Transcript of Proceedings (Oral Argument), held March 19, 2026 on Cross-Motions for Summary Judgement before the Honorable Judge Mustafa T. Kasubhai.

3. Attached as **Exhibit B** is a true and correct copy of the U.S. Department of Health and Human Services Office of the Inspector General’s Press Release dated December 11, 2003, titled “OIG and Tenet Healthcare Corporation Reach Divestiture Agreement to Address Exclusion of Redding Medical Center”. This webpage was saved as a PDF from URL: <https://oig.hhs.gov/newsroom/news-releases-articles/oig-and-tenet-healthcare-corporation-reach-divestiture-agreement-address-exclusion-redding-medical-center/> on April 1, 2026.

4. Attached as **Exhibit C** is a true and correct copy of the Summary Judgment Order entered in *Washington v. FEMA*, No. 25-12006-RGS (D. Mass. Dec. 11, 2025), ECF 130.

5. Attached as **Exhibit D** is a true and correct copy of the Order to Enforce the Court’s Summary Judgment Order entered in *Washington v. FEMA*, No. 25-12006-RGS (D. Mass. Mar. 6, 2026), ECF 137.

6. Attached as **Exhibit E** is a true and correct copy of the Memorandum in Support of Plaintiffs’ Motion to Enforce the Preliminary Injunction filed in *Am. Fed’n of Gov’t Emps. Nat’l VA Council v. Dep’t of Veterans Affairs*, No. 25-cv-583, (D.R.I. Mar. 20, 2026), ECF 33-1.

7. Attached as **Exhibit F** is a true and correct copy of the Contempt Motion Stipulation and Order entered in *Barco Mercado v. Noem*, No. 25-cv-06568 (S.D.N.Y. Mar. 2, 2026), ECF 141.

8. Attached as **Exhibit G** is a true and correct copy of the Order with Appendix entered in *Tobay Robles v. Noem*, No. 26-cv-107 (D. Minn. Jan. 28, 2026), ECF 10 and 10-1.

9. Attached as **Exhibit H** is a true and correct copy of the Judgment entered in *New York v. Dep't of Energy*, No. 6:25-cv-01458-MTK, (D. Or. Nov. 10, 2025), ECF 84.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

DATED this 2nd day of April 2026, at Lacey, Washington.

s/ William McGinty

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Washington Attorney General's Office

Exhibit A

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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

EUGENE DIVISION

STATE OF OREGON; STATE OF)	
WASHINGTON; STATE OF NEW YORK;)	
STATE OF CALIFORNIA; STATE OF)	No. 6:25-cv-02409
COLORADO; STATE OF CONNECTICUT;)	
STATE OF DELAWARE; DISTRICT OF)	March 19, 2026
COLUMBIA; STATE OF ILLINOIS;)	
STATE OF MAINE; STATE OF)	Eugene, Oregon
MARYLAND; COMMONWEALTH OF)	
MASSACHUSETTS; STATE OF MICHIGAN;)	
STATE OF MINNESOTA; STATE OF NEW)	
JERSEY; STATE OF NEW MEXICO; JOSH)	
SHAPIRO, in his official capacity)	
as Governor of the Commonwealth)	
of Pennsylvania; STATE OF RHODE)	
ISLAND; STATE OF VERMONT; and)	
STATE OF WISCONSIN,)	
)	
Plaintiffs,)	
)	
v.)	
)	
ROBERT F. KENNEDY, JR., in his)	
official capacity as the)	
Secretary of the Department of)	
Health and Human Services; THOMAS)	
MARCH BELL, in his official)	
capacity as Inspector General of)	
the Department of Health and)	
Human Services; U.S. DEPARTMENT)	
OF HEALTH AND HUMAN SERVICES)	
OFFICE OF INSPECTOR GENERAL; and)	
the UNITED STATES DEPARTMENT OF)	
HEALTH AND HUMAN SERVICES,)	
)	
Defendants.)	

TRANSCRIPT OF PROCEEDINGS

(Oral Argument)

BEFORE THE HONORABLE MUSTAFA T. KASUBHAI
UNITED STATES DISTRICT COURT JUDGE

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1 THE COURT: I have to determine a final agency
2 action. And what I want to -- really want -- what I'm going
3 to want to hear from everybody is when final agency action
4 can be legally realized. And from what I'm hearing you say is
5 that it's not a final agency action until OIG has adjudicated
6 a decision.

7 MS. ALKIRE: What I'm saying is that the Kennedy
8 Declaration is not final agency action, which is the only
9 document that's challenged in this case.

10 THE COURT: Okay. So what would final agency action
11 look like? Maybe I'll ask it that way. So in a hypothetical
12 world, what would final agency action look like in this
13 context?

14 MS. ALKIRE: The regulations require OIG to make a
15 determination, and once they make a determination, it's then
16 subject to both administrative and judicial review. And so
17 once OIG has made a determination, then that would surely
18 constitute an agency action that could be challenged.

19 THE COURT: Okay. So the determination -- the agency
20 determination would be exclusion? Is that the -- is that the
21 decision, or that final action that could then be appealed or
22 for which additional review could be sought?

23 MS. ALKIRE: Well, so, Your Honor, what -- it depends
24 what type of review you're asking. Within the agency and the
25 regulation structure themselves, OIG first issues a notice of

1 intent to exclude, and at that point there's no exclusion
2 that's happened yet. OIG has just made a determination to
3 open up an investigation to decide -- to collect information
4 and decide whether it will move to exclude the provider. And
5 so once a provider receives a notice of intent to exclude,
6 they have the opportunity to present evidence to OIG.

7 THE COURT: So can we -- let me stop there. So once
8 OIG sends a notice to a provider, a notice to exclude or
9 intent to exclude, is that the final agency action?

10 MS. ALKIRE: I would say -- I would say no, Your
11 Honor.

12 THE COURT: So then once the -- once OIG makes a
13 decision to exclude, that becomes a final agency action?

14 MS. ALKIRE: So after the -- after OIG has reviewed
15 all of the evidence from the provider, after it's reviewed all
16 the evidence that the regulations list within the different
17 types of evidence that it would consider, OIG would then send
18 the provider a notice of exclusion. From that notice of
19 exclusion, the provider can then appeal that to an
20 administrative law judge, to the Department of Appeal Board,
21 and then it's subject to judicial review.

22 So I would say that the decision -- when OIG decides
23 to exclude a provider, that would be the point of an agency
24 action, because there's been a determination of what the
25 standard of care is, that the provider has violated that

1 standard of care, and that OIG has exercised its permissive
2 exclusion authority to exclude the provider.

3 THE COURT: All right. So your argument isn't an
4 exhaustion of remedies -- administrative remedies argument, in
5 that they would have to go all the way through the review
6 process and get a final decision from the highest level of
7 review within the agency before they can seek review to the
8 court?

9 MS. ALKIRE: If that's the point that the case is in
10 front of us that we're arguing, that would create a different
11 circumstance than what we have right now, because what we have
12 right now is we're reviewing the Kennedy Declaration as
13 opposed to a hypothetical future enforcement action, which
14 is -- which has not happened and is not before the Court in
15 this case. So, you know, in the world that we're speaking,
16 that creates a different set of circumstances.

17 Would that provider be required to exhaust
18 administrative remedies before seeking judicial review?
19 That's surely what the regulations state, but that's not to
20 say that the provider would be prohibited from seeking
21 judicial review before -- you know, once they receive a notice
22 of exclusion before an exclusion takes effect. You know, we
23 cite some case law in our briefs that talk about a waiver of
24 the exhaustion of administrative remedies and that there is --
25 there is a method for that so that a provider could seek --

1 this is an imperfect comparison. Somebody can move against an
2 indictment or a charging instrument because it somehow fails
3 in alleging certain elements necessary to charge a crime, but
4 they haven't yet been found guilty of anything.

5 So in the sense of how far -- how early can
6 something -- can a review process be -- how early can a review
7 process be before it is no longer -- it isn't yet ripe or a
8 final agency action?

9 It seems to me that somebody can move against an
10 indictment, for example, before there's a trial and before
11 there's a finding of guilt or not guilt. So there are steps
12 along the way well before a final determination, for example,
13 in a criminal case, a finding of guilt, that a defendant can
14 move against that charging instrument. So there are steps --
15 there are very concrete steps that people can take to avoid
16 appropriately some future final determination that may have
17 also more significant consequences attached to that, and what
18 I'm trying to explore here is where that is in this case. And
19 at the end of the day, you're saying it's really the notice of
20 exclusion.

21 MS. ALKIRE: Yes, Your Honor.

22 THE COURT: Which I think in my analogy, I'm
23 comparing to a verdict of guilty.

24 MS. ALKIRE: Notwithstanding my inexperience with
25 criminal law, Your Honor, that seems like a relevant

1 comparison here. The only difference is, you know, I suppose
2 when someone is arrested, maybe they're released on, you know,
3 pretrial release with some sort of conditions before that
4 guilt determination has been made.

5 In this circumstance, once a provider receives a
6 notice of intent to exclude, there's not a similar punishment
7 involved. It's an investigative period so that OIG can
8 determine whether it is going -- whether the provider has
9 provided services that failed to meet the standard of care,
10 but then there's also a permissive authority part to this.

11 You know, similar to a prosecutor who doesn't have to
12 bring charges even if there's a crime here, OIG has the
13 discretion to -- even if a provider has failed to meet the
14 standard of care, the OIG does not have to exclude the
15 provider under the standard of care exclusion. Certainly
16 there are other types of exclusion that are mandatory
17 exclusions from OIG, but the specific type of exclusion here
18 at issue is not a mandatory exclusion of providers.

19 THE COURT: Okay. We've put off talking about the
20 Declaration for a bit now. I take it from your briefs that
21 you just -- the government's position is that there's just
22 simply no way that that can be construed as a final agency
23 action. Tell me why.

24 MS. ALKIRE: So the Declaration -- the Declaration
25 does not change the process by which OIG conducts exclusion

1 proceedings, and it's not dispositive of the first decision
2 OIG has to make, which is what the relevant professionally
3 recognized standard of care is. It's not dispositive of
4 OIG --

5 THE COURT: You're saying that it isn't -- on the
6 first part, that the Declaration doesn't provide sort of a
7 binding rule or a standard that must now be applied by OIG?

8 MS. ALKIRE: That's correct, Your Honor. It does not
9 apply -- it does not create a binding standard on OIG at all.

10 Under the regulations, OIG must consider multiple
11 sources of information before -- to be able to figure out what
12 the professionally recognized standard of care is and whether
13 a provider has violated it. Those sources of information --

14 THE COURT: So you're saying that the OIG could, even
15 despite the Declaration and the language in the Declaration
16 that indicates that gender-affirming care is not best medical
17 practice, that it could disregard it?

18 MS. ALKIRE: Absolutely. Yes, Your Honor. The
19 agency is free to disregard the substance of the Kennedy
20 Declaration, because it does not create a binding legal
21 effect.

22 THE COURT: OIG is under HHS, right?

23 MS. ALKIRE: Yes, Your Honor.

24 THE COURT: Okay. And is OIG basically sort of the
25 administrative -- the ALJ sort of side of adjudicating

1 THE COURT: And in the course of that explanation, it
2 says, "We considered 20 things. One was the directive or the
3 information or the opinion that Senator Kennedy provided in
4 his Declaration identifying the provision of gender-affirming
5 care falls below the accepted practices -- falls below the
6 accepted professional standards of care," and then -- and then
7 goes on to talk about all the other 20 -- or 19 items for why
8 it decided to exclude, are you saying that it doesn't matter
9 because it's one of many as opposed to the only one?

10 MS. ALKIRE: Both, Your Honor. So if it's one of
11 many, it's not the sole source of setting what the relevant
12 standard of care is, but --

13 THE COURT: It's one of them, but you're saying just
14 because it's -- it may have played a 5 percent role in
15 concluding that exclusion was appropriate, it doesn't have an
16 impact?

17 MS. ALKIRE: Maybe it would be helpful to clarify
18 my -- my second point. So if it's one of them or if it is the
19 only one, which, again, our position is it's not dispositive,
20 so it would not be the only one, if it is the only one, it
21 still does not establish or change the substantive legal
22 standard here.

23 The standard comes from the statute itself, which --
24 which sets that a provider who has furnished services which
25 failed to meet professionally recognized standards of care

1 could be excluded.

2 The case -- the case law that we cite from the Ninth
3 Circuit, *Gentiva*, it talks about local coverage
4 determinations. And when local -- a local coverage
5 determination here did not establish or change the substantive
6 legal standard, because the substantive legal standard came
7 from the statute which says that Medicare can only cover
8 services that are reasonably and -- reasonable and necessary.
9 And the local coverage determination at issue here set the
10 standard for exactly what was reasonable and necessary, and it
11 was binding on the initial decision-making.

12 Our position is that the Kennedy Declaration does not
13 set that standard and it's not binding on decision-making, but
14 even if it was, the substantive legal standard does not
15 change, just as it does not change with this local coverage
16 determination.

17 If the Kennedy Declaration did not exist, there would
18 still be this substantive legal standard in the statute.
19 And just to clarify, plaintiffs do not challenge the statute
20 or regulations in this case.

21 THE COURT: So if the Declaration did modify that
22 standard as you've described it, and I understand what you've
23 defined is what the standard is here, if it didn't say
24 anything about what that standard ought to be, would it then
25 be subject to rule-making requirements?

1 MS. ALKIRE: If the Kennedy Declaration did not
2 reference the standard?

3 THE COURT: No. If it -- if it modified it in some
4 way.

5 MS. ALKIRE: If the Kennedy Declaration established
6 or changed the substantive legal standard under the Medicare
7 notice-and-comment rule-making, it would be subject to
8 rule-making, but it does not here, because the substantive
9 legal standard comes from the statute and regulations
10 themselves.

11 THE COURT: And what you're defining as the
12 substantive legal standard is the language that describes
13 providing medical treatment that drops below
14 the professionally accepted standard of care?

15 MS. ALKIRE: Well, Your Honor, the language comes
16 from the statute, which is --

17 THE COURT: Well, but I'm simply trying to confirm
18 what we're talking about, because I think there's a
19 definitional issue here as well. And I think -- I think the
20 government is asking me to understand that the standard is the
21 language that you've described in the statute. And what I
22 understand from the plaintiffs is that the standard that
23 you're describing is, in fact, being modified by reframing --
24 or actually not reframing, but by saying that as a matter of
25 rule or matter of law, that only -- that any provision of

1 MS. BOYD: Yes, particularly against or superseding
2 the applicable standards of care for that particular provider.
3 So, for example, a provider in one of the plaintiff states,
4 say an Oregon provider, it is recognized under Oregon law,
5 particularly House Bill 2002, that gender-affirming medical
6 treatment is the standard of care. If the Office of Inspector
7 General, you know, goes in, they have to apply that statewide
8 standard in order to determine whether that provider is
9 falling below professionally recognized standards.

10 The concern is that the position taken by the
11 defendants in the responsive briefing is that, no, the Office
12 of the Inspector General could go ahead and decide that
13 provision of that care falls below professionally recognized
14 standards regardless of the fact that Oregon recognizes that
15 as the standard.

16 THE COURT: Okay. Ms. Alkire, do you want to respond
17 to that last point?

18 MS. ALKIRE: Yes, Your Honor. The statute and
19 regulations allow OIG to exclude a provider who provides
20 services that fail to meet the professionally recognized
21 standards of care; that professionally recognized standards of
22 care is decided within an exclusion proceeding using multiple
23 sources of information, including things like statewide
24 standards, but also things that are listed in the factors that
25 we discussed earlier in this proceeding that I'm happy to

1 discuss again, but that determination of what the statewide
2 standard is and whether a provider has failed to meet it is
3 made on the basis of multiple factors, and the statutory
4 authority for OIG to exclude a provider is not challenged in
5 this case.

6 THE COURT: Let's go over it again. I'm going to ask
7 you all to belabor a little bit more, because I want to make
8 sure I'm tracking this.

9 I know you outlined several other considerations that
10 OIG can take up in determining whether to exclude, that being
11 this Declaration is one of them?

12 MS. ALKIRE: Yes, Your Honor. This is one source of
13 information that OIG may consider in a future exclusion
14 proceeding.

15 THE COURT: And other considerations?

16 MS. ALKIRE: 24 C.F.R. Section 1001.701(b) lists the
17 sources of information that the OIG uses to determine whether
18 a provider has provided services that failed to meet the
19 professionally recognized standards of care. They are the
20 quality improvement organization for the area serviced by the
21 individual or entity, state or local licensing or
22 certification authorities, fiscal agents or contractors or
23 private insurance companies, state or local professional
24 societies, or any other sources deemed appropriate.

25 There is no one source of information that is

1 dispositive of the standard.

2 THE COURT: So all of them, I think, for the last
3 one, which was sort of a catch-all anything else deemed
4 appropriate, was state-based sources. Tell me -- maybe I
5 missed something, but all those other considerations are
6 state-based?

7 MS. ALKIRE: One of these is fiscal agents or
8 contractors or private insurance companies. From my
9 understanding, private insurance companies operate nationally.

10 THE COURT: All right. So fiscal agents or
11 private -- or private insurance companies? Is that what it
12 says, "private"?

13 MS. ALKIRE: Fiscal agents or contractors or private
14 insurance companies. This is subsection (3) of that
15 regulation.

16 THE COURT: So it's your contention that -- that --
17 that even though, you know, the standard of care is determined
18 on a statewide level, that OIG could still exclude, taking
19 into account something contrary to the state's determination
20 of standard of care?

21 MS. ALKIRE: Well, Your Honor, the standard of care
22 is not determined just by a set statewide standard. OIG takes
23 into multiple -- multiple sources of information to determine
24 both what the standard of care is and whether a provider has
25 violated it.

1 THE COURT: Do we have an example of anything that
2 the OIG's done that -- that describes this consideration,
3 this review?

4 MS. ALKIRE: Not off the top of my head, Your Honor,
5 but maybe some of the tension here comes from the definitional
6 section that describes what the standard of care is as
7 statewide or national standards, whether in writing or not,
8 that we discussed earlier.

9 The definitional section is not the enforcement
10 determination or the determination of what sets the statewide
11 standards. The definitional section describes what standards
12 of care are, but the determination of what the actual standard
13 of care is in an exclusion proceeding is done on a
14 case-by-case basis underneath the regulations.

15 THE COURT: Well, I mean, then there could be an
16 instance where the OIG might regard the national standards of
17 care in one circumstance and not in another. I mean, it seems
18 like there would be no -- there would be no uniformity to
19 the -- and predictability of what OIG could be considering
20 from one case to another when making a determination to
21 exclude.

22 MS. ALKIRE: Other than the factors of the different
23 sources of information that are limited, you're essentially
24 right, Your Honor. This is a case-by-case factual
25 determination that OIG does within the regulatory process,

1 which is subject to regulatory protections and administrative
2 review and so on. And maybe it would help to give an example
3 of the difference between the definitional section and where
4 it appears in the exclusion regulation.

5 THE COURT: Yes.

6 MS. ALKIRE: So, for example, the definitional
7 provision that describes what standards of care are -- say it
8 said the speed limit means the maximum lawful speed. That's
9 what the definitional section is saying. It's telling you
10 that the concept -- what the concept of a speed limit is, but
11 it's not telling you what the -- what the actual speed limit
12 is for a given area or for a given situation or whether
13 someone was speeding.

14 In the same way, the definitional section of standard
15 of care tells you what professionally recognized standards of
16 care are as a concept, but it does not tell you what the
17 standard of care is for a specific situation or whether that
18 standard of care has been violated. Those determinations
19 require case-specific evaluations, and both of them occur at
20 the same time within the exclusion regulations using those
21 multiple sources of information listed in the regulations and
22 any sources of information that the provider offers to OIG
23 during that investigative process before an exclusion
24 determination is made.

25 THE COURT: If we're using this analogy that there's,

1 you know, a standard about maximum speed limit as sort of --
2 that being the standard generally described as sort of as a
3 general approach, then if I'm extending that analogy to what
4 I'm dealing with here in the Declaration, wouldn't the
5 Declaration be, well, the speed limit's not 55, because it --
6 because Secretary Kennedy has indicated as much, that there is
7 no gender-affirming care provided to youth that would -- that
8 would rise above the -- the generally accepted professional
9 standard of care?

10 MS. ALKIRE: No, Your Honor. So our position still
11 is that the Declaration doesn't do that, but even assuming it
12 does what Your Honor is describing, the Declaration would not
13 be changing the -- the speed -- what speed limit means.

14 THE COURT: Well --

15 MS. ALKIRE: It would be making one of those first
16 determinations of what the speed limit is or whether someone
17 was speeding.

18 It's not making the decision that somebody was
19 speeding, because it does not identify any providers that
20 should be excluded.

21 Under the explanation that the Court has offered and
22 the description that the Court has made of the Kennedy
23 Declaration, it would be saying what the speed limit is, but
24 it would not be changing the definition of what a speed limit
25 is as the maximum lawful speed.

1 safe or effective under a delegated statutory authority.

2 This Court should not be opining on what the whole
3 entire power is of the Department to set standards for the
4 various programs that it regulates, let alone ones that
5 supersede statewide standards here.

6 In regard to this matter, if you rule against
7 defendants, which of course our position is that that's not
8 proper, but if you do, any relief should be limited to the
9 only challenged action in this case, which is the Kennedy
10 Declaration itself, and it should be limited to vacating the
11 Kennedy Declaration, because if the Kennedy Declaration does
12 not exist, if it is vacated, the agency has nothing to rely
13 on. There's no other relief that is required here to remedy
14 plaintiffs' alleged harms.

15 The Ninth Circuit has vacated injunctions that
16 invalidate unchallenged agency decisions and unchallenged
17 agency actions, including those that prohibit similar actions
18 from being taken in the future. It would be improper to
19 extend relief beyond the challenged Declaration here. It
20 would be both overbroad and plaintiffs' -- plaintiffs'
21 requested relief is also impermissibly vague under
22 Rule 65(b)'s specificity requirements.

23 It's not clear enough for the agency to know what
24 plaintiffs mean by "statewide standard of care" as they exist
25 in the plaintiff states, because under the exclusion

1 regulations, how that term is used, it is not dispositive of
2 one standard of care from a state. It's a decision that's
3 made using multiple sources of information like we've
4 discussed, including those submitted by a provider.

5 So the exclusion regulations do not treat standards
6 of care as fixed by any one of these single sources, including
7 those from plaintiff states. So issuing an order
8 that prohibits plaintiffs from anything that relates to the
9 standards of care in plaintiff states would be impermissibly
10 vague.

11 THE COURT: Would you agree that if the Declaration
12 had -- I know it's turning everything in the reverse -- the
13 Declaration, instead of indicating that gender-affirming care
14 fell below the standard of care, it actually said in fact that
15 gender-affirming care is the gold standard for providing care
16 to this population of individuals, and then you had a state
17 out there that said otherwise, medical providers have refused
18 care. I think the way that we're looking at this is that OIG
19 could go ahead and exclude them if they were referred to OIG,
20 correct?

21 MS. ALKIRE: If it were a declaration that's similar
22 to the Kennedy Declaration but says the inverse, it would
23 still not be binding on OIG's authority to exclude a provider,
24 and it would -- as we've described here, it would not be
25 dispositive of what the standard of care is in any exclusion

1 proceeding, because that standard is set by the process of the
2 regulations that take place using those multiple sources of
3 information that's done on a case-by-case situation based on
4 the facts of the individual cases.

5 THE COURT: Even if the state standards that were
6 adopted by that particular state's legislature or local agency
7 bodies indicated that -- that gender-affirming care is
8 disallowed, prohibited, not -- it doesn't meet the minimum
9 standard of care necessary for providing care?

10 MS. ALKIRE: Yes, Your Honor. Those are certainly
11 part of the factors that OIG would consider on the sources of
12 information, but it wouldn't be dispositive.

13 THE COURT: All right. Anything else on the relief?

14 MS. ALKIRE: Other than -- other than it being
15 limited to the Kennedy Declaration and that vacatur is enough
16 to satisfy plaintiffs' alleged injuries --

17 THE COURT: So nothing with respect to a declaratory
18 judgment?

19 MS. ALKIRE: Correct, Your Honor.

20 THE COURT: And the enjoining of implementing, you
21 know, the -- I think Ms. Boyd's pointed out that there's a
22 reference in your brief that OIG could go ahead and do this
23 anyway.

24 MS. ALKIRE: OIG -- so this is the structure of the
25 statute itself on how that standard has not changed as to be

1 subject to rule-making, but the standard has not changed and
2 plaintiffs do not challenge the legality of the statute that
3 empowers OIG to exclude a provider or individual or entity
4 from healthcare programs if it fails -- if it provides
5 services that fail to meet standards of healthcare.

6 THE COURT: And we don't know of any instance in
7 which OIG has done something like that when the states have
8 identified that a particular -- a particular medical practice
9 does meet that standard of care but OIG has found otherwise?

10 MS. ALKIRE: Well, that goes to the ripeness of the
11 claim, which I don't know that we technically wrapped that up
12 yet, but that's -- that's the thing, that OIG has not used the
13 Kennedy Declaration or initiated an exclusion proceeding
14 against any of the plaintiff -- providers in the plaintiff
15 states for this type of care.

16 THE COURT: I asked more broadly there. No one's
17 pointed to me, and if they have, I don't recall, if there's
18 been an instance in which OIG has in fact determined that
19 somebody -- some provider should be excluded because it falls
20 below a standard of care that OIG has determined to be the
21 case where -- where it was clear that the states determined
22 that that treatment would have clearly been within the
23 standard of care in that state.

24 MS. ALKIRE: I think I'm following what you're
25 saying, Your Honor. I'm not aware of any circumstances like

1 that. And from my understanding, it's not been raised in the
2 briefs, either.

3 THE COURT: Okay. All right. What else on relief?
4 Anything?

5 MS. ALKIRE: Nothing further, Your Honor.

6 THE COURT: Okay. Ms. Boyd?

7 MS. BOYD: Yes, Your Honor. I'd like to address two
8 points, the first one being that it should be limited to
9 vacating the Kennedy Declaration. And we would push back on
10 that simply because, again, the defendants have not disclaimed
11 that the Office of Inspector General will turn around and
12 start excluding these providers.

13 And I would point to the Plaintiffs' Exhibit 16,
14 which is ECF 83-16, where HHS tweeted, quote, We will hold
15 every provider of sex-rejecting procedures for children and
16 adolescents accountable for failure to meet recognized
17 standards of healthcare.

18 This is seemingly a broad policy. We do not have any
19 assurance that they will not effectuate this some other way.

20 THE COURT: Well, that was the -- was that the
21 general counsel for HHS?

22 MS. BOYD: Nope. That is the HHS official account.

23 THE COURT: All right.

24 MS. BOYD: So we think because of this position that
25 the defendants continue to hold, that the Office of Inspector

1 General could potentially consider factors that are totally
2 contrary to the state standards, it would be necessary to
3 grant relief that more broadly enjoins not just application of
4 the Kennedy Declaration, but any materially similar policy
5 which purports to supersede the professionally recognized
6 standards of care that exist in the plaintiff states. So that
7 is why we would be asking for that.

8 And that, as articulated, I think defeats any kind of
9 argument that that would be impermissibly vague relief,
10 because we are asking materially similar policy that does this
11 particular thing, that is outside of the Secretary's authority
12 to set a superseding standard of care.

13 THE COURT: Okay. Was there something else,
14 Ms. Alkire?

15 MS. ALKIRE: Yes, Your Honor. I just want to
16 reiterate two points: first, that the Ninth Circuit has
17 vacated similar relief, invalidating unchallenged agency
18 action in light of there being no other challenged agency
19 action here, including those that prohibits any similar
20 actions from being taken.

21 I also want to just point out that --

22 THE COURT: That has been happening in other
23 litigation, you know, around the nation involving other
24 agencies. You know, I know that it's happened in the context
25 of DOE -- cases litigating DOE defunding or unfunding certain

1 programs. So I think there is a precedent for doing so. I
2 don't know if it's been -- if it's happened with HHS.

3 MS. ALKIRE: I'm not aware of those cases, Your
4 Honor. I'm not a party to the -- you know, a party to those
5 cases.

6 I also just want to mention that the relief that the
7 plaintiffs seek about this analogy of the plaintiff states
8 setting the speed limit, that would displace the OIG's
9 unchallenged regulations here, which set the standard of care
10 using those multiple sources of information.

11 THE COURT: All right.

12 MS. ALKIRE: And an order from this Court stating
13 that OIG could never supersede statewide standards of care
14 would be, respectfully, an advisory opinion.

15 THE COURT: How so?

16 MS. ALKIRE: OIG has not tried to exercise any type
17 of authority to supercede statewide standards of care, and
18 opining on whether they can, including in the context of the
19 exclusion regulations --

20 THE COURT: Okay. And so whether you call it an
21 advisory opinion or just simply overbroad, overreaching.

22 MS. ALKIRE: Respectfully, correct, Your Honor.

23 THE COURT: Which one?

24 MS. ALKIRE: Whatever one you call it. So the relief
25 would be overbroad and it would be an impermissible advisory

1 opinion on the scope of the agency's authority when they have
2 not taken an action.

3 THE COURT: All advisory opinions are impermissible
4 or just this one?

5 MS. ALKIRE: This advisory opinion would be
6 impermissible, Your Honor.

7 THE COURT: Okay. Well, I haven't made any advisory
8 opinion yet.

9 MS. ALKIRE: Yes, Your Honor. I apologize. I did
10 not mean to imply that you had or it was impermissible. Our
11 position is that -- yeah.

12 THE COURT: And so --

13 MS. ALKIRE: Our position is that such a -- such an
14 opinion or order here would be an impermissible advisory
15 opinion.

16 THE COURT: All right. I know that we've had
17 cross-motions and motions to dismiss and responses. This is
18 the last call for the last word. If you have anything, we can
19 take a recess in just a bit.

20 Ms. Boyd.

21 MS. BOYD: I don't think anything further, Your
22 Honor.

23 THE COURT: All right. And Ms. Alkire.

24 MS. ALKIRE: Nothing further, Your Honor.

25 THE COURT: Okay. Then let's take 20 minutes. I'll

1 come back, and if I have -- I'm going to review my notes. If
2 I have any other questions, I'll pose them to you, and then
3 we'll talk about the next steps. Thank you.

4 (Recess: 2:29 - 2:57)

5 THE COURT: Counsel, thank you all for taking the
6 time today to walk me through the legal arguments, the issues
7 that on one level might at first seem clear, but I think
8 you've all been able to help ensure that its complexity was
9 fully presented to me today, and I appreciate that.

10 I also appreciate your willingness both to answer the
11 questions and belabor some of the points to make sure that it
12 stuck for me, because I think that's important and why I value
13 oral argument, not just an exercise of hearing your
14 presentation, but more of an interactive discussion.

15 I've had the chance to review the briefs, think about
16 them quite a bit, and in consideration of the arguments that
17 both of you have made, I am going to be denying the motion to
18 dismiss, grant -- the defendants' motion to dismiss and will
19 be granting summary judgment in favor of the -- of the several
20 states plaintiffs.

21 With respect to *ultra vires*, I'm going beyond the
22 scope and authority of the Secretary to declare that which is
23 declared in the -- in the document, the Declaration itself, in
24 violation of Medicare rule-making requirements, violation of
25 the APA rule-making requirements.

1 Now, with respect to Count 4, I haven't decided
2 exactly how I'm going to approach that. And because it is
3 sort of two steps removed from perhaps sort of the direct
4 considerations that are associated with APA rule -- APA and
5 Medicare rule-making requirements, and certainly the
6 *ultra vires*, which, frankly, on its face is about as clear
7 as -- as a -- clear proof of claim as there can be, the
8 Count 4 considerations, I do want to take under advisement and
9 give some further thought about how -- how I need to address
10 them or treat them in some particular way.

11 The relief that I will order is vacating the
12 Declaration. The declaratory judgment -- the request for a
13 declaratory judgment as requested on page 31 of the
14 plaintiffs' reply that in light of the defendants' extensive
15 reach that is not adequately and appropriately tethered to the
16 governing statutes, the judgment will clarify the defendants
17 lack authority to establish superseding standards of care to
18 exclude providers from federal healthcare programs.

19 With respect to the request to enjoin enforcement,
20 implementation, or reliance on the Kennedy Declaration, I'm
21 going to ask that there be an additional supplement --
22 supplemental briefing to help me understand why that would be
23 needed above and beyond declaratory action, as well as more
24 specific language that the plaintiffs would ask that I include
25 in the judgment. And the supplemental briefing, I invite the

1 defendants to provide supplemental briefing to help me
2 understand why that -- that relief should not be ordered.

3 I'll ask that -- that plaintiffs submit proposed
4 language for the judgment outlining the -- the vacatur
5 declaratory judgment and the language that you would like me
6 to consider with respect to enjoining enforcement,
7 implementation, or reliance on the Kennedy Declaration or a
8 materially similar policy as the plaintiffs have asked.

9 The more detailed and specific reasons advancing and
10 identifying the factual bases will be provided in a written
11 opinion that lays out my analysis and reasoning far more -- in
12 far more detail than I'm going to be able to provide here
13 orally. It will take into account the many statements in both
14 declarations, the -- the characterizations that have been made
15 through the communications that defendants have provided over
16 the course of these many months since the Declaration's been
17 issued, along with the explanation based on case law and my
18 reasoning and the application of the facts to that case law as
19 to why the Declaration is *ultra vires* and why rule-making is
20 necessary by virtue of this being a final agency action that
21 implicates a substantive change in rule.

22 I do want to point out a couple of -- maybe one
23 point, perhaps two, but there was a significant distinction
24 between the way in which the parties have been discussing the
25 standard -- the standard that would need to be regarded.

1 On one level, aside from the point that I think as,
2 Ms. Boyd, you pointed out, the Declaration doesn't quite track
3 the language of the standard, potentially modifies it some,
4 but the standard is, as the defendants rely on, have -- it was
5 not explicitly modified or changed by the Declaration. I can
6 appreciate that -- that understanding, but the Declaration
7 also provides some very explicit, unequivocal statements about
8 what is not -- what falls below the standard -- the
9 professionally recognized standard of care as it relates to
10 gender-affirming care. It is not ambiguous. It does not
11 provide for conditions or options or alternatives. It is
12 clear that gender-affirming care does not fall within that
13 which is professionally recognized as standards of care.

14 What that amounts to is a modification. By declaring
15 that as a matter of sort of indelible fact, it has effectively
16 eliminated any consideration of any standard of care for
17 people who are seeking gender-affirming care in the plaintiff
18 states. So it is not merely an opinion. It has materially
19 modified how -- not even how the standard of care might apply
20 in gender-affirming care, but that there is no standard of
21 care that can be applied for even considering the provision of
22 gender-affirming care in those plaintiff states.

23 And it goes -- and that point, I think it speaks to a
24 broader theme and issue. And -- and this is sort of my
25 opportunity to just provide some commentary and observation.

C E R T I F I C A T E

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I certify, by signing below, that the foregoing is a true and correct transcript of the record, taken by stenographic means, of the proceedings in the above-entitled cause.

A transcript without an original signature, conformed signature, or digitally signed signature is not certified.

DATED this 23rd day of March 2026.

/s/ Kellie M. Humiston
Kellie M. Humiston, RMR, CRR
Official Court Reporter
Certificates Expire: 9/2027

Exhibit B

 An official website of the United States government [Here's how you know](#)

U.S. Department of Health and Human Services

Office of Inspector General

OIG and Tenet Healthcare Corporation Reach Divestiture Agreement To Address Exclusion of Redding Medical Center

December 11, 2003

Acting Principal Deputy Inspector General Dara Corrigan announced today that the Office of Inspector General (OIG) of the Department of Health and Human Services has entered into an agreement with Tenet Healthcare Corporation to address the OIG's potential exclusion of Redding Medical Center through the sale of the hospital. The OIG had initiated proceedings to exclude Redding from Medicare, Medicaid and other Federal health care programs based on allegedly unnecessary invasive cardiology services provided to patients of the hospital over a four year period.

“When hospital quality review systems break down and unnecessary medical care is provided, we will use our authorities to remedy the problem,” stated Corrigan. “In a serious case such as this, those remedies may involve excluding an entity from participation in Federal health care programs, requiring the sale or transfer of a facility to an unrelated third party, or imposing stringent integrity and quality measures, as appropriate. At the same time, we will strive to ensure that patients have access to care. We believe that the decision to allow Tenet to sell this hospital is in the best interest of the health care programs and their beneficiaries,” she added.

Under the terms of the agreement, Tenet agrees to divest Redding to an unrelated party and the OIG agrees to withhold issuing a formal notice of exclusion for the alleged misconduct. If Tenet sells the hospital in compliance with the terms of the agreement, the OIG will not proceed with the exclusion. If Tenet fails to comply with the agreement, however, the OIG at its discretion may impose monetary penalties or implement the exclusion.

Media Contact

media@oig.hhs.gov

202-619-0088

“Today’s agreement allows for care to continue to be provided to beneficiaries in the Redding area while at the same time maintaining the integrity of the Federal health care programs,” Corrigan stated. “This agreement demonstrates our commitment to working with providers to resolve matters in a way that reduces the risk of harm to patients.”

On September 3, 2003, the OIG notified Redding, a 269-bed acute care facility in Redding, California, of the OIG’s intent to exclude the hospital based upon unnecessary and substandard invasive cardiology services provided at the hospital between 1999 and 2002. The services at issue included cardiac catheterizations and open heart surgeries known as “coronary artery bypass grafts.” This is the first case in which the OIG initiated the exclusion of a hospital based on unnecessary or substandard care.

Since the September letter, the OIG has met with representatives of Redding and Tenet and considered written argument and evidence offered by Tenet. Had an agreement not been finalized earlier today, the next step in the process would have been for the OIG to issue a notice of exclusion to the hospital, after which the exclusion would have gone into effect in 20 days. Tenet would then have had the opportunity to appeal the exclusion before a federal Administrative Law Judge. An excluded hospital cannot bill Medicare, Medicaid or any other Federal health care program for items or services furnished to beneficiaries of those programs.

Tenet previously entered into a \$54 million civil False Claims Act settlement with the Department of Justice on August 4, 2003, related to the same conduct that is the subject of the proposed exclusion action. The civil settlement did not include a resolution of the OIG’s potential exclusion of Redding. The OIG and the Department of Justice are continuing criminal investigations of individuals involved in this conduct at Redding. In addition, the OIG and the Department of Justice have several other open criminal and civil investigations of Tenet and its hospitals.

Exhibit C

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 25-12006-RGS

STATE OF WASHINGTON, *et al.*

v.

FEDERAL EMERGENCY MANAGEMENT AGENCY, *et al.*

SUMMARY JUDGMENT ORDER

December 11, 2025

STEARNS, D.J.

For the reasons set forth in the court's accompanying memorandum, the court ALLOWS plaintiffs'¹ Motion for Summary Judgment and ORDERS the following:

1. The court declares that the termination of the BRIC program is void and of no force or effect.

¹ Plaintiffs are the State of Washington; the Commonwealth of Massachusetts; the State of Arizona; the State of California; the State of Colorado; the State of Connecticut; the State of Delaware; the District of Columbia; the State of Illinois; Office of the Governor, *ex rel.* Andy Beshear, in his official capacity as Governor of the Commonwealth of Kentucky; the State of Maine; the State of Maryland; the State of Michigan; the State of Minnesota; the State of New Jersey; the State of New Mexico; the State of New York; the State of North Carolina; the State of Oregon; Josh Shapiro, in his official capacity as Governor of the Commonwealth of Pennsylvania; the State of Rhode Island; the State of Vermont; and the State of Wisconsin, and their subdivisions and instrumentalities.

2. The court vacates and sets aside the termination of the BRIC program pursuant to 5 U.S.C. § 706(2).

3. The court permanently enjoins defendants (including Karen Evans, Secretary Noem, and their successors in officers, acting or confirmed, as well as their officers, agents, employees, attorneys, and any other persons in active concert or participation with them (under Fed. R. Civ. P. 65(d)(2)) as follows:

- a. Defendants are enjoined from implementing, adopting, giving effect to, reissuing, or reinstating under a different name the Hamilton Memo [Dkt # 96 at 43-44] and the April 4 Press Release [Dkt # 96 at 55] without Congressional authorization and approval.
- b. Defendants shall not take any further actions to terminate, shut down, cancel, freeze, suspend, or pause the BRIC program with respect to plaintiffs without Congressional authorization and approval.
- c. Defendants shall promptly take all steps necessary to reverse the termination of the BRIC program, including reversing any policies, memoranda, directives, or actions issued before this Order that were designed or intended, in

whole or in part, to implement, adopt, give effect to, comply with, or carry out the termination of the BRIC program.

- d. Defendants are enjoined from obligating, using, expending, disbursing, transferring, or reprogramming funds set aside for FEMA's pre-disaster mitigation program² under 42 U.S.C. § 5133(i) or appropriated directly to FEMA's pre-disaster mitigation program, for purposes other than FEMA's pre-disaster mitigation program without Congressional authority and approval.
- e. Nothing in this Order precludes defendants from requesting information regarding BRIC projects or otherwise analyzing the BRIC program, or allocating BRIC funds among qualified applicants in the ordinary exercise of the Secretary's discretion in the manner authorized by Congress, nor does it bar defendants from seeking legislative changes to the BRIC program, or rescission of any appropriated funds, or recommending that Congress

² FEMA's pre-disaster mitigation program is the program authorized by 42 U.S.C. § 5133, which has gone by different names over time, including Pre-Disaster Mitigation (PDM) and BRIC.

terminate the BRIC program altogether in the future.

- f. Defendants shall provide written notice of this Order to all federal departments and agencies to which the Hamilton Memo or its directives, either therein or subsequently reissued, were communicated.
- g. The court retains jurisdiction to enforce this judgment.

SO ORDERED.

/s/ Richard G. Stearns
UNITED STATES DISTRICT JUDGE

Exhibit D

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 25-12006-RGS

STATE OF WASHINGTON, *et al.*

v.

FEDERAL EMERGENCY MANAGEMENT AGENCY, *et al.*

ORDER TO ENFORCE THE COURT'S
SUMMARY JUDGMENT ORDER

March 6, 2026

STEARNS, D.J.

The court appreciates the tangible steps taken by the Federal Emergency Management Agency to comply with the court's December 11, 2025 Summary Judgment Order (the December 11 Order) [Dkt # 130]. It has communicated the December 11 Order to the relevant stakeholders, and it has ensured that funding set aside for the BRIC program remains in the disaster mitigation account. Plaintiffs are correct, however, that several aspects of the December 11 Order remain unimplemented. The Fiscal Year 2024 Notice of Funding Opportunity (NOFO), for example, which was cancelled during the errant effort to terminate the BRIC program, has not yet been reinstated. There is no indication, moreover, that the agency intends to issue a Fiscal Year 2025 NOFO in the near future, even though the court

found the states entitled to a certain minimal threshold of funding each fiscal year.

In allowing plaintiffs' motion to enforce, the court acknowledges that at least some of the agency's delay in implementing the remaining measures can be attributed to staffing shortages resulting from layoffs and the current budgetary freeze. The court also understands that a new Secretary will soon be appointed and that the transition process will necessarily require some time and adjustment. Nonetheless, the court finds the following measures reasonable steps that can be taken while the transition is completed:

1. Within fourteen (14) days of this Order, Defendants shall communicate to each Plaintiff State's emergency management agency the status of all BRIC projects within that state.

2. Within fourteen (14) days of this Order, Defendants shall identify for the court:

- a. all Building Resilient Infrastructure and Communities (BRIC) projects that have been awarded by Defendants since the date of the December 11 Order;
- b. all BRIC projects that Defendants have moved from Phase 1 to Phase 2 since the date of the December 11 Order;
- c. all period of performance extensions for BRIC projects that

have been granted by Defendants since the date of the December 11 Order; and

d. all selected, phased, or otherwise pending BRIC projects for which Defendants have sent requests for information since the date of the December 11 Order.

3. Within fourteen (14) days of this Order, Defendants shall file a status report which sets forth:

a. steps remaining to reverse the termination of the BRIC program and Defendants' expected timeline, including identifying when Defendants expect to:

i. issue a Fiscal Year 2025 BRIC Notice of Funding Opportunity (NOFO) in compliance with Pub. L. No. 117-58, 135 Stat. 429, 1387 (2021) and 42 U.S.C. § 5133(f); and

ii. issue a Fiscal Year 2026 BRIC NOFO in compliance with Pub. L. No. 117-58, 135 Stat. 429, 1387 (2021) and 42 U.S.C. § 5133(f);

b. when Defendants anticipate:

i. resolving pending requests for period of performance extensions for BRIC projects;

- ii. finalizing pending requests to move Phase 1 BRIC projects to Phase 2; and
- iii. finalizing pending state management cost grant agreements.

4. Within twenty-one days (21) of this Order, Defendants shall issue a BRIC program NOFO for Fiscal Year 2024 in compliance with the Infrastructure Investment and Jobs Act, Pub. L. No. 117-58, 135 Stat. 429, 1387 (2021) and 42 U.S.C. § 5133(f).

5. Take any other such measures consistent with the court's Order that can be undertaken or completed within the specified reporting periods.

SO ORDERED.

/s/ Richard G. Stearns

UNITED STATES DISTRICT JUDGE

Exhibit E

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

AMERICAN FEDERATION OF
GOVERNMENT EMPLOYEES
NATIONAL VA COUNCIL; and

AMERICAN FEDERATION OF
GOVERNMENT EMPLOYEES
LOCAL 2305

Plaintiffs,

v.

UNITED STATES DEPARTMENT
OF VETERANS AFFAIRS; and

DOUGLAS A. COLLINS, in his official
capacity as U.S. Secretary of Veterans
Affairs

Defendants.

Case No. 1:25-cv-00583-MRD-PAS

EXPEDITED RELIEF REQUESTED
(LR Cv 9)

**MEMORANDUM IN SUPPORT OF PLAINTIFES' MOTION TO ENFORCE THE
PRELIMINARY INJUNCTION**

INTRODUCTION

The Defendants in this case are violating an order of this Court. Accordingly, Plaintiffs respectfully seek the Court’s swift intervention to protect their rights—and the rights of the federal employees they represent—and to safeguard the integrity of the judicial process.

On March 13, 2026, this Court issued the PI Order¹ requiring Defendants to immediately comply with all terms of the Master Agreement, which is the collective bargaining agreement between the VA and NVAC. While asserting that the Master Agreement has been reinstated, Defendants are not, in fact, complying with the terms of the Master Agreement and, thus, they are not complying with the PI Order. Defendants continue to deny employees the benefits and protections they are due under the Master Agreement.

Nor have Defendants communicated to Plaintiffs how they will comply with the PI Order in the future. At the national level, Defendants have told the union’s leadership that compliance with the PI Order “raises complex questions of law” and that “additional information and guidance regarding VA’s reinstatement of the [Master Agreement] and compliance with the Order will be forthcoming,” without providing any further detail. Wheeler Decl., Ex. C (03/18/26 Memorandum from Office of Labor-Management Relations to Human Resource Officials). At the local level, VA officials are refusing to interact with local union leadership or to confirm employees’ eligibility for benefits and protections they are due under the Master Agreement. Defendants’ counsel has brushed off Plaintiffs’ counsel’s requests for confirmation

¹ In this brief, “PI Order” refers to the order issued on March 13, 2026, at docket entry 30. The “FSLMRS” refers to the Federal Service Labor-Management Relations Statute. “NVAC” is Plaintiff American Federation of Government Employees National Veterans Affairs Council. The “Wheeler Decl.” is the concurrently filed Declaration of Alexandra Wheeler in Support of Plaintiffs’ Motion to Enforce. The “Termination” refers to Defendant U.S. Secretary of Veterans Affairs Douglas A. Collins’s decision to terminate the Master Agreement on August 6, 2025. The “VA” refers to the United States Department of Veterans Affairs.

that the Master Agreement will be reinstated per the PI Order. In short, there is no compliance today, and no promise of compliance tomorrow.

Instead, Defendants filed a motion seeking “clarification” of the PI Order. Plaintiffs will submit an opposition explaining why that motion lacks merit. But, for the purposes of this motion, the critical fact about Defendants’ clarification motion is that neither of the ancillary issues that it raises has any bearing on whether Defendants can comply with the PI Order today.

Defendants are failing to comply with an order of this Court. The Court should address this situation by issuing a remedial order enforcing the PI Order containing the remedial measures that Plaintiffs seek below.

FACTUAL BACKGROUND

On March 13, 2026, the Court issued the PI Order. It requires that Defendants “reinstate the Master CBA—as well as any amendments, local supplemental agreements, and memoranda of understanding that were in place subsidiary to the Master CBA—for the remainder of the agreed-upon term provided in the Master CBA.” Dkt. 30 at 29.

On Tuesday, March 17, 2026, NVAC’s President, Mary Jean Burke, raised to Defendant Collins’ attention that VA officials were not complying with the PI Order but were instead claiming that they were “awaiting guidance” from the VA. Wheeler Decl., Ex. B (03/17/26 M. Burke Letter to D. Collins). Instead of engaging in good-faith implementation, the VA responded by pointing NVAC to an internal VA memorandum. The memorandum is ambiguous. It starts by stating that “Per the [PI] Order, the 2023 Master CBA with AFGE is reinstated.” Wheeler Decl., Ex. C. (03/18/26 Memorandum from Office of Labor-Management Relations to Human Resource Officials). But the memorandum goes on to say that the “VA is currently reviewing the Order and has engaged with the Department of Justice for guidance on how to

correctly implement the Order. The Order raises complex questions of law about how to reinstate the CBA while the FSLMRS remains inapplicable to the vast majority of VA employees. Additional information and guidance regarding VA’s reinstatement of the 2023 Master CBA and compliance with the Order will be forthcoming.” *Id.* No timeline was provided.

On Thursday, March 19, 2026, lawyers for the VA asserted that the PI Order “did not address the validity of EO 14251, enjoin the implementation of EO 14251, or make the Federal Service Labor-Management Relations Statute (FSLMRS) broadly applicable to VA” and that the “Order’s lack of clarity and failure to address how the CBA can be reinstated notwithstanding the valid and enforceable EO requires VA to get further guidance from the District Court.” Wheeler Decl., Ex. L (03/19/26 N. Pasquarella Letter to F. Cornelius).

On Friday, March 20, 2026, the date this Motion is being filed, Defendants filed a “Motion for Clarification of Preliminary Injunction.” Dkt. 32. But the March 20, 2026 Motion for Clarification omits any arguments about the relationship between the PI Order and Executive Order 14251, and instead raises two different and new issues that purportedly require clarification. First, Defendants assert that the PI Order “could be read as forbidding Defendants from engaging in any future termination of the Master CBA through its scheduled expiration on August 8, 2026. Defendants seek clarification that such a construction was not intended.” *Id.* at 6. Second, Defendants “seek clarification that the [PI] Order is limited to ‘local supplemental agreements, and memoranda of understanding’ it has with the two Plaintiffs in this case.” *Id.* at 7.

Meanwhile Defendants’ counsel has refused to confer with Plaintiffs’ counsel about any of these issues. When Plaintiffs’ counsel first asked to confer, Defendants’ counsel did not

respond and instead pointed to the ambiguous internal memorandum described above. Wheeler Decl., Ex. M (03/18/26 T. Becker Email to T. Silva). The following day, after Plaintiffs' counsel informed Defendants' counsel that the VA was continuing to deny employees their rights under the Master Agreement and asked for confirmation that the VA would comply with the PI Order by adhering to the Master Agreement, Wheeler Decl., Ex. N (03/19/26 T. Silva Email to T. Becker), defense counsel refused to provide that confirmation, instead stating that "If the union believes any provisions of the Master Agreement are not being honored, the agreement spells out the process for raising grievances." Wheeler Decl., Ex. O (03/20/26 T. Becker Email to T. Silva). Within minutes of sending this email, Defendants filed their Motion for Clarification.

All the while, Defendants have been defying the PI Order by openly refusing to follow the Master Agreement's terms. As Plaintiffs show below, the VA continues to deny employees benefits due under the Master Agreement, to deny union officials official time to attend to union duties, to deny employees right during the disciplinary process, and to refuse to participate in the negotiated grievance and arbitration procedure. *See infra*, Argument, Section D.

In sum, in the week since the Court issued the PI Order, Defendants have taken the position that they have complied with the PI Order by issuing a memorandum saying that the Master Agreement is "reinstated," without actually following the Master Agreement's terms. Defendants have simultaneously argued that the PI Order is so ambiguous and unclear that it needs clarification. And the issues that Defendants claimed needed clarification on March 18 and 19 are different than the issues that Defendants claim need clarification in their March 20 Motion for Clarification.

LEGAL STANDARD

Courts may issue further orders “to compel compliance with a [prior] court order.” *United States v. Saccoccia*, 433 F.3d 19, 27 (1st Cir. 2005). To enforce a court order, the plaintiff must show that (1) Defendants “had notice of the order,” (2) “the order was clear and unambiguous,” (3) Defendants “had the ability to comply with the order”, and (4) Defendants “violated the order.” *New York v. Trump*, 777 F. Supp. 3d 112, 116 (D.R.I. 2025) (citing *Hawkins v. Dep’t of Health and Human Servs.*, 665 F.3d 25, 31 (1st Cir. 2012) and granting motion to enforce preliminary injunction against multiple governmental defendants, including Defendants here), *aff’d* – F.4th –, –, 2026 WL 734941, *19 (1st Cir. Mar. 16, 2026).²

ARGUMENT

Plaintiffs have satisfied all four *Hawkins* factors. There is no dispute that Defendants have actual notice of the PI Order. The PI Order’s instruction to “reinstate the Master CBA” is short, direct, and precise, and Defendants have demonstrated that they understand what compliance means in this context. Defendants abided by the Master Agreement before and have the ability to abide by it again. And it is clear that Defendants are violating the PI Order.

A. First Factor: Defendants had notice of the PI Order

There is no dispute that Defendants had actual notice of the PI Order. The Order was electronically served upon them, and Defendants have referred to it in correspondence with Plaintiff NVAC. Wheeler Decl., Ex. C (03/18/26 Memorandum from Office of Labor-Management Relations to Human Resource Officials).

² This is the same standard that governs motions for civil contempt. *See Hawkins*, 665 F.3d at 31. That said, Plaintiffs do not seek civil contempt at this time.

B. Second Factor: The PI Order is clear and unambiguous

The PI Order directs that Defendants “shall reinstate the Master CBA—as well as any amendments, local supplemental agreements, and memoranda of understanding that were in place subsidiary to the Master CBA—for the remainder of the agreed-upon term provided in the Master CBA.” Dkt. 30 at 29. There are no exceptions or qualifications. Compliance is due immediately. The action required by Defendants is precisely stated and easy to identify. It requires Defendants to return to the status quo ante by complying with the Master Agreement.

Indeed, throughout the case, Defendants have made clear that compliance with a preliminary injunction would require the VA to follow the Master Agreement. Defendants acknowledged that reinstating the Master Agreement would require the VA to “allow nearly 2,000 government employees to be able to use union time -- to engage in union activity during the workday” *i.e.*, to provide union officials with official time. Wheeler Decl., Ex. A, (02/19/2026 H’rg) at Tr. 35: 23-25. Defendants stated that an injunction would require them to give “the employee a 90-day performance improvement plan before even terminating them,” *id.* at Tr. 35:21-22; to provide “advance notice to the Union before employees can even be reassigned or involuntarily moved,” *id.* at Tr. 36: 2-5; to furnish “office space at the VA facilities,” *id.* at Tr. 36: 5-6; and to “engage in [] arbitrations and grievance procedures,” *id.* at Tr. 41: 21-23.³ The Court can thus be confident in knowing that Defendants understand what compliance looks like, given that Defendants have described it to the Court.

³ See also Dkt. 17 at 10-11 (listing the VA’s post-termination actions), 52-53 (“If forced to comply with Plaintiffs’ requested preliminary injunction by reinstating the CBA, the VA would have to undo those actions by reestablishing withholding of union dues,” recognizing official time, providing the union with use of VA premises, engaging in collective bargaining, and “otherwise reverting back” to prior practice.).

In contrast, none of Defendants’ shifting claims about why the PI Order requires “clarification” actually suggests that the PI Order is unclear or ambiguous. Rather, Defendants’ “clarification” arguments are either arguments that Defendants recycle from their opposition to Plaintiffs’ Motion for Preliminary Injunction (and that the Court rejected) or are untimely new arguments in opposition to Plaintiffs’ Motion that Defendants are only now raising for the first time.

On Wednesday, March 18, Defendants took the position that the PI Order is unclear because of a purported conflict between the PI Order, which enjoins the Termination, and the related Executive Order, which remains in effect. Wheeler Decl., Ex. C (03/18/26 Memorandum from Office of Labor-Management Relations to Human Resource Officials). There is no such conflict. In their Opposition, Defendants had argued that the legality of the Executive Order and the Termination were one and the same, *see* Dkt. 17 at 17, 33-35, 36-37, 43-44, but the Court rejected those arguments. In fact, the PI Order made very clear that the Court was “deeply mindful” of the distinction between the Executive Order and the Termination. Dkt. 30 at 12. The Court noted that “[t]his case is not about the constitutionality of the EO. The motion before the Court is about whether the Defendants’ termination of the Master CBA is unconstitutional as a violation of the Plaintiffs’ First Amendment rights and/or the APA as well as in violation of the APA as an arbitrary and capricious administrative action.” *Id.* The Court then explained why Plaintiffs are likely to succeed in showing that the Termination ordered *by the Secretary* was unlawful independent of whatever force the Executive Order might have. *Id.* at 12-24. Defendants also clearly understand this distinction; they devote nearly a full page of their Motion for Clarification to acknowledging it. Dkt. 32 at 3-4.

Moreover, Defendants have long understood that the Master Agreement can remain in effect notwithstanding the Executive Order. Immediately after the President issued Executive Order 14251, the Office of Personnel Management affirmatively advised the VA *not* to terminate any collective bargaining agreement. *See* Dkt. 30 at 16 & n.7; *see also* Dkt. 19 at 4-5 (describing the government’s statements that the Executive Order and any termination of collective bargaining agreements are distinct events). Indeed, the VA left the Master Agreement in place for more than four months after the President issued the Executive Order,⁴ and many other collective bargaining agreements stayed in effect for much longer. Dkt. 17 at 44. In short, the objection the VA asserted in its March 18 memorandum is an issue that Defendants already put before the Court and which the Court already addressed in the PI Order.

Abandoning the explanation offered on March 18 for why they could not comply with the PI Order, on March 20, Defendants filed a Motion for Clarification that identifies totally different issues needing “clarification.” As noted above, the Motion for Clarification first asks for the Court’s permission to issue a second termination of the Master Agreement, then seeks to limit the PI Order with respect to subsidiary agreements. Plaintiffs will address the Motion for Clarification in a separate response, but, for present purposes, the key point is that neither of these arguments (even if colorable, which they are not) has anything to do with Defendants’ ability to understand the PI Order or to comply with it today. There is nothing about the question of whether the PI Order would bar some speculative, future conduct by the Defendants that would hamper Defendants’ ability to follow the PI Order today. And Defendants’ non-

⁴ Executive Order 14251 was enjoined, as to its application against Plaintiffs, between June 24, 2025, and July 7, 2025. But it was not enjoined between its March 27, 2025 issuance and June 24, 2025, or again between July 7, 2025 and August 6, 2025.

compliance is not limited to subsidiary, local agreements, but rather is across-the-board defiance of the PI Order, as Plaintiffs illustrate below. *See infra*, Argument, Section D. Furthermore, Defendants have not provided even Plaintiffs NVAC and Local 2305 with union office space. Wheeler Decl., ¶ 17.

None of Defendants’ changing explanations shows that the PI Order is “unclear” or “ambiguous.” Indeed, when they were opposing Plaintiffs’ request for a preliminary injunction, Defendants were able to identify, in detail, the tasks that would be necessary to comply such an injunction. *See supra*, p. 6. Defendants’ protestations about the PI Order’s alleged lack of clarity are pretexts for heel-dragging and re-litigating the merits of the PI motion. Such conduct is improper at this stage of the litigation.

C. Third Factor: Defendants are able to comply with the PI Order

Defendants can comply with the PI Order. The Master Agreement was in effect for all represented employees from when it came into force on August 8, 2023 until the August 6, 2025 Termination at issue in this case. This includes the period of time between the March 27, 2025 issuance of Executive Order 14251 and the Termination. In fact, even after the Termination, the Master Agreement remained in effect for the small subgroup of represented employees, mostly police officers, who Defendants carved out of the Termination. The Court’s restoration of the status quo ante imposes on Defendants only those obligations that they accepted as a matter of contract when they signed the Master Agreement.

D. Fourth Factor: Defendants are violating the PI Order

Defendants are violating the PI Order. Although Defendants assert that the Master Agreement has been “reinstated,” they are failing to comply with easy-to-understand and easy-to-implement provisions of the Master Agreement. The reality is, for the hundreds of thousands

of VA employees represented by Plaintiffs, absolutely nothing has changed since the issuance of the PI Order.

For example, the Master Agreement grants represented employees 16 weeks of parental leave. The Court ruled that denial of such parental leave is an irreparable harm, and this was one of the bases for the PI Order. Dkt. 30 at 25-26 (“Parents cannot turn back the clock to have more time with an infant prior to returning to work once they have missed the early formative weeks of development and their own recovery time.”). Yet, this week, the VA told an AFGE-represented employee that she must return to work imminently—on March 23—even though under the Master Agreement she is entitled to an additional 4 weeks of parental leave to spend with her newborn child. Wheeler Decl., Ex. E (03/18/26 Watts Email). In another example, the VA denied a represented employee expecting to deliver a child in May her contractual parental leave benefit, stating “your record still reflects that you are ineligible for inclusion in a bargaining unit. Currently we have no guidance on when this will change.” Wheeler Decl., Ex. F (03/18/26 Funseth Email). Defendants’ heel-dragging is particularly unconscionable in this context.

By way of another example, Defendants continue to deny employees covered by the Master Agreement the assistance of union representation during the disciplinary processes, as well as procedural protections guaranteed by the Master Agreement. Again, the Court referenced these harms when it issued the PI Order. Dkt. 30 at 26 (“Disciplinary processes, once concluded, have an immediate and irreparable effect on the employee(s) in question”); *see also* Dkt. 13, Ex. A, at Art. 14 (relevant Master Agreement provision). Yet, this week, the VA has continued to obstruct local union leaders’ efforts to arrange for AFGE-represented employees to have union representation as a part of the discipline process. Wheeler Decl., Exs. J (03/19/26 Stratton

Email), G (03/18/26 Brown Email). On March 17, the VA terminated a represented employee, and the termination notice did not contain any notice the employee’s option to appeal through the Master Agreement’s procedure. Wheeler Decl., Ex Q (03/17/26 Removal Decision). Relatedly, the VA continues to deny union leadership’s requests to recognize their right to official time, stating that the VA “will maintain status quo” and that “[o]fficial time request[s] from employees who are not police officers/firefighters/security guards are denied.” Wheeler Decl., Ex. P (03/16/26 E. Gallemyer Email to T. Stormoen).

Defendants are also refusing to participate in ongoing arbitration proceedings to resolve workplace disputes. As outlined in the Declaration of William Wetmore in support of Plaintiffs’ Motion for Preliminary Injunction, after Defendants unilaterally terminated the Master Agreement they also unilaterally refused to participate in any scheduled arbitrations. *See* Dkt. 14-3, at ¶ 31. One such example was a scheduled arbitration based on a grievance filed by AFGE Local 85. On March 16, 2026, the arbitrator handling the AFGE Local 85 grievance requested that the parties move forward with rescheduling proceedings, *citing the PI Order*. On March 19, Defendants sent a letter arguing that the PI Order lacks clarity and the arbitration “should continue to be held in abeyance and processing should only be resumed once the controlling litigation concludes.” Wheeler Decl., Ex L (03/19/26 Pasquarella Letter). Defendants have relied on similar language in refusing to engage in other arbitrations. *See* Wheeler Decl., Exs. H (03/19/26 Greene Email); K (03/19/26 Greenstein Email).

REMEDY

Plaintiffs respectfully request that the Court issue a remedial order requiring Defendants to comply with the Master Agreement, with respect to all employees covered by the terms of the

Master Agreement (and not just the approximately 3,000 police officers who the VA calls “Exempted Employees”). This order should require compliance with immediate effect.

Defendants should be required to submit weekly status reports to the Court and Plaintiffs regarding implementation.

In light of Defendants’ equivocal communications with represented employees, Defendants should be required to issue a communication stating that they have reinstated the Master Agreement as to all employees who fell within its coverage before the Termination. A court overseeing similar litigation over the rescission of a collective bargaining agreement has required such notices. *Am. Fed’n of Gov’t Emps., AFL-CIO v. Noem*, 785 F. Supp. 3d 833, 863 (W.D. Wash. 2025) (requiring similar notification upon initial issuance of a preliminary injunction); *Am. Fed’n of Gov’t Emps., AFL-CIO v. Noem*, No. 2:25-CV-00451-JNW, 2026 WL 113599, at *4 (W.D. Wash. Jan. 15, 2026) (second required communication in same case).

CONCLUSION

The Court should not tolerate open defiance of its orders. The Court should grant the motion to enforce.

Respectfully submitted,

LAW OFFICE OF CARLY B. IAFRATE, PC

Dated: March 20, 2026

By: /s/ Carly Beauvais Iafrate

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Dated: March 20, 2026

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*Attorneys for American Federation of
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Council and American Federation of
Government Employees Local 2305*

Exhibit F

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MEMO ENDORSED

SERGIO ALBERTO BARCO MERCADO, on his
own behalf and on behalf of others similarly situated,

Plaintiff,

v.

KRISTI NOEM, Secretary of the U.S. Department of
Homeland Security, in her official capacity, et al.,

Defendants.

25 Civ. 6568 (LAK)

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 3-2-26

CONTEMPT MOTION STIPULATION AND ORDER

WHEREAS, on November 25, 2025, Plaintiff Sergio Alberto Barco Mercado and the provisionally certified class (“Plaintiffs”) filed a Motion for Contempt and Sanctions against Defendants Kristi Noem, Department of Homeland Security, Todd Lyons, Immigration and Customs Enforcement, Marcos Charles, and LaDeon Francis (“Defendants”) (ECF No. 108) (“Contempt Motion”);

WHEREAS, Plaintiffs’ Contempt Motion raised concerns that Defendants have not been complying with the Courts’ orders in this case, including the Court’s Temporary Restraining Order (ECF Nos. 65 & 70) and Preliminary Injunction (ECF No. 97) (“Preliminary Injunction”);

WHEREAS, on December 11, 2025, the Court granted Plaintiffs’ requests for certain discovery in connection with the Contempt Motion and thereafter granted extensions of the Parties’ time to complete discovery in connection with the Contempt Motion and for Plaintiffs’ time to file a reply brief (ECF Nos. 128–29, 136, 139);

WHEREAS, the Parties now wish voluntarily to resolve Plaintiffs’ outstanding concerns regarding Defendants’ compliance with the Court’s orders according to the terms set forth below in this stipulation (“Stipulation”);

WHEREAS, the Parties jointly request that this Stipulation be so-ordered by the Court, as indicated by the signatures appearing below, the Court's willingness to so-order this Stipulation being a material condition of the Parties' willingness to enter into it;

IT IS HEREBY STIPULATED AND AGREED, by and between the parties hereto:

1. For the avoidance of doubt, the Parties agree that all terms of the Preliminary Injunction (ECF No. 97) apply to any room, cell, or other space where individuals are detained for any length of time by Defendants at 26 Federal Plaza, New York, New York ("26 Fed"), whether on the tenth floor or on any other floor, when any room, cell, or other space is used to detain individuals for any length of time;

2. Defendants shall ensure that the confidential legal calls mandated by the Preliminary Injunction, including in Paragraphs 2(b), 2(c), and 4, take place in a private, confidential room that is not subject to auditory monitoring;

3. Defendants shall ensure that when calls are made to (212) 436-9400, the number designated for attorneys to call to contact or schedule calls with individuals detained at 26 Fed, such number will be answered by a Supervisory Detention and Deportation Officer ("SDDO") or if a SDDO is not available, by another individual under the supervision of a SDDO, or if such individual likewise is not available, that the call be transferred to a call center where it is either answered by an individual instructed regarding the requirements of the Preliminary Injunction or connected to a voicemail account. Defendants shall ensure that if the call is not answered by an SDDO or a person under the supervision of an SDDO, that there is an opportunity to leave a voicemail or verbal message and that the attorney receive a response to any voicemail or message within six (6) regular business hours. The foregoing requirements shall apply to any other telephone number designated by Defendants to facilitate calls between attorneys and individuals detained at 26 Fed;

4. The Notice of Rights required by Paragraph 2 of the Preliminary Injunction (“Notice of Rights”) shall be posted in a semi-permanent fashion (drilled or securely attached, and laminated) in the processing room of the tenth floor and on any other floor where individuals are detained by Defendants for any length of time, and posted either inside each holding cell where individuals are detained for any length of time or on the outside see-through wall of each holding cell where individuals are detained for any length of time such that the Notice of Rights can be viewed by the individuals in the holding cell. Such Notice of Rights shall be in English and Spanish, with text below in several other languages (including at a minimum Arabic, Bengali, French, Haitian Creole, Hindi, K’iche’ (Quiché)/Kxlantzij, Mam, Portuguese, Pulaar, Punjabi, Q’eqchi’ (Kekchi), Romanian, Russian, Simplified Chinese, Turkish, Vietnamese, and Wolof) saying “this notice is available in other languages upon request”;

5. All detained individuals will sign a copy of the Notice of Rights and such copy will be saved in their files. Upon Plaintiffs’ request, Defendants shall either produce to Plaintiffs’ counsel these signed Notices of Rights or a log confirming that every individual detained at 26 Fed has received such a Notice;

6. For the avoidance of doubt, nothing in this Stipulation abrogates or replaces any of Defendants’ obligations under the Preliminary Injunction, all of which remain in place;

7. In exchange for Defendants’ agreement to all of the above terms, Plaintiffs hereby withdraw the Contempt Motion without Prejudice;

8. Nothing herein shall preclude Plaintiffs from filing or re-filing a motion in the future to address issues with compliance or from seeking sanctions and/or attorneys’ fees at a later time, and Plaintiffs hereby reserve all rights and remedies going forward in connection with ensuring Defendants’ compliance with the Court’s orders;

9. All of the obligations herein shall be implemented no later than seven (7) days from the date this Stipulation is fully executed.

IT IS HEREBY FURTHER STIPULATED AND AGREED, this Stipulation may be signed in counterparts and that a facsimile and/or e-mail signature on this Stipulation shall have the effect of an original signature.

Dated: February 27, 2026
New York, New York

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Attorney for Defendants

SO ORDERED:

HON. LEWIS A. KAPLAN
United States District Judge

Dated: _____

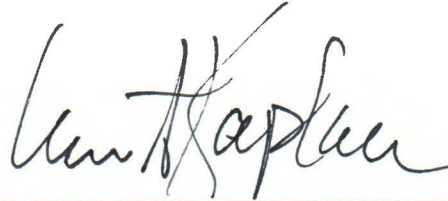
Memorandum Endorsement

Barco Mercado v. Noem, 25-cv-6568 (LAK)

For the avoidance of doubt, the parties are advised that the provisions of paragraphs 1 through 9 constitute orders of the Court compliance with which is mandatory.

SO ORDERED.

Dated: March 2, 2026

A handwritten signature in black ink, appearing to read "Lewis A. Kaplan". The signature is written in a cursive style with a large, prominent initial "L".

Lewis A. Kaplan
United States District Judge

Exhibit G

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

JUAN T.R.,

Case No. 26-CV-0107 (PJS/DLM)

Petitioner,

v.

ORDER

KRISTI NOEM, Secretary, U.S. Department of Homeland Security; DEPARTMENT OF HOMELAND SECURITY; TODD LYONS, Acting Director of U.S. Immigration and Customs Enforcement; and DAVID EASTERWOOD, Acting Director, St. Paul Field Office, U.S. Immigration and Customs Enforcement,

Respondents.

Graham Blair Ojala-Barbour, OJALA-BARBOUR LAW FIRM, for petitioner.

Ana H. Voss, UNITED STATES ATTORNEY'S OFFICE, for respondents.

On January 8, 2026, petitioner Juan T.R. filed a petition for a writ of habeas corpus.¹ The Court issued an order requiring respondents to file an answer no later than January 12, 2026. *See* 28 U.S.C. § 2243 (requiring judges to either “forthwith award the writ” or order the respondent to show cause, within three days, why the writ should not be granted).

¹Pursuant to this District’s policy in immigration cases, the Court identifies petitioner only by first name and last initials.

Respondents failed to answer. Accordingly, the Court granted the writ in part and ordered respondents to afford Juan a bond hearing within seven days or, failing that, to immediately release him from detention. ECF No. 4.

Respondents neither held a bond hearing within the required time nor released Juan. ECF No. 6. The Court then issued a show-cause order and scheduled a hearing at which it ordered the personal appearance of Todd Lyons, Acting Director of U.S. Immigration and Customs Enforcement (“ICE”). ECF No. 7. The Court noted, however, that if the parties filed a stipulation indicating that Juan had been released, the Court would cancel the hearing and would not require Lyons to appear. *Id.* The parties have now filed such a stipulation (ECF No. 9), and thus, as promised, the Court will cancel the hearing, and Lyons will not be required to appear.

That does not end the Court’s concerns, however. Attached to this order is an appendix that identifies 96 court orders that ICE has violated in 74 cases. The extent of ICE’s noncompliance is almost certainly substantially understated. This list is confined to orders issued since January 1, 2026, and the list was hurriedly compiled by extraordinarily busy judges. Undoubtedly, mistakes were made, and orders that should have appeared on this list were omitted.

This list should give pause to anyone—no matter his or her political beliefs—who cares about the rule of law. ICE has likely violated more court orders in

January 2026 than some federal agencies have violated in their entire existence. The Court warns ICE that future noncompliance with court orders may result in future show-cause orders requiring the personal appearances of Lyons or other government officials. ICE is not a law unto itself. ICE has every right to challenge the orders of this Court, but, like any litigant, ICE must follow those orders unless and until they are overturned or vacated.

Juan asks that the Court schedule a hearing at which he may present evidence and argument concerning the hardships that he has suffered as a result of respondents' failure to abide by the January 14 order. *See In re Tetracycline Cases*, 927 F.2d 411, 413 (8th Cir. 1991) ("Civil contempt sanctions may be imposed for either or both of two distinct purposes, to coerce compliance with a court order, and to compensate the complainant for actual losses sustained by him as a result of the defendants' contumacy." (quoting *In re Chase & Sanborn Corp.*, 872 F.2d 397, 400–01 (11th Cir.1989))). The Court will not schedule a hearing at this time. If Juan wants to seek monetary sanctions, he may file a properly supported motion to that effect.

ORDER

Based on the foregoing, and on all of the files, records, and proceedings herein, IT IS HEREBY ORDERED THAT the hearing currently scheduled for Friday, January 30, 2026, at 1:00 pm in Courtroom 15 (MPLS) is CANCELED.

Dated: January 28, 2026

/s/ Patrick J. Schiltz
Patrick J. Schiltz, Chief Judge
United States District Court

Habeas Cases with Order Non-Compliance

Hakan K. v. Noem, et al., Case No. 25-CV-4722 (JMB/DTS) (January 24, 2026 order)

Luis L.P. v. Brott, et al., Case No. 25-CV-4741 (NEB/DJF) (January 9, 2026 order)

Ahmed A. v. Pamela Bondi, et al., Case No. 25-CV-4776 (JWB/DJF) (January 6, 2026 order)

Francisco E.O. v. Olson, et al., Case No. 26-CV-080 (JRT/DJF) (January 15, 2026 order)

Suhaib M. v. Kristi Noem, et al., Case No. 26-CV-013 (JWB/DJF) (January 12, 2026 order)

Alex V.Y.L. v. Pamela Bondi, et al., Case No. 26-CV-031 (JWB/DJF) (January 9, 2026 order)

Francisco E.O. v. Olson, et al., Case No. 26-CV-080 (JRT/DJF) (January 15, 2026 order)

Marlon M.M. v. Easterwood, et al., Case No. 26-CV-106 (NEB/ECW) (January 15, 2026 order)

Juan T.R. v. Noem, et al., Case No. 26-CV-0107 (PJS/DLM) (January 14, 2026 order)

Sharet B.G.M. v. Lyons, et al., Case No.26-CV-120 (JRT/DTS) (January 15, 2026 order)

Botir B. v. Bondi, et al., Case No. 26-CV-130 (LMP/DJF) (January 15, 2026 order)

Lide E.G.Q. v. Executive Office for Immigration Review, et al., Case No. 26-CV-138 (JWB/JFD) (January 9, 2026 order)

Jhony A. v. Bondi, et al., Case No. 26-CV-00146 (JMB/LIB) (January 15, 2026 order)

Christopher A.F.E. v. Pamela Bondi, et al., Case No. 26-CV-150 (JWB/ECW) (January 14, 2026 order)

Evelin M.A. v. Bondi, et al., Case No. 26-CV-156 (NEB/DLM) (January 23, 2026 order)

Jose A. v. Bondi, et al., Case No. 26-CV-160 (NEB/EMB) (January 15, 2026 order)

Pascual G. v. Bondi, et al., Case No. 26-CV-00161 (JMB/LIB) (January 12, 2026 Order)

Santiago A.C.P. v. Todd Lyons, et al., Case No. 26-CV-164 (JWB/DTS) (January 15, 2026 order; January 19, 2026 order; January 20, 2026 order)

Andrei C. v. Lyons, et al., Case No. 26-CV-166 (SRN/ECW) (January 12, 2026 order)

Oscar O.T. v. Pamela Bondi, et al., Case No. 26-CV-167 (JWB/JFD) (January 15, 2026 order; January 19, 2026 order; January 20, 2026 order)

Martin R. v. Bondi, et al., Case No. 26-CV-00168 (JMB/LIB) (January 12, 2026 order; January 20, 2026 order; January 21, 2026 order)

Abdi W. v. Trump, et al., Case No. 26-CV-00208 (KMM/SGE) (January 21, 2026)

Adriana M.Y.M. v. David Easterwood, et al., Case No. 26-CV-213 (JWB/JFD) (January 24, 2026 order)

Estefany J.S. v. Pamela Bondi, et al., Case No. 26-CV-216 (JWB/SGE) (Two January 13, 2026 orders)

Martha S.S. v. Kristi Noem, et al., Case No. 26-CV-231 (JWB/DLM) (January 16, 2026 order; January 20, 2016 order)

Joaquin Q. L. v. Bondi, et al., Case No. 26-CV-233 (LMP/DTS) (January 14, 2026 order; January 21, 2026 order)

Jose L.C.C. v. Pamela Bondi, et al., Case No. 26-CV-244 (JWB/DTS) (January 15, 2026 order; January 19, 2026 order)

Juan R. v. Bondi, et al., Case No. 26-CV-252 (SRN/DTS) (January 16, 2026 order)

Jesus A.P. v. Bondi, et al., Case No. 26-CV-261 (PJS/EMB) (January 15, 2026 order)

Abdiqadir A. v. Bondi, et al., Case No. 26-CV-272 (JMB/DTS) (January 16, 2026 order)

Bashir Ali K. v. Noem, et al., Case No. 26-CV-276 (LMP/DTS) (January 22, 2026 order)

Roman N. v. Donald Trump, et al., Case No. 26-CV-282 (JWB/DLM) (January 3, 2026 order; January 17, 2026 order)

Sandra C. v. Bondi, et al., Case No. 26-CV-00283 (JMB/JFD) (January 16, 2026 order; January 21, 2026 order)

Yeylin C.R. v. Bondi, et al., Case No. 26-CV-296 (NEB/LIB) (January 20, 2026 order)

Liban G. v. Noem, et al., Case No. 26-CV-301 (SRN/ECW) (January 15, 2026 order; January 16, 2026 order; January 20, 2026 order; January 22, 2026 order)

Joseph T.M. v. Bondi, et al., Case No. 26-CV-0309 (PJS/EMB) (January 22, 2026 order)

Obildzhon E. v. Pamela Bondi, et al., Case No. 26-CV-312 (JWB/DTS) (January 17, 2026 order)

Corina E. v. Pamela Bondi, et al., Case No. 26-CV-313 (JWB/DTS) (January 17, 2026 order)

E.E. v. Pamela Bondi, et al., Case No. 26-CV-314 (JWB/DTS) (January 17, 2026 order)

Manolo Z. L. v. Trump, et al., Case No. 26-CV-316 (LMP/DTS) (January 15, 2026 order)

William L.-C. v. Bondi, et al., Case No. 26-CV-317 (NEB/JFD) (January 18, 2026 order)

Diana L.-C. v. Bondi, et al., Case No. 26-CV-319 (NEB/JFD) (January 18, 2026 order)

Felix J.C.A. v. Pamela Bondi, et al., Case No. 26-CV-328 (JWB/DLM) (January 24, 2026 order)

Ihor D. v. Noem, et al., Case No. 26-CV-00351 (JMB/DTS) (January 20, 2026 order; January 22, 2026 order)

Francisco M. v. Bondi, et al., Case No. 26-CV-369 (JMB/EMB) (January 16, 2026 order; January 23, 2026 order)

Alberto C.M. v. Noem, et al., Case No. 26-CV-0380 (DWF/SGE) (January 23, 2026 order)

Josue David P. A. v. Bondi, et al., Case No. 26-CV-396 (LMP/JFD) (January 17, 2026 order)

Nadejda P. v. Lyons, et al., Case No. 26-CV-00404 (KMM/DLM) (January 22, 2026)

Paula G. v. Bondi, et al., Case No. 26-CV-410 (JMB/DLM) (January 17, 2026 order; January 20, 2026 order)

Ronnie C. v. Pamela Bondi, et al., Case No. 26-CV-423 (JWB/JFD) (January 18, 2026 order; January 21, 2026 order)

J.B.C.O. et al., v. Bondi, et al., Case No. 26-CV-0424 (JRT/DJF) (Two January 19, 2026 orders; January 25, 2026 order)

Silvestre R. C. v. Bondi, et al., No. 26-CV-436 (LMP/JFD) (January 23, 2026 order)

Darvin M. v. Bondi, et al., Case No. 26-CV-437 (SRN/EMB) (January 19, 2026 order)

Maria U.C.G. v. Pamela Bondi, et al., Case No. 26-CV-439 (JWB/LIB) (January 24, 2026 order)

Abdirahman S. v. Bondi, et al., Case No. 26-CV-00440 (JMB/DJF) (January 22, 2026 order)

Enrique L. v. Bondi, et al., Case No. 26-CV-00444 (JMB/SGE) (January 22, 2026 order)

Fernando T. v. Noem, et al., Case No. 26-CV-0445 (ECT/EMB) (January 20, 2026 order)

Alexis D.A.M. v. Bondi, et al., Case No. 26-CV-447 (JRT/ECW) (January 20, 2026 order)

Miguel D. v. Bondi, et al., 26-CV-00448 (KMM/DLM) (January 23, 2026 order)

Hector T.G. v. Bondi, et al., Case No. 26-CV-449 (NEB/LIB) (January 23, 2026 order)

Luis S. v. Bondi, et al., Case No. 26-CV-454 (ECT/LIB) (January 22, 2026 order)

Sonia M.M.C. v. Pamela Bondi, et al., Case No. 26-CV-457 (JWB/LIB) (January 24, 2026 order)

Jose A. v. Noem, et al., Case No. 26-CV-00480 (JMB/ECW) (January 26, 2026 order)

Ivan R. v. Pamela Bondi, et al., Case No. 26-CV-485 (JWB/EMB) (January 21, 2026 order; January 24, 2026 order)

Yosber I.M.C. v. Bondi, et al., Case No. 26-CV-489 (JRT/DLM) (January 21, 2026 order)

Fabian L.C. v. Bondi, et al., Case No. 26-CV-493 (NEB/DLM) (January 24, 2026 order)

Maria P. v. Brott, et al., Case No. 26-CV-00504 (JMB/JFD) (January 23, 2026 order)

Brayan M.O. v. Bondi, et al., Case No. 26-CV-517 (NEB/JFD) (January 24, 2026 order)

Isidro L. v. Lyons, et al., Case No. 26-CV-00537 (JMB/DLM) (January 22, 2026 order)

Maria V.H., et al., v. Bondi, et al., Case No. 26-CV-546 (JMG/DLM) (January 24, 2026 order)

Elvis T. E., et al. v. Bondi, et al., Case No. 26-CV-00561 (KMM/JFD) (January 22, 2026 order)

Guled O. v. Noem, et al., Case No. 26-CV-0575 (ADM/DJF) (January 23, 2026 order)

Carlos A. G. v. Bondi, et al., Case No. 26-CV-00580 (SRB-DJF) (January 23, 2026 order)

Jose V. v. Easterwood, et al., Case No. 26-CV-597 (DSD/LIB) (January 25, 2026 order)

Marco Q. v. Noem, et al., Case No. 26-CV-00663 (SRB-DLM) (January 26, 2026 order)

Exhibit H

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON

STATE OF NEW YORK, *et al.*

Case No. 6:25-cv-01458-MTK

Plaintiffs,

JUDGMENT

v.

UNITED STATES DEPARTMENT OF
ENERGY, *et al.*

Defendants.

KASUBHAI, United States District Judge:

Based on the record, and pursuant to this Court’s November 10, 2025 Opinion & Order (ECF No. 83), the Court enters final judgment as follows:

1. Judgment is entered in favor of Plaintiffs on Count I, and the Court retains jurisdiction to enforce this judgment.
2. Pursuant to Federal Rule of Civil Procedure 41(a)(2), the Court dismisses Count II of Plaintiffs’ Amended Complaint without prejudice.
3. The Court vacates and sets aside Policy Flash 2025-25 Adjusting Department of Energy Financial Assistance Policy for State and Local Governments’ Financial Assistance Awards (“Policy Flash”) in its entirety.

4. The Court orders Defendants to set aside any rejections to Plaintiffs' award applications, whether formal or informal, issued pursuant to or in reliance on the Policy Flash.
5. Defendants are prohibited from denying any modifications to existing awards based on any cap on indirect or fringe costs.
6. The Court permanently enjoins Defendants and their officers and agents from implementing the Policy Flash or a substantially similar policy that categorically caps states and local government reimbursement of indirect and/or fringe costs in Plaintiff States. This injunction includes, but is not limited to, implementation of the Policy Flash through the Department of Energy Financial Assistance Letter 2025-05, ECF No. 56-2; the sample language for Notice of Funding Opportunity and language for Award Terms and Conditions contained therein; the Indirect Percentage Cap Fact Sheet, inclusive of its attachments, ECF No. 56-3; any other grant terms and conditions; and any communications requiring Plaintiff States to comply with the Policy Flash or any similar categorical cap on indirect or fringe costs.
7. Pursuant to 28 U.S.C. § 2201(a) and 5 U.S.C. § 703, the Court declares that the Policy Flash is contrary to law.
8. Within five days of entry of this Judgment, Defendants' attorneys shall provide written notice of this Judgment to all Defendants and their employees or contractors with responsibility for administering funding to states and local governments and shall file a copy of the notice on the docket.

DATED this 10th day of November 2025.

s/ Mustafa T. Kasubhai
MUSTAFA T. KASUBHAI (He / Him)
United States District Judge

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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
EUGENE DIVISION**

STATE OF OREGON, et al.,

Plaintiffs,

v.

ROBERT F. KENNEDY, JR., in his official
capacity as the Secretary of the Department
of Health and Human Services, et al.,

Defendants.

No. 6:25-cv-02409-MTK

[PROPOSED] ORDER GRANTING
PLAINTIFFS' MOTION FOR
SUMMARY JUDGMENT

THIS MATTER came before the Court on Plaintiffs' Motion for Summary Judgment and Defendants' Motion to Dismiss, or in the alternative Summary Judgment. Having considered the briefing and oral argument of the Parties, and the supplemental briefing ordered by this Court following oral argument, the Court hereby ORDERS that:

Page 1 – [PROPOSED] ORDER GRANTING PLAINTIFFS' MOTION FOR
SUMMARY JUDGMENT

1. Judgment is entered in favor of Plaintiffs and against Defendants on Counts I, II, III, and IV of Plaintiffs' Amended Complaint (ECF 28).

2. As there is no just reason to delay the entry of final judgment as to fewer than all claims and parties, the Court certifies as final its judgment as to Counts I, II, III, and IV pursuant to Federal Rule of Civil Procedure 54(b).

3. The Court holds unlawful, sets aside, and VACATES the Declaration of the Secretary of the Department of Health and Human Services RE: Safety, Effectiveness and Professional Standards of Care for Sex-Rejecting Procedures on Children and Adolescents dated December 18, 2025 (the Kennedy Declaration) as in excess of statutory authority, without observance of procedure require by law, and contrary to law.

4. The Court DECLARES Defendants lack the authority to establish standards of care that supersede professionally recognized standards of care for provision of gender-affirming care recognized in the Plaintiff States¹ as the Kennedy Declaration purports to do, and to exclude providers from federal health care programs based on their provision of gender-affirming care in a manner and quality consistent with the professionally recognized standards of care in the Plaintiff States.

5. The Court permanently ENJOINS Defendants and their officers, agents servants, employees, and attorneys, including those at the Office of Inspector General (HHS-OIG), from initiating enforcement action, enforcing, implementing, giving intent to, or relying, in whole or in part, on the Kennedy Declaration—or any materially similar policy which supersedes or purports to supersede the professionally recognized standards of care for gender-affirming care that exist in the Plaintiff States—against any provider in the Plaintiff States.

¹ Plaintiff States are Oregon, Washington, New York, California, Colorado, Connecticut, Delaware, the District of Columbia, Hawai'i, Illinois, Maine, Maryland, Massachusetts, Michigan, Minnesota, Nevada, New Jersey, New Mexico, Pennsylvania, Rhode Island, Vermont, and Wisconsin.

6. Within seven calendar days of entry of this Judgment, Defendants' attorneys shall provide written notice of this Judgment to all Defendants and their employees, including HHS-OIG, with responsibility for determining and making exclusions from federally funded health care programs and shall file a copy of the notice on the docket.

7. The Court retains jurisdiction to enforce this injunction and judgment.

DATED this _____ day of April 2026, at Eugene, Oregon.

THE HONORABLE MUSTAFA T. KASUBHAI
United States District Court Judge

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