

NOTE: This order is nonprecedential.

**United States Court of Appeals  
for the Federal Circuit**

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**MELISSA KENNEDY, AS NEXT FRIEND FOR,  
MICHAEL DAN KENNEDY,**  
*Petitioners-Appellants,*

v.

**SECRETARY OF HEALTH AND HUMAN SERVICES,**  
*Respondent-Appellee.*

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2011-5106

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Appeal from the United States Court of Federal  
Claims in case no. 90-VV-1009, Judge Francis M. Allegra.

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**ON MOTION**

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Before SCHALL, *Circuit Judge.*

**ORDER**

The Secretary of Health and Human Services moves to dismiss the appellants' appeal as untimely. The appellants oppose. The Secretary replies.

Because this court has not yet ruled on the filing requirements of 42 U.S.C. § 300aa-12(f), we deem the better

course is to deny the motion without prejudice to the parties discussing the issues related to dismissal in the briefs.

Accordingly,

IT IS ORDERED THAT:

The Secretary's motion to dismiss is denied without prejudice to the parties raising the issues in the briefs. The Secretary should compute his brief due date from the date of filing of this order.

FOR THE COURT

OCT 20 2011

Date

/s/ Jan Horbaly

Jan Horbaly  
Clerk

cc: Andrew D. Downing, Esq.  
Michael P. Milmo, Esq.

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**FILED**  
**U.S. COURT OF APPEALS FOR**  
**THE FEDERAL CIRCUIT**

OCT 20 2011

**JAN HORBALY**  
**CLERK**