

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT**

STATE OF FLORIDA, et al.  
*Appellants,*

v.

DEPARTMENT OF HEALTH AND  
HUMAN SERVICES, et al.  
*Appellees.*

No. 25-11927

**PLAINTIFFS-APPELLANTS' RESPONSE TO THE COURT'S  
JURISDICTIONAL QUESTION**

## **CERTIFICATE OF INTERESTED PERSONS AND CORPORATE DISCLOSURE STATEMENT**

Plaintiffs-Appellants State of Florida, Florida Department of Management Services, Florida Agency for Health Care Administration, and Catholic Medical Association (“Plaintiffs”), file this Certificate of Interested Persons and Corporate Disclosure Statement pursuant to Eleventh Circuit Rules 26.1-1 through 26.1-3.

No publicly traded company has an interest in the outcome of this appeal. The following individuals and entities may have an interest in the outcome of this case:

Alliance Defending Freedom

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Blake, Julie Marie, Alliance Defending Freedom

Bowman, Matthew, Alliance Defending Freedom

Boyden Gray PLLC

Catholic Medical Association

Centers for Medicare and Medicaid Services

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Department of Health and Human Services

DeSousa, Jeffrey DeSousa, Florida Attorney General's Office

Florida

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Holland, Liam C., U.S. Department of Justice

Honold, Ashley Cheung, U.S. Department of Justice

Huang, Allen L., Florida Attorney General's Office

Jung, William Frederic, U.S. District Judge

Kaiser, Rachel T., of Nashville, Tennessee

Kehoe, Gregory W., U.S. Attorney for the Middle District of Florida

Kennedy, Jr., Robert F., Secretary, Department of Health and  
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Pope, Allison Holly, Alliance Defending Freedom

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Sherwood, Zachary, U.S. Department of Justice

Stannard, Paula M., Director, Office for Civil Rights, Department  
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Van Meter, Quentin L. of Atlanta, Georgia

## INTRODUCTION

As explained below, this Court has appellate jurisdiction over the June 6, 2025, appeal under 28 U.S.C. § 1291 for two reasons: First, the orders it appeals are final, and second, even if they are not final, the appeal also relates forward to the entry of a June 9 dismissal order that is final. But in any event, Plaintiffs filed a separate appeal on June 16, 2025, that arises from the later June 9 dismissal order. Plaintiffs have moved to consolidate both appeals. Consolidating the appeals is the proper course, and doing so moots any technical questions about the Court's appellate jurisdiction or the timeliness of either appeal. Resolving this jurisdictional question is therefore unnecessary. The Court should instead consolidate the appeals and moot the jurisdictional question.

## BACKGROUND

To support this response, Plaintiffs provide the following background:

1. On May 6, 2024, Plaintiffs filed this civil action. *See State of Florida, et al. v. Department of Health and Human Services, et al.*, No. 8:24-cv-01080 (M.D. Fla., May 6, 2024), Dkt. No. 1.<sup>1</sup> The complaint

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<sup>1</sup> References to the district court CM/ECF docket are labeled “Dkt. No. #.”

challenges a final rule promulgated by the United States Department of Health and Human Services entitled “*Nondiscrimination in Health Programs and Activities*,” 89 Fed. Reg. 37,522 (May 6, 2024) (“Final Rule”).

2. On July 3, 2024, the district court granted Plaintiffs’ motion for preliminary relief, staying and preliminarily enjoining the enforcement of specific provisions of the Final Rule “throughout the State of Florida.” *Florida v. U.S. Dep’t of Health & Hum. Servs.*, 739 F. Supp. 3d 1091, 1117 (M.D. Fla. 2024).

3. On August 30, 2024, Defendants appealed this interlocutory order. Dkt. No. 46 (docketed as Case No. 24-12826 (11th Cir.)); 28 U.S.C. § 1292(a)(1).

4. On December 13, 2024, while the interlocutory appeal was pending, the district court directed the clerk “to administratively close this case,” while noting that “[a]ny party may reopen at any time by filing a motion.” Dkt. No. 62.

5. Defendants later voluntarily moved to this dismiss their interlocutory appeal, and this Court dismissed it on April 3, 2025, with

the dismissal order operating as the Court's mandate. No. 24-12826, ECF No. 52-1; *see* 11th Cir. R. 41-4.

6. On April 9, 2025, following dismissal of the interlocutory appeal, the district court entered the following order:

ENDORSED ORDER: Upon consideration of the Eleventh Circuit's Order of Dismissal and Mandate, the Clerk is directed to lift the stay and convert the administrative closure into a full closure.

Dkt. No. 71.

7. Because the Eleventh Circuit only dismissed an interlocutory appeal, and because the district court had yet to enter a final judgment, Plaintiffs were confused by this unprompted "full closure" order. To address this confusion, Plaintiffs moved to reopen and to clarify whether the April 9, 2025, "full closure" order was a final judgment and whether it dissolved the July 3, 2024, order granting preliminary relief. Dkt. No. 73.

8. Defendants responded that, to the extent the April 9, 2025, order "caused confusion on the part of Plaintiffs," the proper remedy was to vacate the "full closure" order. Dkt. No. 75, at 3. Defendants also explained that pursuant to several executive orders, Defendants were re-

evaluating the Final Rule. To this day, however, Defendants have not proposed any repeal of the rule.

9. On June 5, 2025, the district court entered the following order:

ENDORSED ORDER denying 73 Motion to Reopen Case; denying 73 Motion for Reconsideration / Clarification. *There is no case or controversy presently pending.*

Dkt. No. 76 (emphasis added).

10. Plaintiffs filed their initial notice of appeal the next day, appealing both the April 9 and the June 5, 2025, orders. Dkt. No. 77 (“June 6 appeal”). This Court docketed the June 6 appeal as Case No. 25-11927.

11. Three days after the June 6 appeal, the district court entered the following order:

ENDORSED ORDER: The Clerk will dismiss this case without prejudice as moot and not capable of repetition within any reasonable time frame.

Dkt. No. 79.

12. On June 16, 2025, Plaintiffs also appealed this order. Dkt. No. 80 (“June 16 appeal”). This Court docketed the June 16 appeal as Case No. 25-12095.

13. On June 24, 2025, Plaintiffs moved to consolidate the appeals in Case Nos. 25-11927 and 25-12095 because they arise from the same



civil action, involve the same parties, and involve the same issue: whether this civil action is moot. ECF No. 14. The Court has not acted on the pending motion to consolidate.

14. On July 2, 2025, this Court requested that the parties address whether the June 6 appeal in Case No. 25-11927 arises from a final or otherwise appealable judgment. ECF No. 18-2.

### **RESPONSE**

Yes, this Court has appellate jurisdiction over the June 6 appeal under 28 U.S.C. § 1291. In the June 6 appeal, Plaintiffs appeal orders issued by the district court on April 9 and June 5. The first of those orders “convert[ed] the administrative closure into a full closure.” Dkt. No. 71. The second order denied Plaintiffs’ motion to reopen the case and clarify whether the April 9 order is a final judgment because “[t]here is no case or controversy presently pending.” Dkt. No. 76. Construed together at least, these orders amount to a final judgment dismissing the case for lack of jurisdiction. Even if they are not final orders, however, the orders also merge with the district court’s later June 9, 2025, order. That order dismisses the case without prejudice on grounds of mootness based on the lack of a case or controversy. That action is undoubtedly a final

judgment, and the appeal of the prior orders relates forward to that final order and may not be dismissed as premature. There is therefore no basis whatsoever to dismiss the June 6 appeal for lack of appellate jurisdiction.

Rather, the proper course is to consolidate the appeals, as Plaintiffs have requested, which would moot the Court’s jurisdictional question and resolve any questions about the timeliness of either appeal.

**A. THE APRIL 9 AND JUNE 5 ORDERS ARE FINAL**

This Court has explained that “in evaluating whether a district court’s order is final and appealable, we look to the substance of the order—not the label.” *Gov’t Emps. Ins. Co. v. Glassco, Inc.*, 58 F.4th 1338, 1345 (11th Cir. 2023) (quoting *Young v. Prudential Ins. Co. of Am.*, 671 F.3d 1213, 1215 (11th Cir. 2012)). Accordingly, that a district court labels of the order as a closure rather than a dismissal was “not dispositive of finality.” *Martinez v. Carnival Corp.*, 744 F.3d 1240, 1244 (11th Cir. 2014). “The slight distinction between an administratively closed case and a dismissed case does not resolve the question of finality.” *Id.* at 1245. “What matters is whether the case, in all practicality, is finished,” at least according to the district court, with “nothing more for the court to do but execute the judgment.” *Id.*

Here, by denying the motion to reopen and to clarify after ordering full closure, and declaring that the denial was based upon the court’s view that there is “no case or controversy,” the district court ended the case. “While ‘[o]rders administratively closing a case normally are not final,’ in that they do not disassociate the district court from the case, the ‘denial of a motion to reopen’ customarily does have that effect.” *Rodriguez v. Hirshberg Acceptance Corp.*, 62 F.4th 270, 275 (6th Cir. 2023) (quoting David G. Knibb, *Fed. Ct. App. Manual* § 2:3 (7th ed.)); *see also* 19 James Wm. Moore’s *Federal Practice* § 202.02 (3d ed.) (“[A] refusal to reopen an administratively closed case is a final judgment if the district court intends to take no further action in the case.”). The denial of the motion to reopen was thus final.

In context, given the district court’s stated reason, that is the only plausible reading of the district court’s actions. The district court’s decision in the June 5 order stated that “[t]here is no case or controversy presently pending.” Dkt. No. 76. That demonstrates that the “full closure” here went well beyond a traditional administrative closure used to manage a district court’s docket. “An order administratively closing a case is a docket management tool that has no jurisdictional effect.” *Dees*

*v. Billy*, 394 F.3d 1290, 1294 (9th Cir. 2005). That is why, as this Court has recognized, an administrative closure “does not prevent the court from reactivating a case either of its own accord or at the request of the parties.” *Fla. Ass’n for Retarded Citizens, Inc. v. Bush*, 246 F.3d 1296, 1298 (11th Cir. 2001). Here, by contrast, the district court expressly disclaimed its jurisdiction to reopen the case: In the district court’s view, there was “no case or controversy” to reopen pending. That goes beyond managing the district court’s docket and is, in substance, an order concluding that the district court lacks jurisdiction under Article III. *See* U.S. Const. art. III, § 2; *see also Genesis Healthcare Corp. v. Symczyk*, 569 U.S. 66, 71–72 (2013). Thus, despite the district court’s “full closure” label, the district court orders were in substance final dismissals for lack of jurisdiction.

**B. THE APRIL 9 AND JUNE 5 ORDERS MERGE WITH THE JUNE 9 FINAL ORDER**

On June 9, 2025, the district court entered a further order instructing the clerk “to dismiss this case without prejudice as moot and not capable of repetition within any reasonable time frame.” Dkt. No. 79. A dismissal for lack of subject-matter jurisdiction is appealable, even though it is without prejudice. *See, e.g., Lauderdale-El v. Ind. Parole Bd.*,

35 F.4th 572, 576 (7th Cir. 2022) (“[W]e routinely exercise jurisdiction over appeals from such dismissals.”); *G. W. v. Ringwood Bd. of Educ.*, 28 F.4th 465, 468 n.2 (3d Cir. 2022) (“Though the Board argues that the dismissal without prejudice is not an appealable final order, its contention is without merit.”); *see also* 15A Wright & Miller’s, *Federal Practice and Procedure* § 3914.6 (3d ed.) (noting the general “rule that a dismissal without prejudice is appealable as a final judgment,” including in cases involving “matters of jurisdiction”). This order is therefore undoubtedly final.

That resolves the Court’s jurisdictional question too. Under applicable federal rules of appellate procedure, the Court must treat the June 6 appeal as relating forward to the later June 9 order. *See* Fed. R. App. P. 4(a)(2). The Supreme Court recently emphasized that relation forward of notices of appeal is the “default” rule. *See Parrish v. United States*, 145 S. Ct. 1664, 1672 (2025). Where a party’s notice of appeal “otherwise provided ample notice to all involved[,] his notice related forward to the date of the District Court’s [later appealable] order.” 145 S. Ct. at 1672. “When a premature notice of appeal makes clear who is appealing, from what judgment, to which appellate court, its relation

forward to entry of the document formally enabling the appeal does not affect substantial rights, and thus “courts are directed to ‘disregard all errors and defects’” of a premature appeal. *Id.* at 1674 (quoting Fed. R. Civ. P. 61). “[T]he spirit of the Federal Rules’ is that ‘decisions on the merits [should not] be avoided on the basis of ... mere technicalities.’” *Id.* (quoting *Foman v Davis*, 371 U.S. 178, 181 (1962)).

Even before *Parrish*, this Court applied the relation-forward test pragmatically when doing so does not affect substantial rights. *See, e.g., Virgo v. Riviera Beach Assocs., Ltd.*, 30 F.3d 1350, 1357 (11th Cir. 1994) (exercising jurisdiction where a party “filed its notice of appeal after the district court and jury decided all counts of the complaint but before the judgment was formally entered on all counts”). Therefore, even if the April 9 and June 5 orders are not final, the orders merge with the June 9 final order, and the June 6 appeal may not be dismissed as premature. *See FirstTier Mortg. Co. v. Invs. Mortg. Ins. Co.*, 498 U.S. 269, 273–74 (1991) (noting that 4(a)(2)’s “relation forward” provision “permits a notice of appeal filed from certain nonfinal decisions to serve as an effective notice from a subsequently entered final judgment”). This Court therefore has jurisdiction over the June 6 appeal and the appeal is timely.

**C. CONSOLIDATING THE APPEALS WOULD MOOT THE COURT'S JURISDICTIONAL QUESTION**

In any event, the Court need not resolve any technical questions of appellate jurisdiction. Rather, the Court should grant Plaintiffs' pending motion to consolidate the appeals, which would then moot these questions. ECF 14.

On June 16, 2025, Plaintiffs separately appealed the June 9 final order. Dkt. No. 80 (Docketed as Case No. 25-12095). Consolidating both appeals would moot any question about this Court's appellate jurisdiction. *Cf. Garrett v. Murphy*, 17 F.4th 419, 425 n.1 (3d Cir. 2021) (dismissing a companion appeal as moot *only* after the Court's merits panel confirmed that another later appeal was timely filed). For the reasons stated in Plaintiffs' motion to consolidate, and to avoid unnecessary jurisdictional complications, the Court should consolidate the appeals and thus moot the jurisdictional question. In any event, the Court should defer dismissal of the June 6 appeal until the Court confirms that the June 16 appeal is proper and timely.

## **CONCLUSION**

The Court has appellate jurisdiction over appeal No. 25-11927 and should grant Plaintiffs' pending motion to consolidate it with No. 25-12095.



Respectfully submitted,

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Dated: July 10, 2025

## **CERTIFICATE OF COMPLIANCE**

Pursuant to Fed. R. App. P. 32(g), I hereby certify that this motion complies with the requirements of Fed. R. App. P. 27(d)(1)(E) because it has been prepared in 14-point Century Schoolbook, a proportionally spaced font, and that it complies with the type-volume limitation of Fed. R. App. P. 27(d)(2)(A) because it contains 2,216 words, according to the count of Microsoft Word.

Dated: July 10, 2025

/s/ James R. Conde  
James R. Conde

## **CERTIFICATE OF SERVICE**

I hereby certify that on July 10, 2025, I electronically filed the foregoing document with the Clerk of this Court by using the CM/ECF system, which will serve all parties automatically.

Dated: July 10, 2025

/s/ James R. Conde  
James R. Conde