United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 25-5376 **September Term, 2026**

FILED ON: NOVEMBER 3, 2026

INFORMED CONSENT ACTION NETWORK,
APPELLANT

v.

UNITED STATES FOOD AND DRUG ADMINISTRATION AND UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES,
APPELLEES

Appeal from the United States District Court
for the District of Columbia
(No. 1:25-cv-00823)

Before: WALKER and CHILDS, *Circuit Judges*, and ROGERS, *Senior Circuit Judge*

J U D G M E N T

We considered this appeal on the record before the United States District Court for the District of Columbia and the briefs of the parties. *See* Fed. R. App. P. 34(a)(2); D.C. Cir. R. 34(j). We fully considered the issues and determined that a published opinion is unnecessary. *See* D.C. Cir. R. 36(d). It is

ORDERED AND ADJUDGED that the appeal be **DISMISSED** for lack of jurisdiction.

* * *

In 2019, the Informed Consent Action Network submitted a Freedom of Information Act request to the Food and Drug Administration. ICAN sought troves of emails related to the Center for Biologics Evaluation and Research's Office of Vaccines Research and Review. In 2025, after the FDA had neither produced the records nor determined whether it would comply with the request, ICAN sued to compel the documents' production.

The FDA requested additional time to process the request. *See* 5 U.S.C. § 552(a)(6)(C)(i). Upon finding that the agency's "exceptional circumstances" and "due diligence" warranted such relief, the district court stayed proceedings for eighteen months and ordered the parties to file periodic status reports. *Id.* ICAN then appealed that order.

We dismiss this interlocutory appeal for lack of jurisdiction.

* * *

Federal courts of appeals have jurisdiction to review "final decisions of the district courts of the United States." 28 U.S.C. § 1291. As an exception to the "final judgment rule," the collateral order doctrine allows parties to immediately appeal from certain types of interlocutory orders. *See Midland Asphalt Corp. v. United States*, 489 U.S. 794, 798–99 (1989). "Narrow, stringent, and of modest scope," that doctrine applies only if the order (1) conclusively determines the disputed question, (2) resolves an important issue separate from the merits of the action, and (3) would be effectively unreviewable on appeal from a final judgment. *GEO Group, Inc. v. Menocal*, No. 24-758, slip op. at 4 (Feb. 25, 2026) (cleaned up).

In *Summers v. United States Department of Justice*, we considered whether the collateral order doctrine applies to orders temporarily staying a FOIA proceeding when those orders are "subject to revision." 925 F.2d 450, 453 (D.C. Cir. 1991) (cleaned up). The answer is no. Because those orders are subject to revision, they do not "conclusively determine the issue of court-imposed time constraints" on the agency's processing of a FOIA request and they therefore fail to satisfy the first of the doctrine's three requirements. *Id.* (cleaned up).

Summers is on all fours with today's case. As in *Summers*, the district court here found that the agency's "exceptional circumstances" and "due diligence" warrant additional processing time. *Id.* at 452 (quoting 5 U.S.C. § 552(a)(6)(C)). And as in *Summers*, the court required regular status reports so that it could supervise the agency's progress and modify or lift the stay as needed. *Id.* at 453. That means the orders are "subject to revision," which means the collateral order doctrine does not apply. *Id.* (cleaned up).

ICAN argues that *Summers* is distinguishable because the appellant there challenged the district court's determination of how much additional time the agency needed, whereas ICAN contends that the court's decision to grant additional time is ultra vires. But finality under § 1291 must "be determined for the entire category to which a claim belongs," rather than on an individualized, "case-by-case" basis. *Digital Equipment Corp. v. Desktop Direct, Inc.*, 511 U.S. 863, 868 (1994) (cleaned up). Here, the district court did not "conclusively determine" the agency's entitlement to a stay, and ICAN cannot get around § 1291's finality requirement by reframing its challenge at a higher level of generality. *Geo Group*, slip op. at 4 (cleaned up).

Because we lack jurisdiction under § 1291, we **DISMISS** this appeal.

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This disposition is unpublished. *See* D.C. Cir. R. 36(d). We direct the Clerk to withhold this mandate until seven days after resolution of a timely petition for panel or en banc rehearing. *See* Fed. R. App. P. 41(b); D.C. Cir. R. 41(a)(1).

Per Curiam

FOR THE COURT:
Clifton B. Cislak, Clerk

BY: /s/
Daniel J. Reidy
Deputy Clerk