

**United States Court of Appeals for the Second Circuit  
Thurgood Marshall U.S. Courthouse  
40 Foley Square  
New York, NY 10007**

**DEBRA ANN LIVINGSTON**  
CHIEF JUDGE

Date: December 02, 2022

Docket #: 22-3054

Short Title: Haller v. U.S. Department of Health and Human  
Services

**CATHERINE O'HAGAN WOLFE**  
CLERK OF COURT

DC Docket #: 21-cv-7208

DC Court: EDNY (CENTRAL  
ISLIP)

DC Judge: Donnelly

DC Judge: Shields

**DOCKETING NOTICE**

A notice of appeal filed by Dr. Daniel Haller and Long Island Surgical PLLC in the above referenced case was docketed today as 22-3054. This number must appear on all documents related to this case that are filed in this Court. For pro se parties the docket sheet with the caption page, and an Acknowledgment and Notice of Appearance Form are enclosed. In counseled cases the docket sheet is available on PACER. Counsel must access the Acknowledgment and Notice of Appearance Form from this Court's website <http://www.ca2.uscourts.gov>.

The form must be completed and returned within 14 days of the date of this notice. The form requires the following information:

**YOUR CORRECT CONTACT INFORMATION:** Review the party information on the docket sheet and note any incorrect information in writing on the Acknowledgment and Notice of Appearance Form.

The Court will contact one counsel per party or group of collectively represented parties when serving notice or issuing our order. Counsel must designate on the Acknowledgment and Notice of Appearance a lead attorney to accept all notices from this Court who, in turn will, be responsible for notifying any associated counsel.

**CHANGE IN CONTACT INFORMATION:** An attorney or pro se party who does not immediately notify the Court when contact information changes will not receive notices, documents and orders filed in the case.

An attorney and any pro se party who is permitted to file documents electronically in CM/ECF must notify the Court of a change to the user's mailing address, business address, telephone

number, or e-mail. To update contact information, a Filing User must access PACER's Manage My Appellate Filer Account, <https://www.pacer.gov/psco/cgi-bin/cmecf/ea-login.pl>. The Court's records will be updated within 1 business day of a user entering the change in PACER.

A pro se party who is not permitted to file documents electronically must notify the Court of a change in mailing address or telephone number by filing a letter with the Clerk of Court.

CAPTION: In an appeal, the Court uses the district court caption pursuant to FRAP 12(a), 32(a). For a petition for review or original proceeding the Court uses a caption pursuant to FRAP 15(a) or 21(a), respectively. Please review the caption carefully and promptly advise this Court of any improper or inaccurate designations in writing on the Acknowledgment and Notice of Appearance form. If a party has been terminated from the case the caption may reflect that change only if the district court judge ordered that the caption be amended.

APPELLATE DESIGNATIONS: Please review whether appellant is listed correctly on the party listing page of the docket sheet and in the caption. If there is an error, please note on the Acknowledgment and Notice of Appearance Form. Timely submission of the Acknowledgment and Notice of Appearance Form will constitute compliance with the requirement to file a Representation Statement required by FRAP 12(b).

For additional information consult the Court's instructions posted on the website.

Inquiries regarding this case may be directed to 212-857-8503.

**NOTICE OF APPEAL**  
**IN THE UNITED STATES DISTRICT COURT**  
**FOR THE EASTERN DISTRICT OF NEW YORK**

DR. DANIEL HALLER and LONG ISLAND  
SURGICAL PLLC,

*Plaintiffs,*

v.

U.S. DEPARTMENT OF HEALTH AND  
HUMAN SERVICES *et al.*,

*Defendants*

**NOTICE OF APPEAL**

No. 21-cv-7208-AMD

Notice is hereby given (in accordance with this Court’s November 9, 2022 Scheduling Order) that DR. DANIEL HALLER and LONG ISLAND SURGICAL PLLC, hereby appeal to the United States Court of Appeals for the Second Circuit from all parts of the Decision and Order of the Honorable Ann M. Donnelly, denying plaintiffs’ motion for declaratory and injunctive relief concerning the “No Surprise Act” and related “Administrative Procedure Act”, denying a restraining order and injunction, and granting defendants’ motion to dismiss all causes of action, including the seventh amendment claim, fifth amendment takings claim and due process claim, deprivation of common law claims, and claims the Regulations exceed authority by the Act, and entered as a judgment on August 11, 2022.

Dated: November 17, 2022

Respectfully Submitted

*/s/ Nick Wilder, Esq.*  
The Wilder Law Firm  
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New York, NY 10019  
(212) 951-0042  
nick@wilder.law  
*Counsel for plaintiffs*

**U.S. District Court  
Eastern District of New York (Central Islip)  
CIVIL DOCKET FOR CASE #: 2:21-cv-07208-AMD-AYS**

Haller et. al. v. U.S. Department of Health and Human Services  
et. al.

Assigned to: Judge Ann M Donnelly  
Referred to: Magistrate Judge Anne Y. Shields  
Cause: 28:2201 Declaratory Judgement

Date Filed: 12/31/2021  
Date Terminated: 08/11/2022  
Jury Demand: None  
Nature of Suit: 440 Civil Rights: Other  
Jurisdiction: U.S. Government Defendant

**Plaintiff**

**Dr. Daniel Haller**

represented by **Edward A. Smith**  
Abrams, Fensterman, Fensterman, Eisman,  
Formato, Ferrara, Wo  
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*TERMINATED: 09/28/2022*  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

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*ATTORNEY TO BE NOTICED*

**Plaintiff**

**Long Island Surgical PLLC**

represented by **Edward A. Smith**  
(See above for address)  
*TERMINATED: 09/28/2022*  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Justin Tyler Kelton**  
(See above for address)  
*TERMINATED: 09/28/2022*  
*LEAD ATTORNEY*  
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**Nicholas Joseph Wilder**  
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*LEAD ATTORNEY*  
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**Robert A. Spolzino**  
(See above for address)  
*TERMINATED: 09/28/2022*  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Adam Michael Birnbaum**  
(See above for address)  
*TERMINATED: 09/28/2022*  
*ATTORNEY TO BE NOTICED*

**Mordecai Geisler**  
(See above for address)  
*TERMINATED: 09/28/2022*  
*ATTORNEY TO BE NOTICED*

V.

**Defendant**

**U.S. Department of Health and Human Services**  
200 Independence Avenue SW,  
Washington, DC 20201

represented by **Anna Lynn Deffebach**  
DOJ-Civ  
Civil Division- Federal Programs Branch  
1100 L ST NW  
Ste Lst 12104  
Washington, DC 20005  
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**Joel McElvain**  
U.S. Dept of Justice  
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**ATTORNEY TO BE NOTICED**

**Defendant**

**Xavier Becerra**  
*in his official capacity as Secretary of  
Health and Human Services, 200  
Independence Avenue SW, Washington,  
DC 20201*

represented by **Anna Lynn Deffebach**  
(See above for address)  
**ATTORNEY TO BE NOTICED**

**Joel McElvain**  
(See above for address)  
**ATTORNEY TO BE NOTICED**

**Joseph Anthony Marutollo**  
(See above for address)  
**ATTORNEY TO BE NOTICED**

**Defendant**

**U.S. Office of Personnel Management**  
*1900 E Street NW Washington, DC 20415*

represented by **Anna Lynn Deffebach**  
(See above for address)  
**ATTORNEY TO BE NOTICED**

**Joel McElvain**  
(See above for address)  
**ATTORNEY TO BE NOTICED**

**Joseph Anthony Marutollo**  
(See above for address)  
**ATTORNEY TO BE NOTICED**

**Defendant**

**Kiran Ahuja**  
*in her official capacity as Director of the  
U.S. Office of Personnel Management,  
1900 E Street NW Washington, DC 20415*

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**ATTORNEY TO BE NOTICED**

**Joel McElvain**  
(See above for address)  
**ATTORNEY TO BE NOTICED**

**Joseph Anthony Marutollo**  
(See above for address)  
**ATTORNEY TO BE NOTICED**

**Defendant**

**U.S. Department of Labor**  
*200 Constitution Avenue NW  
Washington, DC 20210*

represented by **Anna Lynn Deffebach**  
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**ATTORNEY TO BE NOTICED**

**Joel McElvain**

(See above for address)  
**ATTORNEY TO BE NOTICED**

**Joseph Anthony Marutollo**  
 (See above for address)  
**ATTORNEY TO BE NOTICED**

**Defendant**

**Martin J. Walsh**  
*in his official capacity as Secretary of  
 Labor, 200 Constitution Avenue NW  
 Washington, DC 20210*

represented by **Anna Lynn Deffebach**  
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**Joel McElvain**  
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**ATTORNEY TO BE NOTICED**

**Joseph Anthony Marutollo**  
 (See above for address)  
**ATTORNEY TO BE NOTICED**

**Defendant**

**U.S. Department of the Treasury**  
*1500 Pennsylvania Avenue NW,  
 Washington DC 20220*

represented by **Anna Lynn Deffebach**  
 (See above for address)  
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**Joel McElvain**  
 (See above for address)  
**ATTORNEY TO BE NOTICED**

**Joseph Anthony Marutollo**  
 (See above for address)  
**ATTORNEY TO BE NOTICED**

**Defendant**

**Janet Yellen**  
*in her official capacity as Secretary of the  
 Treasury, 1500 Pennsylvania Avenue NW  
 Washington, DC 20220*

represented by **Anna Lynn Deffebach**  
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**ATTORNEY TO BE NOTICED**

**Joel McElvain**  
 (See above for address)  
**ATTORNEY TO BE NOTICED**

**Joseph Anthony Marutollo**  
 (See above for address)  
**ATTORNEY TO BE NOTICED**

Date Filed	#	Docket Text
12/31/2021	<u>1</u>	COMPLAINT against All Defendants filing fee \$ 402, receipt number ANYEDC-15153913 Was the Disclosure Statement on Civil Cover Sheet completed -No., filed by Long Island Surgical PLLC, Daniel Haller. (Kelton, Justin) (Entered: 12/31/2021)
01/03/2022		Notice: Re: Incomplete Civil Cover Sheet. The Clerk's Office cannot assign this case without a completed Civil Cover Sheet. Please submit a Civil Cover Sheet. This event can be found under the event Other Filings - Other Documents - Proposed Summons/Civil Cover Sheet. (Flanagan, Doreen) (Entered: 01/03/2022)
01/03/2022	<u>2</u>	Civil Cover Sheet.. by Daniel Haller, Long Island Surgical PLLC (Kelton, Justin) (Entered: 01/03/2022)
01/04/2022	<u>3</u>	This attorney case opening filing has been checked for quality control. See the attachment for corrections that were made. (Flanagan, Doreen) (Entered: 01/04/2022)

01/04/2022		Case Assigned to Judge Ann M Donnelly and Magistrate Judge Anne Y. Shields. Please download and review the Individual Practices of the assigned Judges, located on our <a href="#">website</a> . Attorneys are responsible for providing courtesy copies to judges where their Individual Practices require such. (Flanagan, Doreen) (Entered: 01/04/2022)
01/04/2022	<u>4</u>	In accordance with Rule 73 of the Federal Rules of Civil Procedure and Local Rule 73.1, the parties are notified that <i>if</i> all parties consent a United States magistrate judge of this court is available to conduct all proceedings in this civil action including a (jury or nonjury) trial and to order the entry of a final judgment. Attached to the Notice is a blank copy of the consent form that should be filled out, signed and filed electronically <b>only if all</b> parties wish to consent. The form may also be accessed at the following link: <a href="http://www.uscourts.gov/uscourts/FormsAndFees/Forms/AO085.pdf">http://www.uscourts.gov/uscourts/FormsAndFees/Forms/AO085.pdf</a> . <b>You may withhold your consent without adverse substantive consequences. Do NOT return or file the consent unless all parties have signed the consent.</b> (Flanagan, Doreen) (Entered: 01/04/2022)
02/15/2022	<u>5</u>	NOTICE of Appearance by Adam Michael Birnbaum on behalf of All Plaintiffs (aty to be noticed) (Birnbaum, Adam) (Entered: 02/15/2022)
02/15/2022	<u>6</u>	Proposed Summons. Re <u>2</u> Proposed Summons/Civil Cover Sheet by Daniel Haller, Long Island Surgical PLLC (Attachments: # <u>1</u> Proposed Summons for Director Kiran Ahuja, # <u>2</u> Proposed Summons for U.S. Department of Labor, # <u>3</u> Proposed Summons for U.S. Department of Health and Human Services, # <u>4</u> Proposed Summons for U.S. Office of Personnel Management, # <u>5</u> Proposed Summons for Secretary Xavier Becerra, # <u>6</u> Proposed Summons for Secretary Martin J. Walsh, # <u>7</u> Proposed Summons for Secretary Janet Yellen, # <u>8</u> Proposed Summons for U.S. Department of the Treasury) (Birnbaum, Adam) (Entered: 02/15/2022)
02/18/2022		Your proposed summons was not issued for one of the following reasons: <b>The CLERK OF COURT name needs to be updated., As of 2/1/2022, Brenna B. Mahoney is the Clerk of Court for the Eastern District of New York.</b>  Please correct and resubmit using Proposed Summons/Civil Cover Sheet. *Also please submit one proposed summons with attached rider. (Guzzi, Roseann) (Entered: 02/18/2022)
02/18/2022	<u>7</u>	Proposed Summons. Re <u>2</u> Proposed Summons/Civil Cover Sheet by Daniel Haller, Long Island Surgical PLLC (Birnbaum, Adam) (Entered: 02/18/2022)
02/22/2022	<u>8</u>	Summons Issued as to Kiran Ahuja, Xavier Becerra, U.S. Department of Health and Human Services, U.S. Department of Labor, U.S. Department of the Treasury, U.S. Office of Personnel Management, Martin J. Walsh, Janet Yellen. (Guzzi, Roseann) (Entered: 02/22/2022)
03/09/2022	<u>9</u>	NOTICE of Appearance by Mordecai Geisler on behalf of All Plaintiffs (aty to be noticed) (Geisler, Mordecai) (Entered: 03/09/2022)
03/09/2022	<u>10</u>	AFFIDAVIT of Service for Summons and Complaint served on U.S. Department of Health and Human Services on March 2, 2022, filed by Daniel Haller, Long Island Surgical PLLC. (Geisler, Mordecai) (Entered: 03/09/2022)
03/09/2022	<u>11</u>	AFFIDAVIT of Service for Summons and Complaint served on Xavier Becerra, Secretary, Department of Health and Human Services on March 2, 2022, filed by Daniel Haller, Long Island Surgical PLLC. (Geisler, Mordecai) (Entered: 03/09/2022)
03/09/2022	<u>12</u>	AFFIDAVIT of Service for Summons and Complaint served on U.S. Office of Personnel Management on March 2, 2022, filed by Daniel Haller, Long Island Surgical PLLC. (Geisler, Mordecai) (Entered: 03/09/2022)
03/09/2022	<u>13</u>	AFFIDAVIT of Service for Summons and Complaint served on Kiran Ahuja, Director, U.S. Office of Personnel Management on March 2, 2022, filed by Daniel Haller, Long Island Surgical PLLC. (Geisler, Mordecai) (Entered: 03/09/2022)
03/09/2022	<u>14</u>	AFFIDAVIT of Service for Summons and Complaint served on U.S. Department of Labor on March 2, 2022, filed by Daniel Haller, Long Island Surgical PLLC. (Geisler, Mordecai) (Entered: 03/09/2022)



03/09/2022	<u>15</u>	AFFIDAVIT of Service for Summons and Complaint served on Martin J. Walsh, Secretary, U.S. Department of Labor on March 2, 2022, filed by Daniel Haller, Long Island Surgical PLLC. (Geisler, Mordecai) (Entered: 03/09/2022)
03/09/2022	<u>16</u>	AFFIDAVIT of Service for Summons and Complaint served on U.S. Department of Treasury on March 2, 2022, filed by Daniel Haller, Long Island Surgical PLLC. (Geisler, Mordecai) (Entered: 03/09/2022)
03/09/2022	<u>17</u>	AFFIDAVIT of Service for Summons and Complaint served on Janet Yellen, Secretary, Department of Treasury on March 2, 2022, filed by Daniel Haller, Long Island Surgical PLLC. (Geisler, Mordecai) (Entered: 03/09/2022)
03/09/2022	<u>18</u>	AFFIDAVIT of Service for Summons and Complaint served on Merrick Garland, U.S. Attorney General on March 2, 2022, filed by Daniel Haller, Long Island Surgical PLLC. (Geisler, Mordecai) (Entered: 03/09/2022)
03/09/2022	<u>19</u>	AFFIDAVIT of Service for Summons and Complaint served on U.S. Department of Justice, Assistant Attorney General for Administration on March 2, 2022, filed by Daniel Haller, Long Island Surgical PLLC. (Geisler, Mordecai) (Entered: 03/09/2022)
03/09/2022	<u>20</u>	AFFIDAVIT of Service for Summons and Complaint served on U.S. Attorney, Eastern District of New York on March 2, 2022, filed by Daniel Haller, Long Island Surgical PLLC. (Geisler, Mordecai) (Entered: 03/09/2022)
04/01/2022	<u>21</u>	MOTION for Preliminary Injunction <i>Order to Show Cause</i> by Daniel Haller, Long Island Surgical PLLC. (Spolzino, Robert) (Entered: 04/01/2022)
04/01/2022	<u>22</u>	AFFIDAVIT/DECLARATION in Support re <u>21</u> MOTION for Preliminary Injunction <i>Order to Show Cause</i> filed by Daniel Haller, Long Island Surgical PLLC. (Spolzino, Robert) (Entered: 04/01/2022)
04/01/2022	<u>23</u>	MEMORANDUM in Support re <u>22</u> Affidavit in Support of Motion, <u>21</u> MOTION for Preliminary Injunction <i>Order to Show Cause</i> filed by Daniel Haller, Long Island Surgical PLLC. (Spolzino, Robert) (Entered: 04/01/2022)
04/01/2022		<p>ORDER denying <u>21</u> Motion for Preliminary Injunction.</p> <p>The plaintiffs submit <u>21</u> an "<i>ex parte</i>" application for a temporary restraining order and order to show cause why Defendants should not be preliminarily enjoined from implementing, enforcing, or otherwise carrying out the specific provisions of the "No Surprises Act and governing regulations. "No <i>ex parte</i> order, or order to show cause to bring on a motion, will be granted except upon a clear and specific showing by affidavit of good and sufficient reasons why a procedure other than by notice of motion is necessary." <i>Gullas v. 37-31 73rd St. Owners Corp.</i>, No. 12-CV-2301, 2012 WL 1655520, at *1 (E.D.N.Y. May 10, 2012) (quoting Loc. Civ. R. 6.1(d)). "A temporary restraining order may be issued without notice only if 'specific facts in an affidavit or a verified complaint clearly show that immediate and irreparable injury, loss, or damage will result to the movant before the adverse party can be heard in opposition.'" <i>FEI Hong Kong Co. Ltd. v. GlobalFoundries, Inc.</i>, No. 20-CV-2342, 2020 WL 1444956, at *2 (S.D.N.Y. Mar. 25, 2020) (quoting Fed. R. Civ. P. 65(b)(1)(A)).</p> <p>There is no discussion in the plaintiffs' submissions <u>21</u> <u>22</u> <u>23</u> about why <i>ex parte</i> relief is appropriate. The plaintiffs have not made a clear and specific showing by affidavit of good and sufficient reasons why a procedure other than by notice of motion is necessary. Ordered by Judge Ann M. Donnelly on 4/1/2022. (Mathew, Joshua) (Entered: 04/01/2022)</p>
04/04/2022	<u>24</u>	NOTICE of Appearance by Anna Lynn Deffebach on behalf of All Defendants (aty to be noticed) (Deffebach, Anna) (Entered: 04/04/2022)
04/04/2022	<u>25</u>	MOTION for Preliminary Injunction by Daniel Haller, Long Island Surgical PLLC. (Spolzino, Robert) (Entered: 04/04/2022)
04/04/2022		ORDER. The Court has received the plaintiffs' notice <u>25</u> of motion for a preliminary injunction. The plaintiffs are directed to submit a brief letter advising the Court whether they will file a declaration and memorandum in support of the motion, or if they intend to rely on the previously-filed submissions <u>22</u> <u>23</u> . Ordered by Judge Ann

		M. Donnelly on 4/4/2022. (Mathew, Joshua) (Entered: 04/04/2022)
04/05/2022	<u>26</u>	Letter <i>in response to Court's minute entry of April 4, 2022</i> by Daniel Haller, Long Island Surgical PLLC (Kelton, Justin) (Entered: 04/05/2022)
04/05/2022		SCHEDULING ORDER: The defendants are directed to file their opposition to the plaintiffs' motion for preliminary injunction by April 19, 2022, and the plaintiffs are directed to file their reply, if any, by April 26, 2022. A hearing on the plaintiffs' motion for a preliminary injunction is scheduled for May 3, 2022 at 3:30 p.m. in Courtroom 4G North. Ordered by Judge Ann M. Donnelly on 4/5/2022. (Mathew, Joshua) (Entered: 04/05/2022)
04/07/2022	<u>27</u>	Letter by Kiran Ahuja, Xavier Becerra, U.S. Department of Health and Human Services, U.S. Department of Labor, U.S. Department of the Treasury, U.S. Office of Personnel Management, Martin J. Walsh, Janet Yellen (Deffebach, Anna) (Entered: 04/07/2022)
04/08/2022	<u>28</u>	Letter <i>in Response to Defendants' Letter dated April 7, 2022</i> by Daniel Haller, Long Island Surgical PLLC (Geisler, Mordecai) (Entered: 04/08/2022)
04/08/2022		<p>SCHEDULING ORDER: The Court has received the parties' letters <u>27</u> <u>28</u> . The defendants' request to waive the pre-motion conference requirement in anticipation of a motion to dismiss is granted.</p> <p>The parties state that one or more non-parties will seek to participate in this action as <i>amici curiae</i>, but do not identify them. "District Courts have broad discretion in deciding whether to accept <i>amicus</i> briefs." <i>Jamaica Hosp. Med. Ctr., Inc. v. United Health Grp., Inc.</i>, 584 F. Supp. 2d 489, 497 (E.D.N.Y. 2008) (citation omitted). "Additionally, the circumstances under which an <i>amicus</i> brief is considered 'desirable' are limited[.]" <i>Id.</i> The parties have not shown that those circumstances are present here.</p> <p>The revised briefing schedule does not include <i>amicus</i> briefing, but accommodated the defendants' anticipated motion to dismiss. The defendants' memorandum in opposition to the plaintiffs' motion for a preliminary injunction and in support of their motion to dismiss is due by April 26, 2022 and must not exceed 40 pages. The plaintiffs' memorandum in opposition to the defendants' motion to dismiss and reply in support of their motion for a preliminary injunction is due by May 24, 2022 and must not exceed 40 pages. The defendants' reply in support of their motion to dismiss is due by May 31, 2022 and must not exceed 10 pages. A hearing on the plaintiffs' motion for a preliminary injunction and the defendants' motion to dismiss is scheduled for June 7, 2022 at 10:00 a.m. in Courtroom 4G North. Ordered by Judge Ann M. Donnelly on 4/8/2022. (Mathew, Joshua) (Entered: 04/08/2022)</p>
04/26/2022	<u>29</u>	Notice of MOTION to Dismiss for Failure to State a Claim <i>and Opposition to Plaintiffs' Motion for a Preliminary Injunction</i> by Kiran Ahuja, Xavier Becerra, U.S. Department of Health and Human Services, U.S. Department of Labor, U.S. Department of the Treasury, U.S. Office of Personnel Management, Martin J. Walsh, Janet Yellen. (Deffebach, Anna) (Entered: 04/26/2022)
04/26/2022	<u>30</u>	MEMORANDUM in Opposition re <u>25</u> MOTION for Preliminary Injunction , MEMORANDUM in Support of <i>Defendants' Motion to Dismiss</i> filed by All Defendants. (Deffebach, Anna) (Entered: 04/26/2022)
05/24/2022	<u>31</u>	MEMORANDUM in Opposition to <i>Defendants' Motion to Dismiss, and in Further Support of Plaintiffs' Motion for a Preliminary Injunction</i> filed by All Plaintiffs. (Spolzino, Robert) (Entered: 05/24/2022)
05/30/2022	<u>32</u>	NOTICE of Appearance by Joseph Anthony Marutollo on behalf of All Defendants (aty to be noticed) (Marutollo, Joseph) (Entered: 05/30/2022)
05/31/2022	<u>33</u>	REPLY in Support re <u>29</u> Notice of MOTION to Dismiss for Failure to State a Claim <i>and Opposition to Plaintiffs' Motion for a Preliminary Injunction</i> filed by All Defendants. (Deffebach, Anna) (Entered: 05/31/2022)
06/02/2022	<u>34</u>	NOTICE of Appearance by Joel McElvain on behalf of All Defendants (aty to be noticed) (McElvain, Joel) (Entered: 06/02/2022)

06/07/2022		Minute Entry for proceedings held before Judge Ann M. Donnelly: Motion Hearing held on 6/7/2022 re <u>25</u> Motion for Preliminary Injunction filed by the plaintiffs and <u>29</u> Motion to Dismiss for Failure to State a Claim filed by the defendants. Robert Spolzino and Justin Kelton appeared for the plaintiffs. Anna Deffebach, Joel McElvain and Joseph Marutollo appeared for the defendants. Case called. Discussion held. (Court Reporter Michele Lucchese.) (Mathew, Joshua) (Entered: 06/07/2022)
08/10/2022	<u>35</u>	MEMORANDUM DECISION AND ORDER. The plaintiffs' motion for preliminary injunction is denied. The plaintiffs' Seventh Amendment and takings claims are dismissed with prejudice. Their due process claim is unripe and is dismissed for lack of subject matter jurisdiction without prejudice. Ordered by Judge Ann M. Donnelly on 8/10/2022. (Greene, Donna) (Entered: 08/10/2022)
08/11/2022	<u>36</u>	JUDGMENT: It is ORDERED and ADJUDGED that the plaintiffs' motion for preliminary injunction is denied; that the plaintiffs' Seventh Amendment and takings claims are dismissed with prejudice; and that their due process claim is unripe and is dismissed for lack of subject matter jurisdiction without prejudice. Ordered by Jalitza Poveda, Deputy Clerk on behalf of Brenna B. Mahoney, Clerk of Court on 8/11/2022. (Latka-Mucha, Wieslawa) (Entered: 08/12/2022)
09/16/2022	<u>37</u>	Letter MOTION to Withdraw as Attorney by Daniel Haller, Long Island Surgical PLLC. (Kelton, Justin) (Entered: 09/16/2022)
09/28/2022		ORDER granting <u>37</u> Motion to Withdraw as Attorney: In light of the fact that this matter is closed, and all claims have been dismissed, the application is granted. Attorney Justin Tyler Kelton; Edward A. Smith; Robert A. Spolzino; Adam Michael Birnbaum and Mordecai Geisler terminated. So Ordered by Magistrate Judge Anne Y. Shields on 9/28/2022. (Minerva, Deanna) (Entered: 09/28/2022)
10/31/2022	<u>38</u>	NOTICE of Appearance by Nicholas Joseph Wilder on behalf of All Plaintiffs (aty to be noticed) (Wilder, Nicholas) (Entered: 10/31/2022)
10/31/2022	<u>39</u>	First MOTION for Extension of Time to File <i>Notice of Appeal</i> by Daniel Haller, Long Island Surgical PLLC. (Attachments: # <u>1</u> Affidavit in Support, # <u>2</u> Exhibit Judgment, # <u>3</u> Exhibit Physician's Letter, # <u>4</u> Exhibit Surgery Notes, # <u>5</u> Exhibit Aff. of Goldberg, # <u>6</u> Exhibit Notice of Appeal, # <u>7</u> Memorandum in Support Memorandum of Law) (Wilder, Nicholas) (Entered: 10/31/2022)
10/31/2022	<u>40</u>	NOTICE by Daniel Haller, Long Island Surgical PLLC <i>Notice of Appeal</i> (Wilder, Nicholas) (Entered: 10/31/2022)
11/01/2022		SCHEDULING ORDER directing the defendants to respond to <u>39</u> the plaintiff's motion to extend the time to file a notice of appeal before November 7, 2022. Ordered by Judge Ann M. Donnelly on 11/1/2022. (CG) (Entered: 11/01/2022)
11/02/2022	<u>41</u>	RESPONSE to Motion re <u>39</u> First MOTION for Extension of Time to File <i>Notice of Appeal Notifying Court of Defendants' Non-Opposition</i> filed by All Defendants. (Deffebach, Anna) (Entered: 11/02/2022)
11/03/2022		ORDER granting <u>39</u> the plaintiff's motion to extend time to file a notice of appeal. Because one of the parties is a United States agency, the plaintiff was required to file his notice of appeal within 60 days after the entry of judgment. Fed. R. App. P. 4(a)(1)(B). Judgment entered on the court's order denying the plaintiff's motion for a preliminary injunction and granting the defendant's motion to dismiss on August 11, 2022. Accordingly, the plaintiff's time to file a notice of appeal lapsed on October 11, 2022. However, the Court may extend the time to file a notice of appeal for good cause or excusable neglect if the motion is made within 30 days of the expiration. Fed. R. App. P. 4(a)(5)(A). The plaintiff filed his motion for an extension of time on October 31, 2022. An excusable neglect standard is appropriate here because the plaintiff's delay was partially caused by his substitution of counsel. <i>Alexander v. Saul</i> , 5 F.4th 139, 142 (2d Cir. 2021), cert. denied sub nom. <i>Alexander v. Kijakazi</i> , 212 L.Ed. 2d 548, 142 S. Ct. 1461 (2022) ("[t]he excusable neglect standard applies when the need for an extension results from factors within the movant's control.") The Court finds that the plaintiff counsel's neglect was excusable here, because the illness which prevented a timely filing was "so physically and mentally disabling that counsel [was] unable to file the appeal[.]" <i>Michael Aksman, v. Greenwich Quantitative Research LP</i> , No. 20-CV-8045, 2021 WL 6551082, at *2 (S.D.N.Y. Dec. 21, 2021). Ordered by Judge

		Ann M. Donnelly on 11/3/2022. (CG) (Entered: 11/03/2022)
11/09/2022	<u>42</u>	Letter <i>Concerning the 1-3-22 Order</i> by Daniel Haller, Long Island Surgical PLLC (Wilder, Nicholas) (Entered: 11/09/2022)
11/09/2022		SCHEDULING ORDER: The Court acknowledges receipt of <u>42</u> the plaintiff's letter. The plaintiff must file his notice of appeal before November 17, 2022. Ordered by Judge Ann M. Donnelly on 11/9/2022. (CG) (Entered: 11/09/2022)
11/17/2022	<u>43</u>	NOTICE by Daniel Haller, Long Island Surgical PLLC <i>Notice of Appeal</i> (Wilder, Nicholas) (Entered: 11/17/2022)
11/29/2022		Incorrect Case/Document/Entry Information. As per email from Central Islip clerks office advised that Counsel filed document #43 incorrectly as a notice. Counsel shall refile. (RG) (Entered: 11/29/2022)
11/29/2022		SCHEDULING ORDER: The plaintiff is directed to file a corrected notice of appeal by November 30, 2022. Ordered by Judge Ann M. Donnelly on 11/29/2022. (CG) (Entered: 11/29/2022)
11/30/2022	<u>44</u>	NOTICE OF APPEAL by Daniel Haller, Long Island Surgical PLLC. Filing fee \$ 505, receipt number ANYEDC-16179990. (Wilder, Nicholas) (Entered: 11/30/2022)
11/30/2022		Electronic Index to Record on Appeal sent to US Court of Appeals. <u>44</u> Notice of Appeal Documents are available via Pacer. For docket entries without a hyperlink or for documents under seal, contact the court and we'll arrange for the document(s) to be made available to you. (VJ) (Entered: 11/30/2022)