

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

UNIVERSITY OF NOTRE DAME,
Plaintiff-Appellant,

v.

THOMAS E. PRICE, et al.,
Defendants-Appellees

No. 13-3853

and

JANE DOE 3, et al.,
Intervenors-Appellees.

STATUS REPORT

By order dated August 14, 2017, the Court directed the parties to submit detailed status reports on August 31, 2017. The Court specified that in their next status report, the Departments should outline the status of the Office of Management and Budget's review of the draft interim final rule, and what additional steps, if any, remain to be taken. Accordingly, the Departments and the University of Notre Dame respectfully submit this joint status report, and request that the Court direct the parties to file updated status reports by October 2, 2017.

1. The government and counsel for Notre Dame continue to engage in extensive settlement discussions. The parties most recently discussed settlement on August 9 and August 23. Though the parties have not reached an agreement to resolve the cases, the talks continue to be productive.

2. Apart from the settlement negotiations, as we have noted in prior status reports, the government has initiated the rulemaking process to reconsider the regulations at issue in this litigation. Under Executive Order 12866, *available at* https://www.reginfo.gov/public/jsp/Utilities/EO_12866.pdf, certain proposed regulations are subject to review by the Office of Management and Budget (OMB).

3. On May 23, 2017, a draft interim final rule that would supersede the regulations at issue was sent to OMB for review. <https://www.reginfo.gov/public/do/eoDetails?rrid=127381>.

4. Under Executive Order 12866, OMB typically has ninety (90) calendar days to coordinate and complete interagency review of a draft of an interim final rule. *See id.* § 6(b). That timeframe is subject to an extension either by the OMB director, or if requested by the head of the agency issuing the regulation. OMB review can result in the rule being passed forward for publication in the Federal Register or returned to the agency for reconsideration.

5. OMB did not act on the proposed interim final rule within 90 days, but has extended its review of the draft rule.

6. The government respectfully submits that it would not be appropriate to adjudicate a challenge to regulations that the government has already begun the process of superseding, and that the government intends to replace in the near future.

7. For the foregoing reasons, the government respectfully requests that the Court direct the parties to submit updated status reports by October 2, 2017.

Respectfully submitted,

Matthew A. Kairis (OH No. 55502)
(Counsel of record)
JONES DAY
325 John H. McConnell Blvd., Suite 600
P.O. Box 165017
Columbus, OH 43216
(614) 469-3939
makairis@jonesday.com
Counsel for Plaintiff-Appellant
University of Notre Dame

MARK B. STERN
ALISA B. KLEIN
PATRICK G. NEMEROFF
/s/ Joshua Salzman
JOSHUA M. SALZMAN
Attorneys, Appellate Staff
Civil Division
U.S. Department of Justice
950 Pennsylvania Ave., NW, Rm. 7258
Washington, DC 20530
202-532-4747

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CERTIFICATE OF SERVICE

I hereby certify that on August 31, 2017, I electronically filed the foregoing with the Clerk of the Court by using the appellate CM/ECF system. I further certify that the participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

s/ Joshua Salzman

JOSHUA M. SALZMAN