

IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

ELI LILLY AND CO., et al.,

Plaintiffs-Appellees,

v.

UNITED STATES DEPARTMENT OF HEALTH &
HUMAN SERVICES, et al.,

Defendants-Appellants,

No. 21-3405

DOCKETING STATEMENT

Pursuant to Circuit Rules 3(c)(1) and 28(a), the federal defendants-appellants file the docketing statement in this appeal.

On January 12, 2021, plaintiffs Eli Lilly and Co. and Lilly USA, LLC, filed suit in district court, challenging an advisory opinion, enforcement letter, and a rulemaking issued by the federal defendants. *Eli Lilly & Co. v. U.S. Dep't of Health and Human Servs.*, No. 21-cv-81 (N.D. Ind.). The defendants are the U.S. Department of Health and Human Services (HHS), the Health Resources and Services Administration (HRSA), Carole Johnson in her official capacity as Administrator of HRSA, Xavier Becerra in his official capacity as

Secretary of HHS, and Daniel J. Barry in his official capacity as Acting General Counsel of HHS.

The district court issued partial summary judgment, holding that the advisory opinion issued by the HHS General Counsel was arbitrary and capricious, and holding that the enforcement letter issued by HRSA was arbitrary and capricious. Order at 60-62, Dkt. 144, *Eli Lilly Co. v. U.S. Department of Health and Human Servs.*, No. 21-81 (S.D. Ind. Oct. 29, 2021). The court rejected plaintiffs' arguments that the enforcement letter was beyond the federal defendants' statutory authority, *id.* at 37-50, or was otherwise unconstitutional, *id.* at 50-52. The court vacated those contested actions and remanded the enforcement letter to the agency for further consideration. *Id.* at 62. The court issued a separate partial judgment pursuant to Federal Rule of Civil Procedure 54(b). Partial Final Judgment, Dkt. 145, *Eli Lilly Co. v. U.S. Department of Health and Human Servs.*, No. 21-81 (S.D. Ind. Oct. 29, 2021).

The district court had jurisdiction under 28 U.S.C. § 1331 and 5 U.S.C. § 702. The district court issued partial summary judgment on October 29, 2021. The federal defendants filed a timely appeal on December 28, 2021. *See* Fed. R. App. P. 4(a)(1)(B) (60-day time limit).

Plaintiffs filed their own appeal on November 10, 2021. That appeal is docketed in this Court as *Eli Lilly And Co. v. Becerra*, No. 21-3128 (7th Cir.), and this Court *sua sponte* consolidated the federal defendants' appeal with plaintiffs' earlier noticed appeal.

In that consolidated appeal, the Court directed the parties to address whether it has jurisdiction over an immediate appeal from the district court's partial summary judgment, or whether it was necessary to remand the case to the district court so that the judgment would “declare specifically and separately the respective rights of the parties.” Order, *Eli Lilly & Co. v. Becerra*, No. 21-3128 (7th Cir. Nov. 16, 2021). In response to that order, the federal defendants explained that it may be necessary to remand the case to the district court for the limited purpose of modifying the judgment to address those concerns, as this Court has done in other cases. *See Philadelphia Indemnity Ins. Co. v. Chicago Trust Co.*, 930 F.3d 910, 912 (7th Cir. 2019) (“We remanded with instructions to enter a new judgment” and “[t]he district judge complied”); *Greenhill v. Vartanian*, 917 F.3d 984, 987 (7th Cir. 2019) (the Court “remand[ed] the case with instructions to enter a proper declaratory judgment” and “[t]he district court promptly complied”).

But recognizing that the Court may disagree and conclude that the judgment is sufficient and no remand is necessary, and it can immediately exercise jurisdiction under 28 U.S.C. § 1291, the federal defendants noticed their own appeal to comply with the 60-day time limit of Federal Rule of Appellate Procedure 4(a)(1)(B).

Respectfully submitted,

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JANUARY 2022