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July 22, 2021

VIA ECF

Honorable Frederic Block
United States District Judge
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: *Tanya Asapansa-Johnson Walker, et al. v. Alex M. Azar II, et al.*, Civ. No. 20-CV-02834
(FB) (SMG)

Dear Judge Block:

Tanya Asapansa-Johnson Walker and Cecilia Gentili, Plaintiffs in the above-referenced matter, submit this letter in response to Defendants' July 16, 2021 letter ("Defs.' Letter") to the Court (ECF Docket No. 39), filed in response to this Court's Status Report Order, entered July 7, 2021.

As an initial matter, Defendants' status update to this Court admits that the 2020 Rule was unduly promulgated contrary to *Bostock v. Clayton County, Georgia*, 140 S. Ct. 1731 (2020) ("*Bostock*") and other applicable law. As such, Plaintiffs were surprised by the status update submitted by Defendants, which goes well beyond the update requested by this Court and contains a demand that Plaintiffs withdraw their Complaint, to which Plaintiffs must now respond.¹ Accordingly, Plaintiffs write to inform the Court of Defendants' omissions concerning the status of Defendants' appeal so the Court has the benefit of the full procedural history and also to respond to Defendants' new legal arguments, which are not grounded in either law or fact. Finally, in light of the circumstances, and for the reasons further described below, Plaintiffs write to respectfully ask this Court to lift its stay and order appropriate discovery such that

¹ In the spirit of cooperation and to avoid burdening the Court with multiple letters, Plaintiffs requested that Defendants provide a draft of their status update in advance of filing so the parties would have an opportunity to work out any concerns without burdening the Court. Unfortunately, Defendants refused to share any drafts and instead provided a summary that failed to fairly capture the essence of their filing. See Exhibit A, pp. 2-4.

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Plaintiffs can pursue the full and fair adjudication of their claims against the 2020 Rule, which has not been yet replaced by any duly promulgated new rule.

I. Procedural Background in the Second Circuit Appeal

On October 26, 2020, Defendants moved to stay this case pending an appeal of this Court's injunction. ECF Docket No. 33. Plaintiffs objected to the stay on October 30, 2020 because of the harm threatened by the 2020 Rule and the critical health care challenges each faced. ECF Docket No. 35. On November 2, 2020, the Court overruled those objections, stating that "[t]he possibility of further irreparable harm to the plaintiffs pending appeal is mitigated by the extant preliminary injunction." On January 19, 2021, Defendants filed their opening brief before the U.S. Court of Appeals for the Second Circuit ("Second Circuit"), seven days earlier than required, in an apparent attempt to get the appeal on file prior to the inauguration of President Biden on January 20, 2021.

As one of his first acts upon assuming office, President Biden issued Executive Order 13988: Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation, 86 Fed. Reg. 7,023 (Jan. 25, 2021) ("EO 13988"). In light of this dramatic development, Plaintiffs reached out to Defendants to assess their intentions with respect to their appeal of this Court's injunction and this case. *See* Exhibit B. The Defendants asked for time for the new Administration to come to a determination. *Id.* Trusting in the Government's good faith, Plaintiffs agreed, and the parties filed a joint motion to stay the appeal, which was granted on March 18, 2021. Motion Order, *Walker v. Becerra*, Case No. 20-3580, ECF Docket No. 60 (2d Cir. Mar. 18, 2021).

Subsequent events have unfortunately caused Plaintiffs to question whether their trust in Defendants' good faith was misplaced. The Second Circuit required the parties to file a joint status report no later than May 14, 2021. *Id.* Prior to filing that status report, Plaintiffs again reached out to Defendants and requested that they withdraw their appeal in light of EO 13988 and the Biden Administration's stated intentions regarding its reversal of positions on the 2020 Rule. *See* Exhibit C, p. 6. Defendants declined, citing on a phone call that there were barriers to do so imposed by Department of Justice "policy" and bureaucratic red tape, and that "policy" may require them to continue to litigate the appeal. *See* Exhibit C, p. 1. Instead, Defendants demanded that Plaintiffs drop their claims in this action—despite the fact that the 2020 Rule has not been withdrawn or rescinded—on the basis of Defendants' stated intention of non-enforcement of the 2020 Rule, arguing that Plaintiffs' harms were now "moot." *Id.* The parties filed a joint status report to the Second Circuit on May 14, 2021 requesting that the Second Circuit continue the stay for a period of 90 days. That request was granted by the Second Circuit on May 18, 2021.

On July 16, 2020, Plaintiffs contacted counsel for Defendants for a meet and confer to discuss Defendants' position in advance of the Second Circuit's August 16, 2021 deadline to file

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a status report on the proceedings. *See* Exhibit A, pp. 1–2. Defendants’ counsel responded that “we don’t yet have an update from our client on that front.” *Id.* This is perplexing given Defs’ Letter’s statement that Defendants are moving forward with reinterpreting Section 1557 in a manner that would address Plaintiffs’ concerns regarding the 2020 Rule. Plaintiffs contend that Defendants’ efforts would be better spent addressing Plaintiffs’ stated and established concerns regarding the 2020 Rule rather than appealing this Court’s decision.

II. Plaintiffs’ Harm is Not Obviated by Defendants’ Public Statements Absent a Duly Promulgated Rule Protecting their Rights

As this Court held, Plaintiffs have standing to challenge the 2020 Rule because “Plaintiffs have experienced discrimination from healthcare providers in the past, and their medical conditions will require them either to interact with at least some of those same medical providers in the future, or to delay or forego treatment.” *See* Memorandum and Order, ECF Docket No. 23, pp. 15–16. Despite Defendants’ contentions, this threat to Plaintiffs’ health and safety does not evaporate simply because Defendants state that the Administration “anticipates issuing a Notice of Proposed Rulemaking in early 2022” that addresses Section 1557. *See* Defs’ Letter, p. 3. Defendants take the extraordinary leap from informing the Court of their rulemaking intent to asserting that Plaintiffs should be ordered “to show cause why this case should not be dismissed as moot given the agency’s recently promulgated Notification about *Bostock*.” *Id.* This demand—which would have the substantive effect of mootng this Court’s injunction of the 2020 Rule—is particularly stunning.

Defendants draw a false equivalence between the current Administration’s public statements indicating its intent to abandon the 2020 Rule and the full force and effect of a duly promulgated Rule that is consistent with applicable law to replace it. The current 2020 Rule is and remains the official administrative rule interpreting Section 1557, which is only prevented from going into effect due to this Court’s granting of Plaintiffs’ requested preliminary injunction. While Defendants’ stated intent concerning enforcement and future rulemaking are welcome news, they have no force of law and thus, are no more than mere statements. Indeed, Defendants admit that they may change their position at their whim, making it clear that EO 13988 and other statements from this administration (including Exhibit 2 to Defs’ Letter) offer Plaintiffs no true protection at all. Defs’ Letter, p. 3.

Unsubstantiated promises do not afford Plaintiffs the protection of a duly promulgated new rule that is consistent with *Bostock*, the APA, and Constitutional law. *See Nat. Res. Def. Council v. Nat’l Highway Traffic Safety Admin.*, 894 F.3d 95, 113 (2d Cir. 2018) (“A basic principle of administrative law is that ‘an agency issuing a legislative rule is itself bound by the rule until that rule is amended or revoked’ ... Similarly, an agency ‘may not alter such a rule without notice and comment,’ ... nor does the agency have any inherent power to stay a final rule”) (internal citations omitted). Even if the current Administration follows through with its stated intentions—which have no binding legal effect—the 2020 Rule will remain in effect

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absent judicial invalidation (subject to this Court's injunction). Defendants do not intend to issue a notice of proposed rulemaking to replace it until "early 2022" and the rulemaking process could take years. *See* Defs' Letter, p. 3. Thus, Plaintiffs' claims are not moot, the harms they continue to face are still imminent, and the Defendants have done little to assuage Plaintiffs' concerns by refusing to withdraw its appeal of this Court's injunction in the Second Circuit, filing a litigious status report in this Court, and attempting to convince Plaintiffs to withdraw their Complaint.

To see the uncertainty of Defendants' position vis-à-vis the 2020 Rule, this Court need not look any further than Defendants' status report. Defendants are sending mixed and inconsistent messages to Plaintiffs and this Court by repeatedly identifying numerous grounds upon which they may continue to litigate this Court's injunction in the Second Circuit and Plaintiffs' claims in this case, which has the direct and catastrophic effect of propping up and furthering the lifespan of the discriminatory and unlawful 2020 Rule. *See* Defs' Letter, p. 4. ("Alternatively, if the Court decides to lift the stay but find motion practice preferable, Defendants are willing to move to dismiss the case for lack of subject matter jurisdiction."). If successful, such a motion would moot this Court's injunction, while Defendants admit in the same letter that "hardship to Plaintiffs from delay 'is mitigated by the extant preliminary injunction.'" *See* Defs' Letter, p. 4 (citing this Court's Electronic Order dated Nov. 2, 2020).

Plaintiffs submit that Defendants' request for a lift of the stay for Plaintiffs to show cause why their Complaint should be dismissed should be denied. Until the 2020 Rule is rescinded, this Court's injunction must stay in full force and effect. Alternatively, if the Court determines to permit this case to move forward, Plaintiffs are prepared to litigate their claims to an adjudicated outcome, which Plaintiffs believe will result in this Court's invalidation of the 2020 Rule pursuant to Plaintiffs' claims. Until such time, Plaintiffs will continue to live their day to day lives under imminent threat of harm.

III. The Court Should Lift the Stay and Immediately Compel Production of the Administrative Record and Permit Discovery on Plaintiffs' Constitutional Claims

Plaintiffs affirmatively reached out to Defendants to offer and agree to an initial stay of the appeal of nearly three months in light of the change in Administration and subsequently agreed to an additional three-month extension of that stay. Exs. B, C. Plaintiffs have been more than generous by agreeing to repeated stays of Defendants' appeal in the Second Circuit. However, Plaintiffs respectfully submit that the threatening and litigious tone of Defendants extant status report suggests that this Court should no longer extend that same patience. That, together with the fact that Defendants are currently unable to articulate their intentions with respect to their appeal when the current Second Circuit stay expires on August 16, 2021, Motion Order, *Walker v. Becerra*, Case No. 20-3580, ECF Docket. No. 60 (2d Cir. Mar. 18, 2021), should compel this Court to lift the current stay and allow discovery to proceed expeditiously. It would be neither just nor proper to permit Plaintiffs' claims to linger indefinitely, with both

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discovery stayed in this case and Defendants' appeal stayed in the Second Circuit, presumably on an indefinite basis. *See* Fed. R. Civ. P. 1 (“[The Federal Rules of Civil Procedure] should be construed, administered, and employed by the court and the parties to secure the just, speedy, and inexpensive determination of every action and proceeding.”).

Defendants argue for a continued stay by asserting that they have “an important interest in avoiding being unnecessarily burdened with the production of complex administrative records in cases like this.” Defs’ Letter, p. 5. As an initial matter, Defendants—with all of the resources of the federal government of the United States of America behind them—appear to think it appropriate to shift the burden of ending this case to Plaintiffs, who are two individual members of one of the most highly marginalized groups in America. But more importantly, any assertion of burden is demonstrably false. The Administrative Record for the 2020 Rule has already been produced in another related challenge to the 2020 Rule pending before Judge Hellerstein in the Southern District of New York and Defendants’ failure to inform the Court of such production is perplexing. *See State of N.Y. v. U.S. Dep’t of Health and Human Servs.*, Civil Action No. 1:20-cv-5583 (S.D.N.Y.). After the Administrative Record and other appropriate discovery is produced, Plaintiffs will be free to file a motion for summary judgment that they believe will bring a swift and final end to this ugly chapter of Defendants’ hateful and discriminatory 2020 Rule. Indeed, as this Court previously found, Plaintiffs have a high probability of success on the merits of their claims, and that finding was issued before Defendants’ admission to the public and this Court that the 2020 Rule is contrary to law.

Moreover, to the extent Defendants complain of the “hardship” on the United States Department of Health and Human Resources by having to further litigate this case “detracts” from its future rulemaking efforts, there is a simple solution. The Defendants have within their power the freedom to abandon their appeal in the Second Circuit and cease defending the 2020 Rule—that they now say they don’t support—in this Court.

Contrary to Defendants’ repeated assertions, this is not merely an APA case. Defs’ Letter, p. 4. Plaintiffs’ Complaint challenges the 2020 Rule under the APA as being contrary to law, in excess of statutory authority, arbitrary, capricious, an abuse of discretion, and in violation of the equal protection guarantee of the Fifth Amendment of the United States Constitution. *See* ECF Docket No. 1, ¶¶ 257–314. As such, Plaintiffs’ claims are inclusive of alleged violations of the APA as well as constitutional challenges to the 2020 Rule. Therefore, Defendants’ assertion that discovery is limited to the Administrative Record because Plaintiffs’ claims are under the APA should be disregarded as it is contrary to Plaintiffs’ actual claims. *See Nat’l Audubon Soc. v. Hoffman*, 132 F.3d 7, 14 (2d Cir. 1997) (“Despite the general ‘record rule,’ an extra-record investigation by the reviewing court may be appropriate when there has been a strong showing in support of a claim of bad faith or improper behavior on the part of agency decisionmakers or where the absence of formal administrative findings makes such investigation necessary in order to determine the reasons for the agency's choice.”); *Almaklani v. Trump*, 444 F. Supp. 3d 425, 434 (E.D.N.Y. 2020) (“[T]he general rule that review of agency action is limited to the

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administrative record compiled by the agency is not absolute.”) (quoting *Vidal v. Duke*, Nos. 16 CV 4756, 17 CV 5228, 2017 WL 8773110, at *3 (E.D.N.Y. Oct. 17, 2017)). Plaintiffs’ Complaint raises several specific and detailed allegations of statements from individuals within the previous administration, as well as actions by the previous administration, that showed an extreme animus towards the LGBTQ+ community. *Id.* at ¶¶ 163–192. As such, Plaintiffs’ claims extend beyond the APA, and the Court should further permit additional discovery on those claims.

Plaintiffs respectfully submit that the legally, factually, and morally correct course of action is here is for Defendants to immediately abandon their appeal of the 2020 Rule in the Second Circuit and for this Court to expeditiously adjudicate the legality of the 2020 Rule pursuant to Plaintiffs’ claims. Even if Defendants continue to pursue their appeal, justice requires this Court to now lift its stay and permit appropriate discovery. In the meantime, Plaintiffs respectfully urge this Court to take no action that would jeopardize its injunction against the 2020 rule, because Plaintiffs respectfully submit that their very lives hang in the balance. Plaintiffs are available to provide any additional information necessary that may be of further assistance to this Court.

Respectfully,

/s/ Edward J. Jacobs

Edward J. Jacobs
Partner
cc (via ECF):

Jason Edward Starr, Esq.
Kathryn M. Zunno-Freaney, Esq.
Michael A. Sabella, Esq.
Ryan E. Harbin, Esq.
Brian M. Boynton, Esq.
Michelle R. Bennett, Esq.
Liam C. Holland, Esq.

EXHIBIT A

From: [Jacobs, Edward J.](#)
To: [Dos Santos, Joshua Y. \(CIV\)](#); [Holland, Liam C. \(CIV\)](#)
Cc: [Harbin, Ryan E.](#); [Cheung, Ashley \(CIV\)](#); [Sabella, Michael A.](#); [Jason Starr](#)
Subject: RE: Activity in Case 1:20-cv-02834-FB-VMS Asapansa-Johnson Walker et al v. Azar II et al Status Report Order
Date: Thursday, July 22, 2021 3:58:54 PM

Hi Liam,

We will be filing a response to Defendants' status update, which we feel went beyond the summary provided below. Nothing in your summary indicated that Defendants would be seeking an order to show cause adjudicating the case as moot or arguing that Discovery is precluded.

Please let us know as soon as practicable when we can schedule a call to discuss the status report due in the Second Circuit on August 16, 2021.

Regards,
Ted

From: Dos Santos, Joshua Y. (CIV) <Joshua.Y.Dos.Santos@usdoj.gov>
Sent: Saturday, July 17, 2021 10:03 AM
To: Jacobs, Edward J. <ejacobs@bakerlaw.com>; Holland, Liam C. (CIV) <Liam.C.Holland@usdoj.gov>
Cc: Harbin, Ryan E. <rharbin@bakerlaw.com>; Cheung, Ashley (CIV) <Ashley.Cheung@usdoj.gov>; Sabella, Michael A. <msabella@bakerlaw.com>; Jason Starr <jason.starr@hrc.org>
Subject: RE: Activity in Case 1:20-cv-02834-FB-VMS Asapansa-Johnson Walker et al v. Azar II et al Status Report Order

Hi Ted,

Thanks for reaching out about the appeal. Unfortunately we don't yet have an update from our client on that front, so a call next week would be too early on our end. We will confer and touch base with you as soon as we can in advance of the August 16 status report.

Thanks very much,
Josh

From: Jacobs, Edward J. <ejacobs@bakerlaw.com>
Sent: Friday, July 16, 2021 11:13 AM
To: Holland, Liam C. (CIV) <Liam.C.Holland@usdoj.gov>
Cc: Harbin, Ryan E. <rharbin@bakerlaw.com>; Dos Santos, Joshua Y. (CIV) <Joshua.Y.Dos.Santos@usdoj.gov>; Cheung, Ashley (CIV) <Ashley.Cheung@usdoj.gov>; Sabella, Michael A. <msabella@bakerlaw.com>; Jason Starr <jason.starr@hrc.org>
Subject: RE: Activity in Case 1:20-cv-02834-FB-VMS Asapansa-Johnson Walker et al v. Azar II et al Status Report Order

Hi Liam,

Thank you for the update. We will let you know prior to filing if we intend to file any response.

Josh, please let us know if there is a convenient time for us to discuss the expiration of the stay of the appeal and who should be included.

Regards,
Ted

From: Holland, Liam C. (CIV) <Liam.C.Holland@usdoj.gov>
Sent: Friday, July 16, 2021 11:02 AM
To: Jacobs, Edward J. <ejacobs@bakerlaw.com>
Cc: Harbin, Ryan E. <rharbin@bakerlaw.com>; Dos Santos, Joshua Y. (CIV) <Joshua.Y.Dos.Santos@usdoj.gov>; Cheung, Ashley (CIV) <Ashley.Cheung@usdoj.gov>; Sabella, Michael A. <msabella@bakerlaw.com>; Jason Starr <jason.starr@hrc.org>
Subject: RE: Activity in Case 1:20-cv-02834-FB-VMS Asapansa-Johnson Walker et al v. Azar II et al Status Report Order

Good Morning Ted,

In the status report letter, the government plans on informing the court about events occurring since the change in presidential administrations, including EO 13988 and the May 10, 2021 HHS Notification of Interpretation and Enforcement of Section 1557 of the ACA and Title IX. We will include a brief overview of the docket events occurring in the appeal and letting the court know about its status as presently stayed. We will let the Court know that we believe that the stay of district court proceeding should remain in effect, but also express our views about the implications of the events occurring since the change in administrations on the case. Finally, we will remind the court that this is an APA case.

Again, if you intend to file your own letter, please let us know your intentions.

Thanks,
Liam

From: Jacobs, Edward J. <ejacobs@bakerlaw.com>
Sent: Thursday, July 15, 2021 11:30 AM
To: Holland, Liam C. (CIV) <Liam.C.Holland@usdoj.gov>
Cc: Harbin, Ryan E. <rharbin@bakerlaw.com>; Dos Santos, Joshua Y. (CIV) <Joshua.Y.Dos.Santos@usdoj.gov>; Cheung, Ashley (CIV) <Ashley.Cheung@usdoj.gov>; Sabella, Michael A. <msabella@bakerlaw.com>; Jason Starr <jason.starr@hrc.org>
Subject: Re: Activity in Case 1:20-cv-02834-FB-VMS Asapansa-Johnson Walker et al v. Azar II et al Status Report Order

Hi Liam,

We are hoping we will not be compelled to file our own letter, which is why we asked that you share

your intentions in advance so we have an opportunity to raise any concerns. Hopefully we can proceed in a manner that is best for the case regardless of your office's policies, which to us is in the spirit of cooperation, in the best interests of our clients' rights, which the Administration has publicly stated it supports, and so we aren't bombarding the Court with competing statements.

Regardless, we would like to schedule a meet and confer as to the status of the appeal and how the Parties plan on proceeding after the expiration of the current stay, which I believe is August 16th. Please let us know your availability of the next few business days as soon as practicable.

Regards,
Ted

On Jul 15, 2021, at 11:14 AM, Holland, Liam C. (CIV) <Liam.C.Holland@usdoj.gov> wrote:

Ryan,

If you intend on filing your own letter, we would appreciate it if you would return the favor.

Thanks,
Liam

From: Holland, Liam C. (CIV)
Sent: Thursday, July 15, 2021 11:13 AM
To: 'Harbin, Ryan E.' <rharbin@bakerlaw.com>; Dos Santos, Joshua Y. (CIV) <Joshua.Y.Dos.Santos@usdoj.gov>; Cheung, Ashley (CIV) <Ashley.Cheung@usdoj.gov>
Cc: Sabella, Michael A. <msabella@bakerlaw.com>; Jacobs, Edward J. <ejacobs@bakerlaw.com>; Jason Starr <jason.starr@hrc.org>
Subject: RE: Activity in Case 1:20-cv-02834-FB-VMS Asapansa-Johnson Walker et al v. Azar II et al Status Report Order

Good Morning Ryan,

Our office does not typically share our court filings with opposing counsel prior to filing. Nevertheless, I will try and provide you with the gist of what we will report prior to filing in the interest of goodwill between counsel. However, we are still in the drafting stage at this time.

Thanks,
Liam

From: Harbin, Ryan E. <rharbin@bakerlaw.com>

Sent: Thursday, July 15, 2021 10:31 AM

To: Holland, Liam C. (CIV) <Liam.C.Holland@usdoj.gov>; Dos Santos, Joshua Y. (CIV) <Joshua.Y.Dos.Santos@usdoj.gov>; Cheung, Ashley (CIV) <Ashley.Cheung@usdoj.gov>

Cc: Sabella, Michael A. <msabella@bakerlaw.com>; Jacobs, Edward J. <ejacobs@bakerlaw.com>; Jason Starr <jason.starr@hrc.org>

Subject: RE: Activity in Case 1:20-cv-02834-FB-VMS Asapansa-Johnson Walker et al v. Azar II et al Status Report Order

Hi Liam,

No problem at all. We agree with your interpretation but would appreciate seeing your response prior to filing.

Thanks,
Ryan

Ryan Harbin
She | Her | Hers
Associate

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<image008.jpg>
<image010.jpg>

From: Holland, Liam C. (CIV) <Liam.C.Holland@usdoj.gov>

Sent: Wednesday, July 14, 2021 6:14 PM

To: Dos Santos, Joshua Y. (CIV) <Joshua.Y.Dos.Santos@usdoj.gov>; Harbin, Ryan E. <rharbin@bakerlaw.com>; Cheung, Ashley (CIV) <Ashley.Cheung@usdoj.gov>

Cc: Sabella, Michael A. <msabella@bakerlaw.com>; Jacobs, Edward J. <ejacobs@bakerlaw.com>; Jason Starr <jason.starr@hrc.org>

Subject: RE: Activity in Case 1:20-cv-02834-FB-VMS Asapansa-Johnson Walker et al v. Azar II et al Status Report Order

Good Evening Ryan,

Sorry for the delay in responding. We've come to the conclusion that the Court's order does not contemplate a joint filing. We thought the order applied only to Defendants, but would not object if you wanted to file a status report letter as well.

Thanks,
Liam

From: Dos Santos, Joshua Y. (CIV) <Joshua.Y.Dos.Santos@usdoj.gov>
Sent: Tuesday, July 13, 2021 12:52 PM
To: Harbin, Ryan E. <rharbin@bakerlaw.com>; Holland, Liam C. (CIV) <Liam.C.Holland@usdoj.gov>; Cheung, Ashley (CIV) <Ashley.Cheung@usdoj.gov>
Cc: Sabella, Michael A. <msabella@bakerlaw.com>; Jacobs, Edward J. <ejacobs@bakerlaw.com>; Jason Starr <jason.starr@hrc.org>
Subject: RE: Activity in Case 1:20-cv-02834-FB-VMS Asapansa-Johnson Walker et al v. Azar II et al Status Report Order

Hi Ryan,

Thanks very much for reaching out. I'm copying Liam Holland, who should be copied on any correspondence related to district court proceedings. We are conferring and will get back to you.

All best,
Josh

Josh Dos Santos
Civil Division, Appellate Staff
U.S. Department of Justice
(202) 353-0213

From: Harbin, Ryan E. <rharbin@bakerlaw.com>
Sent: Tuesday, July 13, 2021 11:18 AM
To: Dos Santos, Joshua Y. (CIV) <Joshua.Y.Dos.Santos@usdoj.gov>
Cc: Sabella, Michael A. <msabella@bakerlaw.com>; Jacobs, Edward J. <ejacobs@bakerlaw.com>; Jason Starr <jason.starr@hrc.org>
Subject: FW: Activity in Case 1:20-cv-02834-FB-VMS Asapansa-Johnson Walker et al v. Azar II et al Status Report Order

Hello Josh,

As you have likely seen, Judge Block would like an update on the appeal status by this Friday. Does the government have a position on what we should tell Judge Block? Would you like to discuss this week?

Sincerely,
Ryan

Ryan Harbin

She | Her | Hers
Associate

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<image018.jpg>
<image020.jpg>

From: ecf_bounces@nyed.uscourts.gov <ecf_bounces@nyed.uscourts.gov>
Sent: Wednesday, July 7, 2021 3:16 PM
To: nobody@nyed.uscourts.gov
Subject: Activity in Case 1:20-cv-02834-FB-VMS Asapansa-Johnson Walker et al v. Azar II et al Status Report Order

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U.S. District Court

Eastern District of New York

Notice of Electronic Filing

The following transaction was entered on 7/7/2021 at 3:16 PM EDT and filed on 7/7/2021

Case Name: Asapansa-Johnson Walker et al v. Azar II et al
Case Number: [1:20-cv-02834-FB-VMS](https://ecf.nyed.uscourts.gov/cases/1:20-cv-02834-FB-VMS)
Filer:

Document Number: No document attached

Docket Text:

STATUS REPORT ORDER: By July 16, 2021 counsel shall notify the court by letter as to the status of their appeal and whether the stay in this case can now be lifted and discovery can begin. Ordered by Judge Frederic Block on 7/7/2021. (Innelli, Michael)

1:20-cv-02834-FB-VMS Notice has been electronically mailed to:

Kathryn M. Zunno kzunno@bakerlaw.com, bhlitdocket@bakerlaw.com

Michael A. Sabella msabella@bakerlaw.com, bhlitdocket@bakerlaw.com

Jason Edward Starr jason.starr@hrc.org, jasonestarr@gmail.com

Edward J. Jacobs ejacobs@bakerlaw.com, bhlitdocket@bakerlaw.com

Jordan Von Bokern jordan.l.von.bokern2@usdoj.gov

Liam Holland liam.c.holland@usdoj.gov

Douglas Neal Letter douglas.letter@mail.house.gov

Ryan Harbin rharbin@bakerlaw.com

Katrina M. Quicker kquicker@quickerlaw.com, treid@bakerlaw.com

Joshua Rovenger jrovenger@bakerlaw.com

1:20-cv-02834-FB-VMS Notice will not be electronically mailed to:

House of Representatives

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EXHIBIT B

From: [Harbin, Ryan E.](#)
To: [Dos Santos, Joshua Y. \(CIV\)](#); [Holland, Liam C. \(CIV\)](#)
Cc: [Cheung, Ashley \(CIV\)](#); [Zunno-Freaney, Kathryn](#); [Jacobs, Edward J.](#); [Jason Starr](#)
Subject: RE: Asapansa-Johnson Walker v. HHS, EDNY Case No. 20-CV-2834 ; Second Cir. Appeal No. 20-3580
Date: Tuesday, February 23, 2021 12:20:00 PM
Attachments: [image006.png](#)
[image011.png](#)

Hi Josh,

Good to hear from you. That timeline makes sense to us, and we will join the motion. Are you able to prepare a draft?

Thanks,
Ryan

Ryan Harbin
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rharbin@bakerlaw.com

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From: Dos Santos, Joshua Y. (CIV) <Joshua.Y.Dos.Santos@usdoj.gov>
Sent: Friday, February 19, 2021 12:13 PM
To: Holland, Liam C. (CIV) <Liam.C.Holland@usdoj.gov>; Harbin, Ryan E. <rharbin@bakerlaw.com>
Cc: Cheung, Ashley (CIV) <Ashley.Cheung@usdoj.gov>
Subject: RE: Asapansa-Johnson Walker v. HHS, EDNY Case No. 20-CV-2834 ; Second Cir. Appeal No. 20-3580

[External Email: Use caution when clicking on links or opening attachments.]

Hi Ryan,

Thanks very much for reaching out. We were planning to reach out to you all as well. Consistent with stays in other cases involving the 2020 Rule, we would propose a stay of proceedings in the Second Circuit to allow new leadership at HHS to evaluate the issues in this case, with a status report due on May 14, 2021. The Executive Order on sex discrimination and gender identity states that agencies should develop a plan to carry out actions the agency identifies as appropriate in light of the order

by April 30, 2021. May 14 would provide the parties two weeks to confer after that date.

Would plaintiffs be amenable to joining or consenting to such a motion? Please let us know if a call to discuss would be helpful.

All best,
Josh

Josh Dos Santos
Civil Appellate
U.S. Department of Justice
(202) 353-0213

From: Holland, Liam C. (CIV) <Liam.C.Holland@usdoj.gov>
Sent: Thursday, February 18, 2021 5:58 PM
To: Harbin, Ryan E. <rharbin@bakerlaw.com>
Cc: Dos Santos, Joshua Y. (CIV) <Joshua.Y.Dos.Santos@usdoj.gov>; Cheung, Ashley (CIV) <Ashley.Cheung@usdoj.gov>
Subject: RE: Asapansa-Johnson Walker v. HHS, EDNY Case No. 20-CV-2834 ; Second Cir. Appeal No. 20-3580

Good afternoon Ryan,

HHS has represented that it will be reassessing the issues that are presented by this case including the rule in question and courts have stayed other challenges to the 2020 Rule to give HHS some time to complete that reassessment. I'm not sure a stay of the EDNY proceeding is necessary because the case is already stayed. I have cced my colleges from Civil Appellate—Josh Dos Santos and Ashley Cheung—who are handling *Walker* before the Second Circuit. They are authorized to discuss a stay of the appeal.

-Liam

From: Harbin, Ryan E. <rharbin@bakerlaw.com>
Sent: Thursday, February 18, 2021 4:35 PM
To: Holland, Liam C. (CIV) <Liam.C.Holland@usdoj.gov>
Subject: Asapansa-Johnson Walker v. HHS, EDNY Case No. 20-CV-2834 ; Second Cir. Appeal No. 20-3580

Good afternoon Liam,

I am one of the attorneys on the EDNY case identified above, challenging the HHS's 2020 Rule interpreting and applying certain portions of the ACA, particularly as to gender identity and sexual orientation.

It is our understanding that the new administration has changed its position as to the ACA and the

2020 Rule and will not be defending it. Accordingly, we would like to discuss seeking a stay of the appeal and the EDNY proceeding until the administration can make its decision. Do you have time for a call next week?

Thanks,
Ryan

Ryan Harbin
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Associate

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EXHIBIT C

From: [Jacobs, Edward J.](#)
To: [Dos Santos, Joshua Y. \(CIV\)](#)
Cc: [Harbin, Ryan E.](#); [Holland, Liam C. \(CIV\)](#); [Cheung, Ashley \(CIV\)](#); [Zunno-Freaney, Kathryn](#); [Jason Starr](#); [Scarborough, Charles \(CIV\)](#)
Subject: Re: Asapansa-Johnson Walker v. HHS, EDNY Case No. 20-CV-2834 ; Second Cir. Appeal No. 20-3580
Date: Thursday, May 13, 2021 9:20:40 PM
Attachments: [image018.png](#)
[image027.png](#)
[image032.png](#)
[image037.png](#)

Josh,

We agreed to your request for a further extension of the stay as a courtesy, but have every right to inform the Court of our position on the Defendants' appeal in light of the new circumstances you seek to report to the Court in furtherance of your request for an additional stay. As we stated on our call, we strongly feel that in light of Defendants' admissions concerning the legal invalidity of the 2020 Rule and their stated intentions to now reverse it, it is incumbent upon the government to abandon this appeal.

We decline to withdraw our revisions and additions to the status report because we fundamentally disagree with the reasoning stated below. I think Defendants confuse the appeal of the injunction with the merits of the claims in the District Court. Until the government promulgates a final Rule that is consistent with the full force and effect of *Bostock*, the injunction is necessary to protect Plaintiffs' rights. I am surprised the current administration may disagree that if Plaintiffs dismissed their claims they would be exposed to the discriminatory effect of the current rule that gave rise to the injunction in the first instance. The government can't claim that *Bostock* is determinative of the issues but continue to litigate the injunction that blocks the very portions of the 2020 Rule that contravene it (and HHS now says it intends to reverse). If HHS feels it can defend that position to the Court and on the public record, please by all means share with us a draft of the additional paragraph you propose.

I also note that the purpose of the status report is not solely to benefit the government. As you noted, the government would like the report to focus on the "status of the administrative proceedings and the parties' views on abeyance," but our view on abeyance is intertwined with our view on mootness. It is entirely appropriate, therefore, to inform the Court of our position that although at this time we are agreeing to the stay the government requested as a courtesy, we believe the government's appeal is moot—a position that we have communicated to you and indicated we will press if necessary.

Accordingly, we reiterate our insistence that Defendants' immediately notify the Court of their intention to withdraw their appeal. On our call, Defendants failed to provide any legitimate reason not to do so. We don't believe the Court will appreciate Defendants arguing the legitimacy of their appeal while they at the same time ask the Court for more time to resolve it after announcing a complete policy reversal, but if Defendants insist on adding additional language please send us a further revised draft prior to filing so we can determine if it necessitates any further response.

Regards,

Ted

On May 13, 2021, at 5:47 PM, Dos Santos, Joshua Y. (CIV)
<Joshua.Y.Dos.Santos@usdoj.gov> wrote:

Hi Ryan,

Thanks for the response. We don't think we need to litigate mootness in this status report. We'd leave that topic for further briefing if it becomes necessary. In our view, the status report should simply inform the court about the status of administrative proceedings and the parties' views on abeyance. Accordingly, we propose cutting the paragraph you added.

If you'd still like to include that paragraph, we'd note that mootness actually works the other way. The *Bostock* announcement appears to moot all of the alleged injuries in this case, and therefore plaintiffs should dismiss their claims. If you'd like to include a paragraph like the one you sent, please let us know if we can represent that you do not agree to dismiss your claims, and we will add that point as well. But again, we think it makes more sense to leave this topic for further briefing if necessary, not for a status report.

Please let us know whether we can proceed without the paragraph you added, or whether we can instead note that plaintiffs will not dismiss their claims as moot.

Happy to discuss by phone if you'd like.

All best,
Josh

From: Harbin, Ryan E. <rharbin@bakerlaw.com>

Sent: Thursday, May 13, 2021 3:46 PM

To: Dos Santos, Joshua Y. (CIV) <Joshua.Y.Dos.Santos@usdoj.gov>; Jacobs, Edward J. <ejacobs@bakerlaw.com>; Holland, Liam C. (CIV) <Liam.C.Holland@usdoj.gov>

Cc: Cheung, Ashley (CIV) <Ashley.Cheung@usdoj.gov>; Zunno-Freaney, Kathryn <kzunno@bakerlaw.com>; Jason Starr <jason.starr@hrc.org>; Scarborough, Charles (CIV) <Charles.Scarborough@usdoj.gov>

Subject: RE: Asapansa-Johnson Walker v. HHS, EDNY Case No. 20-CV-2834 ; Second Cir. Appeal No. 20-3580

Josh,

Please see our proposed revisions in the attached.

Sincerely,
Ryan

Ryan Harbin
She | Her | Hers
Associate

<image016.jpg>

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T +1.404.256.8786

rharkin@bakerlaw.com
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<image018.png>
<image020.jpg>
<image022.jpg>
<image024.jpg>

From: Dos Santos, Joshua Y. (CIV) <Joshua.Y.Dos.Santos@usdoj.gov>
Sent: Thursday, May 13, 2021 9:44 AM
To: Jacobs, Edward J. <ejacobs@bakerlaw.com>; Harbin, Ryan E. <rharkin@bakerlaw.com>; Holland, Liam C. (CIV) <Liam.C.Holland@usdoj.gov>
Cc: Cheung, Ashley (CIV) <Ashley.Cheung@usdoj.gov>; Zunno-Freaney, Kathryn <kzunno@bakerlaw.com>; Jason Starr <jason.starr@hrc.org>; Scarborough, Charles (CIV) <Charles.Scarborough@usdoj.gov>
Subject: RE: Asapansa-Johnson Walker v. HHS, EDNY Case No. 20-CV-2834 ; Second Cir. Appeal No. 20-3580

[External Email: Use caution when clicking on links or opening attachments.]

Hi Ted,

Here's a draft status report. Apologies for the delay.

Thanks,
Josh

From: Jacobs, Edward J. <ejacobs@bakerlaw.com>
Sent: Thursday, May 13, 2021 9:36 AM
To: Dos Santos, Joshua Y. (CIV) <Joshua.Y.Dos.Santos@usdoj.gov>; Harbin, Ryan E. <rharkin@bakerlaw.com>; Holland, Liam C. (CIV) <Liam.C.Holland@usdoj.gov>
Cc: Cheung, Ashley (CIV) <Ashley.Cheung@usdoj.gov>; Zunno-Freaney, Kathryn <kzunno@bakerlaw.com>; Jason Starr <jason.starr@hrc.org>; Scarborough, Charles

(CIV) <Charles.Scarborough@usdoj.gov>

Subject: RE: Asapansa-Johnson Walker v. HHS, EDNY Case No. 20-CV-2834 ; Second Cir. Appeal No. 20-3580

Hi Josh,

On our call yesterday you mentioned that the government would circulate a draft proposed status report. Do you think you will be able to circulate that shortly? I think it will be most productive if we have a chance to review that first before we are scheduled to speak at 10am today. In the event there is anything we need to discuss by phone perhaps we can speak later today or tomorrow. Please let us know.

Regards,
Ted

From: Dos Santos, Joshua Y. (CIV) <Joshua.Y.Dos.Santos@usdoj.gov>

Sent: Tuesday, May 11, 2021 1:49 PM

To: Harbin, Ryan E. <rharbin@bakerlaw.com>; Holland, Liam C. (CIV) <Liam.C.Holland@usdoj.gov>

Cc: Cheung, Ashley (CIV) <Ashley.Cheung@usdoj.gov>; Zunno-Freaney, Kathryn <kzunno@bakerlaw.com>; Jacobs, Edward J. <ejacobs@bakerlaw.com>; Jason Starr <jason.starr@hrc.org>; Scarborough, Charles (CIV) <Charles.Scarborough@usdoj.gov>

Subject: RE: Asapansa-Johnson Walker v. HHS, EDNY Case No. 20-CV-2834 ; Second Cir. Appeal No. 20-3580

Thanks very much, Ryan.

Josh

From: Harbin, Ryan E. <rharbin@bakerlaw.com>

Sent: Tuesday, May 11, 2021 1:48 PM

To: Dos Santos, Joshua Y. (CIV) <Joshua.Y.Dos.Santos@usdoj.gov>; Holland, Liam C. (CIV) <Liam.C.Holland@usdoj.gov>

Cc: Cheung, Ashley (CIV) <Ashley.Cheung@usdoj.gov>; Zunno-Freaney, Kathryn <kzunno@bakerlaw.com>; Jacobs, Edward J. <ejacobs@bakerlaw.com>; Jason Starr <jason.starr@hrc.org>; Scarborough, Charles (CIV) <Charles.Scarborough@usdoj.gov>

Subject: RE: Asapansa-Johnson Walker v. HHS, EDNY Case No. 20-CV-2834 ; Second Cir. Appeal No. 20-3580

Certainly. Please use this info:

Dial in: (866) 468-2930

Conference code: 4042568786

I look forward to talking tomorrow,
Ryan

From: Dos Santos, Joshua Y. (CIV) <Joshua.Y.Dos.Santos@usdoj.gov>
Sent: Tuesday, May 11, 2021 1:13 PM
To: Harbin, Ryan E. <rharbin@bakerlaw.com>; Holland, Liam C. (CIV) <Liam.C.Holland@usdoj.gov>
Cc: Cheung, Ashley (CIV) <Ashley.Cheung@usdoj.gov>; Zunno-Freaney, Kathryn <kzunno@bakerlaw.com>; Jacobs, Edward J. <ejacobs@bakerlaw.com>; Jason Starr <jason.starr@hrc.org>; Scarborough, Charles (CIV) <Charles.Scarborough@usdoj.gov>
Subject: RE: Asapansa-Johnson Walker v. HHS, EDNY Case No. 20-CV-2834 ; Second Cir. Appeal No. 20-3580

That works for us. Would you mind sending a dial-in for that time?

Best,
Josh

From: Harbin, Ryan E. <rharbin@bakerlaw.com>
Sent: Tuesday, May 11, 2021 1:01 PM
To: Dos Santos, Joshua Y. (CIV) <Joshua.Y.Dos.Santos@usdoj.gov>; Holland, Liam C. (CIV) <Liam.C.Holland@usdoj.gov>
Cc: Cheung, Ashley (CIV) <Ashley.Cheung@usdoj.gov>; Zunno-Freaney, Kathryn <kzunno@bakerlaw.com>; Jacobs, Edward J. <ejacobs@bakerlaw.com>; Jason Starr <jason.starr@hrc.org>; Scarborough, Charles (CIV) <Charles.Scarborough@usdoj.gov>
Subject: RE: Asapansa-Johnson Walker v. HHS, EDNY Case No. 20-CV-2834 ; Second Cir. Appeal No. 20-3580

How about tomorrow at 10 AM?

From: Dos Santos, Joshua Y. (CIV) <Joshua.Y.Dos.Santos@usdoj.gov>
Sent: Tuesday, May 11, 2021 12:00 PM
To: Harbin, Ryan E. <rharbin@bakerlaw.com>; Holland, Liam C. (CIV) <Liam.C.Holland@usdoj.gov>
Cc: Cheung, Ashley (CIV) <Ashley.Cheung@usdoj.gov>; Zunno-Freaney, Kathryn <kzunno@bakerlaw.com>; Jacobs, Edward J. <ejacobs@bakerlaw.com>; Jason Starr <jason.starr@hrc.org>; Scarborough, Charles (CIV) <Charles.Scarborough@usdoj.gov>
Subject: RE: Asapansa-Johnson Walker v. HHS, EDNY Case No. 20-CV-2834 ; Second Cir. Appeal No. 20-3580

Hi Ryan,

Would you be available for a call to discuss this afternoon or tomorrow before 11am?

Thanks very much,
Josh

Josh Dos Santos
Civil Division, Appellate Staff
U.S. Department of Justice
(202) 353-0213

From: Dos Santos, Joshua Y. (CIV)
Sent: Monday, May 3, 2021 9:15 PM
To: Harbin, Ryan E. <rharbin@bakerlaw.com>; Holland, Liam C. (CIV) <Liam.C.Holland@usdoj.gov>
Cc: Cheung, Ashley (CIV) <Ashley.Cheung@usdoj.gov>; Zunno-Freaney, Kathryn <kzunno@bakerlaw.com>; Jacobs, Edward J. <ejacobs@bakerlaw.com>; Jason Starr <jason.starr@hrc.org>; Scarborough, Charles (CIV) <Charles.Scarborough@usdoj.gov>
Subject: RE: Asapansa-Johnson Walker v. HHS, EDNY Case No. 20-CV-2834 ; Second Cir. Appeal No. 20-3580

Hi Ryan,

Thanks for your message. We'll confer and get back to you.

All best,
Josh

Josh Dos Santos
Civil Division, Appellate Staff
U.S. Department of Justice
(202) 353-0213

From: Harbin, Ryan E. <rharbin@bakerlaw.com>
Sent: Monday, May 3, 2021 8:46 PM
To: Dos Santos, Joshua Y. (CIV) <Joshua.Y.Dos.Santos@usdoj.gov>; Holland, Liam C. (CIV) <Liam.C.Holland@usdoj.gov>
Cc: Cheung, Ashley (CIV) <Ashley.Cheung@usdoj.gov>; Zunno-Freaney, Kathryn <kzunno@bakerlaw.com>; Jacobs, Edward J. <ejacobs@bakerlaw.com>; Jason Starr <jason.starr@hrc.org>; Scarborough, Charles (CIV) <Charles.Scarborough@usdoj.gov>
Subject: RE: Asapansa-Johnson Walker v. HHS, EDNY Case No. 20-CV-2834 ; Second Cir. Appeal No. 20-3580

Hello again Josh,

2021 is hurtling along and I think May 14 will be here before we know it, so I wanted to check on the status report. What has the administration decided?

Thanks,
Ryan

Ryan Harbin
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<image026.jpg>

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<image027.png>
<image028.jpg>
<image029.jpg>
<image030.jpg>

From: Dos Santos, Joshua Y. (CIV) <Joshua.Y.Dos.Santos@usdoj.gov>
Sent: Monday, March 15, 2021 12:34 PM
To: Harbin, Ryan E. <rharbin@bakerlaw.com>; Holland, Liam C. (CIV) <Liam.C.Holland@usdoj.gov>
Cc: Cheung, Ashley (CIV) <Ashley.Cheung@usdoj.gov>; Zunno-Freaney, Kathryn <kzunno@bakerlaw.com>; Jacobs, Edward J. <ejacobs@bakerlaw.com>; Jason Starr <jason.starr@hrc.org>; Scarborough, Charles (CIV) <Charles.Scarborough@usdoj.gov>
Subject: RE: Asapansa-Johnson Walker v. HHS, EDNY Case No. 20-CV-2834 ; Second Cir. Appeal No. 20-3580

Thanks very much, Ryan. We'll file today.

Best,
Josh

From: Harbin, Ryan E. <rharbin@bakerlaw.com>
Sent: Monday, March 15, 2021 10:38 AM
To: Dos Santos, Joshua Y. (CIV) <Joshua.Y.Dos.Santos@usdoj.gov>; Holland, Liam C. (CIV) <Liam.C.Holland@usdoj.gov>
Cc: Cheung, Ashley (CIV) <Ashley.Cheung@usdoj.gov>; Zunno-Freaney, Kathryn <kzunno@bakerlaw.com>; Jacobs, Edward J. <ejacobs@bakerlaw.com>; Jason Starr <jason.starr@hrc.org>; Scarborough, Charles (CIV) <Charles.Scarborough@usdoj.gov>
Subject: RE: Asapansa-Johnson Walker v. HHS, EDNY Case No. 20-CV-2834 ; Second Cir. Appeal No. 20-3580

Good morning Josh,

We are fine with your changes. You have our express permission to sign for Edward Jacobs and file at your convenience.

Thanks,

Ryan

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Associate

<image031.jpg>

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<image032.png>

<image033.jpg>

<image034.jpg>

<image035.jpg>

From: Dos Santos, Joshua Y. (CIV) <Joshua.Y.Dos.Santos@usdoj.gov>

Sent: Friday, March 12, 2021 1:37 PM

To: Harbin, Ryan E. <rharbin@bakerlaw.com>; Holland, Liam C. (CIV) <Liam.C.Holland@usdoj.gov>

Cc: Cheung, Ashley (CIV) <Ashley.Cheung@usdoj.gov>; Zunno-Freaney, Kathryn <kzunno@bakerlaw.com>; Jacobs, Edward J. <ejacobs@bakerlaw.com>; Jason Starr <jason.starr@hrc.org>; Scarborough, Charles (CIV) <Charles.Scarborough@usdoj.gov>

Subject: RE: Asapansa-Johnson Walker v. HHS, EDNY Case No. 20-CV-2834 ; Second Cir. Appeal No. 20-3580

Hi Ryan,

Thanks very much. Here's a slightly revised version of the language you added. If you're okay with this, I can file this today. (I'd just need your finalized signature.)

Best,

Josh

Josh Dos Santos
Civil Division, Appellate Staff

U.S. Department of Justice
(202) 353-0213

From: Harbin, Ryan E. <rharbin@bakerlaw.com>
Sent: Friday, March 12, 2021 9:54 AM
To: Dos Santos, Joshua Y. (CIV) <Joshua.Y.Dos.Santos@usdoj.gov>; Holland, Liam C. (CIV) <Liam.C.Holland@usdoj.gov>
Cc: Cheung, Ashley (CIV) <Ashley.Cheung@usdoj.gov>; Zunno-Freaney, Kathryn <kzunno@bakerlaw.com>; Jacobs, Edward J. <ejacobs@bakerlaw.com>; Jason Starr <jason.starr@hrc.org>
Subject: RE: Asapansa-Johnson Walker v. HHS, EDNY Case No. 20-CV-2834 ; Second Cir. Appeal No. 20-3580

Josh,

Thanks for putting this together. We have one addition that is redlined in the attached. I also added our signature block.

Let us know if you'd like to discuss.

Sincerely,
Ryan

Ryan Harbin
She | Her | Hers
Associate

<[image036.jpg](#)>

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<[image037.png](#)>
<[image038.jpg](#)>
<[image039.jpg](#)>
<[image040.jpg](#)>

From: Dos Santos, Joshua Y. (CIV) <Joshua.Y.Dos.Santos@usdoj.gov>
Sent: Friday, March 5, 2021 1:34 PM
To: Harbin, Ryan E. <rharbin@bakerlaw.com>; Holland, Liam C. (CIV) <Liam.C.Holland@usdoj.gov>
Cc: Cheung, Ashley (CIV) <Ashley.Cheung@usdoj.gov>; Zunno-Freaney, Kathryn

<kzunno@bakerlaw.com>; Jacobs, Edward J. <ejacobs@bakerlaw.com>; Jason Starr
<jason.starr@hrc.org>

Subject: RE: Asapansa-Johnson Walker v. HHS, EDNY Case No. 20-CV-2834 ; Second Cir.
Appeal No. 20-3580

Hi Ryan,

Attached is a draft joint motion to stay appellate proceedings in the Second Circuit. If
this looks okay to you, please add your signature block where indicated.

Thanks very much, and please let us know if you have questions.

All best,
Josh

Josh Dos Santos
Civil Division, Appellate Staff
U.S. Department of Justice
(202) 353-0213

From: Dos Santos, Joshua Y. (CIV)
Sent: Thursday, February 25, 2021 11:21 AM
To: Harbin, Ryan E. <rharbin@bakerlaw.com>; Holland, Liam C. (CIV)
<Liam.C.Holland@usdoj.gov>
Cc: Cheung, Ashley (CIV) <

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complete analysis of all relevant issues or authorities.

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