

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

MAYOR AND CITY COUNCIL OF
BALTIMORE,

Plaintiff,

v.

XAVIER BECERRA, in his official capacity as
SECRETARY OF HEALTH AND HUMAN
SERVICES; and U.S. DEPARTMENT OF
HEALTH AND HUMAN SERVICES,

Defendants.

Case No. 1:19-cv-01672-GLR

JOINT STATUS REPORT

The parties submit this joint status report pursuant to the Court's April 14, 2022 order, ECF No. 125, to provide an update regarding the status of related appellate proceedings.

As the parties have reported to the Court, Defendants filed notices of appeal to the United States Court of Appeals for the Second Circuit of the final judgments in the United States District Court for the Southern District of New York that vacated the rule that Plaintiff challenges in this case. *See State of New York v. U.S. Dep't of Health & Human Servs.*, No. 1:19-cv-4676-PAE, Notice of Appeal, ECF No. 255 (S.D.N.Y.) (*New York*); *Planned Parenthood Fed'n of Am., Inc. v. Azar*, No. 1:19-cv-5433-PAE, Notice of Appeal, ECF No. 123 (S.D.N.Y.) (*Planned Parenthood*); *Nat'l Family Planning & Reproductive Health Ass'n v. Azar*, No. 1:19-cv-5435-PAE, Notice of Appeal, ECF No. 129 (S.D.N.Y.) (*NFPRHA*). Intervenors in the Southern District of New York litigation also filed notices of appeal. *See New York*, Notice of Appeal, ECF No. 254; *Planned Parenthood*, Notice of Appeal, ECF No. 122; *NFPRHA*, Notice of Appeal, ECF No. 128. The Second Circuit scheduled oral argument in the two consolidated cases for March 16, 2021. However, on February 5, 2021, the Second Circuit granted Defendants' consent motion to remove

the cases from its oral argument calendar and to place the appeals in abeyance while new leadership at the U.S. Department of Health & Human Services (HHS) evaluates the issues the cases present. The Second Circuit directed Defendants to file stay status letters every thirty days. Most recently, on October 7, 2022, Defendants informed the Second Circuit that the draft notice of proposed rulemaking that HHS submitted to the Office of Information and Regulatory Affairs (OIRA) within the Office and Management and Budget remains under review.

Defendants also appealed to the United States Court of Appeals for the Ninth Circuit, seeking review of the final judgment in the United States District Court for the Eastern District of Washington vacating the challenged rule on November 21, 2019, *Washington v. Azar*, No. 2:19-CV-00183-SAB (E.D. Wash.), as well as of the final judgments entered in three cases in the United States District Court for the Northern District of California where the court also vacated the challenged rule, *City & County of San Francisco v. Azar*, No. 3:19-cv-2405-WHA (N.D. Cal.); *California v. Azar*, No. 3:19-cv-2769-WHA (N.D. Cal.); *County of Santa Clara v. U.S. Dep't of Health & Human Servs.*, No. 3:19-cv-2916-WHA (N.D. Cal.). The Ninth Circuit initially scheduled oral argument for February 8, 2021 but removed the consolidated cases from its argument calendar upon Defendants' motion. The government subsequently filed periodic status reports requesting that the appeal continue to be held in abeyance, and those requests were granted.

On June 16, 2022, the Ninth Circuit granted the government's request that the court continue to hold the appeals in abeyance for a period of six months, or until thirty days after the issuance of a final rule, whichever is sooner. In a status report filed on October 3, the government informed the court that HHS remains in the process of finalizing the notice of proposed rulemaking it previously drafted and submitted to OIRA, and that HHS has been informed that the proposed rule is expected to be approved and published in the Federal Register within the next 90 days.

The government requested that the court hold the appeals in abeyance for an additional six months, or until thirty days after the issuance of a final rule, whichever is sooner. The Ninth Circuit granted that request and ordered the parties to provide a status report at the end of the abeyance period.

Dated: October 11, 2022

Respectfully submitted,

By: /s/ Jane Lewis

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