

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

CITY OF COLUMBUS, *et al.*,

Plaintiffs,

v.

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

Defendants.

Civil Action No. 1:26-cv-2215-BAH

DEFENDANTS' NOTICE OF ERRATA

Defendants, through undersigned counsel, respectfully submit this Notice of Errata and state as follows:

1. On September 17, Defendants filed a Motion for Entry of Judgment on Certain Claims under Federal Rules of Civil Procedure 54(b) and 56. ECF No. 38. That motion relied in part on the Declaration of Jeff Wu, the Deputy Director for Policy at CMS's Center for Consumer Information and Insurance Oversight, which had been executed the week before, on September 10, and was cited and block quoted in Defendants' motion. *See id.* at 4.

2. On October 7, in the course of preparing Defendants' reply brief, undersigned counsel discovered that the Wu Declaration had not properly uploaded to ECF when the motion was filed. The same day, undersigned counsel reached out to Plaintiffs' counsel, notifying them of the error, providing them with a copy of the declaration, and advising them of Defendants' intent to file this notice of errata.

3. Undersigned counsel also asked Plaintiffs' counsel if they had any objection to this approach, and stated that Defendants would have no objection to their either amending their opposition before Defendants' reply was filed or filing a supplemental brief afterward. (Undersigned counsel also noted that, if necessary, Defendants could of course refile their motion with the declaration, but suggested that course would be less efficient.) Plaintiffs relayed the following position: "Plaintiffs take no position with respect to whether Defendants may permissibly file an errata in support of their motion, but if the errata is accepted for filing Plaintiffs reserve the right to file a supplemental brief to address it." As noted, Defendants have no objection to Plaintiffs' filing a supplemental brief addressing the declaration.

4. The Wu Declaration, which has not been modified from the version executed on September 10 and block quoted in Defendants' motion, is attached.

DATED: October 7, 2026

Respectfully submitted,

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Civil Action No. 1:26-cv-02215

DECLARATION OF JEFF WU

Pursuant to 28 U.S.C. § 1746, I, Jeff Wu, make the following declaration based on my personal knowledge, information contained in the records of the U.S. Department of Health and Human Services (“HHS”) and its subsidiary agencies, and information provided to me by HHS employees:

1. I am the Deputy Director for Policy at the Center for Consumer Information and Insurance Oversight (“CCIIO”), one of the centers within the Centers for Medicare & Medicaid Services (“CMS”), a component of HHS. CCIIO is charged with operating HealthCare.gov, including the Federally-facilitated Exchanges and certain State-based exchanges that use the federal HealthCare.gov infrastructure, as well as overseeing State-based Exchanges to ensure they comply with federal requirements. As part of that work, CCIIO is also responsible for administering consumer enrollment in qualified health plans (QHPs) offered through the Federally-facilitated Exchanges and State-based Exchanges on the federal platform, including eligibility for advance payment of the premium tax credit (APTC) and cost-sharing reductions

(CSRs) under the Patient Protection and Affordable Care Act (“ACA”). In addition, CCIIO enforces federal health insurance regulations covering the individual, small group, and fully-insured large group health insurance markets, and non-federal governmental plans.

2. I graduated from Harvard College in 1992 with a bachelor’s degree in economics, and from Stanford Business School and Stanford Law School in 2001 with a master’s degree in business administration and a juris doctor degree, respectively.

3. In 2011, I joined CCIIO as a health insurance specialist, and I have served in various policy roles at CCIIO since then. I am currently the senior member of the career staff responsible for overseeing CCIIO’s policy and regulatory activities, including policymaking with respect to the Exchanges and the advance-payment premium tax credit and cost-sharing reductions, as well as our payment policies.

4. My role at CCIIO encompasses policy matters pertaining to the recently promulgated final rule entitled “Patient Protection and Affordable Care Act, HHS Notice of Benefit and Payment Parameters for 2027; and Basic Health Program” 90 Fed. Reg. 27,526 (May 20, 2026) (the 2026 NBPP), which contains the policies disputed in *City of Columbus v. Kennedy*.

5. I also understand that the Department of Justice is moving, on behalf of HHS, to file a motion under Federal Rule of Civil Procedure 54(b), which allows for the entry of a final decision on one or more claims when there is no just reason for delay. This motion would request certification on the following provisions of the rule stayed in *City of Columbus*;

- a. The mandatory verification policy for certain low-income enrollees through revisions to 45 C.F.R. § 155.320(c)(3)(iii)(A) and §155.320(c)(3)(vi)(C)(2);
- b. The revocation of the option for enrollees to attest to their income without

verification through other trusted data sources when IRS data is requested but unavailable through the rule's revision of 45 C.F.R. § 155.320(c)(5);

- c. And the imposition of a special enrollment period verification through the rule's revision to 45 C.F.R. § 155.420(g).

6. The imposition of a stay on these policies imposes great costs on the government.

The stay of the mandatory verification policy for low-income enrollees is estimated to increase Federal outlays for advance payments of the premium tax credits (APTC) by approximately \$213 million per plan year. The stay of the revocation of the income attestation option is estimated to increase Federal APTC outlays by approximately \$1,069 million per plan year. The stay of a special enrollment period verification under 45 C.F.R. § 155.420(g) is estimated to increase Federal APTC outlays by approximately \$105.4 million per plan year.

7. The government and the marketplace would greatly benefit from certainty on the legality of these provisions, without delay, to allow for orderly planning for the 2028 plan year.

I declare under penalty of perjury that foregoing is true and correct to the best of my knowledge and belief. Executed this 10th day of September, 2026.

JEFF WU