

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

STATE OF NEW JERSEY, *et al.*,

Plaintiffs,

v.

U.S. OFFICE OF MANAGEMENT AND
BUDGET, *et al.*,

Defendants.

Civil Action No. 25-11816-IT

PLAINTIFFS' RESPONSE IN OPPOSITION TO MOTION FOR STAY

Plaintiffs oppose Defendants' motion for an indefinite stay in light of the lapse in federal appropriations. This case challenges Defendants' use of a single subclause buried in federal regulations to terminate billions of dollars in critical federal funding to States. A stay of this case while the parties are briefing summary judgment would unnecessarily delay Plaintiffs from obtaining relief making clear that Defendants cannot use this Clause¹ to terminate federal funding based on new agency priorities not identified at the time of the grant award—relief that is particularly critical given Defendants' ongoing reliance on the Clause, at the President's express direction, to terminate grants on this basis. *See* Pls.' Reply, Doc. No. 98 at 16-18. Indeed, a stay would be especially inequitable since Defendants have apparently paused billions in awarded federal funds during the lapse in appropriations and have stated that they are considering whether to terminate additional funding. *See* Russ Vought (@russvought), X (Oct. 17, 2025, at 2:24 PM), <https://tinyurl.com/y7nx4dds>. A stay is also unnecessary because Defendants will not be harmed by the

¹ Plaintiffs refer to both 2 C.F.R. § 200.340(a)(4) (2024) and its predecessor, 2 C.F.R. § 200.340(a)(2) (2021), as the "Clause."

denial of a stay, particularly since the Department of Justice’s (“DOJ”) own contingency plan authorizes its attorneys to work on litigation matters when a court has declined to order a stay. This Court’s discretion to grant or deny a stay of proceedings “calls for the exercise of judgment, which must weigh competing interests.” *Landis v. N. Am. Co.*, 299 U.S. 248, 254-55 (1936). Those interests all strongly counsel in favor of denying Defendants’ motion.

For one thing, a stay would unnecessarily delay Plaintiffs from obtaining relief that is necessary to avoid ongoing harms stemming from Defendants’ invocation of the Clause to terminate grants. Plaintiffs have filed a motion for summary judgment on Count I of their Complaint, seeking a declaratory judgement that sets out the Clause’s limits, including that the Clause does not permit Defendants to terminate grants based on new agency priorities not identified at the time of the award. Pls.’ Br., Doc. No. 67 at 19. Briefing on that motion is nearly complete. The relief Plaintiffs seek in Count I is necessary because Defendants have continued to improperly terminate grants under the Clause. *See* Doc. No. 98 at 18. Indeed, the President has issued an Executive Order expressly directing Defendants to continue terminating grants using the Clause. *See* Exec. Order No. 14,332 § 6(b), 90 Fed. Reg. 38,929, 38,933 (Aug. 7, 2025); *see also* Doc. No. 67 at 15-16 (detailing Executive Orders directing federal agencies to review and terminate existing grant funding). If the Court stays this matter, additional time will pass before the Court can issue relief, allowing Defendants to continue terminating critical federal grants in the meantime based on their improper interpretation of the Clause. As the undisputed factual record establishes, these terminations have cut billions in critical funding for States, which had been used to combat violent crime, protect public safety, remove chemicals from drinking water, protect unemployment benefits systems from fraud, distribute locally grown produce to schools and underserved communities, and more. *See* Doc. No. 67 at 17-18, 21. And Plaintiffs have billions of dollars in active grants with

Agency Defendants that remain vulnerable to termination under the Clause. *See* Doc. No. 98 at 17-18. To avoid imminent injury from Defendants’ future invocation of the Clause, Plaintiffs therefore need briefing to continue apace, with a decision from this Court as soon as practicable.

Defendants claim there is no urgency here because Plaintiffs have not moved for “time-sensitive injunctive relief” and the parties instead agreed to a four-month briefing schedule. Defs.’ Mot., Doc. No. 99 at 2 (¶ 6). But Plaintiffs primarily seek a declaratory judgment, not injunctive relief. *See* Am. Compl. Doc. No. 64 at 82-83 (¶¶ i-iv). And “there is no such thing as a motion for a preliminary declaratory judgment.” *Corp. for Pub. Broad. v. Trump*, 786 F. Supp. 3d 142, 150 (D.D.C. 2025). So Plaintiffs chose the most expeditious path to obtain their desired declaratory relief: moving for summary judgment less than seven weeks after filing this case and only four days after amending their complaint. *See* Doc. No. 99 at 2 (¶ 6). That motion could end this case in short order. Plaintiffs should therefore not be penalized for choosing to, in Defendants’ words, “work collaboratively on scheduling matters.” *Id.*

Moreover, Defendants will not suffer any harm from the denial of a stay. The DOJ’s own guidance authorizes the DOJ to continue work on this matter despite the lapse in appropriations. Under 31 U.S.C. § 1342, federal attorneys generally may not work during a government shutdown unless “authorized by law” or for “emergencies involving the safety of human life or the protection of property.” But on September 29, 2025, the DOJ issued a contingency plan setting forth its planned operations during a lapse in appropriations. *See* U.S. Dep’t of Just., *FY 2026 Contingency Plan* (Sept. 29, 2025) (“Contingency Plan”), <https://tinyurl.com/mrys56dn>. For civil litigation, the DOJ instructs its attorneys to “approach the courts and request that active cases ... be postponed until funding is available.” *Id.* at 3. If a court denies a stay, however, “the Government will comply

with the court’s order, which would constitute express legal authorization for the activity to continue” under § 1342. *Id.*; *see also* Text Order Denying Mot. to Stay, *Rhode Island, v. Trump*, No. 1:25-cv-00128 (D.R.I. Oct. 2, 2025) (noting that “[t]he Court is required to continue its constitutional functions”); *Kornitzky Grp., LLC v. Elwell*, 912 F.3d 637, 638 (D.C. Cir. 2019) (Srinivasan & Edwards, JJ., concurring) (discussing the DOJ’s similar FY 2019 Contingency Plan). In other words, “[i]f a court denies a litigator’s request to postpone a case and orders it to continue, the litigation will become an excepted activity that can continue during the lapse.” *See* Contingency Plan at 7. Separately, both 31 U.S.C. § 1342 and the DOJ’s Contingency Plan establish that the DOJ activities associated with “emergencies involving the safety of human life” may continue as “excepted” activities during a lapse of appropriations. *See* Contingency Plan at 1 (quoting the “emergencies” language in 31 U.S.C. § 1342). Because federal law authorizes the payment of wages for “excepted activities” during a lapse in appropriations, any harm to Defendants’ counsel would be mitigated should this Court deny a stay. *See* 31 U.S.C. § 1341(c)(2); *see also* Contingency Plan at 3 (the DOJ is required to maintain civil litigation staffing at the level necessary to continue activities in proceedings that are not stayed.).

That is among the reasons why federal courts have regularly declined requests by the DOJ to stay proceedings due to a lapse of appropriations. For instance, “when federal appropriations lapsed in 2013, resulting in a ‘shutdown’ from October 1 to October 17, 2013, [the D.C. Circuit] received Government motions to stay oral argument in at least sixteen cases.” *Kornitzky Grp.*, 912 F.3d at 638 (Srinivasan & Edwards, JJ., concurring). In “every one of those motions,” the government counsel cited the same statute that Defendants cite here, 31 U.S.C. § 1342, claiming that it prohibited them from working. *Id.* at 638-39. But the D.C. Circuit denied “every one of these motions,” even when a stay was unopposed, “and every time, the Government then participated in

oral argument.” *Id.* This practice of denying such motions continued during the most recent government shutdown from December 22, 2018 to January 25, 2019. *Id.* at 639.

Indeed, multiple federal courts have already denied requests by the DOJ to stay proceedings during this current lapse of appropriations. For instance, this Court recently denied the federal government’s request for a stay in other litigation brought by some of the Plaintiffs in this case. *See* Memorandum & Order Denying Mot. to Stay, *California v. U.S. Dep’t of Health and Human Services*, No. 1:25-cv-12118 at Doc. No. 72 (D. Mass. Oct. 8, 2025) (Talwani, J.) (“Plaintiffs’ interest in proceeding in this case outweighs Defendants’ interest in a stay where counsel for Defendants may continue litigating during the lapse in funding pursuant to a court order.”). And district courts across the country, including this one, have repeatedly denied the DOJ’s motions for stays due to the current lapse of appropriations. *See* Order Denying Mot. to Stay, *Guerrero Orellana v. Moniz*, No. 1:25-cv-12664 at Doc. No. 51 (D. Mass Oct. 2, 2025); Order Granting in Part and Denying in Part Mot. to Stay, *California v. U.S. Dep’t of Agric.*, No. 3:25-cv-06310 at Doc. No. 97 (N.D. Cal. Oct. 1, 2025) (refusing to stay briefing on plaintiffs’ motion for preliminary injunction); Text Order Denying Mot. to Stay, *Rhode Island v. Trump*, No. 1:25-cv-00128 (D.R.I. Oct. 2, 2025) (denying motion to stay and citing the DOJ’s Contingency Plan); Text Order Denying Mot. to Stay, *New York v. Kennedy*, No. 1:25-cv-00196 (D.R.I. Oct. 3, 2025); Text Order Denying Mot. to Stay, *United States v. Rhode Island*, No. 1:14-cv-00175 (D.R.I. Oct. 2, 2025); Text Order Denying Mot. to Stay, *J.P. Morgan Chase Bank, N.A. v. Carver*, No. 1:24-cv-00478 (D.R.I. Oct. 3, 2025); Order Denying Mot. to Stay, *New York v. U.S. Dep’t of Energy*, No. 6:25-cv-01458 at Doc. No. 77 (D. Or. Oct. 9, 2025); Text Order Denying Mot. to Stay, *New York v. U.S. Dep’t of Just.*, No. 1:25-cv-00499 (D.R.I. Oct. 6, 2025).

For the reasons explained above, this Court should do the same.

Dated: October 23, 2025

MATTHEW J. PLATKIN
ATTORNEY GENERAL OF NEW JERSEY

/s/ Jeremy M. Feigenbaum
Jeremy M. Feigenbaum*
Solicitor General
Sundeep Iyer*
Chief Counsel
Stephen Ehrlich*
Deputy Solicitor General
Bassam Gergi*
Jessica L. Palmer†
Amanda I. Morejón
Meghan K. Musso*
Sarah Nealon†
Lauren E. Van Driesen†
Deputy Attorneys General
Office of the Attorney General
124 Halsey Street, 5th Floor
Newark, NJ 07101
(609) 696-5279
Jeremy.Feigenbaum@njoag.gov
Amanda.Morejon@law.njoag.gov

Counsel for the State of New Jersey

LETITIA JAMES
ATTORNEY GENERAL OF NEW YORK

By: /s/ Rabia Muqaddam
Rabia Muqaddam†
Special Counsel for Federal Initiatives
Jessica Ranucci†
Special Counsel
28 Liberty St.
New York, NY 10005
(212) 416-8883
Rabia.muqaddam@ag.ny.gov
Jessica.Ranucci@ag.ny.gov

Counsel for the State of New York

Respectfully submitted,

ANDREA JOY CAMPBELL
ATTORNEY GENERAL OF MASSACHUSETTS

By: /s/ Vanessa A. Arslanian
Katherine B. Dirks (BBO No. 673674)
Chief State Trial Counsel
Vanessa A. Arslanian (BBO No. 688099)
James A. Sweeney (BBO No. 543636)
State Trial Counsel
Anna J. Lumelsky (BBO No. 677708)
Deputy State Solicitor
Yael Shavit (BBO No. 695333)
Chief, Consumer Protection Division
Jak Kundl (BBO No. 713951)
Assistant Attorney General
Office of the Attorney General
One Ashburton Place, 20th Floor
Boston, MA 02108
(617) 963-2277
katherine.dirks@mass.gov
vanessa.arslanian@mass.gov

Counsel for the Commonwealth of Massachusetts

KRISTIN K. MAYES
ATTORNEY GENERAL OF ARIZONA

By: /s/ Hayleigh S. Crawford
Hayleigh S. Crawford†
Deputy Solicitor General
Syreeta A. Tyrell†
Senior Litigation Counsel
2005 North Central Avenue
Phoenix, Arizona 85004
Phone: (602) 542-3333
Hayleigh.Crawford@azag.gov
Syreeta.Tyrell@azag.gov
ACL@azag.gov

Counsel for the State of Arizona

ROB BONTA

ATTORNEY GENERAL OF CALIFORNIA

By: /s/ Shiwon Choe

Anya M. Binsacca*

Supervising Deputy Attorney General

Shiwon Choe[†]

Zelda Vassar[†]

Harald H. Kirn[†]

Deputy Attorneys General

455 Golden Gate Avenue, Suite 11000

San Francisco, CA 94102

(415) 510-4400

Anya.Binsacca@doj.ca.gov

Shiwon.Cho@doj.ca.gov

Zelda.Vassar@doj.ca.gov

Harald.Kirn@doj.ca.gov

Counsel for the State of California

PHILIP J. WEISER

ATTORNEY GENERAL OF COLORADO

By: /s/ David Moskowitz

David Moskowitz[†]

Deputy Solicitor General

1300 Broadway, #10

Denver, CO 80203

(720) 508-6000

David.Moskowitz@coag.gov

Counsel for the State of Colorado

WILLIAM TONG

ATTORNEY GENERAL OF CONNECTICUT

By: /s/ Michael K. Skold

Michael K. Skold[†]

Solicitor General

165 Capitol Ave

Hartford, CT 06106

(860) 808-5020

Michael.skold@ct.gov

Counsel for the State of Connecticut

KATHLEEN JENNINGS

ATTORNEY GENERAL OF DELAWARE

By: /s/ Ian R. Liston

Ian R. Liston[†]

Director of Impact Litigation

Vanessa L. Kassab*

Deputy Attorney General

Delaware Department of Justice

820 N. French Street

Wilmington, DE 19801

(302) 683-8899

vanessa.kassab@delaware.gov

Counsel for the State of Delaware

BRIAN L. SCHWALB

ATTORNEY GENERAL FOR THE DISTRICT OF
COLUMBIA

By: /s/ Andrew C. Mendrala
Andrew C. Mendrala[†]
Assistant Attorney General
400 Sixth Street, NW
Washington, D.C. 20001
(202) 724-9726
Andrew.mendrala@dc.gov

Counsel for the District of Columbia

KWAME RAOUL

ATTORNEY GENERAL OF ILLINOIS

By: /s/ Darren Kinkad
Darren Kinkad[†]
Public Interest Counsel
115 South LaSalle Street
Chicago, IL 60603
(773) 590-6967
Darren.Kinkad@ilag.gov

Counsel for the State of Illinois

ANNE E. LOPEZ

ATTORNEY GENERAL OF HAWAI‘I

By: /s/ Kaliko‘onālani D. Fernandes
David D. Day[†]
Special Assistant to the Attorney General
Kaliko‘onālani D. Fernandes[†]
Solicitor General
425 Queen Street
Honolulu, HI 96813
(808) 586-1360
kaliko.d.fernandes@hawaii.gov

Counsel for the State of Hawai‘i

LAURA KELLY

IN HER OFFICIAL CAPACITY AS GOVERNOR OF
THE STATE OF KANSAS

By: /s/ Justin Whitten
Justin Whitten[†]
General Counsel
Ashley Stites-Hubbard[†]
Deputy Chief Counsel
Office of the Kansas Governor
300 SW 10th Ave, Room 541-E
Topeka, KS 66612
(785) 296-3930
Justin.h.whitten@ks.gov
Ashley.stiteshubbard@ks.gov

Counsel for Governor Laura Kelly

OFFICE OF THE GOVERNOR *ex rel.*
ANDY BESHEAR

IN HIS OFFICIAL CAPACITY AS GOVERNOR OF
THE COMMONWEALTH OF KENTUCKY

By: /s/ S. Travis Mayo
S. Travis Mayo[†]
General Counsel
Taylor Payne[†]
Chief Deputy General Counsel
Laura C. Tipton[†]
Deputy General Counsel
Office of the Governor
700 Capitol Avenue, Suite 106
Frankfort, KY 40601
(502) 564-2611
travis.mayo@ky.gov
taylor.payne@ky.gov
laurac.tipton@ky.gov

Counsel for the Office of the Governor

ANTHONY G. BROWN
ATTORNEY GENERAL OF MARYLAND

By: /s/ Steven J. Goldstein
Steven J. Goldstein[†]
Assistant Attorney General
Office of the Attorney General of Maryland
200 Saint Paul Place, 20th Floor
Baltimore, MD 21202
410-576-6414
Sgoldstein@oag.state.md.us

Counsel for the State of Maryland

AARON M. FREY
ATTORNEY GENERAL OF MAINE

By: /s/ Jason Anton
Jason Anton[†]
Assistant Attorney General
Office of the Attorney General
6 State House Station
Augusta, ME 04333-0006
Tel.: 207-626-8800
Fax: 207-287-3145
jason.anton@maine.gov

Counsel for the State of Maine

DANA NESSEL
ATTORNEY GENERAL OF MICHIGAN

By: /s/ Neil Giovanatti
Neil Giovanatti[†]
Assistant Attorney General
Michigan Department of Attorney General
525 W. Ottawa
Lansing, MI 48909
(517) 335-7603
GiovanattiN@michigan.gov

Attorney for the People of the State of Michigan

KEITH ELLISON

ATTORNEY GENERAL OF MINNESOTA

By: /s/ Katherine J. Bies

Katherine J. Bies[†]

Special Counsel, Rule of Law
445 Minnesota Street, Suite 600
St. Paul, Minnesota, 55101
(651) 300-0917
Katherine.Bies@ag.state.mn.us

Counsel for the State of Minnesota

RAÚL TORREZ

ATTORNEY GENERAL OF NEW MEXICO

By: /s/ Amy Senier

Amy Senier

Senior Litigation Counsel
New Mexico Department of Justice
P.O. Drawer 1508
Santa Fe, NM 87504-1508
(505) 490-4060
asenier@nmdoj.gov

Counsel for the State of New Mexico

AARON D. FORD

ATTORNEY GENERAL OF NEVADA

By: /s/ Heidi Parry Stern

Heidi Parry Stern[†]

Solicitor General
Office of the Nevada Attorney General
1 State of Nevada Way, Ste. 100
Las Vegas, NV 89119
HStern@ag.nv.gov

Counsel for the State of Nevada

DAN RAYFIELD

ATTORNEY GENERAL OF OREGON

By: /s/ Brian Simmonds Marshall

Coby Howell[†]

Brian Simmonds Marshall*
Senior Assistant Attorney General
Oregon Department of Justice
100 SW Market Street
Portland, OR 97201
Tel (971) 673-1880
Fax (971) 673-5000
Brian.S.Marshall@doj.oregon.gov

Counsel for the State of Oregon

JOSH SHAPIRO

IN HIS OFFICIAL CAPACITY AS GOVERNOR OF
THE COMMONWEALTH OF PENNSYLVANIA

Jennifer Selber
General Counsel

By: /s/ Jacob B. Boyer

Jacob B. Boyer[†]

Deputy General Counsel

Michael J. Fisher[†]

Executive Deputy General Counsel

Pennsylvania Office of the Governor

30 N. 3rd St., Suite 200

Harrisburg, PA 17101

(717) 460-6786

jacobboyer@pa.gov

Counsel for Governor Josh Shapiro

CHARITY R. CLARK

ATTORNEY GENERAL OF VERMONT

By: /s/ Jonathan T. Rose

Jonathan T. Rose[†]

Solicitor General

109 State Street

Montpelier, VT 05609

(802) 828-3171

Jonathan.rose@vermont.gov

Counsel for the State of Vermont

PETER F. NERONHA

ATTORNEY GENERAL OF RHODE ISLAND

By: /s/ Leonard Giarrano IV

Leonard Giarrano IV[†]

Special Assistant Attorney General

150 South Main Street

Providence, RI 02903

(401) 274-4400, Ext. 2062

lgiarrano@riag.ri.gov

Counsel for the State of Rhode Island

JOSHUA L. KAUL

ATTORNEY GENERAL OF WISCONSIN

By: /s/ Colin T. Roth

Colin T. Roth[†]

Assistant Attorney General

Wisconsin Department of Justice

Post Office Box 7857

Madison, Wisconsin 53707-7857

(608) 266-7636

rothct1@doj.state.wi.us

Counsel for the State of Wisconsin

**Pro hac vice application forthcoming*

[†] Admitted pro hac vice

CERTIFICATE OF SERVICE

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF), and paper copies will be sent to those indicated as non-registered participants.

/s/ Katherine B. Dirks

Katherine B. Dirks

Dated: October 23, 2025