



U.S. Department of Justice
Civil Division
950 Pennsylvania Ave., N.W., Room 7243
Washington, D.C. 20530-0001

Tel: (202) 353-0213

VIA CM/ECF

February 2, 2021

Lyle W. Cayce
Clerk of Court
United States Court of Appeals for the Fifth Circuit
F. Edward Hebert Building
600 S. Maestri Place
New Orleans, LA 70130

Re: *Franciscan Alliance, Inc. v. Cochran*, No. 20-10093 (oral argument scheduled for March 2, 2021)

Dear Mr. Cayce:

We write in response to appellants' January 27, 2021 letters pursuant to Federal Appellate Rule 28(j).

As the government explained in its brief, plaintiffs obtained a favorable final judgment on their RFRA claims against the 2016 Rule, which HHS did not appeal, and the challenged provisions of that Rule were vacated and rescinded. Under those circumstances, plaintiffs' request for injunctive relief against the 2016 Rule is moot, and they cannot obtain relief against a possibility of future agency action that is not imminent and the contours of which are yet to be known.

The developments that plaintiffs cite in their letter only confirm that point. Unlike the plaintiffs in this case, the plaintiffs in *Religious Sisters of Mercy v. Azar*, 2021 WL 191009 (D.N.D. Jan. 19, 2021), did not have a favorable judgment on RFRA claims against the 2016 Rule, and in any event the government is currently evaluating whether to appeal the injunction issued in that case. Moreover, Executive Order No. 13,988 directs agencies to "consider whether to"

take any actions “necessary to fully implement statutes that prohibit sex discrimination” and “consistent with applicable law” (which includes RFRA). 86 Fed. Reg. 7,023, 7,024 (Jan. 20, 2021). Plaintiffs’ reliance on that order before HHS has taken any action only highlights the speculative and premature nature of their request for injunctive relief.

Respectfully submitted,

s/ Joshua Dos Santos

Joshua Dos Santos

Attorney, Appellate Staff

Civil Division, Room 7243

U.S. Department of Justice

950 Pennsylvania Avenue NW

Washington, DC 20530

(202) 353-0213

cc: all counsel (via CM/ECF)

CERTIFICATE OF COMPLIANCE

This letter complies with the word count limitation of Fed. R. App. 28(j), as its body contains 221 words as automatically totaled by Microsoft Word.

s/ Joshua Dos Santos
JOSHUA DOS SANTOS