UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

STATE OF ILLINOIS *et al.*, Plaintiffs, v. RUSSELL VOUGHT, *in his official capacity as Director of the Office of Management & Budget*, *et al.,* Defendants.	Case No. 26-cv-1566 Hon. Manish S. Shah

PLAINTIFF STATES' REPLY IN SUPPORT OF MOTION FOR EXPEDITED DISCOVERY

TABLE OF CONTENTS

Introduction 1

Background 3

Argument 6

I. Jurisdictional discovery is appropriate on all claims. 6

II. Discovery is appropriate on Plaintiff States' constitutional claims. 8

III. Expedited discovery and completion of the administrative record are also appropriate under APA caselaw. 9

IV. 28 U.S.C. § 1292(d)(4)(B) does not prevent the Court from granting expedited discovery. 11

V. Expedited discovery should be ordered immediately. 13

Conclusion 14

INTRODUCTION

Defendants' response to the motion for expedited discovery, ECF 34, and now their motion to transfer this case to the Court of Federal Claims, ECF 43, both confirm that expedited discovery should be ordered immediately. Defendants do not deny that the Targeting Directive exists, *see* ECF 34 at 4; ECF 43-1 at 23; and they surely would if they could. Yet they do not produce the Directive. Instead, they have produced a woefully incomplete administrative record that, among other failings, does not include any documents from the lead defendant agency, the Office of Management and Budget ("OMB"), that explain the agency action actually challenged in this suit: the Targeting Directive. Indeed, the administrative record produced alongside the motion to transfer focuses solely on grant terminations at CDC and explains that CDC asked "artificial intelligence" ("AI") to write up reasons that grants to Plaintiff States did not align with agency priorities. *Id.* at 8; ECF 44-3 at 139–147 (AR 139–147).[1] But defendants cannot evade their statutory responsibilities to produce an administrative record that is responsive to the challenged agency action by filing a record related to agency actions of their own choosing.[2] And, perhaps more importantly for instant purposes, defendants have now made a factual challenge to this Court's jurisdiction, but without submitting any facts on the key jurisdictional dispute in this case, namely, "whether the decision here amounts to internal guidance or pure grant termination." ECF 20 at 2; *Illinois v. Vought*, _ F. Supp. 3d _, 2026 WL 404014, at *1 (N.D. Ill. Feb. 12, 2026). The Court should order expedited discovery, or in the alternative completion of the administrative record, to make facts on that question available for the parties and the Court.

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[1] AR refers to the Bates-stamped administrative record produced by defendants on February 23, 2026. For ease of reference, Plaintiff States also provide a citation to the Court's docket.

[2] Plaintiff States will provide a fulsome, substantive response to defendants' motion to transfer or dismiss, ECF 43, and address it here only to the extent that it bears on the request for discovery currently pending before the Court. Furthermore, as Plaintiff States noted at the February 18, 2026, status hearing, ECF 35, they intend to amend the complaint as of right.

This Court is fully empowered to order such discovery. Defendants' response to Plaintiff States' motion for expedited discovery does not engage with the Rule 26(d)(1) good-cause factors. Indeed, defendants do not cite Rule 26(d)(1) at all, forfeiting any argument under the pertinent legal standard. Instead, they focus exclusively on threshold arguments: They contend that this Court lacks jurisdiction and then draw the mistaken inference that, because they challenge the Court's jurisdiction, discovery would be inappropriate. ECF 34 at 3. Nor are defendants correct that the administrative record submitted alongside defendants' motion precludes the discovery that Plaintiff States seek. *Id.* at 5.

First, "[f]ederal courts have the jurisdiction needed to determine their own jurisdiction." *Word Seed Church v. Vill. of Hazel Crest*, 111 F.4th 814, 819 (7th Cir. 2024). "Jurisdictional discovery is an essential exercise of that jurisdiction." *Brown v. Montgomery*, 2025 WL 3679031, at *2 (7th Cir. Dec. 18, 2025). So defendants' factual challenge to this Court's jurisdiction *invites*, not precludes, expedited discovery. Second, this Court unquestionably has jurisdiction over Plaintiff States' non-APA claims—that is, the constitutional claims—so discovery is justified in exercise of that jurisdiction. Third, even on the APA claims, courts are empowered to order discovery or complete the administrative record when needed "in order to reconstruct the ground or contents of the agency's decision." *Cronin v. U.S. Dep't of Agric.*, 919 F.2d 439, 446 (7th Cir. 1990). Finally, defendants' motion to transfer this matter to the Court of Federal Claims, ECF 43, does not prevent the Court from ordering limited discovery pertinent to both the Court's jurisdiction and a forthcoming motion for preliminary injunctive relief.

Given the emergency posture of this case, which results solely from defendants' own actions, certain basic discovery should proceed immediately. Plaintiff States respectfully request that defendants be ordered to respond to the existing discovery requests by February 26, 2026.

BACKGROUND

On February 11, 2026, Plaintiff States filed a complaint after public reporting that OMB had issued an unlawful Targeting Directive commanding the Department of Health and Human Services ("HHS") and other agencies to imminently cut critical funding to Plaintiff States based on arbitrary political animus. ECF 1 ¶¶ 39–43. Plaintiff States immediately filed an emergency motion for temporary restraining order, ECF 3, to enjoin the Targeting Directive before dire consequences could ensue. Plaintiff States' instincts were correct, as defendants later issued notices which purported to make February 11 the last day of the period of performance on a range of grants issued to Plaintiff States by HHS component the Centers for Disease Control and Prevention ("CDC"). *See* ECF 44-9 at 50 to ECF 44-10 at 238 (AR 850–1238). On the morning of February 12, this Court held a hearing and soon after issued a 14-day written temporary restraining order. *See* ECF 20–21; *Illinois v. Vought*, 2026 WL 404014.

The Court's TRO opinion determined that "[m]ore factual development is necessary" to understand the nature of the agency action at issue in this case. ECF 20 at 3; 2026 WL 404014, at *3. Plaintiff States thus immediately reached out to defendants to request limited expedited discovery and the administrative record. *See* ECF 28-1 (Roller Decl.), ¶ 5. Defendants had no substantive response, *id.* ¶ 6, so on February 14, Plaintiff States moved for expedited discovery given the level of urgency in the case, ECF 28. The Court entered a minute order the next day continuing the motion and stating: "The government would be well advised to begin marshaling records (and nothing prevents the government from voluntarily producing materials in advance of 2/18/26)." ECF 30.

Defendants did not produce any materials or reach out to Plaintiff States to discuss factual development; rather, defendants opposed the motion in a February 17 filing that presents only legal argument about the Court's jurisdiction and the scope of APA review. *See* ECF 34.

At the February 18 status hearing, the Court extended the temporary restraining order through March 12 without objection from defendants. ECF 35. Additionally, the Court directed defendants to file a motion by Monday, February 23, to "start making a substantive showing to support their arguments of lack of jurisdiction." Ex. 1-A (transcript of Feb. 18, 2026 hearing), at 6:21–23, 14:8–12. The Court noted that "I need some facts from the government as to what decisions were made, and when, and through what process to even decide the jurisdictional point that the government is making." *Id.* at 4:18–21. The Court entered and continued Plaintiff States' motion for expedited discovery and ordered the parties "to meet and confer to discuss what facts the government intends to rely on in the forthcoming motion." ECF 35.

The parties spoke on the phone to meet and confer the next day, February 19, but, despite their assurances to the Court and to Plaintiff States, defendants were not prepared to "discuss what facts the government intend[ed] to rely on in the forthcoming motion." *Id.*; Ex. 1 (Supp. Roller Decl.) ¶¶ 5–10. Defendants could not or would not say what type of motion they planned to file on February 23 or what the underlying factual record in this matter might consist of. *See* Ex. 1 ¶¶ 6–8. Defendants stated that they planned to introduce facts tending to show that the "termination wasn't necessarily based on immigration policies," but could not explain what kinds of evidence they would use to make that argument, or from what sources they intended to gather such evidence. *Id.* ¶ 7. Defendants had no position to share on whether the Targeting Directive exists. *Id.* ¶ 10. When Plaintiff States asked whether defendants would meet and confer with them on Monday, February 23, to provide the information set forth in the Court's order, defendants' counsel stated that such a call would not be productive. *Id.* ¶ 11.

On February 23, defendants moved to transfer this case to the Court of Federal Claims pursuant to 28 U.S.C. § 1631 or, in the alternative, to dismiss the case for lack of jurisdiction or

failure to state a claim. ECF 43. Alongside their motion, they filed an administrative record from CDC only. ECF 44. The administrative record contains no documents from defendant OMB other than Budget Data Request No. 26-09, without any resulting reports. *See* ECF 44-2. Instead, the heart of the current administrative record is undated "grant review reports" written by AI that set forth machine-generated reasons for terminating CDC grants to Plaintiff States based on "CDC's published priorities." *See* ECF 44-3 at 139 to ECF 44-6 at 2 (AR 139–552).[3] Although all the other documents in the AR index are dated, Defendants conspicuously do not say *on what date* they had AI produce four hundred pages of machine-generated reasoning for terminating Plaintiff States' grants. *See* ECF 43-1 at 8; ECF 44-2. A spreadsheet summarizing the AI output includes a table that identifies only the four Plaintiff States and totals the grants slated for termination in each. *See* ECF 44-6 at 17 (AR 567). The spreadsheet also contains a large, unexplained redaction box covering one of the columns. *See id.* at 3–22 (AR 553–572).

Defendants do not address in their administrative record or their memorandum of law why Plaintiff States and no other jurisdictions were targeted by the AI mass termination strategy—in other words, the Targeting Directive that is the actual object of this suit. *See* ECF 1 ¶ 4. Yet defendants notably stop short of denying the Directive's existence. There is no declaration from any official swearing that CDC acted independently. On the contrary, defendants concede that "it is hardly unusual for HHS and OMB to communicate about funding priorities." ECF 43-1 at 22. They hypothesize that the Targeting Directive could exist and argue that they would still be entitled to dismissal. *Id.* at 23. Yet defendants produce no documents that would actually shed light on the nature of the challenged Targeting Directive.

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[3] The proper interpretation of the agency-priorities regulation, 2 C.F.R. § 200.340(a)(4), is currently the subject of litigation, including in *New Jersey v. U.S. Office of Mgmt. & Budget*, No. 25-11816-1T (D. Mass.), where opposing dispositive motions have been under advisement since December 5, 2025.

ARGUMENT

Plaintiff States should have the opportunity to take certain limited discovery before responding to defendants' motion to transfer and, similarly, before Plaintiff States must move for a preliminary injunction. Defendants present no argument about Rule 26(d)(1) in their opposition brief, thus forfeiting any possible rebuttal to Plaintiff States' argument that the good-cause factors for expedited discovery are present here. Instead, defendants focus exclusively on threshold contentions: their jurisdictional argument that this action belongs in the Court of Federal Claims, ECF 34 at 3, and their view that discovery is never permitted if a complaint pleads an APA claim, *id.* at 5–6. These arguments lack merit.

First, a factual argument against jurisdiction does not excuse a defendant from its discovery obligations; on the contrary, it necessitates immediate discovery on the jurisdictional question. Second, this Court unquestionably has jurisdiction over the constitutional claims in this suit, on which discovery is both permitted and necessary. Third, expedited and extra-record discovery is appropriate even in pure APA cases in some circumstances, such as when discovery is necessary "to ascertain the contours of the precise policy at issue," *Hisp. Affs. Project v. Acosta*, 901 F.3d 378, 388 (D.C. Cir. 2018) (quoting *Venetian Casino Resort, L.L.C. v. E.E.O.C.*, 530 F.3d 925, 928 (D.C. Cir. 2008)), or "to add evidence that is properly part of the record but was excluded" by the agency, *Oceana, Inc. v. Ross*, 290 F. Supp. 3d 73, 78 (D.D.C. 2018). Finally, the motion to transfer to the Court of Federal Claims does not stay the discovery that Plaintiff States seek.

I. Jurisdictional discovery is appropriate on all claims.

Defendants contend that "substantial doubts as to jurisdiction" counsel against discovery "until [the Court] has assured itself of jurisdiction," ECF 34 at 4, but Seventh Circuit precedent says exactly the opposite. Once defendants have made a factual challenge to jurisdiction, "that factual dispute about the court's adjudicatory competency must be resolved," including through

"an evidentiary hearing" if necessary. *Bazile v. Fin. Sys. of Green Bay, Inc.*, 983 F.3d 274, 281 (7th Cir. 2020); *see also Kanzelberger v. Kanzelberger*, 782 F.2d 774, 777 (7th Cir. 1986) ("[T]he district judge must conduct whatever supplementary factual proceedings are necessary to resolve the doubt."); *Prakash v. Am. Univ.*, 727 F.2d 1174, 1179 (D.C. Cir. 1984) ("The court has considerable latitude in devising the procedures it will follow to ferret out the facts pertinent to jurisdiction … ."). As the Seventh Circuit summed up just two months ago: "Federal judges have jurisdiction to determine their own jurisdiction. Jurisdictional discovery is an essential exercise of that jurisdiction." *Brown*, 2025 WL 3679031, at *2 (citation omitted). "[T]he court may be required to allow either cross-examination of witnesses or pre-hearing discovery if a party so requests." *Philos Techs., Inc. v. Philos & D, Inc.*, 802 F.3d 905, 912 (7th Cir. 2015) (personal jurisdiction). If a "jurisdictional question cannot be resolved on the pleadings," then it is error to deny jurisdictional discovery. *Abelesz v. Magyar Nemzeti Bank*, 692 F.3d 661, 694–95 (7th Cir. 2012) (sovereign immunity).

APA cases are no exception. *Contra* ECF 34 at 5. It is true that adjudicating the *merits* of an APA claim is generally "based on the full administrative record that was before the [official] at the time he made his decision." *Citizens to Pres. Overton Park, Inc. v. Volpe*, 401 U.S. 402, 420 (1971). And indeed, Plaintiff States continue to seek a *complete* administrative record to aid the parties and the Court in understanding the nature and reasoning of the decision at issue here. But even in APA cases, "[w]hen presented with a factual challenge to [jurisdiction], courts routinely consider affidavits and other evidence, and courts at times permit jurisdictional discovery." *Ranchers-Cattlemen Action Legal Fund v. U.S. Dep't of Agric.*, 573 F. Supp. 3d 324, 335 (D.D.C. 2021). Indeed, the United States has itself before urged a court to consider extra-record material

in deciding the question of jurisdiction over APA claims. *See Vargus v. McHugh*, 87 F. Supp. 3d 298, 302 (D.D.C. 2015).

Caselaw on factual challenges to subject-matter jurisdiction applies with full force here because defendants' challenge to jurisdiction *is* factual in nature. Defendants have cited a raft of documents outside the complaint, ECF 44, and contend that those documents "call[] the court's jurisdiction into question." *Apex Digital, Inc. v. Sears, Roebuck & Co.*, 572 F.3d 440, 444 (7th Cir. 2009). A key factual question as to the Court's jurisdiction over Plaintiff States' APA claims then becomes whether defendants implemented "internal agency guidance," *Nat'l Insts. of Health v. Am. Pub. Health Ass'n*, 145 S. Ct. 2658, 2661 (2025) (Barrett, J., concurring), over which this Court retains jurisdiction. This Court has already concluded that defendants' public statements and pattern of conduct, as described in Plaintiff States' allegations, "plausibly suggest … final internal guidance articulating a basis to implement grant termination." *Illinois v. Vought*, 2026 WL 404014, at *2. Plaintiff States' request for discovery, or, in the alternative, completion of the administrative record, merely seeks to confirm that answer in order to resolve *NIH*'s application to the facts of this case. Plaintiff States ask defendants to produce the agency directives and memoranda at issue and basic details about the attempted grant terminations that resulted, *see* ECF 28-1 (Roller Decl.), Ex. A, ¶¶ 1–6, so that the parties and the Court can decide the issue based on facts.

II. Discovery is appropriate on Plaintiff States' constitutional claims.

Next, the Tucker Act could not possibly oust this Court's jurisdiction over Plaintiff States' constitutional claims, and expedited discovery is appropriate to evaluate preliminary injunctive relief for those claims. District court jurisdiction over constitutional claims is "the creation of courts of equity, and reflects a long history of judicial review of illegal executive action." *Armstrong v. Exceptional Child Ctr.*, 575 U.S. 320, 327 (2015). In equity, "'suits for specific relief against officers of the sovereign' allegedly acting … 'unconstitutionally' are not barred by

sovereign immunity." *Pollack v. Hogan*, 703 F.3d 117, 120 (D.C. Cir. 2012) (quoting *Larson v. Domestic & Foreign Com. Corp.*, 337 U.S. 682, 689, 693 (1949)); *see also Clark v. United States*, 691 F.2d 837, 840–41 (7th Cir. 1982). The Tucker Act limits this Court's jurisdiction over APA claims by restricting the APA's waiver of sovereign immunity, *Dep't of Educ. v. California*, 604 U.S. 650, 651 (2025), but Plaintiff States' constitutional claims do not depend on that waiver. Accordingly, the Tucker Act could not preclude the Court from considering them.

Plaintiff States are "entitled to discovery on [a constitutional] claim regardless of whether [they] can satisfy the 'strong showing' standard [for extra-record discovery] applicable to APA claims." *Cook Cnty. v. Wolf*, 461 F. Supp. 3d 779, 795 (N.D. Ill. 2020); *see also Am. First Legal Found. v. Cardona*, 630 F. Supp. 3d 170, 187 (D.D.C. 2022) (authorizing discovery where case involved claims under both the APA and the Mandamus Act and citing other examples); *Mayor & City of Baltimore v. Trump*, 429 F. Supp. 3d 128, 141 (D. Md. 2019) (holding that the APA did not govern whether discovery was available on constitutional claims even though plaintiff also alleged APA claims). All this Court must find in order to allow expedited discovery on those claims, therefore, is that the good-cause factors are met—which Plaintiff States demonstrated in their opening brief, ECF 28, and which defendants have conceded by failing to raise any contrary argument under the Rule 26(d)(1) standard.

III. Expedited discovery and completion of the administrative record are also appropriate under APA caselaw.

In any event, expedited discovery, and alternatively, completion of the administrative record, is also appropriate on Plaintiff States' APA claims. The parties' dispute about the existence and nature of the Targeting Directive, in addition to its jurisdictional implications, is also a merits issue going to the "final agency action" element of Plaintiff States' APA cause of action. *See Matushkina v. Nielsen*, 877 F.3d 289, 292 n.1 (7th Cir. 2017); *Trudeau v. Fed. Trade Comm'n*,

456 F.3d 178, 184 n.7 (D.C. Cir. 2006). The Court can order discovery or, alternatively, completion of the administrative record on that merits issue.

First, under one line of APA cases, extra-record merits discovery is proper when "a key question in [the] case is 'whether the alleged [] policy in fact exists.'" *AFL-CIO v. Dept. of Labor*, 349 F.R.D. 243, 248 (D.D.C. 2025) (quoting *Venetian Casino Resort, L.L.C. v. E.E.O.C.*, 409 F.3d 359, 360 (D.C. Cir. 2005)); *see also Cronin*, 919 F.2d at 446 (holding that there are "unusual administrative review cases in which an evidentiary hearing is necessary in order to reconstruct the ground or contents of the agency's decision"); *Escobar Molina v. U.S. Dep't of Homeland Sec.*, 2025 WL 3465518, at *37 (D.D.C. Dec. 2, 2025) (discovery permitted in APA cases to determine the "contours of the precise policy" challenged).

Whether the challenged policy exists is precisely the subject of the parties' factual dispute at this stage. Plaintiff States allege the existence of the Targeting Directive. ECF 1 ¶¶ 2, 4, 39. Defendants do not deny that it exists, but they say that "even if the posited OMB directive existed, it would not constitute final agency action." ECF 43-1 at 23. Defendants, in disputing the issue of final agency action but refusing all discovery on it, are "effectively asking [Plaintiff States] to accept [their] representation that there has been no final agency action, which essentially leaves [Plaintiff States] unarmed in [their] effort to thwart [the] motion to dismiss." *Sensient Flavors LLC v. Nat'l Inst. for Occupational Safety & Health*, 2008 WL 11383364, at *3 (S.D. Ind. Oct. 31, 2008). Plaintiff States have attempted to learn facts about OMB's actions from defendants through voluntary meet-and-confer discussions, but defendants did not provide any relevant information. *See* Ex. 1 (Supp. Roller Decl.). And now the filed administrative record adds nothing about the actions that OMB took to ensure that Plaintiff States, and only Plaintiff States, lost millions of dollars in funding. *See* ECF 44.

Neither the APA nor basic fairness allow defendants to hide the ball in this manner. Instead, the Court is empowered to order discovery to determine the scope of the agency action at issue. *See Sensient Flavors*, 2008 WL 11383364, at *3 (doing so). "To evaluate the reasonableness and lawfulness of Defendants' decision … this Court requires an adequate record of exactly what actions Defendants took," and it may "allow limited discovery" to create that record. *All. for Retired Americans v. Bessent*, 2025 WL 1114350, at *3 (D.D.C. Mar. 20, 2025).

Second, under a related line of cases, the Court may order completion of the administrative record "to include evidence that should have been properly a part of the administrative record but was excluded by the agency." *Oceana*, 290 F. Supp. 3d at 77 (quotation omitted). "When parties move to complete, rather than supplement, the administrative record, no showing of bad faith is required and a plaintiff must only present clear evidence, which means a strong, substantial or prima facie showing that the record is incomplete." *Roe v. Mayorkas*, 2024 WL 5198705, at *2 (D. Mass. Oct. 2, 2024). Plaintiff States have made such a showing. The Court has already preliminarily concluded that OMB promulgated "final internal guidance articulating a basis to implement grant termination." ECF 20 at 2; *Illinois v. Vought*, 2026 WL 404014, at *2. Defendants' filings have done nothing to unsettle that conclusion. At a minimum, the administrative record should be completed to include the OMB documents that were "before [defendant Vought] at the time he made his decision." *Overton Park*, 401 U.S. at 420.

IV. 28 U.S.C. § 1292(d)(4)(B) does not prevent the Court from granting expedited discovery.

Discovery is available notwithstanding defendants' request yesterday to stay this case under 28 U.S.C. § 1292(d)(4)(B). ECF 43. First, and most fundamental, "a federal court always has jurisdiction to determine its own jurisdiction." *United States v. Ruiz*, 536 U.S. 622, 628 (2002). "Jurisdictional discovery is an essential exercise of that jurisdiction." *Brown*, 2025 WL 3679031,

at *2. Here, the requested discovery would "ensure[] a full and fair airing of the issues presented in the motion to transfer." *Friant Water Auth. v. Jewell*, 2014 WL 5325352, at *3 (E.D. Cal. Oct. 17, 2014). So this Court has authority to develop whatever facts it needs to determine whether any transfer to the Court of Federal Claims is, in fact, appropriate.

Second, as discussed above, Plaintiff States' constitutional claims are not subject to the Tucker Act, *see supra* pp. 8–9, and as a result cannot be transferred. Section 1292(d)(4)(B) "relates to transfer of an 'action,' not to severance and transfer of a claim," and if the district court retains any claims, the stay does not apply to those claims. *Far W. Fed. Bank, S.B. v. Dir., Off. of Thrift Supervision*, 744 F. Supp. 233, 236 (D. Or. 1990), *aff'd* 930 F.2d 883 (Fed. Cir. 1991). "There is not even arguable Tucker Act jurisdiction over" the non-APA claims, so "28 U.S.C. § 1292(d)(4) does not require a stay." *Id.*

Third, § 1292(d)(4)(B) does "not bar the granting of preliminary or injunctive relief, where appropriate and where expedition is reasonably necessary." In addition to preliminary relief itself, this exception extends to matters related to such relief. For example, a motion to intervene was properly considered during the 60-day stay where the intervenors "expressly sought to intervene for the limited purpose of being heard on [p]laintiff's motion for preliminary injunction." *Patriot Cont. Servs. v. United States*, 388 F. Supp. 2d 1010, 1014 n.1 (N.D. Cal. 2005); *see also Friant*, 2014 WL 5325352, at *2–3 (same). Similarly, a motion for preliminary class certification may be granted during the 60-day stay in order to provide preliminary notice to class members before a statute of limitations expires. *See Nigg v. United States Postal Serv.*, 2004 WL 7333090, at *3 (C.D. Cal. May 13, 2004).

The same principle authorizes expedited discovery here. The discovery sought is for the purposes of a preliminary injunction, exactly the type of matter exempted from § 1292(d)(4)(B).

As multiple courts have acknowledged, motions ancillary to the sought injunctive relief are equally appropriate for resolution. And "expedition is reasonably necessary," 28 U.S.C. § 1292(d)(4)(B), because failure to obtain discovery could hinder plaintiffs' ability to receive injunctive relief to preserve the status quo while litigation proceeds. Caselaw developed under Rule 26(d)(1)—which, again, defendants do not cite in their opposition brief—supports the necessity for expedited discovery in connection with a forthcoming preliminary-injunction motion. *See Ibarra v. City of Chicago*, 816 F. Supp. 2d 541, 554 (N.D. Ill. 2011) (first factor is "whether a preliminary injunction is pending").

V. Expedited discovery should be ordered immediately.

Last, defendants argue that "there is no need for the Court to entertain these matters on such an accelerated time frame." ECF 34 at 2. But there is a grave and pressing need. Plaintiff States face severe irreparable harm at the expiration of the current temporary restraining order on March 12 unless they can secure preliminary relief on a more permanent basis before that time. This case thus remains in an emergency posture solely because defendants are keeping it there. To be concrete, one proposed schedule for next steps in this matter would be:

- February 26: Defendants' production;
- March 2: Plaintiff States' first amended complaint;
- March 6: Plaintiff States' motion for a preliminary injunction;
- March 9: Defendants' opposition to Plaintiff States' motion;
- March 10: Plaintiff States' reply in support of their motion; and
- March 11: hearing on the motion for a preliminary injunction.

This schedule demonstrates the exigent nature of the situation before the Court.

Notwithstanding the foregoing, Plaintiff States would be willing to withdraw their request for expedited discovery at any time if defendants rescinded the Targeting Directive or stipulated to durable preliminary relief that would allow these discovery disputes to be litigated at a less frantic pace. Unless one of those things happens, Plaintiff States have no choice but to press

forward as quickly as possible to avert the severe irreparable harm that defendants' threatened actions would inflict on Plaintiff States and their residents.

CONCLUSION

For the foregoing reasons, the Plaintiff States respectfully seek a court order:

1. Deeming served Plaintiff States' Requests for Production attached as Exhibit A to the Declaration of Katharine Roller, ECF 28-1, pursuant to Rule 26(d)(1);
2. Setting a deadline of February 26, 2026, for defendants to respond to Plaintiff States' First Requests for Production, pursuant to Rule 34(b)(2)(A); and
3. Setting a deadline of February 26, 2026, for defendants complete the administrative record at defendants OMB and HHS relevant to the Targeting Directive.

Dated: February 24, 2026

ROB BONTA
Attorney General of California

By: /s/ Harald H. Kirn
R. MATTHEW WISE*
KATHLEEN BOERGERS
Supervising Deputy Attorneys General
HARALD H. KIRN
CHRISTOPHER KISSEL*
CARTER JANSEN*
DAVID GREEN*
Deputy Attorneys General
California Office of the Attorney General
1300 I Street
Sacramento, CA 95814
916-210-6111
Harald.Kirn@doj.ca.gov
Christopher.Kissel@doj.ca.gov
Carter.Jansen@doj.ca.gov
David.Green@doj.ca.gov

Counsel for the State of California

KWAME RAOUL
Attorney General of Illinois

By: /s/ R. Henry Weaver
CARA HENDRICKSON
Executive Deputy Attorney General
KATHARINE ROLLER
Complex Litigation Counsel
SARAH HUNGER
Deputy Solicitor General
SHERIEF GABER
MOLLY MAUCK
AKANKSHA SHAH
R. HENRY WEAVER
BRIANNA YANG
Assistant Attorneys General
Office of the Illinois Attorney General
115 South LaSalle Street
Chicago, Illinois 60603
(312) 814-3000
Cara.Hendrickson@ilag.gov
Katharine.Roller@ilag.gov
Sarah.Hunger@ilag.gov
Sherief.Gaber@ilag.gov
Molly.Mauck@ilag.gov
Robert.Weaver@ilag.gov

Counsel for the State of Illinois

PHILIP J. WEISER
Attorney General of Colorado

By: /s/ David Moskowitz
DAVID MOSKOWITZ
Deputy Solicitor General
Ralph L. Carr Judicial Center
1300 Broadway, 10th Floor
Denver, CO 80203
(720) 508-6000
david.moskowitz@coag.gov

Counsel for the State of Colorado

KEITH ELLISON
Attorney General of Minnesota

By: /s/ Katherine Bies
KATHERINE BIES
ED STOCKMEYER*
Assistant Attorneys General
Office of the Minnesota Attorney General
445 Minnesota Street, Suite 600
St. Paul, Minnesota 55101
(651) 300-0917
Katherine.Bies@ag.state.mn.us
Ed.Stockmeyer@ag.state.mn.us

Counsel for the State of Minnesota

* Pro Hac Vice Forthcoming

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

STATE OF ILLINOIS *et al.*, Plaintiffs, v. RUSSELL VOUGHT, *in his official capacity as Director of the Office of Management & Budget*, *et al.*, Defendants.	Case No. 26-cv-1566 Hon. Manish S. Shah

EXHIBIT 1

Supplemental Declaration of Katharine Roller

SUPPLEMENTAL DECLARATION OF KATHARINE ROLLER

I, Katharine Roller, declare under penalty of perjury pursuant to 28 U.S.C. § 1746, as follows:

1. I am a resident of the State of Illinois. I am over the age of 18 and have personal knowledge of all the facts stated herein. If called as a witness, I could and would testify competently to the matters set forth below.

2. I am Complex Litigation Counsel in the Office of the Illinois Attorney General. I am lead attorney for the State of Illinois in the above captioned matter.

3. Attached as **Exhibit A** is a true and correct copy of the transcript of the status conference and hearing on Plaintiff States' motion for expedited discovery held on February 18, 2026, before Hon. Manish S. Shah.

4. On February 18, 2026, the Court ordered defendants "to file a motion" by February 23, 2026. ECF 35. The Court further directed the parties "to meet and confer to discuss what facts the government intends to rely on in the forthcoming motion." *Id.*

5. I accordingly contacted counsel for defendants to schedule a meet and confer, and the parties met telephonically on February 19, 2026, at 3:00 PM Central Time. Present on the call were myself, Henry Weaver, Molly Mauck, and Sherief Gaber for Plaintiff States and Michael Velchik for the federal defendants.

6. At the meet and confer, I asked counsel for defendants what they planned to file on Monday, February 23. Defendants indicated that the filing would relate to jurisdiction and the Tucker Act but that they had no further information to share about its procedural posture.

7. Counsel for defendants indicated that defendants planned to introduce facts tending to show that the "termination wasn't necessarily based on immigration policies."

8. I asked counsel what form defendants' evidence would take, whether the evidence would extend beyond the termination letters themselves, and how such evidence

would be placed into the record. Defendants could not provide any further information.

9. Counsel for defendants asked me whether there was a document called the Targeting Directive. I pointed to counsel to defendants' own statements to the press set forth in Plaintiff States' complaint and pending requests for production.

10. I asked counsel, "What is your position on whether the Directive exists or not?" Counsel responded that he hoped defendants' position would be articulated in the upcoming filing, but that he had no further details to share.

11. Given the above, I asked counsel if he wanted to meet and confer again on Monday to discuss the facts defendants intend to rely on in their anticipated motion per this Court's order (ECF 35). Counsel for defendants indicated that he hoped the filing on Monday would provide Plaintiff States with more information and that an additional meet and confer before the Wednesday status conference would not be productive.

12. As of the date of this declaration, counsel for defendants has not provided any additional information outside of their filed motion (ECF 43), nor agreed to further meet and confer with counsel for Plaintiff States before the Wednesday status conference. Defendants have not produced any materials to Plaintiff States outside of their filed motion.

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

Executed on February 24, 2026, in Oak Park, Illinois.

By: /s/ *Katharine Roller*
Katharine Roller
Complex Litigation Counsel
Office of the Illinois Attorney General

EXHIBIT A

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

STATE OF ILLINOIS; STATE OF CALIFORNIA; STATE OF COLORADO; and STATE OF MINNESOTA,	)	Case No. 26 C 1566
Plaintiffs,	)	
v.	)	
RUSSELL VOUGHT, in his official capacity as Director of the Office of Management & Budget, et al.,	)	Chicago, Illinois February 18, 2026 9:30 a.m.
Defendants.	)	

TRANSCRIPT OF PROCEEDINGS - STATUS HEARING
BEFORE THE HONORABLE MANISH S. SHAH

APPEARANCES:

For the Plaintiffs: OFFICE OF THE ILLINOIS ATTORNEY GENERAL
ATTORNEY GENERAL KWAME RAOUL
SPECIAL LITIGATION BUREAU
BY: MS. KATHARINE A. ROLLER
MR. ROBERT H. WEAVER
MS. MOLLY MAUCK
MR. SHERIEF GABER
115 S. LaSalle Street, 35th Floor
Chicago, Illinois 60603

For the Defendants: (phone) DEPARTMENT OF JUSTICE - CIVIL DIVISION
BY: MR. MICHAEL VELCHIK
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

Court Reporter: COLLEEN M. CONWAY, CSR, RMR, CRR
Official Court Reporter
219 S. Dearborn Street, Room 1918
Chicago, Illinois 60604
(312) 435-5594
colleen_conway@ilnd.uscourts.gov

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PROCEEDINGS REPORTED BY STENOTYPE
TRANSCRIPT PRODUCED USING COMPUTER-AIDED TRANSCRIPTION

(Proceedings heard in open court:)

THE CLERK: 26 CV 1566, State of Illinois versus Vought.

THE COURT: Good morning.

Who do we have on behalf of plaintiffs this morning?

MS. ROLLER: Good morning, Your Honor. Katharine Roller on behalf of plaintiff states this morning.

THE COURT: Good morning.

And I understand counsel for the defense is on the phone. If we could just get your appearance for the record, please.

MR. VELCHIK: Good morning, Your Honor. This is Michael Velchik, counsel for United States defendants.

THE COURT: Good morning. So we should talk about what next steps the parties have in mind.

I have seen the motion for expedited discovery and the government's response.

In the government's response, it has no objection to extending the TRO. I was wondering what the government's position would be on converting the TRO to a preliminary injunction while we continue to develop the facts and maybe attend to potential issues of changing the preliminary injunction or TRO or vacating it if I don't have jurisdiction.

So let me -- Mr. Velchik, if I could ask you, what would the government's position be on converting the TRO to a

preliminary injunction?

MR. VELCHIK: Thank you. Happy to address that.

Certainly, I think the current TRO has only been in effect for less than a week, and so that has at least one week to run.

As we explained in the brief, I can represent, on behalf of my clients, that we don't oppose extending that temporary restraining order for another two weeks with sort of one caveat about the application of the order to the Defendant President of the United States, just as a formal matter, because we take the position that injunctions can't run against the President, and he's also exempt from the APA.

In terms of extending it beyond that, I think our initial position would be three weeks should be more than enough time for us to brief some of these issues and get them in front of the Court, particularly some of the threshold issues on jurisdiction. And hopefully we can agree on a briefing schedule that can get all of those issues before the Court before we need to engage in any sort of production of an administrative record, much less discovery. And I think that would be our first line of response.

If it turns out that that briefing schedule may require a longer timeline, I can certainly take it back to my client agencies. But I think it's reasonable to make sure that, I guess, there's some sort of injunctive protection while

we try to determine some of these threshold issues.

But yeah, I would be amenable to taking that back to my client agencies. But, certainly, I think three weeks should be enough time to get something in front of the Court. Over.

THE COURT: I imagine plaintiffs have no objection, at a minimum, to an extension of the TRO for another two weeks past the original two weeks?

MS. ROLLER: That is correct, Your Honor, although not if that is in exchange for not getting discovery. We would rather get the discovery and have it expire faster than the other way around.

THE COURT: Well, for now, I am going to extend the TRO another two weeks, just to give us a little more time to continue to discuss the threshold issues that are in the case.

With respect to discovery. Whether there is an administrative record to be produced or it's not as straightforward as a traditional administrative record that can be produced, it seems to me that I need some facts from the government as to what decisions were made, and when, and through what process to even decide the jurisdictional point that the government is making.

So I would like to talk about what we can get produced, even if it's not a complete production of what anyone would consider the official administrative record, but enough to start understanding where the facts may be that would allow

both sides to make their legal arguments about what next steps ought to be.

So I suppose that's another question for the government I had, which is, what can you produce either in support of your forthcoming arguments about jurisdiction or to allow everyone to understand what kind of record we might be dealing with?

MR. VELCHIK: Thank you for the question.

I think the assumption that we need records immediately jumps the gun. I mean, at this point, we haven't had the opportunity to file a response, whether it's the response to the temporary restraining order or file a motion to dismiss.

Merely by filing something in front of the Court that allows us to tell our side of the story, including the facts, as we understand them, and how those would map on to some of the legal arguments, I think that's sort of a threshold part of this process that I think will narrow some of the issues and I think can clarify where the parties stand. But we're not even there yet. I think this case was filed a week ago. And so --

I mean, our position would be, certainly, we should be able to get something in front of the Court. I think it could take any number of procedural postures, whether it's a motion to dismiss, a motion to transfer for want of jurisdiction, a response to a potential filing by plaintiffs. But I believe

our initial filing will be able to narrow some of the issues and also bring to light what facts we can bear.

And if, after that point, the Court still finds that there are, you know, factual questions that preclude a determination of some of the even jurisdictional issues, maybe at that point, you know, would be appropriate for an administrative record. And then only at that point, I think, would discovery even be appropriate. But it's still our position that this is a record-of-review case under the APA.

But I think we would push back on the assumption that even before the government has had the opportunity to file any sort of responsive motion here that there necessarily are factual uncertainties that merit the production of records at this point. Over.

THE COURT: It would seem to me, from plaintiffs' perspective, that having something from defendants would then give you an opportunity to take aim at something a little bit more concrete so you know what questions you should be asking or where some documents might be.

So it's not -- doesn't seem unreasonable to see if I can get something from the government where they start making a substantive showing to support their arguments of lack of jurisdiction or maybe a transfer of venue where they will have to, I would imagine, lay out factually what their perspective is on what decisions were made. And then the plaintiffs may

then have an opportunity to say: Well, that means we need to look at a communication between person A and person B, or what memo might have existed in HHS before this declarant, who is saying that they did something, there might be a predicate step there that we don't have access to, and we would like that.

So let me hear what the plaintiffs' reaction is to what I understand the government to be saying, which is they'd like to file something relatively soon to start teeing up the facts from their perspective before I authorize a request to produce or an interrogatory or the like.

MS. ROLLER: Thank you, Your Honor.

So on the position that defendants have not had the opportunity to do a substantive filing, I will note that the filing last night is largely aimed at the merits of the Court's jurisdiction, so -- and the arguments there do not rely on any facts. Defendants surely, as this case having been filed a week ago, know whether the targeting directive exists or not, but the motion just calls it "the hypothesized directive."

By the end of today, plaintiff states would like to see the directive and to know where it went. This is an urgent situation. And we -- as Your Honor pointed out, it's important to allow everyone to understand what kind of record we're dealing with and what kind of action we're dealing with.

For example, the TRO that was entered applies only to public health funding, but defendants' public statements to the

press also mention the Department of Transportation and say that further cuts are expected.

If we need to expand the TRO in order to protect funding from the rest of the federal government, we need to know that immediately.

So while we're not opposed to having a little bit more time before production of an administrative record or, you know, documents that went into the creation of a targeting directive, seeing the directive itself is going to be very important. Also going to be very important to have a productive meet-and-confer.

Without seeing the directive and knowing who received it, it's really difficult for us to have a meet-and-confer and to know what the scope of the discovery we're seeking will be. That is the most helpful thing for clarifying the litigation and moving the litigation forward that the government could do.

THE COURT: The government's response to the motion for expedited discovery says these are grant terminations. I would imagine that means that the government has readily, at its fingertips, documentation to show what grant terminations happened and what led to those grant terminations.

Whether there is, in fact, a document that could some day be labeled a "targeting directive," I don't know, but there must be some trail of decision-making that led to what the government is saying are grant terminations.

So I wonder, Mr. Velchik, if the government can, either in a meet-and-confer with plaintiffs' counsel or in a filing with me within the next couple of days, start laying out that factual history.

So that's a timing question and a substantive, what documents can you marshal to inform the plaintiffs of what will be coming from the defense perspective?

MR. VELCHIK: Thank you, Your Honor.

I don't have additional facts beyond what was filed last night or said at the last hearing. But I will note, in general, that this is not the first grants termination case that's been brought against the government. There have been any number of cases for similar funds and much greater.

Typically, the government has argued that these are grant termination cases subject to the Court of Federal Claims under the Tucker Act. And to the extent that plaintiffs have sped around it through NIH or that district courts have asserted jurisdiction over them, they've been litigated at the TRO or preliminary injunction stage.

I'm not familiar with examples where there was recourse to discovery at that early stage after the preliminary injunction. There have been administrative records in certain cases. That will include the, you know, notices that the grants have been terminated, things of that sort. But that is typically how these cases have proceeded. I don't know why

that would be any different here.

We also think that the fact that they've received -- plaintiffs have received now a three-week TRO protecting them should cover the equities that they've articulated.

And the one point that I would emphasize is that even if we got to the point where there was a preliminary injunction and we were now proceeding through regular discovery, at most in these grant termination cases, plaintiffs would be entitled to that administrative record, as we've produced in similar cases. And so it strikes us as odd and unwarranted to allow plaintiffs to seek expedited discovery for more or different documents much earlier than they would in typical grant termination cases just given the facts.

But I think that's roughly how we would see this case playing out. Over.

THE COURT: In terms of timing, when were you thinking you would file some sort of substantive filing, either as a motion to dismiss or a motion to transfer?

MR. VELCHIK: I think we would like to brief this, you know, certainly while the TRO is in effect, and I think that gives us three weeks.

We think that's more than enough time to get briefing in front of the Court, whether it's a motion to dismiss or the preliminary injunction.

And if the briefing takes longer -- you know, I

acknowledge the Court's suggestion at the opening of the hearing of maybe bumping out the TRO to make sure that the briefing cycle can be complete and that plaintiffs are protected during the pendency of that litigation. I think that makes sense.

But I think we would like to move on that timeline to resolve some of these threshold issues. And, certainly, the preliminary injunction is issued consistent with litigation in other grant termination cases. You know, the production of an AR, that might be appropriate at that time. But I think before we start going beyond even what the administrative record production would be, I think we would just respect the process and go in that sequence.

THE COURT: Well, what I am trying to get at is, what process are you proposing to get things wrapped up within three weeks?

So it's not -- I don't think it's a reasonable process to say the government has three weeks to file something with me, and that would be enough to get the issues fully or sufficiently aired so that I can make some sort of decision. I think if I were to accept that we need to take a few weeks to drill down on these things, that means that I am getting multiple filings within those three weeks. And I am inclined to give the government the next salvo here, but it would -- I think it would be in the next couple of days, at most, to then

keep things moving, so that we can have it at least adequately briefed before the expiration of any TRO.

So I'll phrase my question a little differently and instead say, can you get something on file by Monday, the 23rd or Tuesday, the 24th?

MR. VELCHIK: Yes. I think that's consistent with, you know, my understanding.

We would want the briefing completed during the time of the TRO. I didn't mean to suggest that we would take three weeks to do an initial brief.

I mean, I work for the government, so obviously I'll take this back to our team just to confirm, but yes, I think getting the ball rolling with, you know, a brief that would resolve this, the timeline that the Court suggests, 23rd, 24th -- so that's early next week -- yeah, I think that's a reasonable way to get the ball rolling and get this resolved during that three-week time frame.

THE COURT: Are you in a position to have a conversation with plaintiffs' counsel before a filing to talk to them about what you're expecting to be relying on factually for the positions that you'll be taking in the filing?

That might speed things up as we move things along.

MR. VELCHIK: Yes. We can make ourselves available to meet and confer with plaintiffs.

MS. ROLLER: Your Honor, if I may?

It is not merely a question of counsel's availability. It is a question of, will they be prepared at that meet-and-confer to tell us what decision was made, on what basis, by what process, and to whom was it disseminated?

If they don't have that information, it's hard to see how a meet-and-confer would be productive.

THE COURT: Mr. Velchik, do you have that kind of information at your fingertips? Or, can you have that kind of information at your fingertips in the next day or so?

MR. VELCHIK: I don't have that information right in front of me. But, I mean, to the extent that the Court schedules a meet-and-confer with plaintiffs, I mean, we can try and order, you know, our fact-gathering to try and have that.

THE COURT: Okay.

MS. ROLLER: Your Honor, I --

THE COURT: Go ahead.

MS. ROLLER: I hate to interrupt, but I noticed that Mr. Velchik said that they would try. And while I do appreciate their efforts, I think we really need to have a commitment on this.

It would be a shame if those efforts did not pan out in time for this to be a productive conversation.

THE COURT: Maybe. But if I am getting a filing on Monday or Tuesday, if you have unproductive conversations that are not satisfying to you, and the government isn't telling you

what they're relying on, if we get something by Monday or Tuesday of next week, it will hopefully be useful then.

And I do take into account the notion that things are moving fairly quickly and Mr. Velchik may need to get the attention of people who may not be willing to give him their attention in that way, at least to plaintiffs' satisfaction, in the next couple of -- next few hours.

So what we'll do is the government has leave to file its motion to dismiss, motion to transfer, motion to vacate TRO -- you can choose your procedural vehicle, Mr. Velchik, but you will file that by midnight on the 23rd, or meaning the night of the 23rd.

And then let's have another conference on Wednesday, the 25th, if people are available --

(Counsel nods.)

THE COURT: -- and if we are available.

MS. ROLLER: Plaintiffs' counsel is available. Thank you, Your Honor.

THE CLERK: Excellent. Everyone, I would suggest -- why don't we do 9:30 a.m. again. Would that work for you?

MS. ROLLER: Perfect.

THE CLERK: And will that work for you, Mr. Velchik? So it'd be 9:30 --

MR. VELCHIK: Yes. I'll --

THE CLERK: -- Chicago time.

MR. VELCHIK: -- make myself available.

THE CLERK: Thank you.

MR. VELCHIK: Yes, that works.

THE COURT: So by that time, I will have seen what the government's filing is. You will have had some time to digest it yourselves. And hopefully -- and I will direct counsel on both sides to meet and confer in advance of the government's filing to discuss what factual representations the government intends to rely on in its forthcoming motion.

And so, hopefully, you'll have that conversation, you'll have the government's filing, and then on Wednesday, the 25th, we can talk about what next steps make sense, whether it's another brief from the plaintiffs or something else, and we'll keep things moving along on that pace.

The new expiration of the TRO is March 12th.

MS. ROLLER: Your Honor, I hate to throw a wrinkle into this plan, but just wanted to make you aware of one additional sort of factor, which is that plaintiffs are intending to file an amended complaint to take into account the developments that have happened since the first complaint was filed.

We don't wish to disrupt the Court's schedule, but if defendants are filing a motion to dismiss, they might find it productive to see the amended complaint first. But then, of course, the amended complaint, we would like to have the facts

that defendants have in it.

So to the extent that that informs Your Honor's thinking on this. I just wanted to make sure that it didn't come as a surprise. We didn't want to ambush defendants and have them do a motion to dismiss and then, a few days later, there would be an amended complaint. That would be sharp practice.

THE COURT: When do you think you're going to file an amended complaint?

MS. ROLLER: Well, this is the thing, Your Honor. An amended complaint should contain what was the decision, when was it made, to whom was it disseminated, so we think it would make sense to have that information from defendants. And if -- makes sense. We think it's necessary to have that information from defendants before we can amend.

So if defendants can produce that this week, we can do an amended complaint next week, of course. But, otherwise, it will have to wait until defendants produce.

THE COURT: I think it'll have to wait. I think we'll see what the defense files and then we'll talk on Wednesday, the 25th, and we can talk about the timing of an amended complaint at that point.

And, again, I appreciate the government's willingness to extend the TRO a little bit to give everyone some room to continue to investigate the facts and hone in on the arguments

that will be most productive in moving the case forward.

So we'll stick with that plan.

MS. ROLLER: That sounds good, Your Honor. Thank you.

THE COURT: Mr. Velchik, is there anything else we should cover this morning from the government's perspective?

MR. VELCHIK: Nothing from the government other than to thank the Court and the clerk for accommodating appearance by telephone. Over.

THE COURT: That's fine. Anything further from plaintiffs?

MS. ROLLER: Nothing from us, Your Honor. Thank you very much.

THE COURT: Thank you. We're in recess.

(Proceedings concluded at 9:59 a.m.)

* * * * *

I certify that the foregoing is a correct transcript of the record of proceedings in the above-entitled matter.

/s/ Colleen M. Conway, CSR, RMR, CRR — *02/18/2026*

Official Court Reporter — Date

United States District Court

Northern District of Illinois

Eastern Division