

[NOT YET SCHEDULED FOR ORAL ARGUMENT]

IN THE UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

Novartis Pharmaceuticals Corp.,

Plaintiff-Appellee,

v.

Carole Johnson, in her official capacity as  
Administrator of the U.S. Health  
Resources and Services Administration,  
et al.,

Defendants-Appellants.

No. 21-5299

**CERTIFICATE AS TO PARTIES, RULINGS, AND  
RELATED CASES**

Defendant-appellant certifies the following information regarding the parties, rulings, and related cases in its appeal. D.C. Cir. R. 28(a)(1).

**A. Parties**

Plaintiff-appellee Novartis Pharmaceuticals Corp. sued to challenge agency letters stating that its policies were in violation of 42 U.S.C. § 256b. Defendants-appellants were Diana Espinosa, in her official capacity as Acting Administrator of the U.S. Health Resources and Services Administration (HRSA), and Xavier Becerra, in his official capacity as Secretary of Health and Human Services. After the district court

proceedings concluded, Carole Johnson was appointed as Administrator of the Health Resources and Services Administration, replacing Diana Espinosa.

In the district court, plaintiff stated that its parent corporation is Novartis Finance Corporation, and that it is an indirect, wholly-owned subsidiary of Novartis AG. There have been no intervenors. The amici in the district court were the American Hospital Association, 340B Health, America's Essential Hospitals, Association of American Medical Colleges, National Association of Children's Hospital's d/b/a Children's Hospital Association, and American Society of Health-System Pharmacists. Amici stated that they were not corporations.

### **B. Rulings Under Review**

The ruling under review was issued on November 5, 2021, by District Court Judge Dabney L. Friedrich. The opinion is not published in the Federal Supplement 3d, but is accessible at 2021 WL 5161783. The district court granted partial summary judgment to plaintiff and vacated violation letters issued by HRSA. *Id.* at \*9.

### **C. Related Cases**

This case has not previously been before this Court or any other court. In the district court, the case was consolidated with *United Therapeutics*

*Corp. v. Espinosa*, No. 21-1686 (D.D.C.), and the district court issued a single opinion for both cases. The consolidated case has been docketed in this Court as *United Therapeutics Corp. v. Espinosa*, No. 21-5304 (D.C. Cir.). Appeals involving similar violation letters have been docketed in the Third and Seventh Circuits. *See Sanofi-Aventis U.S., LLC v. HHS*, No. 21-3167 (3d Cir.); *Eli Lilly and Co. v. Becerra*, No. 21-3128 (7th Cir.).

Respectfully submitted.

/s/ Daniel Aguilar  
DANIEL AGUILAR  
(202) 514-5432  
Attorney, Appellate Staff  
Civil Division  
U.S. Department of Justice  
950 Pennsylvania Ave., N.W.  
Room 7266  
Washington, DC 20530

JANUARY 2022