

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ERICA SAMP, an individual

Plaintiff,

v.

ROBERT F. KENNEDY, Jr.,
in his official capacity as
Secretary U.S. Department of
Health and Human Services
200 Independence Ave, S.W.
Washington, D.C. 20201,

Defendant.

CASE NO.: 1:26-cv-01703

**MOTION FOR STAY PENDING
COMPLETION OF DEFENDANT HHS'S
PLANNED TIMETABLE OF A NOTICE
OF PROPOSED RULEMAKING AND
END OF COMMENT PERIOD WITHIN
SIX MONTHS FOR HHS TO ESTABLISH
THE COVID-19 COUNTERMEASURE
INJURY TABLE**

DECLARATION OF RAY L. FLORES II

Plaintiff Erica Samp sues HHS Secretary Kennedy in his official capacity over the HHS's failure to perform its non-discretionary duty to establish, under the Public Readiness and Emergency Preparedness ("PREP") Act,¹ a COVID-19 Countermeasure Injury Table ("Table").
The Rule: **42 U.S. Code § 247d-6e(5)(A) COVERED COUNTERMEASURE INJURY TABLE**

The Secretary shall by regulation establish a table identifying covered injuries that shall be presumed to be directly caused by the administration or use of a covered countermeasure and the time period in which the first symptom or manifestation of onset of each such adverse effect must manifest in order for such presumption to apply. (*in pertinent part*)

¹ 42 U.S.C. §§ 247d-6d, and 247d-6e

Even though former HHS Secretary Azar declared the COVID-19 Emergency on April 15, 2020,² and former Secretary Becerra continued PREP Act COVID-19 Countermeasures' protections through December 31, 2029,³ neither they, nor the current HHS Secretary ever established the Table.

Plaintiff Erica Samp suffered serious physical injury caused by COVID-19 vaccines (one of the PREP Act's covered countermeasures). No Injury Table was in place, however, when HRSA (HHS's sub-agency) denied Erica Samp's Countermeasure's Injury Compensation Program claim on November 20, 2024. "If the Secretary publishes a new Countermeasure Injury Table, a newly eligible claimant may file within one year after the new table is established."⁴ With an Injury Table established, due to the severity of the injuries caused by the COVID-19 vaccines, Erica Samp will likely become a newly eligible claimant.

Over six years of HHS's inaction passed when, on May 19, 2026, Plaintiff sued the current HHS Secretary in his official capacity, asking the Court to "compel agency action [establishing the Table] unlawfully withheld or unreasonably delayed." Administrative Procedure Act 5 U.S. Code §706(1). Defendant HHS appears to have capitulated.

² <https://www.federalregister.gov/documents/2020/04/15/2020-08040/amendment-to-declaration-under-the-public-readiness-and-emergency-preparedness-act-for-medical>

³ <https://www.federalregister.gov/documents/2024/12/11/2024-29108/12th-amendment-to-declaration-under-the-public-readiness-and-emergency-preparedness-act-for-medical>

⁴ Congressional Research Compensation Programs for Potential COVID-19 Vaccine Injuries
https://www.congress.gov/crs_external_products/LSB/PDF/LSB10584/LSB10584.3.pdf
 (at 3)

Beginning as early as Fall 2023, the HHS/HRSA posted on the Unified Agenda, indicating an intention to follow the law. There was no timetable, however, and the HHS's four subsequent postings over the next few years also evidenced the HHS Secretary's recalcitrance to abide by the law; stating: "**Legal Deadline:** None"⁵

On July 1, 2026, only six weeks after Plaintiff filed suit, the HHS has finally set deadlines and acknowledged its legal duty: HHS's Unified Agenda declared:⁶

Action	Source	Description	Date
NPRM	Statutory	PL 109-148 secs 31F-3 and 319F-4	07/01/2026

Overall Description of Deadline: HRSA plans to initiate this NRPM to establish the CICP COVID-19 Countermeasure Injury Table.

Timetable:

Action	Date	FR Cite
NPRM	11/00/2026	
NPRM Comment Period End	01/00/2027	

This was the first time, the Unified Agenda cites an end date; "NPRM Comment Period End [in January 2027];" The HHS announced its intention:

This proposed rule would establish the COVID-19 Countermeasures Injury Table for the Countermeasures Injury Compensation Program (CICP). The Public Readiness and Emergency Preparedness Act (PREP Act) authorized the Secretary of HHS to establish the CICP to provide benefits to certain persons who sustain serious physical injury or death as a direct result of the administration or use of covered countermeasures identified by the Secretary in declarations issued under the PREP Act. In addition, the Secretary may provide death benefits to certain survivors of individuals who died as a direct result of covered injuries or their health complications. One way that an individual who was administered or used a covered countermeasure can show that they sustained a covered injury is by demonstrating that they sustained an injury listed on a Countermeasures Injury Table (Table) within the time interval set forth on the Table. The Table will list

⁵ <https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202310&RIN=0906-AB31>

⁶ <https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202510&RIN=0906-AB31>

and explain injuries that, based on compelling, reliable, valid, medical, and scientific evidence, are presumed to be caused by covered COVID-19 countermeasures, and set forth the time periods in which the onset of these injuries must occur after the administration or use of these covered COVID-19 countermeasures.

Based on HHS' Unified Agenda's notification, the HHS is within months of finalizing (and establishing) the Table. Once it does, the need for litigation will cease. The matter is all but resolved.

LEGAL STANDARD

The Court's authority to order a stay of proceedings is well-settled. "The power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants." *Asylumworks v. Mayorkas*, 2021 U.S. Dist. LEXIS 102835, *8-9 (D.D.C. 2021) (*internal Citations omitted*).

District courts are given broad discretion in determining "whether to grant or lift a stay." *Judicial Watch, Inc. v. U.S. Dept. of Justice*, 57 F. Supp. 3d 48, 50 (D.D.C. 2014); see also *Landis v. North American Co.*, 299 U.S. 248, 254 (1936) (holding that "the power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants.").

The United States Supreme Court has held that federal district courts have the inherent authority to manage their dockets and courtrooms with a view toward the efficient and expedient resolution of cases. *Dietz v. Bouldin*, 579 U.S. 40, 41 (2016)

When assessing a stay, a court must "weigh competing interests and maintain an even balance between the court's interests in judicial economy and any possible hardship to the

parties.” *Belize Soc. Dev. Ltd. v. Belize*, 668 F.3d 724, 732–33 (D.C. Cir. 2012) (*internal quotations omitted*).

Since this controversy solely concerns the establishment of the Table, and upcoming, firm dates were recently set, in the interest of judicial economy and continuing burden of unnecessary litigation for the parties, Plaintiff respectfully asks this Court to stay this action for six months in order for the parties and this Court to better understand if a controversy even exists in February 2027. HHS’s firm plan to establish the Table is an apparent response to Plaintiff, Erica Samp’s suit. It appears highly likely that Plaintiff will prevail and will be able to avoid the burden of litigation. A stay will not prejudice Defendant who would also avoid the time and trouble of taking a position that contradicts its recent actions.

CONCLUSION

Based on the Court’s inherent power, under the circumstances, and in the interest of judicial economy, Plaintiff respectfully asks this Court to order a six-month stay.

Dated: August 18, 2026

Signed /s/_____
 RAY L. FLORES II, Attorney at Law
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DECLARATION OF COUNSEL

Pursuant to LCvR 7(m) the parties met and conferred to discuss this motion with opposing counsel in a good-faith effort to determine whether there is any opposition to the stay. On August 18, 2026, Defendant, through counsel stated the following: “Defendant disagrees with the assertions presented in Plaintiff’s motion and takes no position on the relief requested.”

I declare under penalty of perjury that the foregoing is true and correct.

Date: August 18, 2026

/s/ _____
Ray L. Flores II, Attorney for Plaintiff