

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

**REPLY IN SUPPORT OF MOTION FOR ENTRY OF FINAL JUDGMENT ON
CERTAIN CLAIMS UNDER FEDERAL RULES OF CIVIL PROCEDURE 54(b) AND 56**

In the prior iteration of this case, *City of Columbus v. Kennedy*, No. 25-2114 (D. Md.), Plaintiffs moved for a preliminary injunction in July 2025, which was granted in part and appealed in August 2025. The parties then litigated the case to final judgment, which was entered in July 2026, and appealed in August 2026, mooting the preliminary-injunction appeal. The appeal of the final judgment remains pending, with argument scheduled for later this month. Thus, Defendants have not yet been able to obtain guidance from the Fourth Circuit on the important issues at stake in the earlier case—some of which are raised again here.

Yet in this case, the same pattern threatens to unfold. Plaintiffs moved for a preliminary injunction in June 2026, which was entered in July 2026. Any appeal of that preliminary injunction likely would have been mooted by entry of final judgment, as before. Yet Plaintiffs are resisting Defendants' efforts to obtain prompt guidance from the Fourth Circuit, despite the undisputed cost to the federal fisc in the meantime. Perhaps their approach should be unsurprising—after all, the longer it takes for this case to reach final judgment, the longer they can claim the protection of the

preliminary injunction. But under the current briefing schedule, there will not be an appealable final judgment until at least February 2027, perhaps significantly later. There is a strong likelihood, then, that Defendants will have no meaningful chance at effective Fourth Circuit relief until after *next year's* Notice is issued, *cf.* Notice of Benefit and Payment Parameters for 2027, 91 Fed. Reg. 29,526 (issued May 20, 2026), meaning this inefficient cycle could persist.

The Court should not permit this to happen. Defendants' opening brief established—and Plaintiffs do not appear to dispute—that the inability to implement the three policies at issue in this motion is costing the Federal Government nearly \$1.4 billion per plan year. Otherwise put, delaying appeal of these provisions comes at a cost to taxpayers of \$115.6 million *every month*. There is no just reason for delay, especially at this cost, and Plaintiffs' arguments do not show otherwise.

First, Plaintiffs suggest that it is “rare” for Rule 54(b) to be applied when it would not eliminate a party from remaining district court proceedings, but it would instead leave “the contestants on appeal remain[ing as] contestants below.” Pls.' Opp'n at 2–3 (quoting *Kinsale Ins. Co. v. JDBC Holdings, Inc.*, 31 F.4th 870, 876 (4th Cir. 2022)). But the text of Rule 54(b) contains no such constraint. Indeed, the rule explicitly permits the court to “direct entry of a final judgment as to one or more, but fewer than all, claims *or* parties.” Fed. R. Civ. P. 54(b) (emphasis added). So even if this circumstance might “counsel[] hesitation,” *Spiegel v. Trs. of Tufts Coll.*, 843 F.2d 38, 44 (1st Cir. 1988), the rule itself plainly contemplates it.

Moreover, the cases Plaintiffs themselves cite principally focus not on the identity of the parties, but instead on whether the claims for which final judgment is proposed are “inextricably intertwined” with those that would remain to be litigated in district court. *See Kinsale*, 31 F.4th at 876 (“the disputed issues of damages, breach of contract, and common law bad faith are

‘interrelat[ed]’ or ‘inextricably intertwined’” (citation omitted)); *Braswell Shipyards, Inc. v. Beazer E., Inc.*, 2 F.3d 1331, 1337 (4th Cir. 1993) (“the damages under negligent nondisclosure and CERCLA are inextricably intertwined”); *see also Spiegel*, 843 F.2d at 45 (“The factual underpinnings of the adjudicated and unadjudicated counts are also inextricably intertwined.”). Plaintiffs make no such contention here, nor could they. This is not a case where the claims that would remain in district court present other challenges, on different theories, to the same regulatory provisions. Nor is it a case where the claims that would remain in district court seek different forms of relief concerning the same provisions. Instead, the three policies at issue are factually and legally distinct from the remaining claims, were separately briefed by the parties, were examined individually in the Court’s stay decision, and were separately stayed—on a provision-by-provision basis—in the Court’s order granting preliminary relief. They cannot be said to be so “inextricably intertwined” with the claims that would remain in district court that application of Rule 54(b) is inappropriate.

Second, Plaintiffs claim to need more time to review the administrative record to potentially develop additional arguments against the three policies at issue. But Plaintiffs do not even hypothesize, much less plausibly allege, what such arguments might be. Plaintiffs already opposed substantially similar versions of these policies in the earlier case, and they have made comprehensive arguments against them again here. They drafted an extensive complaint, which they have never suggested they plan to amend, as well as thorough preliminary injunction papers. And although they now claim that their motion for preliminary relief was brought merely “on the basis of comments that they were already aware had been before the agency,” Pls.’ Opp’n at 3, public comments have long been available for review online, at [regulations.gov](https://www.regulations.gov), as has the agency’s justification for the proposed and final rules. The mere possibility that Plaintiffs could

discover other theories neither already encompassed within their complaint nor even hinted at in their opposition brief should not outweigh the undisputed and mounting cost of the three policies.

Third, Plaintiffs contend that “if a partial judgment were to be certified, the Fourth Circuit would likely face multiple appeals presenting overlapping issues.” Pls.’ Opp’n at 3. True, there could be “multiple appeals”—that much is inherent in the use of Rule 54(b). But Plaintiffs fail to show, beyond vague gestures, that there would indeed be “overlapping issues” or any lack of efficiency. As explained above, the three policies at issue are factually and legally distinct from those that would remain in district court; they were subject to separate merits analyses, resulting in targeted, provision-specific orders of preliminary relief. *See supra* pp. 2–3. The only supposedly “overlapping” issue Plaintiffs suggest is that of standing. *See* Pls.’ Opp’n at 3–4. But that argument is overstated: As the Court is aware, Plaintiffs challenge a variety of different provisions, and it is axiomatic that a plaintiff must “demonstrate standing for each claim he seeks to press and for each form of relief that is sought.” *Davis v. Fed. Election Comm’n*, 554 U.S. 724, 734 (2008) (citation modified). And Plaintiffs’ characterization of the three policies at issue as “part of a common pattern of decisionmaking . . . that discourages enrollment,” Pls.’ Opp’n at 4, is a rhetorical flourish, not a legal issue for the Fourth Circuit to decide, much less twice.

At bottom, if Defendants’ motion is granted, there would be no need for the Fourth Circuit to consider any issue—including whether a particular policy is authorized by statute or is arbitrary and capricious, or whether Plaintiffs have standing to raise such a challenge—a second time. These issues can be readily separated and independently decided. And Plaintiffs’ passing assertion that it is “likel[y]” that a “Rule 54(b) appeal would be consolidated into any appeal of the final judgment in this case,” Pls.’ Opp’n at 5, is not only purely speculative but unsupported. If this motion is granted, Defendants’ appeal could be briefed and set for argument well before the parties’ cross-

motions for summary judgment on the claims that would remain in this Court are ripe for decision. Plaintiffs’ suggestion that the Fourth Circuit might hold up a fully briefed appeal while legally distinct issues percolate below is a recipe for less efficiency, not more.

Fourth, Plaintiffs suggest that “the ‘costs and risks’ that piecemeal appeals would pose for the litigants, for this Court, and for the Fourth Circuit” “outweigh” the harms to the federal fisc if Defendants’ motion is denied. Pls.’ Opp’n at 4. But Plaintiffs identify no concrete “costs and risks” to themselves or the judiciary. *See id.* And aside from describing the costs to the Government as lacking “supporting evidence,” *id.*, they do not appear to challenge Defendants’ figures.¹

Instead, Plaintiffs seem to contend that even extraordinary costs to the Government—and thus to taxpayers—can never be a “just reason” to avoid delaying appeal. They fall well short of supporting such a bold claim. They argue that the losses here—again, about \$1.4 billion per plan year, or \$115 million a month—are insufficient, because only “immediate financial hardship, like insolvency, . . . typically warrants Rule 54(b) certification.” Pls.’ Opp’n 4–5. But the case they cite for this proposition, *CapitalSource Fin., LLC v. Delco Oil, Inc.*, 608 F. Supp. 2d 655 (D. Md. 2009), says no such thing. There, the court noted that “[c]ourts have frequently found no just reason for delay . . . when the judgment debtor is insolvent or may become insolvent before the conclusion of judicial proceedings.” *Id.* at 669 (citation omitted). But nowhere did it suggest that threatened insolvency is the only, or even the typical, case for Rule 54(b). And applying such a principle here

¹ As explained in Defendants’ notice of errata, ECF No. 42, the Declaration of Jeff Wu, the Deputy Director for Policy at CMS’s Center for Consumer Information and Insurance Oversight, was cited and block quoted in Defendants’ motion, but not properly uploaded to ECF. A copy of that declaration was attached to the notice of errata, which the Court approved by paperless order, ECF No. 43, and it has authorized Plaintiffs to file a supplemental brief in response if they wish.

would make it virtually impossible for the Federal Government—whose solvency is not in question—ever to invoke Rule 54(b).

Plaintiffs also suggest that, regardless of its size, financial harm to the Government has no place in the Rule 54(b) analysis, arguing that “the Government cannot suffer harm from an injunction that merely ends an unlawful practice.” Pls.’ Opp’n at 4 (quoting *C.G.B. v. Wolf*, 464 F. Supp. 3d 174, 218 (D.D.C. 2020)). Even if that principle were correct in the emergency-relief context, from which Plaintiffs try to import it, *but see Trump v. CASA, Inc.*, 606 U.S. 831, 835 (2025) (“[A]ny time a State is enjoined by a court from effectuating statutes enacted by representatives of its people, it suffers a form of irreparable injury.” (citation omitted)), it is misplaced here. Defendants are not seeking an injunction and need not demonstrate that the equitable balance tips in their favor for their Rule 54(b) motion to be granted. That motion seeks only entry of judgment, for the reasons already set out by the Court, so that Defendants may exercise their appellate rights more promptly. Under Rule 54(b), the “district court may look to *all the facts and circumstances* of the case in determining whether there is any just reason for delaying the entry of judgment,” 10 Moore’s Federal Practice - Civil § 54.23[1][b] (emphasis added), including the costs to the Government.

There can be no reasonable dispute that those costs are significant. To calculate the cost of the income and special enrollment period (“SEP”) verification policies, CMS first estimated the number of future consumers who would be affected by the annual income or SEP verification policies by cataloging how many consumers received this type of verification issue in previous plan years when these policies were active and adjusting it for expected enrollment in future plan years. CMS then estimated the corresponding reduction in APTC expenditures by taking the historical rate of households who did not verify their income or SEP eligibility and were thus

ineligible for APTCs or a qualifying health plan and the APTCs available with it, respectively, for the remainder of the plan year to approximate how long households would not receive APTCs.

CMS reached the following estimate:

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**.

Decl. of Jeff Wu, ECF No. 42-1, at 3 (Sept. 10, 2026) (emphasis added).

* * *

In sum, there is a good-faith dispute about the legality of the three policies at issue, they are not meaningfully intertwined with the claims that would remain in district court, and the financial effect of the injunction is significant—and growing by the day. There is no just reason to delay entry of final judgment and, with it, Defendants’ right to seek appellate review. The Government respectfully requests that their motion be granted.

Dated: October 8, 2026

Respectfully submitted,

BRETT A. SHUMATE
Assistant Attorney General
Civil Division

ERIC B. BECKENHAUER
Assistant Director
Federal Programs Branch

/s/ Jordan A. Hulseberg
JORDAN A. HULSEBERG
(D.C. Bar No. 90033542)
Trial Attorney
United States Department of Justice
Civil Division, Federal Programs Branch

1100 L Street NW
Washington, DC 20005
Phone: (202) 598-3856
Email: Jordan.A.Hulseberg2@usdoj.gov

Counsel for Defendants