

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

COMMONWEALTH OF MASSACHUSETTS,)
et al.)

Plaintiffs,)

v.)

NATIONAL INSTITUTES OF HEALTH, *et al.*,)

Defendants.)

Case No. 1:25-cv-10338

ASSOCIATION OF AMERICAN MEDICAL)
COLLEGES, *et al.*)

Plaintiffs,)

v.)

NATIONAL INSTITUTES OF HEALTH, *et al.*,)

Defendants.)

Case No. 1:25-cv-10340

ASSOCIATION OF AMERICAN)
UNIVERSITIES, *et al.*)

Plaintiffs,)

v.)

DEPARTMENT OF HEALTH AND HUMAN)
SERVICES, *et al.*,)

Defendants.)

Case No. 1:25-cv-10346

**DEFENDANTS’ ASSENTED-TO MOTION TO CONVERT ORDER ON
PRELIMINARY INJUNCTION INTO ORDER ON PERMANENT INJUNCTION AND
ENTER FINAL JUDGMENT**

Defendants in the above-captioned cases respectfully request, with the assent of the Plaintiffs, that the Court convert its March 5, 2025, Memorandum and Order on Plaintiffs’ Motion for Preliminary Injunction, *see Mass. v. NIH*, Doc. 105, into an order on a permanent injunction and enter final judgment, without prejudice to Defendants’ right to appeal from that order and final judgment.¹ No outstanding factual or legal issues remain for disposition by this Court; no party would suffer any prejudice; and entering a final judgment would facilitate prompt and efficient review by the United States Court of Appeals for the First Circuit on Defendants’ appeal, which right they expressly reserve. In support of this motion, and without any party waiving any argument on appeal, Defendants state as follows:

BACKGROUND

1. On February 10, 2025, three Plaintiff groups filed complaints seeking injunctive and declaratory relief, each alleging that Supplemental Guidance issued by the National Institutes of Health (Supplemental Guidance)² violates the Administrative Procedure Act (APA) because it exceeds statutory authority and is arbitrary and capricious. Each Plaintiff group requested an *ex parte* temporary restraining order (TRO), two of which were granted, and the third was denied as moot after the Court issued a nationwide injunction in No. 1:25-cv-10340.

¹ Defendants have represented to Plaintiffs that, if this Motion is granted, Defendants will forego a bond or stay pending their appeal from the resulting order.

² *See* Supplemental Guidance to the 2024 National Institutes of Health (“NIH”) Grants Policy Statement: Indirect Cost Rates (NOT-OD-25-068), available at <https://grants.nih.gov/grants/guide/notice-files/NOT-OD-25-068.html> (last visited March 20, 2025).

2. On February 13, 2025, the Court directed Defendants to submit a single consolidated opposition to the pending TRO motions, to be filed in each case. Defendants filed their opposition to Plaintiffs' TRO motions on February 14, 2025. Plaintiffs filed their consolidated reply in support the TRO motions on February 18, 2025.

3. On February 21, 2025, the Court held a hearing on the TRO motions. At the hearing, the parties agreed that, with a full round of briefing prior to the hearing, the matter was in a preliminary injunction posture. *See* TRO Hearing Tr. at 23-24. The Court found good cause to extend the TRO, pursuant to Fed. R. Civ. P. 65(b)(2), until it could decide whether to issue a preliminary injunction. *Id.* at 24. During the hearing, the Court also requested that the parties raise any disputed facts, aside from the parties' positions on irreparable harm. The Court explained:

THE COURT: . . . As you present your legal arguments, aside from the parties' positions with regards to irreparable harm, please let [the Court] know if there are any disputed facts -- disputed facts surrounding the history, grant process, process for negotiating the indirect cost rates, timeline, and sequence of events leading up to February 10th when these three lawsuits were filed. So this applies to everyone if you think that there is a dispute in facts because there seems there's much agreement, but please highlight those for me.

Id. at 11. No party identified any disputed facts at the hearing.

4. On March 5, 2025, in a 76-page opinion, the Court granted Plaintiffs' motions for preliminary injunctive relief. *See Mass. v. NIH*, Doc. 105. In doing so, the Court rejected Defendants' contention that this Court lacks jurisdiction because, under the Tucker Act, 28 U.S.C. § 1491(a)(1), the Court of Federal Claims is the only forum that may entertain Plaintiffs' claims.

After concluding that Plaintiffs had shown the four elements necessary to obtain a preliminary injunction, the Court enjoined "Defendants and their officers, employees, servants, agents, appointees, and successors . . . from taking any steps to implement, apply, or enforce the

Supplemental Guidance . . . in any form with respect to institutions nationwide until further order issued by this Court.” *Id.* at 75-76.

MOTION

The Defendants ask the Court to convert its March 5, 2025, Memorandum and Order into an order granting a permanent injunction and enter a final judgment on the merits. Under Federal Rule of Civil Procedure 65(a)(2), “[b]efore or after beginning the hearing on a motion for a preliminary injunction, the court may advance the trial on the merits and consolidate it with the hearing.” Fed. R. Civ. P. 65(a)(2). “Even when consolidation is not ordered, evidence that is received on the motion and that would be admissible at trial becomes part of the trial record and need not be repeated at trial.” *Id.* Consistent with Federal Rule 65(a)(2), a district court can “convert a preliminary injunction order into a permanent injunction order” and enter final judgment. *Maine Republican Party v. Dunlap*, No. 1:18-CV-00179-JDL, 2018 WL 11183911, at *1 (D. Me. Aug. 3, 2018); *Fla. Retail Fed’n, Inc. v. Att’y Gen. of Fla.*, 576 F. Supp. 2d 1301, 1302–03 (N.D. Fla. 2008) (holding that entry of final judgment on parties’ motion to convert preliminary injunction order “is, in effect, a consolidation of the merits with the preliminary injunction hearing, as expressly authorized by Federal Rule of Civil Procedure 65”). The Court should do so here for multiple reasons.

First, no additional facts need to be considered. The NIH has presented the entirety of the record it relies upon as the basis for the agency action under review and the Court has considered it. In the Court’s Memorandum and Order, the Court issued its ruling regarding the Supplemental Guidance, and the declarations submitted by the parties. The Defendants will submit no further record or evidentiary submissions, and no further record or evidentiary submissions are necessary. *Cf. Crosspoint Church v. Makin*, No. 1:23-CV-00146-JAW, 2024

WL 2830931, at *4 (D. Me. June 4, 2024) (converting denial of preliminary injunction into denial of permanent injunction, reasoning “there are no material factual disputes” and “an evidentiary hearing is unnecessary”).³

Second, no additional legal issues need to be considered. The four-element test for a preliminary injunction is the same as the test for a permanent injunction “except that the movant must show actual success on the merits of the claim, rather than a mere likelihood of success.” *Id.* (citing *Caroline T. v. Hudson Sch. Dist.*, 915 F.2d 752, 755 (1st Cir. 1990)); see also *Voice of the Arab World, Inc. v. MDTV Med. News Now, Inc.*, 645 F.3d 26, 34 (1st Cir. 2011). Without any need to consider additional facts, as noted above, the Court can reach a decision on the merits by “adopt[ing] and restat[ing] all of the legal conclusions contained in” the March 5, 2025, Memorandum and Order, and enter final judgment for Plaintiffs. *Crosspoint*, No. 1:23-CV-00146-JAW, 2024 WL 2830931, at *4.

Finally, this case presents dispositive legal issues that Defendants will address on appeal to the First Circuit, and entering judgment would serve judicial efficiency and avoid the unnecessary expenditure of party resources. See Fed. R. Civ. P. 1 (“[The Federal Rules] should be construed, administered, and employed by the court and the parties to secure the just, speedy, and inexpensive determination of every action and proceeding.”). The Defendants therefore ask the Court to convert the March 5, 2025, Memorandum and Order into an order on a permanent

³ Similarly, the Court needs no additional facts to decide whether it has jurisdiction to hear Plaintiffs’ claims. In support of their jurisdictional argument, Defendants rely on language found in all NIH grant agreements at issue and, in their Opposition to Plaintiffs’ TRO motions, refer to an exemplar grant agreement attached to a supporting declaration. See *Mass. v. NIH*, Doc. No. 74 at 8 and Doc. No. 74-1, Exh. B, Notice of Award. Plaintiffs’ jurisdictional position relies on the allegations of statutory and regulatory violations in their complaints. *Mass. v. NIH*, Doc. No. 81 at 1-6. No evidentiary submissions or a hearing on this issue is necessary.

injunction and enter final judgment in this case, without prejudice to any argument that any party may raise on appeal from the requested final judgment.

CONCLUSION

For the foregoing reasons, the Defendants respectfully ask the Court to grant this Assented-to Motion.

Dated: April 4, 2025

Respectfully submitted,

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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).

Dated: April 4, 2025

/s/ Thomas W. Ports, Jr.
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Case No. 1:25-cv-10338

ASSOCIATION OF AMERICAN MEDICAL)
COLLEGES, *et al.*)

Plaintiffs,)

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NATIONAL INSTITUTES OF HEALTH, *et al.*,)

Defendants.)

Case No. 1:25-cv-10340

ASSOCIATION OF AMERICAN)
UNIVERSITIES, *et al.*)

Plaintiffs,)

v.)

DEPARTMENT OF HEALTH AND HUMAN)
SERVICES, *et al.*,)

Defendants.)

Case No. 1:25-cv-10346

[PROPOSED] FINAL JUDGMENT AND PERMANENT INJUNCTION

Pending before the Court is the Defendant's Assented-to Motion to Convert Order on Preliminary Injunction into Order on Permanent Injunction and Enter Final Judgment. After

reviewing the motion, the record, and the applicable law, the Court is of the opinion that the motion should be **GRANTED**.

For reasons stated in this Court’s Memorandum and Order on Plaintiffs’ Motion for Preliminary Injunction, *see Massachusetts v. NIH*, Case No. 1:25-cv-10338, Doc. No. 105, the Court finds that this Court has jurisdiction over Plaintiffs’ claims, and that the Court of Federal Claims does not have exclusive jurisdiction over Plaintiffs’ claims under the Tucker Act, 28 U.S.C. § 1491(a)(1). The Court concludes that Plaintiffs in the above-captioned cases have demonstrated success on the merits of their Administrative Procedure Act claims that the issuance of the 2024 National Institutes of Health (NIH) Notice Number NOT-OD-25-068 (hereinafter, “Notice Number NOT-OD-25-068”): (1) violated 45 C.F.R. § 75.414 and Section 224 of the Further Consolidated Appropriations Act, 2024, Public Law 118-47;¹ (2) was arbitrary and capricious;² (3) failed to follow notice-and-comment procedures;³ and (4) was impermissibly retroactive.⁴

Accordingly, the Court concludes that entry of a permanent injunction is appropriate. *See Caroline T. v. Hudson Sch. Dist.*, 915 F.2d 752, 755 (1st Cir. 1990) (“Where a plaintiff seeks

¹ See Doc. No. 1 in *Mass. v. NIH*, Case No. 1:25-cv-10338 (Counts II and III); Doc. 1 in *AAMC v. NIH*, Case No. 1:25-cv-10340 (Count 1 and II); Doc. 1 in *AAU v. HHS*, Case No. 1:25-cv-10346 (Counts I, III, and V).

² See Doc. No. 1 in *Mass. v. NIH*, Case No. 1:25-cv-10338 (Count I); Doc. 1 in *AAMC v. NIH*, Case No. 1:25-cv-10340 (Count III); Doc. 1 in *AAU v. HHS*, Case No. 1:25-cv-10346 (Count IV).

³ See Doc. No. 1 in *Mass. v. NIH*, Case No. 1:25-cv-10338 (Count V); Doc. 1 in *AAMC v. NIH*, Case No. 1:25-cv-10340 (Count IV); Doc. 1 in *AAU v. HHS*, Case No. 1:25-cv-10346 (Count VI).

⁴ See Doc. No. 1 in *Mass. v. NIH*, Case No. 1:25-cv-10338 (Count III); Doc. 1 in *AAMC v. NIH*, Case No. 1:25-cv-10340 (Count V); Doc. 1 in *AAU v. HHS*, Case No. 1:25-cv-10346 (Count VIII).

permanent injunctive relief, the test is the same, except that ‘the movant must show actual success on the merits of the claim, rather than a mere likelihood of such success.’”) (quoting *K-Mart Corp. v. Oriental Plaza, Inc.*, 875 F.2d 907, 915 (1st Cir. 1989)).

Therefore, it is hereby **ORDERED**:

1. The Court has subject matter and personal jurisdiction over this action and the Parties.
2. Venue is proper before this District.
3. For the reasons stated in this Court’s Memorandum and Order on Plaintiffs’ Motion for Preliminary Injunction, *see Massachusetts v. NIH*, Case No. 1:25-cv-10338, Doc. No. 105, in *Massachusetts, et al. v. NIH, et al.*, Case No. 1:25-cv-10338, judgment is entered in favor of the Plaintiffs in that action on the following claims brought against the National Institutes of Health; Jay Bhattacharya, M.D., Ph.D., in his official capacity as Director of the National Institutes of Health; the United States Department of Health and Human Services; and Robert F. Kennedy, Jr., in his official capacity as Secretary of Health and Human Services: Count I; Count II; Count III; Count IV; and Count V.
4. For the reasons stated in this Court’s Memorandum and Order on Plaintiffs’ Motion for Preliminary Injunction, *see Massachusetts v. NIH*, Case No. 1:25-cv-10338, Doc. No. 105, in *Association of American Medical Colleges, et al. v. NIH, et al.*, Case No. 1:25-cv-10340, judgment is entered in favor of the Plaintiffs in that action on the following claims brought against the National Institutes of Health; Jay Bhattacharya, M.D., Ph.D., in his official capacity as Director of the National Institutes of Health; the United States Department of Health and Human Services; and Robert F. Kennedy, Jr., in his official capacity as Secretary of Health and

Human Services: Count I; Count II; Count III; Count IV; and Count V, as to the claim of a violation of the statutory prohibition on retroactivity.

5. For the reasons stated in this Court's Memorandum and Order on Plaintiffs' Motion for Preliminary Injunction, *see Massachusetts v. NIH*, Case No. 1:25-cv-10338, Doc. No. 105, in *Association of American Universities, et al. v. NIH*, Case No. 1:25-cv-10346, judgment is entered in favor of the Plaintiffs in that action on the following claims brought against the United States Department of Health and Human Services; the National Institutes of Health; Robert F. Kennedy, Jr., in his official capacity as Secretary of Health and Human Services; and Jay Bhattacharya, M.D., Ph.D., in his official capacity as Director of the National Institutes of Health: Count I; Count III; Count IV; Count V; Count VI; and Count VIII.

6. Defendants and their officers, employees, servants, agents, appointees, and successors are hereby **ENJOINED** from taking any steps to implement, apply, or enforce Notice Number NOT-OD-25-068, issued by the Office of the Director of the National Institutes of Health on February 7, 2025, in any form with respect to institutions nationwide.

7. Pursuant to 5 U.S.C. § 706(2), the Court **VACATES**, in its entirety, Notice Number NOT-OD-25-068, issued by the Office of the Director of the National Institutes of Health on February 7, 2025.

8. The following claim in *Association of American Medical Colleges, et al. v. NIH, et al.*, Case No. 1:25-cv-10340, is dismissed without prejudice: Count V, as to the claim of a violation of the constitutional prohibition on retroactivity.

9. The following claims in *Association of American Universities, et al. v. NIH*, Case No. 1:25-cv-10346, are dismissed without prejudice: Count II and Count VII.

This is a Final Judgment. It is **SO ORDERED**.

Signed this _____ of _____, 2025.

HON. ANGEL KELLEY
UNITED STATES DISTRICT JUDGE