

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

CITY AND COUNTY OF SAN FRANCISCO,

Plaintiff-Appellee,

v.

XAVIER BECERRA, Secretary of U.S.
Department of Health and Human Services; et
al.,¹

Defendants-Appellants.

No. 20-15398

COUNTY OF SANTA CLARA; et al.,

Plaintiffs-Appellees,

v.

U.S. DEPARTMENT OF HEALTH AND
HUMAN SERVICES; and XAVIER BECERRA,
in his official capacity as Secretary of Health and
Human Services,

Defendants-Appellants.

No. 20-15399

¹ Secretary Becerra has been automatically substituted for Acting Secretary Norris Cochran pursuant to Federal Rule of Appellate Procedure 43(c)(2). Secretary Becerra is recused from this litigation.

STATE OF CALIFORNIA,

Plaintiff-Appellee,

v.

XAVIER BECERRA, in his official capacity as
Secretary of the U.S Department of Health &
Human Services, and U.S. DEPARTMENT OF
HEALTH AND HUMAN SERVICES,

Defendants-Appellants.

No. 20-16045

STATE OF WASHINGTON,

Plaintiff-Appellee,

v.

XAVIER BECERRA and U.S. DEPARTMENT
OF HEALTH AND HUMAN SERVICES,

Defendants-Appellants.

No. 20-35044

**STATUS REPORT PURSUANT TO THE COURT'S
ORDER OF OCTOBER 5, 2021**

1. These consolidated appeals concern the validity of a final rule that the U.S. Department of Health and Human Services (HHS) promulgated in 2019. The rule, entitled Protecting Statutory Conscience Rights in Health Care, 84 Fed. Reg. 23,170 (May 21, 2019), implicates various federal statutes that protect individuals and other entities with religious or moral objections to providing certain health-care-related

services in connection with government-provided or government-funded health care programs. In these appeals, the federal government sought review of decisions in which two district courts—one in the Eastern District of Washington and one in the Northern District of California—vacated the rule.

2. After the consolidated appeals were fully briefed, the Court scheduled oral argument for February 8, 2021. On January 28, 2021, the parties to the appeals filed a joint motion to remove the appeals from the oral argument calendar and place the appeals in abeyance, explaining that new leadership at HHS planned to reassess the issues that the cases present.

3. On January 29, 2021, the Court issued an order granting the parties' joint motion. The Court removed the cases from the February 8 argument calendar and directed the parties to "provide the Court within sixty days a status report as to whether the appeal will continue to be prosecuted." The government subsequently filed status reports on March 30, 2021, June 1, 2021, August 2, 2021, and October 1, 2021, requesting that the appeal continue to be held in abeyance. This Court granted those motions and directed in its October 5, 2021, order that the parties provide another status report regarding whether the appeal will continue to be prosecuted by November 30.

4. HHS remains in the process of reassessing the issues that these cases present, and the agency continues to need additional time to review the rule in question and the multiple legal issues that are involved in these consolidated appeals,

to consult with all interested federal agencies and offices, and to determine the appropriate course going forward. We therefore respectfully ask that the appeal remain in abeyance and that appellants be permitted to file another status report within 60 days after the filing of this report, by January 31, 2022.²

Respectfully submitted,

MICHAEL RAAB
LOWELL V. STURGILL
SARAH CARROLL

/s/ Leif Overvold

LEIF OVERVOLD

Attorneys, Appellate Staff
Civil Division, Room 7226
U.S. Department of Justice
950 Pennsylvania Ave., N.W.
Washington, D.C. 20530
(202) 532-4631
leif.overvold2@usdoj.gov

NOVEMBER 2021

² January 29, 2022 is 60 days after today's date, but January 29 is a Saturday. *See* Fed. R. App. P. 26(a)(1)(C).