

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Before The Honorable Rita F. Lin, Judge

NEETA THAKUR, et al.,)	
)	
Plaintiffs,)	
)	
vs.)	No. 3:25-cv-04737-RFL
)	
DONALD J. TRUMP, et al.,)	
)	
Defendants.)	
_____)	

San Francisco, California

Tuesday, August 26, 2025

TRANSCRIPT OF PROCEEDINGS

HELD VIA ZOOM VIDEOCONFERENCE

APPEARANCES:

For Plaintiffs:

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BY: ERWIN CHEMERINSKY, ATTORNEY AT LAW

(Appearances continued on the following page)

REPORTED BY: April Wood Brott, CSR No. 13782, Official United States Reporter

APPEARANCES (continued):

For Defendants:

U.S. Department of Justice, Civil Division
1100 L Street NW, Office 11308
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BY: JASON ALTABET, ATTORNEY AT LAW
KATHRYN BARRAGAN, ATTORNEY AT LAW

1 **Tuesday - August 26, 2025**

1:31 P.M.

2 **R E M O T E P R O C E E D I N G S**

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4 **THE COURTROOM DEPUTY:** This court is now in session,
5 the Honorable Rita F. Lin presiding. Calling Civil Case Number
6 25-4737, Neeta Thakur, et al. vs. Donald J. Trump, et al.

7 Will counsel please state your appearances for the record,
8 starting with Plaintiffs' counsel.

9 **MS. CABRASER:** Good afternoon, Your Honor. Elizabeth
10 Cabraser of Lief Cabraser Heimann & Bernstein for Plaintiffs.
11 Also with me is co-counsel.

12 **MR. CHEMERINSKY:** Good afternoon, Your Honor. Erwin
13 Chemerinsky for the plaintiffs.

14 **MR. ALTABET:** Good afternoon, Your Honor. Jason
15 Altabet on behalf of the United States along with my
16 co-counsel, who will introduce herself.

17 **MS. BARRAGAN:** Good afternoon, Your Honor. Kat
18 Barragan on behalf of the United States.

19 **THE COURT:** Good afternoon to all of you. I put out
20 some questions before the hearing.

21 Let's just start with Plaintiffs' request. I got a letter
22 brief, as you all know, from the plaintiffs proposing to
23 further amend the complaint to add NIH as a plaintiff in this
24 -- or to add a representative or a class to represent folks who
25 had grants terminated at NIH, and then I also received a letter

1 brief from the defendants later that evening contesting that
2 issue.

3 So I want to just start with that issue, and let me just
4 start with Plaintiffs. Obviously since we're past the deadline
5 by which amendment to pleadings would normally be permitted
6 under the existing case schedule, the test is good cause. So
7 what is Plaintiffs' showing for good cause for not adding
8 representative plaintiffs for the NIH defendants within the
9 prior deadline?

10 **MS. CABRASER:** Thank you, Your Honor. I will address
11 that for Plaintiffs.

12 The catalyzing event was the July 31st form letter
13 suspending UCLA NIH grants. There was one letter sent to the
14 chancellor at UCLA attaching a list of 500 suspended NIH
15 grants, and that occurred nearly two weeks after our July 18th
16 deadline.

17 Before that date, we had assumed, based on our review of
18 the pleadings, that the NIH grants were covered by other
19 litigation, NIH litigation, that was pending. We learned after
20 the suspension that that action did not include an ongoing
21 preliminary injunction like this court has issued.

22 It did not -- it only included a specified list of NIH
23 grants and thus did not cover this suit. We investigated that
24 matter to assure ourselves of that. We were approached by a
25 number of NIH researchers who had gotten a stop work order on

1 August 1st, and so we spent the intervening time since then
2 investigating the matter.

3 We obtained detailed declarations from three NIH suspended
4 grant researchers who agreed to serve as additional plaintiffs
5 and class representatives, and confirmed with the California
6 Attorney General that proceeding in this matter by amending our
7 complaint to add those plaintiffs with respect to the form
8 suspension letter would not interfere with that case.

9 I think -- I hope -- we have spent the intervening time
10 wisely. We could not have known on July 18th that this was
11 going to occur, and, in fact, we learned of it several days
12 after that August 31st -- I'm sorry -- August 1st -- I'm sorry,
13 it's July 31st -- letter was sent out. So we have acted with
14 diligence, and I think we've acted as quickly as we reasonably
15 could have under the circumstances and hope that the Court will
16 allow us to file an amended complaint.

17 I will note that NIH, the National Institutes of Health,
18 has been named as a defendant from the outset of the filing of
19 this action. It was a named defendant in the original
20 complaint, the complaint that was amended on July 18th.

21 What we are now doing is adding, specifically adding
22 proposed representatives who have been directly impacted by the
23 suspension action to serve as the representatives for NIH
24 suspension class following the process and format that this
25 court has used in its earlier orders.

1 **THE COURT:** So let me just confirm then as to the
2 three new class representatives that you mentioned proposing
3 who had grants terminate by NIH. Were each of those grants
4 terminated or suspended after the deadline for amended
5 pleadings?

6 **MS. CABRASER:** Yes. Each of these grants -- and these
7 are three proposed class representatives. They each have
8 multiple NIH grants. All of those grants were active grants
9 until the July 31st form letter. They were included in the
10 list of 500 suspended grants, and all three of our researchers
11 received a copy of that form letter and a stop work order under
12 it. Several of those grants had been renewed as recently as
13 June of 2025.

14 **THE COURT:** Let me give the Government an opportunity
15 to respond as to Plaintiffs' good cause showing.

16 **MR. ALTABET:** Yes, Your Honor.

17 So to start, I think the real timeline here starts around
18 six weeks prior to when Plaintiffs' letter brief was filed, and
19 that was July 11th, when Plaintiffs affirmatively represented
20 by email, quote, "We will be adding an NIH plaintiff, as we
21 have confirmed there are a number of UC grants that are not
22 meaningfully captured by the Massachusetts v. Kennedy
23 injunction."

24 And that wasn't in a vacuum, Your Honor, in after a week
25 of information sharing and negotiations over a stipulation to

1 add NIH grants to this case. So I think Plaintiffs' statement
2 that there was some sort of surprise about the injunction that
3 they discovered later is belied by the factual record here.

4 And frankly, 47 days ago, the parties had discussed the
5 exact topic that they now seek to amend their complaint to
6 cover, the named NIH plaintiff. And the leading case here, as
7 Your Honor knows from probably prior cases dealing with good
8 cause, is Johnson v. Mammoth Recreations, 975 F.2d 604, pincite
9 609, Ninth Circuit, 1992.

10 And in that case, the Court, Ninth Circuit, said that good
11 cause means plaintiffs must make a showing of sufficient
12 diligence in pursuing the topic of their proposed amendment
13 after a scheduling order has passed.

14 And if we look at the proposed timeline here, there is no
15 such diligence. And in fact, Johnson specifically discussed
16 negotiations over a stipulation which would have added a
17 defendant there, here obviously a named plaintiff, but the
18 Ninth Circuit found that discussions of stipulations showed
19 that there was a lack of sufficient diligence.

20 And here, Plaintiffs proposed a short deadline to add
21 additional named plaintiffs. They proposed 25 days from the
22 Court's preliminary injunction, which put them on notice that a
23 named plaintiff would be required for injunctive relief for a
24 defendant until July 18th, the deadline. You know, that was
25 their choice, adopted by the Court.

1 And after that, Plaintiffs and Defendants got to work. On
2 July 2nd, we shared detailed information, including about NIH
3 grants involving the Massachusetts v. Kennedy injunction that
4 they just cited.

5 On July 8th, Plaintiffs stated that if we could come to an
6 agreement on a stipulation, they would forego adding an NIH
7 plaintiff, therefore trying to set out a negotiation about
8 whether an NIH plaintiff would be included. And when, on July
9 11th, those stipulations were unsuccessful -- sorry. I'm
10 getting a little bit of feedback, Your Honor.

11 On July 11th, Plaintiffs stated that they would be adding
12 an NIH named plaintiff to the amended complaint. Now, seven
13 days later, they did not do so. They added other named
14 plaintiffs for other agencies, but they did not do so for NIH.

15 Now, Plaintiffs are, as the Court found in its order
16 appointing them class counsel, premier attorneys in
17 administrative law and constitutional law and class action
18 issues, and they are familiar that a scheduling order is
19 binding absent leave of court and that an amended pleading
20 deadline is a really important date in a class action setup.

21 After that date, other litigation is going to be based on
22 the content of the amended complaint. And here, the scheduling
23 order is based on that amended complaint, whether it be
24 administrative records, thousands of pages of which Defendants
25 will be producing in a week for the five agency defendants for

1 which there are named plaintiffs, and then summary judgment
2 deadlines and either a hearing or bench trial on December 16th
3 in front of Your Honor. That's the current schedule.

4 And Plaintiffs cite July 31st as the appropriate date,
5 that on July 31st something new happened and that therefore
6 they've exercised sufficient diligence. But it provides no
7 excuse, and you can see that as early as June 4th, when they
8 filed their original complaint. There, Plaintiffs alleged that
9 terminations en masse would be ongoing at agencies that they
10 named.

11 They specifically named NIH as an agency that they would
12 allege was likely to continue terminating grants. They stated
13 that NIH and NSF were the two most important institutions for
14 the University of California system, therefore highlighting
15 that they thought it was important to cover NIH.

16 And they stated in that complaint that specifically the
17 anti-Semitism task force was likely to begin terminating grants
18 or influencing agencies to terminate grants or making findings
19 that would lead agencies to terminate or suspend grants based
20 on the University of California system. And that's paragraph
21 430 in their original complaint.

22 And of course, the Court's order in June specifically
23 adopted Plaintiffs' allegations in order to affirm their
24 request for prospective relief for ongoing terminations, and
25 then it left open whether Plaintiffs would add named plaintiffs

1 to cover additional agencies.

2 I had one other point on diligence, and then I can move
3 on, Your Honor. And that's just not only does that timeline
4 matter for determining whether Plaintiffs provided sufficient
5 diligence, but also that by their own date, July 31st, is the
6 appropriate date where they were put on notice that they would
7 want to add a named plaintiff.

8 And we are now nearly three weeks from that deadline, and
9 Plaintiffs -- excuse me -- we're nearly three weeks from that
10 deadline Plaintiffs first informed the Court that they were
11 even suggesting adding an NIH named plaintiff outside of the
12 scheduling order deadline.

13 And the fact that they didn't even inform the Court as
14 they prepared three declarations by their own statement today,
15 which means they found named plaintiffs, identified their
16 grants, did factual research, created a new amended
17 complaint -- that's a substantial amount of work that nobody
18 was aware of until Plaintiffs filed their letter brief on
19 August 21st, where they stated in a suggestion that they would
20 add an NIH named plaintiff.

21 That's not sufficient diligence.

22 **THE COURT:** One question I have for you is the three
23 proposed new NIH named plaintiffs, as I understand it, had not
24 had any kind of grant termination or suspension prior to July
25 31st. And of course, although Plaintiffs did allege that NIH

1 was continuing to terminate grants, no one could know whether
2 NIH would terminate grants in a way that did not provide
3 adequate information to the putative class members about --
4 whether NIH would do the same thing that it had done before was
5 unknown to the plaintiffs.

6 So as I understand Plaintiffs' argument, they couldn't
7 have added these three people earlier to the complaint before
8 July 31st because nothing had happened to those folks yet, and
9 now that something has happened to those folks, it is
10 appropriate to add them to the complaint, and it does change
11 the scope of the case for the reasons that you identified
12 earlier.

13 And so they have been diligent in adding those three
14 individuals at -- within a reasonable time frame after they
15 suffered the injury at issue, which is three weeks prior to
16 proposing the addition. What is your response to that?

17 **MR. ALTABET:** So a couple of points. The first is on
18 diligence. Even in adding these NIH plaintiffs, I don't think
19 that has been shown. The original 18 days between the Court's
20 scheduling order and the deadline to amend the complaint --
21 right now Plaintiffs -- we'll get to proposals in a moment, but
22 Plaintiffs are proposing around double that amount of time to
23 amend their complaint to add NIH.

24 And again, no one was informed prior to the 21st about
25 this course of action. So I think that itself belies a showing

1 of sufficient diligence. But even setting that aside, looking
2 at Plaintiffs' knowledge on July 18th, based on Plaintiffs'
3 allegations in the Court's order, everyone seems to agree that
4 agencies that were not covered by the injunction had a
5 likelihood of continuing to terminate grants based on the
6 allegations in Plaintiffs' complaint in en masse form
7 terminations.

8 So Plaintiffs' own allegations, their own very reason for
9 this case, the reason they wanted, according to them, to amend
10 the complaint to add additional agencies was for prospective
11 relief to prevent future terminations of the kind they discuss.

12 And so at the time of July 18th, they had the motivation,
13 they had the incentive, and they had the knowledge to cover
14 this future action. The fact that something they predicted
15 would happen did happen does not allow them to disrupt the
16 scheduling order that they chose.

17 If that was true, then they could have proposed another
18 round of amended complaints. They could have proposed things
19 in a different way, but that's not what we did. We proposed a
20 final termination of this case based on a strict schedule.

21 And there's also a prejudice prong that's separate from
22 diligence, even if Your Honor finds diligence. There could be
23 prejudice. And I'll just briefly note that under the schedule
24 we have or the schedule we would make up, there would be
25 significant prejudice. If the current schedule controls, we'll

1 have parallel tracks of litigation by necessity -- a different
2 administrative record deadline, different summary judgment
3 deadline, a different hearing or bench trial date.

4 And if we modify the schedule, this orderly resolution
5 both parties agreed to, knowing full well the situation would
6 have to be modified so everyone gets the same administrative
7 record at the same time. Everyone deals with summary judgment
8 at the same time. And both would be burdensome, the very
9 reason scheduling orders exist.

10 So I think all of that's to say, Your Honor, there is no
11 good cause here, there's no reasonable diligence, and at the
12 very least, there's substantial prejudice to this orderly
13 proceeding that it's not proper for them to add an NIH named
14 plaintiff at this time.

15 **THE COURT:** Let me give Plaintiffs an opportunity to
16 respond as to the cause issue, and then I want to understand
17 what the scheduling proposal is so I can assess the prejudice
18 issue. But let's just stay with good cause for a moment.

19 **MS. CABRASER:** Yes. Thank you, Your Honor.

20 So additional facts -- we did indeed have a potential NIH
21 plaintiff. However -- but prior to the July 18th deadline.
22 However, that grant was reinstated prior to the July 18th
23 deadline, and that reassured everyone, certainly reassured the
24 researchers, that the situation was stable.

25 So we were all surprised when we learned subsequently,

1 when we learned about the July 31st letter that, in fact, the
2 opposite had happened. There had been an en masse suspension
3 of NIH grants at UCLA. And indeed, that's really what we're
4 focused on for the amended complaint. We're dealing with the
5 group of NIH UCLA researchers whose grants were suspended en
6 masse by that single form letter asserting the same claims as
7 are presently asserted in the complaint.

8 So what is new and different about the case before and
9 after that letter is that now we have an additional identified
10 set of grants that have been suspended in one fell swoop by one
11 letter. It was a surprise.

12 In fact, when we were before the Ninth Circuit on July
13 31st and the Court inquired as to why there had not been a stay
14 request by another of the agencies, NSF, I believe, which also
15 utilized, as you know, that suspension mechanism on the same
16 day, we weren't given any information that would have alerted
17 us to the fact that this has just happened.

18 And of course, we found out about it when the researchers
19 themselves did and contacted us, which was several days after
20 the fact when they got their stop work notice. So if days
21 matter -- and they do here -- we were constrained by the timing
22 that we had. It was a surprise.

23 I will note that amendments are freely given when justice
24 so requires. I think this is a balancing act for the Court.
25 We understand the importance of case management orders. Every

1 litigator, you know, lives and dies with respect to case
2 management orders. But they are also amended and refined as
3 cases go on, particularly when cases gain new facts, add
4 complexity.

5 We are certainly willing to work with the Government. I
6 think we've worked very well thus far, civilly, with courtesy
7 with respect to proposed schedules. And in fact, we've had a
8 number of emails back and forth on a proposed schedule for this
9 next phase, and we are not very far apart in terms of days.
10 It's mainly a matter of the Court's convenience in terms of
11 scheduling the next hearing, and we're happy to go into the
12 various positions on that.

13 But we are willing and able to get our amended complaint
14 on file, get our pleadings on file in this matter by Friday of
15 this week so as not to delay the rest of the case. I don't
16 think we're going to have to proceed on different schedules in
17 order to be fair to everyone, but if we do -- and I doubt
18 that -- there is nothing unusual or atypical about a different
19 schedules for different tracks.

20 And I will say this: One of the most difficult things,
21 and one of the paradoxes of a class action is that it requires
22 exceptional people with typical claims who are willing to be
23 named and take a stand on behalf of others. The fear and
24 concern over retaliation has been a live issue in this case.

25 It was a live issue with respect to the original named

1 plaintiffs. It was a live issue with respect to UCLA
2 researchers who used several weeks to decide, to determine, to
3 consider, based on, you know, all sorts of professional and
4 personal and family considerations whether they could, in fact,
5 come forward and be named and serve as class representatives,
6 and they decided in the end in the affirmative.

7 And as soon as that had occurred, we notified the DOJ and
8 then notified this court on August 21st.

9 **THE COURT:** Thank you. Let's move to my other
10 question about the parties' schedule, in the event that the
11 Court were to permit amendment, how would that affect the
12 schedule.

13 Let me hear first from Plaintiffs, since they're the ones
14 proposing this modification. Tell me what the parties have
15 discussed in terms of agreement and what the potential areas of
16 disagreement are. And then I can hear the Government's
17 position on that.

18 **MS. CABRASER:** Okay. Thank you, Your Honor.
19 Elizabeth Cabraser. Let me try to recite the current
20 situation.

21 It's Plaintiffs' position that we would be filing the
22 amended complaint on Friday, August 29th, together with the
23 motion for preliminary injunction and provisional class
24 certification. Our position is that the defendants would have
25 until Monday, September the 8th, to respond, and our reply,

1 Plaintiffs' reply, would be due on Friday, September the 12th.

2 By the way, as to the supplemental briefing, as to the
3 impact of the Supreme Court and Ninth Circuit decisions, I
4 think the parties are in agreement on that with respect to
5 proposing simultaneous briefs with a maximum of ten pages on
6 Friday, September the 5th. And to get back to the complaint,
7 our schedule contemplated that the hearing could be set on
8 September 16th, but we are now aware, Your Honor, that you're
9 unavailable on that day.

10 I think the Government's position would be to file the
11 amended complaint on the 5th of September together with the
12 motion for preliminary injunction and provisional class
13 certification. The response of Defendants would be due
14 September the 12th, which is a Friday. Our reply would be due
15 Tuesday, September the 16th and with a hearing date of Tuesday,
16 September 23rd.

17 But, again, those hearing dates really are based on the
18 Court's schedule and the Court's convenience. So we're
19 literally days apart on that schedule.

20 **THE COURT:** Thank you.

21 Let me hear from Defendants. Anything additional you'd
22 like the Court to know about the impact on the case schedule?

23 **MR. ALTABET:** No. I think that was an eloquent -- we
24 realized right before the hearing that there were hearing dates
25 blocked off on your calendar, and so I think probably we were

1 looking -- I guess the reason we want to start slightly later
2 is so that we're sequential, since we agreed September 5th
3 should be the supplemental briefs. We figured after
4 supplemental briefing on the Supreme Court and Ninth Circuit
5 decisions, then we would start, if the Court were to grant
6 their amendment, on the named NIH plaintiff.

7 **MS. CABRASER:** And Your Honor, with respect to that
8 concept, we're happy to file on the 29th and, you know,
9 allowing a reasonable time obviously for responses. That's --
10 we're not trying to jam Defendants at all on that. As I say,
11 we were both working back from ideas on when the Court could
12 hear us.

13 **MR. ALTABET:** You know, I guess one final point. The
14 hardest part, at least for the Government, is that we have
15 Labor Day weekend. Then all the administrative records are due
16 on September 2nd. That's a pretty substantial day's
17 production. It's thousands of documents. We have to get them
18 all finished, Bates stamped, and into the Box folder. Then the
19 supplemental brief is due September 5th.

20 So at least for us, sort of the later is better just so
21 those can be sequential events.

22 **THE COURT:** I understand that. That makes sense.

23 In terms of the schedule, let's do August 29th for the
24 plaintiffs to file the first amended complaint. This is the
25 schedule, I think, that makes sense. I'm just talking about

1 this from a scheduling perspective, and I want to take your
2 temperature on it from a scheduling perspective; then I'll go
3 back to the Rule 16 issue.

4 But if we were going to modify the schedule, it seems to
5 me that Plaintiffs filing the first amended complaint and
6 preliminary injunction and provisional class certification
7 papers on August 29th would make sense.

8 I could give Defendants a few more days on the response in
9 consideration of the need to prepare the administrative record
10 and also the need to prepare the supplemental briefing on the
11 Supreme Court and Ninth Circuit rulings. So we could do that
12 on September 10th instead.

13 And then I could put the plaintiffs' reply on the 15th,
14 September 15th, and we could have the hearing -- as it turns
15 out, I'm not available on September 16th or 23rd. But I could
16 special set you on Thursday, September 18th in the afternoon at
17 1:30. Just from a pure scheduling perspective -- then I'd
18 leave the simultaneous briefs on September 5th. From a pure
19 scheduling perspective, does that schedule work for the
20 parties?

21 Let me start with the plaintiffs.

22 **MS. CABRASER:** Yes, Your Honor, that schedule works
23 for the plaintiffs.

24 **THE COURT:** And for the Government, Defendants?

25 **MR. ALTABET:** I think it would certainly work if the

1 hearing were on Zoom. Is that what the Court is contemplating?
2 I have to double-check for in person because I do have a
3 wedding that weekend. I need to see when I need to be there.

4 **THE COURT:** I don't mind having it on Zoom.

5 Do the plaintiffs have any objection to having the hearing
6 by Zoom?

7 **MS. CABRASER:** No, Your Honor. We understand the
8 travel situation and folks' very busy schedules.

9 **THE COURT:** Great. So I think that makes sense in
10 terms of the schedule that I would set.

11 And with respect to the Rule 16 issue, as you can tell
12 from my question, I had some concern about whether there is
13 good cause, but given that these are three new plaintiffs who
14 are alleging injuries that occurred after the deadline for
15 amended pleadings had passed, it does not seem to me that they
16 could have anticipated what the form letter would have looked
17 like in advance.

18 Although I understand the point that there was some
19 anticipation that there were ongoing mass terminations and that
20 was the basis for the injunctive relief request, I don't think
21 that they could have diligently asserted that claim earlier.

22 And Plaintiffs have adequately shown that their prior
23 proposed NIH plaintiff was no longer viable because that person
24 had their grant reinstated, and it didn't seem likely that the
25 government, after having the Court's opinion, would

1 re-terminate those grants in the same way, particularly after
2 the issuance of the preliminary injunction. So I can
3 understand why Plaintiffs did not make this motion to amend at
4 an earlier time.

5 I also don't see significant prejudice to having a later
6 schedule for the production of the administrative record and
7 the briefing on summary judgment and the argument on it. If
8 the parties have a preference to consolidate the summary
9 judgment briefing for efficiency, I'm open to a stipulation to
10 do that.

11 If the parties think it makes more sense to proceed in
12 seriatim, I'm okay with that too. I don't want to have a bench
13 trial on these issues until I've entered a summary judgment
14 ruling or determined that there are disputed issues that
15 require a bench trial. If we have a bench trial, it will be
16 all at once.

17 So we will probably need a revised schedule from the
18 parties as to a proposed new bench trial date, and then I'll
19 let you all meet and confer about whether you want to change
20 the summary judgment date so that you only have to brief this
21 once. That might be less burdensome for you all. I'm open to
22 it one way or the other, whatever works best.

23 I think it makes sense to continue to have two
24 administrative record dates so that the Government can provide
25 what it has been preparing and then can provide an additional

1 set as to additional defendants if that's necessary, although
2 it sounds as though you all have been working pretty hard on
3 putting most of that together anyway.

4 So it's hard for me to see the prejudice, especially since
5 I need to take a pause anyway in terms of assessing the
6 preliminary injunction order as to DOD and DOT while I hear
7 from you all about the impact of the intervening Ninth Circuit
8 and Supreme Court decisions.

9 I need that before I can address the DOD and DOT
10 injunctions anyway; so this isn't delaying that much more than
11 we were already going to need to be delayed for me to digest
12 that information. So I understand the concern, but I think we
13 can mitigate any prejudice by adjusting the case deadlines if
14 necessary to avoid duplicative work, and by the -- by keeping
15 in place the existing administrative record deadline but
16 allowing more time, obviously, to prepare the record as to new
17 plaintiffs that are being added.

18 So I'm going to grant Plaintiffs' motion to file an
19 amended complaint along the lines that we discussed with the
20 schedules that we have those dates.

21 I will say that if it is helpful as you all are preparing
22 the briefing on the effect of the Supreme Court's NIH ruling
23 and the Ninth Circuit's denial of the motion to stay the
24 preliminary injunction that was previously issued, it would be
25 helpful for me, in terms of assessing the NIH ruling, to

1 understand the arguments that were made concerning the
2 individual researchers in the NIH case.

3 There are a couple plaintiffs in the NIH case that was
4 before the Supreme Court who were individual researchers, but
5 it did not appear to me, from my brief review of the papers in
6 that case, that the plaintiffs argued either in the district
7 court or in the subsequent appeals courts that they should be
8 treated differently because they were individual researchers.

9 And so I don't know if the Supreme Court has really had an
10 opportunity to weigh in on that issue or whether that argument
11 was really waived by Plaintiffs in the NIH case out of
12 Massachusetts, and it would be helpful for me to have your
13 perspective on that issue as you're preparing the supplemental
14 briefing.

15 I still have my outstanding question that I put out
16 earlier about the estimate as to the number of active grants
17 for DOD and DOT. I would like to get the information that
18 you've prepared on that, assuming you have. But before I do
19 that, I wanted to give you all an opportunity to let me know if
20 there's anything else you think we should discuss with respect
21 to the plaintiffs' proposed amendment to add NIH.

22 I'll start with Plaintiffs, and then I can hear from the
23 defendants.

24 **MS. CABRASER:** No, Your Honor. Nothing further. We
25 appreciate the ruling and the schedule. We also appreciate the

1 guidance on the focus of the supplemental briefing.

2 **THE COURT:** And the Government?

3 **MR. ALTABET:** Nothing from the Government right now.
4 We'll have to discuss and figure out a timeline.

5 **THE COURT:** And then let me ask you all, since I have
6 you here. We had originally scheduled this for a hearing on
7 the request to add -- or to issue a new injunction as to the
8 Department of Defense and Department of Transportation.

9 And I asked the parties what is the parties' best estimate
10 as to the total number of active grants awarded by the
11 Department of Defense and the Department of Transportation
12 where a University of California researcher is named as the
13 principal researcher, investigator, or project leader on the
14 grant application.

15 And I asked this because I have information about how many
16 grants were terminated by those agencies, but I don't have a
17 sense of how many grants there are out there. And what
18 Plaintiffs are saying, that it's an injunctive relief issue and
19 that there are potential ongoing mass terminations, as we
20 discussed, that I think the number of active grants in general
21 is important to the Court's analysis potentially. So I wanted
22 to ask the parties about that.

23 I'll start with Plaintiffs, and then I can ask for any
24 estimate from Defendants.

25 **MS. CABRASER:** Thank you, Your Honor.

1 Actually, I think our best answer to your question at this
2 point actually comes from the Department of Justice. We did
3 get a detailed email yesterday in response to our request that
4 noted an estimated 717 active grants awarded by DOD to a
5 University of California institution where a UC researcher is
6 named as principal researcher on the grant at location, and the
7 Government can explain how it gathered that information, its
8 methodology.

9 And with respect to the Department of Transportation, they
10 identified 12 active grants under the University Transportation
11 Center program that would have principal investigators from UC,
12 and there are another six, I think, active research grants
13 involving UC schools for other DOT research programs. So that
14 would indicate, from the Government's information, 18 for DOT
15 and then over 700 for DOD.

16 We don't have any better information than that, I don't
17 think, but of course, the number of researchers involved is a
18 multiple, usually, of the number of grants, if you include
19 co -- you know, co-researchers on major grants.

20 **THE COURT:** And so it would be the plaintiffs'
21 argument that DOT, even though it's only 18 grants that are
22 currently active, that it's still enough for numerosity because
23 it's likely that there are -- that's the number for situations
24 where there's a grant with a principal researcher, and so for
25 each grant, there are multiple UC researchers typically. So

1 we're looking at potentially, in terms of the putative class
2 members, somewhere more like 18 times three?

3 **MS. CABRASER:** That would be correct, Your Honor, as a
4 strict numerosity calculation, but of course, the rule actually
5 relates to impracticability of individual joinder. And here
6 especially, one of the barriers to individual joinder of all of
7 those three dozen or so researchers as named plaintiffs is, as
8 it often is in other discrimination or constitutional cases or
9 even employment 23(b) (2) cases, a concern about retaliation.

10 So that's a very real, practicable barrier to individual
11 joinder, even for a relatively small 23(b) (2) class.

12 **THE COURT:** Let me give the Government an opportunity
13 to add any other detail or response to Plaintiffs'
14 characterization.

15 **MR. ALTABET:** Sure. Just a couple clarifications.

16 So at the time to swap estimates, Plaintiffs informed us
17 that they had no information, did not plan to make an estimate,
18 and so we provided an estimate of 717 active grants for DOD.
19 That covers where a UC-related person is a principal
20 researcher.

21 So DOD used 16 sort of UC search terms to identify that.
22 Their system doesn't let them capture co-investigators or
23 sub-positions and the like, so the sort of low estimate of
24 principal research active grants is 717. There may be other
25 grants, but we can say that safely.

1 DOT is kind of the reverse angle. DOT determined there
2 were 12 in the UTC program where University of California was
3 the lead university or a consortium member, but that doesn't
4 tell us whether there's a UC relevant individual in a relevant
5 position on the actual grant because of the mix.

6 Similarly -- we have six non-UTC grants where we
7 identified a UC school was involved, but similarly, we have not
8 identified whether or not someone is in a privileged position
9 on those grants.

10 So in a way, the DOD is the low end of the possibility,
11 and DOT is on the high end of the possibility from what we can
12 tell, outside of a University of California researcher being on
13 the grant to another school. So those are the UC grants that
14 could be relevant for DOT.

15 **THE COURT:** Help me understand that UTC versus non-UTC
16 distinction, just so I understand the facts.

17 **MR. ALTABET:** Sure.

18 **THE COURT:** So as I understand it, you're saying UTC
19 grants from DOT are situations where the University of
20 California is the principal grantee. And there is a
21 possibility, hypothetically, that University of California
22 would be the grantee, but for some reason, none of the
23 principal researchers, investigators, project leaders -- none
24 of those people actually work at the University of California.
25 So you're saying that 12 number could be an overestimate?

1 **MR. ALTABET:** Yeah, and it's kind of a weird -- as you
2 can see, the named plaintiff has a UTC grant, the named
3 Department of Transportation plaintiff. And you can see in
4 those files, it's a bit of an odd situation. The UTC, which is
5 sort of created another program, is either -- there's, like, a
6 lead university or a consortium member, and this covers where
7 UC is a lead university or a consortium member.

8 The other six are just the more traditional grants we've
9 seen for most of the other named plaintiffs, research topic,
10 and there's principal investigators. It's sort of the standard
11 situation.

12 So we split it up that way both because UTC was easier to
13 identify. DOT's grant program is kind of disaggregated, and so
14 we had to get responses from all of the different departments,
15 but also because the grants look different.

16 **THE COURT:** So for the non-UTC category, the six that
17 were identified are situations in which the grantee was the
18 University of California and the principal researcher was
19 someone from the University of California?

20 **MR. ALTABET:** We know a UC school is involved as a
21 grantee or a sub-grantee, but we don't know if a UC individual
22 is listed on the grant.

23 **THE COURT:** Okay. Thanks. I understand.

24 **MR. ALTABET:** In part because that disaggregation made
25 it hard to sort of compile all of the information.

1 And I'll just add as to the sort of law here, I do think
2 it's important -- and maybe this will be discussed more at the
3 later hearing, but here, the Court decided, at least based on
4 its preliminary injunction order, that the final agency action
5 are the actual grant determinations.

6 I think the way the Court structured its order is that if
7 a termination were to occur, all the researchers become part of
8 the class at that moment but not before. So it does seem odd
9 to include them for numerosity when they have no -- they're not
10 relevantly part of the class until a termination occurs. So we
11 just wanted to point out that issue to the extent it's useful
12 for the Court.

13 **THE COURT:** Thank you. That's helpful. Is there
14 anything else the parties would like to address with the Court
15 before we conclude today?

16 I'll give Plaintiffs an opportunity, and then the
17 Government.

18 **MS. CABRASER:** Nothing for Plaintiffs, Your Honor.
19 Thank you very much.

20 **THE COURT:** Okay. And the Government?

21 **MR. ALTABET:** It depends. Is Your Honor planning to
22 hold additional argument on the preliminary injunction,
23 including the issues that have just been briefed, in the
24 future?

25 **THE COURT:** Yes. When we have our hearing on

1 September 18th, my plan is to discuss both the preliminary
2 injunction request as to DOD and DOT and the preliminary
3 injunction request as to NIH, all three of those at the same
4 time at the hearing.

5 **MR. ALTABET:** Understood. We'll have additional
6 argument then, Your Honor, and we have nothing else for now,
7 other than we may reach out to chambers, cc'ing opposing
8 counsel, about how to produce the administrative record to the
9 Court, either through Box or some other system.

10 **MS. CABRASER:** And, Your Honor, as always, we're happy
11 to meet and confer about that. We will certainly meet and
12 confer with respect to the scheduling issues that you
13 identified for purposes of later proceedings to see if we can
14 come up with a joint proposal.

15 **THE COURT:** Great. Thank you. Be well.

16 **MS. CABRASER:** Thank you.

17 **THE COURTROOM DEPUTY:** Court is in recess.

18 (The proceedings concluded at 2:16 P.M.)

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CERTIFICATE OF REPORTER

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

DATE: Wednesday, August 27, 2025



April Wood Brott, CSR No. 13782