

PETITION FOR REHEARING *EN BANC*

- The Final Order filed on February 20, 2024 – Document#2041192 -
Before: Henderson, Pillard and Rao, Circuit Judges

Case No. 23-1007

**IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

GEMI SPAULDING, et. al.

Petitioners,

v.

MERRICK B. GARLAND, Attorney General, et. al.

Respondents.

Seeking *en banc* review of the three judge panel *per curiam* order, upholding
final decision of DEA Administrative Trial Judge – Docket No. 23-5
Before the Honorable Teresa A. Wallbaum (TAW)

PETITION FOR REHEARING *EN BANC*

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TABLE OF CONTENTS

I. PETITION FOR REHEARING *EN BANC* PURSUANT TO RULE 35.....7

A. PREDICATE FOR PETITION – RULE 35 (B)(1)7

**B. LEGAL DISCUSSION OF THE CONFLICTING DC CIRCUIT CASE
AUTHORITY SUPPORTING PETITIONERS’ INTERVENTION IN THE
SECRET DEA PROCEEDINGS AS WELL AS STANDING BEFORE A TITLE
III COURT.7**

II. STATEMENT OF THE CASE.....12

III. SPECIFIC ISSUES IN THE ORDER DISPUTED.....14

**A. IT’S A DENIAL OF DUE PROCESS TO SEAL OFF ALL
PROCEEDINGS BEFORE A DEA ADMINISTRATIVE PROCEEDING
WHEN 5 USC SECTION 555(B) IS INTENDED TO PROVIDE ACCESS TO
INTERVENE.14**

**B. THERE WAS INSUFFICIENT EVIDENCE TO SUSPEND DR.
BOCKOFF’S AUTHORITY TO PRESCRIBE.17**

**C. THE 3-JUDGE PANEL WAS CRITICAL OF THE PATIENTS’ CLAIMS
AND SUGGESTED THEY SHOULD HAVE DONE MORE TO EXPLAIN**

THEMSELVES; DEA DIDN'T MAKE THIS CLAIM; THE COURT IN ITS SUMMARY ORDER DID HOWEVER.....18

D. THE APA PROVIDES JUDICIAL REVIEW WHEN AN ADMINISTRATIVE ACTION IS NOT "FINAL;" AND THERE IS NO QUESTION PETITIONERS' CLAIMS ARE WITHIN "THE ZONE OF INTEREST.".....20

E. QUITE FUTILE TO FILE AN INTERLOCUTORY APPEAL WITH THE DEA ADMINISTRATOR23

Cases

Animal Legal Def. Fund, Inc. v. Vilsack, 237 F. Supp. 3d 15 (D.D.C. 2017)9

Ass’n of Flight Attendants-CWA-AFL-CIO v. United States DOT, 564 F.3d 462
 (DC Circuit 2009)19

Block v. SEC, 50 F.3d 1078, 1085 (DC Cir. 1995).....9

*Compare Valley Forge Christian College v. Americans United for Separation of
 Church and State, Inc.*, 454 U.S. 464, 472, 483 (1982)11

Environcare of Utah, Inc. v. Nuclear Regulatory Comm’n, 194 F.3d 72, 74 (DC
 Cir. 1999).....10

Friends of the Bow v. Thompson, 124 F.3d 1210, 1220 (10th Cir. 1997)9

Nichols v. Board of Trustees, 266 U.S. App. D.C. 304, 835 F.2d 881, 896-99 (D.C.
 Cir. 1987)9

U.S. v. Romano, Case No. 2:19-cr-202 SD Ohio (3/17/23).....14

United States v. Titus, 2023 U.S. App. LEXIS 22009 (3d Cir. 8/22/23).....18

Ziulu Ruan v. United States, 142 S.Ct. 2370 (June 27, 2022)13

Statutes

21 USC Section 802 (2)23

21 USC Section 824(d)(1)24

5 USC 555(b)20

5 USC Section 555(b)7

5 USC Section 702.....21

Rules

21 CFR Section 1316.6224

21 CFR Section 1316.418

21 CFR Section 1316.4615

Federal Rules of Civil Procedure, Rule 56(c)(4)19

Rule 24 of the Federal Rules of Civil Procedure11

Rule 24(b)(1)(B) of the Federal Rules of Civil Procedure12

RULE 35 (B)(1) of the Federal Rules of Appellate Procedure7

Other Authorities

John J. Mulrooney, II and Katherine E. Legel, “Current Navigation Points in Drug Diversion” (Marquette Law Review), at 101:1 (2017).....25

Shravani Durbhakula, OPINION: “The DEA needs to Stay Out of Medicine,” NEW YORK TIMES (March 22, 2024) - Opinion | The DEA Needs to Stop Restricting Opioids - The New York Times (nytimes.com)7

PETITION FOR REHEARING *EN BANC* PURSUANT TO RULE 35

I. PREDICATE FOR PETITION – RULE 35 (B)(1)

A. The three-judge panel’s *ex parte* order entered on February 20, 2024, wrongly denied chronic pain patient petitioners’ demand, as “interested persons,” under 5 USC Section 555(b), to intervene in their doctor’s licensing suspension to argue that their doctor be authorized to prescribe their much needed pain medications - a matter of life and death; this three-judge panel’s *ex parte* order conflicts with decisions of this Circuit, and with constitutional principles, and statutes; we review the case citations and their relevance in section B.¹

B. LEGAL DISCUSSION OF THE CONFLICTING DC CIRCUIT CASE

AUTHORITY SUPPORTING PETITIONERS’ INTERVENTION IN THE

¹ Shravani Durbhakula, OPINION: “The DEA needs to Stay Out of Medicine,” NEW YORK TIMES (March 22, 2024) - [Opinion | The DEA Needs to Stop Restricting Opioids - The New York Times \(nytimes.com\)](#) . “[T]he government should strip the DEA of its authority to suspend providers’ controlled substance licenses when dangers arise”

SECRET DEA PROCEEDINGS AS WELL AS STANDING BEFORE A
TITLE III COURT.²

We have objected that the judicial policy makes no sense that an “interested person” in the case of an administrative proceeding, not a Title III court, may have “standing” under 5 USC Section 555(b) alone, but not have standing to appeal an adverse decision.- unless that same person, when appealing, may also demonstrate standing in a Title III sense.

We have objected that this makes no sense but we do also rush to underscore the fact that we have satisfied the requirements of Title III standing (discussed below).

By way of background, it is crystal clear that “procedures in any administrative hearing held under the Act are governed generally by the rule making and/or adjudication procedures set forth in the Administrative Procedure Act (5 USC 551-559)” 21 CFR Section 1316.41.

Title 5, United States Code, Section 555 (b) provides in relevant part that, “So far as the orderly conduct of public business permits, an interested person may appear before an agency or its responsible employees for the presentation, adjustment, or determination of an issue, request, or controversy in a proceeding,

² Rule 35 (b)(1)(A) requires that we cite “conflicting case or cases” and we have set forth this section to meet that requirement.

whether interlocutory, summary, or otherwise or in connection with an agency function.”

In *Animal Legal Def. Fund, Inc. v. Vilsack*, 237 F. Supp. 3d 15 (D.D.C. 2017), the presiding administrative law judge concluded that the intervenors stated interests were beyond the scope of the proceeding. The plaintiff objected that the administrative tribunal’s decision was contrary to Section 555(b) of the APA. The court decided that the judicial officer’s finding erred, and that plaintiff’s interest was squarely within the scope of the proceeding, and the judicial officer’s finding to the contrary “was therefore arbitrary and capricious under the APA.”

The court underscored the fact that the APA “allows ‘interested persons’ to participate in agency proceedings ‘so far as the orderly conduct of public business permits.’” *Id.*, at 19.

The Court confirmed that “5 USC Section 555(b) applies to all forms of agency action,” citing *Friends of the Bow v. Thompson*, 124 F.3d 1210, 1220 (10th Cir. 1997); *see also Block v. SEC*, 50 F.3d 1078, 1085 (DC Cir. 1995).

Section 555(b) is universally understood to establish the right of an “interested person” to participate in an on-going agency proceeding. *See Nichols v. Board of Trustees*, 266 U.S. App. D.C. 304, 835 F.2d 881, 896-99 (D.C. Cir. 1987).

The Court concluded that Article III standing is not required. Citing the DC Circuit, the Court stated, “Federal Agencies may, and sometimes do, permit

persons to intervene in administrative proceedings even though these persons would not have standing to challenge the agency's final action in federal court," citing *Environcare of Utah, Inc. v. Nuclear Regulatory Comm'n*, 194 F.3d 72, 74 (DC Cir. 1999).

Parenthetically the Court cited the fact that "Agencies of course, are not constrained by Article III of the Constitution; nor are they governed by judicially-created standing doctrines restricting access to federal courts. The criteria for establishing 'administrative standing' therefore may permissibly be less demanding than the criteria for 'judicial standing.'" *Id.*

In federal cases, where "judicial standing" applies, the measure is more rigorous than "administrative standing."

We have nevertheless alleged a judicially cognizable injury to satisfy the requirements for Article III standing – and it is the gross abuse of discretion by the ALJ, denying petitioners the opportunity to participate in a DEA proceeding that will ultimately determine whether intervenors may receive their pain prescriptions.

Intervenors well appreciate that they are not entitled to any result but we are invoking the right of access to a proceeding that has not yet been resolved, is not moot, and may make a life and death difference to the intervenors.

Accordingly, each petitioner "has suffered some actual or threatened injury," certainly, the loss of life and death medications qualify, and the right to object

under 5 USC 555(b). *Compare Valley Forge Christian College v. Americans United for Separation of Church and State, Inc.*, 454 U.S. 464, 472, 483 (1982).

Another way to compare the “standing” of the petitioners is running the traps on **Rule 24** of the **Federal Rules of Civil Procedure** that governs intervention in the civil procedure, that is, intervention as a “right” and “permissive” intervention.

Patients respectfully insist that they satisfy this more rigid standard for intervention in both its prongs, as “right” or as a “permissive” grant.

Intervention of right, found in Rule 24(a), permits anyone to intervene who “claims an interest relating to the ...transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant’s ability to protect its [their] interest, unless existing parties adequately represent that interest.”

The DEA has unilaterally cut off medicine to the chronic pain patients seeking to intervene, and most certainly DEA does not come close to “represent[ing]” the patients’ interest.

Nor does Dr. Bockoff “adequately” represent the patients’ interest in assuring to them their right to be treated, responding, as he assuredly is, to the insufficient factual basis to justify the immediate suspension of his registration (“ISO”).

In “permissive intervention,” Rule 24(b)(1)(B), the court may permit anyone to intervene if the intervening party’s “claim or defense ... shares with the main action a common question of law or fact.”

The common question of law and fact is the authority of Dr. Bockoff to prescribe pain medication for the intervening chronic pain patients.

The patients sought to have this administrative tribunal recommend the suspension itself be suspended or dissolved.

When exercising its discretion, according to Rule 24(b)(3), the court considers “whether the intervention will unduly delay or prejudice the adjudication of the original parties’ rights.” This is similar to the concerns of 5 USC 555(b).

Given Intervenors’ posture as chronic pain patients seeking relief immediately lest they suffer more, there is no concern that the patients’ intervention will seek to delay these proceedings.

Intervenors have sought no delay, in either procedural template, administrative or judicial, since the patients seek immediate action, as immediate as possible, to argue for suspending the summary suspension, and to dissolve the *ex parte* order, to restore to the chronic pain patients their medication, and to be treated.

II. STATEMENT OF THE CASE

1. This case began with a DEA investigation of Dr. Bockoff who treated and prescribed pain medication for 240 patients; DEA served a general search

warrant on Dr. Bockoff's medical offices, based on thinly evident claims, presented to a Magistrate on or about September 9, 2021. See Joint Appendix 1-22.

2. We did not represent Dr. Bockoff.
3. But, when the DEA Administrator cut off treatment and medication to Dr. Bockoff's pain patients, without any evidence, when the prescriptions appeared quite appropriate, we sought to intervene, on behalf of 11 petitioners who presented as "interested persons" (See 5 USC 555(b)).
4. These denied prescriptions hit hard the chronic pain patients. Indeed, several original pain patient petitioners died, denied their medication, by the summary order of the DEA Administrator, without notice of the flimsy evidence "supporting" the DEA Administrator's decision.
5. This "investigation," began with a general search warrant, quite broadly cast, without probable cause, insisting that Dr. Bockoff made unauthorized prescriptions. Compare *Ziulu Ruan v. United States*, 142 S.Ct. 2370 (June 27, 2022).
6. The DEA's expert, Dr. Timothy Munzing, was, by any fair review, "damaged goods" by DEA's overuse of his "skills." In an Ohio case, Dr. Munzing's testimony was directly contradicted by his sworn testimony at an earlier trial. The U.S. District Judge Michael Watson found clear violations of *Brady/Giglio*,

and declared a mistrial. On information and belief, this impeachment material involving Dr. Munzing, the DEA's sole expert witness, was withheld from Dr. Bockoff in the DEA Administrative proceeding below. See *U.S. v. Romano*, Case No. 2:19-cr-202 SD Ohio (3/17/23); see Jt. Appendix at pp. 199-227.

7. DEA conceded in its general search warrant that Dr. Bockoff had patients who had "legitimate needs." DEA's sworn affidavit in support of the wide ranging search warrant, stated their search protocol would "minimize disruption to the legitimate needs of lawfully-treated patients (if any)(underscoring supplied)." See Joint Appendix, at pp 39-40.
8. About a year after the search, on October 25, 2022, the DEA Administrator, Anne Milgram, issued her *ex parte* summary order enjoining Dr. Bockoff's authority to prescribe to his patients, without any notice to any patient, forcing the sudden abandonment of 240 chronic pain patients without any care for medical services afterwards. See Joint Appendix at pp 14-22.

III. SPECIFIC ISSUES IN THE ORDER DISPUTED

A. IT'S A DENIAL OF DUE PROCESS TO SEAL OFF ALL

**PROCEEDINGS BEFORE A DEA ADMINISTRATIVE PROCEEDING
WHEN 5 USC SECTION 555(B) IS INTENDED TO PROVIDE ACCESS
TO INTERVENE.**

There is much talk about how the government is “open” and transparent, but DEA’s proceedings are entirely opaque to patients and the public.

Without apology, and seemingly without contradiction, DEA warrants a quite Kafkaesque procedural muddle, somewhat like what faced Josef K in *The Trial*, denied notice of his charged misbehavior, and the whereabouts of his court appearance.

In the case of our patients, they receive no notice and had no notice nor access to what was unfolding.

In fact and truth, Josef’s court was to be found in an attic of a dilapidated working-class tenement, at the back of a young washer-woman’s home. When Josef K complained of the “absurdity,” he faced a hostile assembly. We have been met with silence and our own absurdity – that due process is an uncomfortable fit for the DEA.

It is written - no “third” party has any right of access to any of the pleadings or proceedings in a DEA matter.

21 CFR Section 1316.46 provides that “the record bearing on any proceeding ... shall be available for inspection and copying by any person entitled to participate in such proceeding ...”

In this case, that was not the patients, only Dr. Bockoff and his counsel.

In order to obtain the documents we did obtain, to make our arguments, we depended on the “kindness of strangers.”³

We had no right to inspect the evidence.

But we did locate the DEA’s 5 witnesses and we found their prescriptions apt, and our findings were enclosed in our petition to intervene on November 22, 2022. See Joint Appendix, at pp 42 – 51.

We were otherwise kept in the dark, hamstrung to proceed, as we had no right to attend any hearings, not even to monitor the proceedings, on the question, whether Dr. Bockoff should be denied authority to prescribe pain medication.

FR Section 1316.46 provides that “the record bearing on any proceeding ... shall be available for inspection and copying by any person entitled to participate in such proceeding ...” ADDENDUM, Exs, Access Denied, A-3, at p. 13.

The patients, denied their medication, who sought to intervene, were not persons “entitled to participate.”

Nor could they participate in the hearing, not even to observe the proceedings.

Dr. Bockoff’s counsel wrote his client, referencing the hearings, confirming that “no one but the parties can sign in and watch the hearing.” ADDENDUM, Ex. A-2, at p. 11.

³ In order to obtain the documents and information we did obtain, to make our arguments, we depended on the “kindness of strangers.”

Dr. Bockoff tried to obtain, by invoking FOIA, copies of the pleadings and the transcript of the hearing that resulted and, although he was certainly a person “entitled to participate,” Dr. Bockoff himself was denied access, and DEA’s objection was that the material was privileged. ADDENDUM, Exs, A-5, at p. 16, A-6, at p. 17, and A-7, at p. 18.

We were entirely hamstrung to proceed to seek review in any DEA proceedings as we had no right to review any pleadings, to attend any hearings, to monitor the proceedings, to review any of the “evidence,” to hear the arguments, and the only decision made available to us by the ALJ related to the motion to intervene.

During oral argument, DOJ counsel volunteered that the proceedings were “open.”

Anita Gay, DEA Counsel, misled the three-judge panel, saying that Petitioners could have attended a “public” hearing. She said, “I confirmed with DEA that the hearings are public ...”

B. THERE WAS INSUFFICIENT EVIDENCE TO SUSPEND DR.

BOCKOFF’S AUTHORITY TO PRESCRIBE.

By the terms of the suspension, DEA closed down Dr. Bockoff’s medical practice based on only 5 patients, the only ones “alleged” by the Administrator, to have inapt prescriptions.

DEA has insisted that's sufficient to close off Dr. Bockoff's entire medical practice and his 240 chronic pain patients and the public at large.

DEA implicitly and directly asserts that these 5 patients may be reliably extrapolated to include the public at large.

The DEA ignores the math and the case authority that a small sample, 5 patients here, are insufficient to extrapolate to 240 patients, much less, to a public emergency. See *United States v. Titus*, 2023 U.S. App. LEXIS 22009 (3d Cir. 8/22/23); Joint Appendix 192-198.

In addition, Petitioners gained access to these 5 patients, interviewed them, reviewed their medical records, and discussed in our first petition to the ALJ why there was nothing inapt about their prescriptions. See Joint Appendix, at pp. 42 – 51.

C. THE 3-JUDGE PANEL WAS CRITICAL OF THE PATIENTS' CLAIMS AND SUGGESTED THEY SHOULD HAVE DONE MORE TO EXPLAIN THEMSELVES; DEA DIDN'T MAKE THIS CLAIM; THE COURT IN ITS SUMMARY ORDER DID HOWEVER.

The 3-judge panel's *per curiam* order, at p. 2 states that Exhibit 1 was "a series of narratives purported to be by pain patients (underscoring supplied)."

This court says "purported" and that ordinarily means "reputed" or "alleged."

Is the Court talking about the several patient petitioners “reputed” to have died without Dr. Bockoff’s medication?

Is the Court talking about the woman in a wheel chair, herself a petitioner, who attended oral argument in this case; the 3-judge panel could see her; her pain made it necessary that she attend, if at all, in a wheel chair.

It is particularly distressing that this three-judge panel stated that the patients made “no creditable [sic] factual submissions regarding the injuries” suffered. See *per curiam* order at p.3, 1st full paragraph.

Not “Creditable” means “not worthy of belief.”

As a make-weight, at the last page of the panel’s *per curiam* order, at page 3, first complete paragraph, the panel’s *per curiam* order references the Federal Rules of Civil Procedure, Rule 56(c)(4)(covering summary judgments), and, amazingly, claims case authority for petitioners to file sworn affidavits, based on a dispute about a certificate of public convenience (see *Ass’n of Flight Attendants-CWA-AFL-CIO v. United States DOT*, 564 F.3d 462 (DC Circuit 2009)).

On November 22, 2022, the Petitioners, comprised of 11 chronic pain patients, submitted its initial pleading to the DEA Administrative Law Court, a 28-page EMERGENCY MOTION TO INTERVENE, See Joint Appendix, at pp. 33-60.

On page one of that motion, the patients stated they “have provided [14 pages of] descriptions of themselves and their various medical conditions requiring

prescriptions that DEA presently [then and now] withholds and forbids.” Joint Appendix, at p. 33, fn. 1.

The surviving petitioners have now submitted affidavits, found in the accompanying Addendum, swearing to the truth of their original claims, though there is no case nor rule requiring they do so. See Addendum, at pp. 22-62.

D. THE APA PROVIDES JUDICIAL REVIEW WHEN AN ADMINISTRATIVE ACTION IS NOT “FINAL;” AND THERE IS NO QUESTION PETITIONERS’ CLAIMS ARE WITHIN “THE ZONE OF INTEREST.”

The APA, in 5 USC 555(b), plainly states:

“So far as [1] the orderly conduct of public business permits, an [2] interested person may appear [3] before an agency or its responsible employees for the [4] presentation, adjustment, or determination of an issue, request, or controversy in a proceeding,[5] whether interlocutory, summary, or otherwise, or [6] in connection with an agency function (underscoring supplied)”. “

The APA provides, if the intervention does not overrun the orderliness of “public business,” then an “interested person” may appear before an agency, for a menu of reasons, namely, to present, adjust or determine an issue request or

controversy, and this is so even if the “person’s” application is properly termed as “interlocutory” and/or involves a “agency function.”

As the night follows the day, DEA summarily cutting off prescriptions to chronic pain patients, prompts the patient to dispute the cut off particularly when the evidence of unauthorized prescriptions is rebuttable, and the factual predicate statistically insignificant, and the only expert DEA had was quite deceptive in another proceeding.

The APA further provides:

“With due regard for the convenience and necessity of the parties or their representatives and within a reasonable time, each agency shall proceed to conclude a matter presented to it (underscoring supplied).”

There has been nothing “reasonable” about the time the DEA has taken, given that DEA and DOJ admits they still don’t have a “final” decision.

The right to appeal an “action” of the agency, the ALJ’s denial to intervene, is found in Title 5 USC Section 702, to the effect that, “a person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to judicial review thereof.”

Petitioners satisfied this requirement and sought review of our petition by this Circuit Court.

Section 702 is significant because it plainly waives the federal government's immunity from a suit seeking other than money damages and states a claim that an agency or an officer or employee therefore acted or failed to act in an official capacity or under color of legal authority. *Id.*

In the case at the bar, the DEA ALJ summarily dismissed the motion to intervene in such a fashion that it was tantamount to a ban for all motions to intervene, and that appeared to engulf not just the patients in this case.

It is instructive to consider two separate requirements for establishing a waiver of sovereign immunity under Section 702.

First, the person must identify some agency action affecting him in a specific way, and the action need not be final. *Id.* Nothing could be more specific in this context than denying patients their pain medicine.

Second, the patient must show that he has been adversely affected or aggrieved by that "action." *Id.* What could be more germane to a proceeding to suspend a doctor's authority than that it will result in denying chronic pain patients their pain medication?

This 3-judge panel court was somewhat myopic when it said that this conflict wasn't within the "zone of interest" when righteous prescriptions are as much a part of the CSA as policing the administration of wrongly authorized prescriptions in a licensing proceeding.

The underlying CSA statute is the titular law detailing how prescription drugs are categorized, stored, inventoried, and dispensed.

The CSA established the “scheduling” of drugs to include all prescription medications. See 21 USC Section 812.

The intervenors’ gravamen is that they are appropriate patients to receive medications found in these schedules.

The CSA contains the definitions of “administer” – the “direct application of a controlled substance to the body of a patient” by a “practitioner” and “whether such application be by injection, inhalation, ingestion or any other means.” See 21 USC Section 802 (2).

Under the CSA’s registration requirements, 21 USC Section 823 (b) states, in the affirmative, that “[t]he Attorney General shall register an applicant to distribute a controlled substance in Schedule I or II ...(underscoring added).” The registration is mandatory, the term is “shall,” “unless [the Attorney General] determines that the issuance of such registration is inconsistent with the public interest.” Id.

E. QUITE FUTILE TO FILE AN INTERLOCUTORY APPEAL WITH THE
DEA ADMINISTRATOR

DEA and this Circuit Court have suggested we should have first appealed to the Administrator before coming to this Circuit Court.

The 3-judge panel overlooked the fact that petitioners have NO access to the DEA file, not the pleadings, the hearings, not the exhibits, and not the arguments.

It is true that 21 CFR 1316.62 provides for “interlocutory appeals” from rulings of the presiding officer (the ALJ) to the DEA Administrator but not without the consent of the presiding officer.

We cannot lose sight of the fact that the DEA ALJ, the presiding officer, refused our motion to intervene and our request for any stay pending appeal.

We considered the fact that the CSA provides that the Administrator’s suspension remains in place “until the conclusion of such proceedings ...” See 21 USC Section 824(d)(1).

Given that the Administrator has not acted over the last year, and need not act until the completion of the case on appeal, there was NO possibility that the Administrator would withdraw her summary suspension, so it would have to be “dissolved by a court of competent jurisdiction.” See 21 USC Section 824(d)(1).

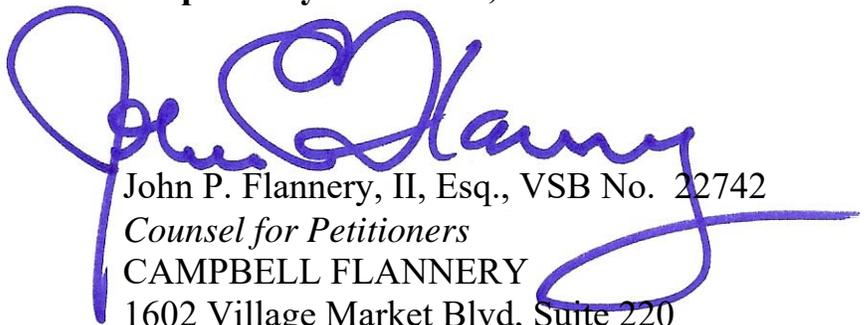
Of course, the proceeding is still open, ripe for further proceedings, absent any decision by the Administrator, and the matter could properly be remanded by a panel of this Court to permit intervention.

During oral argument, Circuit Judge Pillard characterized the DEA’s argument as “over-reaching” when claiming the appeal was moot when it could still be remanded,

The DEA construct is riddled with defects as discussed by DEA's former Chief ALJ, John J. Mulrooney, II and Katherine E. Legel, "Current Navigation Points in Drug Diversion (Marquette Law Review), at 101:1 (2017).

To appeal the ALJ's decision to the DEA Administrator, is to be "stuck" in a chimerical exercise that is "clearly useless."

Respectfully submitted,



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**CERTIFICATE OF COMPLIANCE WITH TYPE AND VOLUME
LIMITATIONS**

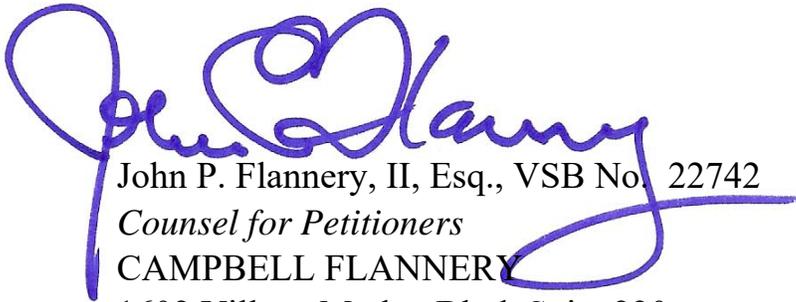
I hereby certify that the foregoing petition for rehearing en banc was prepared in 14 point proportionally spaced Times New Roman Type in Microsoft Word 2013 and contains 3,763 words. The number of words for the opening brief may not exceed 3,900 words. The aforesaid petition complies with the requirements of Federal Rules of Appellate Procedure 35(b)((2)(A)..



John P. Flannery, II, Esq.

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed a copy of the foregoing petition for a rehearing en banc with the Clerk of Court, United States Court of Appeals for the District of Columbia Circuit by using the appellate CM/ECF system on April 5, 2024. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by using the appellate CM/ECF system.



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APPENDIX

TABLE OF CONTENTS

1. Three-Judge Panel’s Per Curiam Order..... 1

2. Certificate as to parties Rulings and Related Cases.....6

3. Related Cases 7

4. Disclosure Statement.....7

5. Certificate of Parties of Amici Curiae..... 8

6. Exhibits A and B..... 9

ADDENDUM

- **1. Three-Judge Panel's *Per Curiam* Order.**

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 23-1007

September Term, 2023

FILED ON: FEBRUARY 20, 2024

GEMI SPAULDING, ET AL.,
PETITIONERS

v.

MERRICK B. GARLAND, ATTORNEY GENERAL, ET AL.,
RESPONDENTS

On Petition for Review of an Order
of the Drug Enforcement Administration

Before: HENDERSON, PILLARD and RAO, *Circuit Judges*

J U D G M E N T

This appeal was considered on the record from the Drug Enforcement Administration (DEA), the briefs of the parties, and oral argument held on January 23, 2024. The Court has accorded the issues full consideration and has determined that they do not warrant a published opinion. *See* D.C. Cir. R. 36(d). It is hereby

ORDERED AND ADJUDGED that the petition for review be **DENIED**.

Petitioners are patients who previously obtained prescriptions for federally controlled pain medication from a doctor whose registration the DEA suspended pending an administrative proceeding to determine whether to revoke it. The patients unsuccessfully sought to intervene in their doctor’s administrative registration-suspension proceeding. They now petition this court on an interlocutory basis to reverse the Administrative Law Judge (ALJ)’s order denying intervention, yet they disclaim any obligation to establish Article III standing to seek relief here. Because the patients make no showing to meet their burden to establish their standing, we dismiss the petition.

* * *

In October 2022, the DEA issued an order to Dr. David Bockoff, a physician in California, immediately suspending the DEA registration that authorizes him to prescribe drugs on Schedules

II through V under the Controlled Substances Act and initiating administrative proceedings to permanently revoke that registration. The agency identified five patients to whom it contends Dr. Bockoff repeatedly prescribed controlled substances without appropriate medical justification or necessity, citing those cases in support of its charge that Dr. Bockoff's prescribing practices pose "an imminent danger to the public health or safety" and render his "continued registration . . . inconsistent with the public interest." Dr. Bockoff unsuccessfully sought a temporary restraining order in federal district court in California to lift the DEA's suspension of his registration. *Bockoff v. Garland*, No. 22-cv-9046, 2023 WL 2559205 (C.D. Cal. Jan. 3, 2023).

Petitioners, nine patients of Dr. Bockoff who are not among those the agency identified as recipients of his unlawful prescribing, sought to stay the suspension of the doctor's registration and intervene as parties to the administrative pre-revocation hearing. The Administrative Procedure Act allows "interested person[s]" to participate in agency proceedings "[s]o far as the orderly conduct of public business permits." 5 U.S.C. § 555(b). Petitioners argued that they have relied on Dr. Bockoff to prescribe pain medication, and that revocation of his registration would effectively cut off their access to those medications. Represented by counsel, Petitioners submitted to the ALJ a 14-page document containing a series of narratives purporting to be by pain patients or their spouses briefly explaining the circumstances that led them to seek treatment from Dr. Bockoff. The document is unsigned, undated, and unverified. *Cf.* 28 U.S.C. § 1746 (providing that unsworn declarations signed and dated under penalty of perjury may be used in lieu of affidavits made under oath or otherwise verified).

The ALJ denied the motion to intervene, concluding that Petitioners failed to show they are "interested persons" under the APA: They do not identify "any statutory right or property interest that makes them entitled to a hearing; nor do they argue that they fall within the statutory zone of interest." The patients petition us for reversal of the ALJ's order denying intervention. The DEA opposed the petition as moot since the administrative hearing is completed, and for want of finality because the rulings of the ALJ are not final orders of the agency.

Under the Controlled Substances Act, "any person aggrieved by a final decision of the Attorney General" may obtain judicial review. 21 U.S.C. § 877. To obtain review in federal court, an aggrieved person must, among other things, satisfy the constitutional requirements for standing. *New World Radio, Inc. v. FCC*, 294 F.3d 164, 169-70 (D.C. Cir. 2002). Petitioners bear the non-waivable burden to establish Article III standing with competent evidence showing: (i) a concrete and particularized injury; (ii) a causal link between that injury and the DEA order being challenged; and (iii) that the injury will likely be redressed by a favorable decision. *See Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560-61 (1992). And where, as here, the person bearing that burden "is not himself the object of the government action or inaction he challenges, standing is not precluded, but it is ordinarily substantially more difficult to establish." *Id.* at 562 (internal quotation marks omitted).

In cases involving direct review of administrative actions, petitioners must set forth to this court the basis of their Article III standing at the earliest opportunity. *See* D.C. Cir. R. 28(a)(7); *Sierra Club v. EPA*, 292 F.3d 895, 900-01 (D.C. Cir. 2002). Because such a petitioner "does not

ask the court merely to assess the sufficiency of its legal theory,” but effectively moves for summary judgment based on the administrative record, “asking the court of appeals for a final judgment on the merits,” the petitioner must carry its burden with evidence, not just factual allegations. *Sierra Club*, 292 F.3d at 899.

Petitioners not only fail to establish standing in their opening brief, but throughout their briefing and at oral argument they affirmatively disclaim any obligation to meet Article III standing requirements. They contend it suffices that they qualify as “interested persons” with statutory eligibility to intervene in the administrative proceedings. Pet. Br. at 15; Pet. Reply at 6-8; Oral Arg. Rec. at 8:34-9:01. That is incorrect. Unlike federal courts, agencies are “not constrained by Article III.” *Fund Democracy, LLC v. SEC*, 278 F.3d 21, 27 (D.C. Cir. 2002). But, to seek judicial review of an agency decision, Petitioners must establish standing. *Sierra Club*, 292 F.3d at 899. Even assuming that petitioners were “interested person[s]” under the APA and therefore eligible to participate in the DEA proceedings, “this does not mean that [they have] Article III standing.” *Fund Democracy*, 278 F.3d at 27.

Consistent with Petitioners’ disavowal of any burden to establish constitutional standing, they made no creditable factual submissions regarding the injuries they assert from DEA’s suspension and potential revocation of Dr. Bockoff’s DEA registration. See *Ass’n of Flight Attendants-CWA, AFL-CIO v. U.S. Dep’t of Transp.*, 564 F.3d 462, 464 (D.C. Cir. 2009) (requiring petitioners to set forth “affidavits or other evidence” to support claims of standing (quoting *Sierra Club*, 292 F.3d at 900)); Fed. R. Civ. P. 56(c)(4) (requiring that an “affidavit or declaration used to support or oppose a motion must be made on personal knowledge, set out facts that would be admissible in evidence, and show that the affiant or declarant is competent to testify on the matters stated”). Nor have Petitioners requested any opportunity to make supplemental submissions. See *Sierra Club*, 292 F.3d at 900 (providing that the court may for good cause excuse petitioners’ omissions in their opening briefs); *Twin Rivers Paper Co. LLC v. SEC*, 934 F.3d 607, 614 (D.C. Cir. 2019) (explaining that good cause has been found where “the parties reasonably, but mistakenly, believed that the initial filings before the court had sufficiently demonstrated standing,” and “where the parties reasonably assumed that [their] standing was self-evident from the administrative record” (alteration in original) (internal quotation marks omitted)).

Because Petitioners do not carry their burden of producing evidence to support the elements of constitutional standing, we accordingly dismiss their petition for review.

Pursuant to D.C. Circuit Rule 36, this disposition will not be published. The Clerk is directed to withhold issuance of the mandate until seven days after resolution of any timely petition for rehearing or rehearing *en banc*. See Fed. R. App. P. 41(b); D.C. Cir. R. 41(a).

Per Curiam

FOR THE COURT:
Mark J. Langer, Clerk

BY: /s/
Daniel J. Reidy
Deputy Clerk

➤ **2. CERTIFICATE AS TO PARTIES, RULINGS AND RELATED CASES**

(a) Parties (updated) The Petitioners in the above captioned case are chronic pain patients who sought to intervene in the DEA Administrative Proceeding below, after DEA summarily suspended their doctor's authority to prescribe pain medication and sought to revoke his DEA certificate of registration (COR); the patients sought to inform the DEA Administrative trial judge that their doctor's continued authority to prescribe pain medication was consistent with their "personal interest" and critical to their health and survival; 11 patients joined the original motion to intervene in the Administrative Tribunal; patients have died since we filed our petition with this Court.

The petitioners are:

- (1) Gemi Spaulding,
- (2) Wilbert Louis Ogden,
- (3) Clarisa Knopf,
- (4) Dustin Parker,
- (5) Michelle Gubbay-Snyder,
- (6) Lera Anne Fuqua,
- (7) Regina Dolan,
- (8) Piper McKee-Wright, and
- (9) Rodney Summers.

(b) Respondents. The respondents in this matter are comprised of the Attorney General of the United States, the DEA Administrator, and the Chief Counsel DEA.

(c) Intervenors. Petitioners are not aware of any other intervenors in this matter.

(d) Ruling under review. The petitioners sought to intervene in the proceedings below, in *In re David Bockoff, MD* v. DOJ, DEA, Docket No. 23-5; the administrative trial judge, however, denied the motion on December 22, 2022, and that decision was filed with this Court on February 15, 2023. On February 20, 2024, a three judge panel of this Circuit denied the relief requested on appeal. Thus, this petition to be heard *en banc*.

(e) Subsequent Ruling. The administrative trial judge's memorandum opinion followed on May 2, 2023, and there was no mention of the patients' petition to intervene.

➤ **3. Related cases.** The ruling that is the subject of this petition for review has not previously been before this Court or any other court.

➤ **4. DISCLOSURE STATEMENT (Rule 26.1).** Petitioners are individuals and not entities not part of any entities of any sort; there are therefore no parent corporations nor any publicly held corporations to disclose.

- **5. CERTIFICATE OF PARTIES OF AMICI CURIAE.** Petitioners are not aware of any amici in this matter.

➤ **6. EXHIBITS A and B:**

A. Petitioners Denied Access to DEA Administrative Hearing Procedure:

1. 1/4/23 – Correspondence to Dr. Bockoff’s counsel requesting info about the “upcoming hearing.” See ADDENDUM, Exs, Access denied, A-1, at p.10.
2. 1/4/23 - Counsel Bartlett correspondence to Dr. Bockoff “no one but the parties” may participate. See ADDENDUM, Exs, Access denied, A-2, at p.11
3. 21 CFR Section 1316.46 – inspection of records only “by any person entitled to participate in such proceeding ...”See ADDENDUM, Exs, Access Denied, A-3, at p. 13.
4. 5/22/23 – Dr. Bockoff request of counsel for transcripts and pleadings. See ADDENDUM, Exs, Access Denied, A-4, at p. 15.
5. 2/15/24 – DEA FOIA encloses belated response to Dr. Bockoff’s Foia request – cover letter. See ADDENDUM, Exs, Access Denied, A-5, at p. 16.
6. 2/15/24 – DEA FOIA Notice that Dr. Bockoff’s FOIA Request has been closed – 2nd cover letter. See ADDENDUM, Exs, Access Denied, A-6, at p. 17.
7. 2/15/24 – USDOJ correspondence denying FOIA request because, states DOJ, 5 USC section 552(b)(5) bars the Dr. Bockoff from reviewing the “deliberative process,” the “attorney work product privilege,” or “attorney client privilege.” See ADDENDUM, Exs, Access Denied, A-7, at p. 18.

EXHIBIT

A-1

From: David Bockoff <bockoff1@gmail.com>
Sent: Wednesday, January 4, 2023 9:30 AM
To: Bartlett, Mark <MarkBartlett@dyt.com>; Office Line 1
<bockoff@msu.com>**Subject:** Administrative Law Hearing
[EXTERNAL]

Dear Mark,

Dr. Bockoff would like to know the date, time, and location of the upcoming hearing with the Administrative Law Judge. Is this a virtual hearing or, does he have to appear in person?

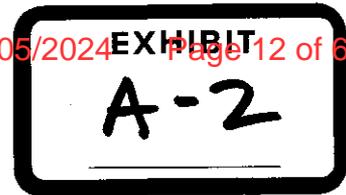
And- is there anything you need from us?

Could you please send us this information? This way- we can plan accordingly.

Thank you,

Jim

L.A. Pain Management



From: Bartlett, Mark <MarkBartlett@dwt.com>
Sent: Wednesday, January 4, 2023 11:50 AM
To: David Bockoff <bockoff@gmail.com>; Office Line 1
<bockoff@msn.com>
cc: David Bockoff <mdbockoffdavid@gmail.com>; Porter, Alex
<AlexPorter@dwt.com>; Fritz, Marissa <MarissaFritz@dwt.com>
Subject: RE: Administrative Law Hearing

Jim,

Thank you for the email. The upcoming DEA Administrative hearing will be a virtual hearing. The DEA Administrative law judge will be in Virginia, and possibly the DEA attorney, and we will be participating virtually from the DWT Los Angeles Office (865 South Figueroa Street, Suite 2400). It also appears that the DEA witnesses will be testifying virtually from Los Angeles.

Because of the judge's calendar, the hearing schedule is broken up a bit.

- **January 19-20** (Thursday-Friday): hearing will start and the government will begin to put on their witnesses. The hearing time will be 8 am to 2 pm PT.
- **January 23-26:** hearing will reconvene on Monday and go through Thursday (if necessary). Hearing time will be 8 am to 2 pm PT.

Dr. Bockoff and all of Dr. Bockoff's witnesses will come to the DWT LA Office and testify through our video teleconference set up.

My understanding is that no one but the parties can sign in and watch the hearing.

Please let me know if you have any questions or comments. At this point I am not aware of any assistance we need from you and your team.

Mark Bartlett | Davis Wright Tremaine LLP

920 Fifth Avenue, Suite 3300 | Seattle, WA 98104-1610

Tel: (206) 757-8298 | Fax: (206) 757-7298 | Mobile: (206) 794-0705

Email: markbartlett@dwt.com | Website: www.dwt.com

Bio: www.dwt.com/people/MarkNBartlett

Anchorage | Bellevue | Los Angeles | New York | Portland | San Francisco

| Seattle | Washington, D.C.



LII > Electronic Code of Federal Regulations (e-CFR) > Title 21—Food and Drugs
> CHAPTER II—DRUG ENFORCEMENT ADMINISTRATION, DEPARTMENT OF JUSTICE
> PART 1316—ADMINISTRATIVE FUNCTIONS, PRACTICES, AND PROCEDURES
> Subpart D—Administrative Hearings > **§ 1316.46 Inspection of record.**

21 CFR § 1316.46 - Inspection of record.

CFR

§ 1316.46 Inspection of record.

(a) The record bearing on any proceeding, except for material described in subsection (b) of this section, shall be available for inspection and copying by any person entitled to participate in such proceeding, during office hours in the office of the Hearing Clerk, Drug Enforcement Administration. See the Table of DEA Mailing Addresses in § 1321.01 of this chapter for the current mailing address.

(b) The following material shall not be available for inspection as part of the record:

(1) A research protocol filed with an application for registration to conduct research with controlled substances listed in Schedule I, pursuant to § 1301.32 (a)(6) of this chapter, if the applicant requests that the protocol be kept confidential;

(2) An outline of a production or manufacturing process filed with an application for registration to manufacture a new narcotic controlled substance, pursuant to § 1301.33 of this chapter, if the applicant requests that the outline be kept confidential;

(3) Any confidential or trade secret information disclosed in conjunction with an application for registration, or in reports filed while registered, or acquired in the course of an investigation, entitled to protection under subsection 402(a) (8) of the Act (21 U.S.C. 842(a) (8)) or any other law restricting public disclosure of information; and

(4) Any material contained in any investigatory report, memorandum, or file, or case report compiled by the Administration.

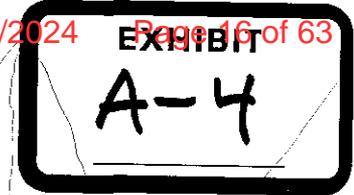
[36 FR 7820, Apr. 24, 1971. Redesignated at 38 FR 26609, Sept. 24, 1973, as amended at 62 FR 13970, Mar. 24, 1997; 75 FR 10645, Mar. 9, 2010]

 **CFR Toolbox**

Law about... Articles from Wex

Table of Popular Names

Parallel Table of Authorities



From: David Bockoff <bockoff@comcast.com>
Date: Mon, May 22, 2023 at 3:34 PM
Subject: POST RULING CLIENT REQUEST
To: Bartlett, Mark <mark.bartlett@dwt.com>
Cc: Davis, Jennifer <jennifer.davis@dwt.com>

Hi Mark,

This is Jim.

Having read the ruling, David left me a list of documents that he has requested in order to protect his constitutional right to due process and appeal.

It is understood that once the Administrator makes the final decision, he will have only 30 days on which to act on the decision and then the opportunity will be lost.

Forever. It is also understood that it is very unlikely that the Administrator will rule in Dr. Bockoff's favor. That being said, Dr. Bockoff requests the following:

- 1) Official transcripts from the hearing.
- 2) A list of Petitioner's & Respondent's exhibits.
- 3) A list of Petitioner's & Respondent's witnesses.
- 4) All pre-hearing and post-hearing briefs.

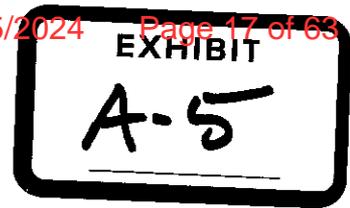
Your office is the only resource that can provide these documents in a timely fashion.

I have been trying to access the transcripts on the FOIA website and this process could possibly take months to procure once they are available.

Thank you Mark for your assistance and if there is anything that I can do to help expedite this process let me know.

Jim

L.A. Pain Management



From: <DEA.FOIA@dea.gov>
Date: Thu, Feb 15, 2024 at 4:48 AM
Subject: DEA FOIA/PA Case Number: 23-00647-F
To: <bockoff@gmail.com>

Dear David Bockoff:

Please see the attached response to your Freedom of Information Act/Privacy Act (FOIA/PA) request 23-00647-F. If you have any questions, please contact our FOIA Requester Service Center at (571) 776-2300.

Sincerely,

FOIA/PA Unit
FOIA & Information Law Section
Office of Chief Counsel
Drug Enforcement Administration

PRIVACY ACT NOTICE: This e-mail (including any attachments herein) may contain personal and privileged information that requires protection in compliance with the Privacy Act of 1974 (5 U.S.C. § 552a). Any use of this information by anyone other than the intended recipient is prohibited. If you have received this communication in error, please immediately delete all copies of this information and notify me by e-mail. The use, dissemination, distribution, or reproduction of this communication by unintended recipients is not authorized and may be unlawful.



From: <dea.foia@dea.gov>
Date: Thu, Feb 15, 2024 at 4:50 AM
Subject: Status Update for Request #23-00647-F
To: <bockoff@gmail.com>

Dear David Bockoff,

The status of your FOIA request #23-00647-F has been updated to the following status 'Closed'. To log into the DEA Public Access Link click on the Application URL below.

<https://ifa.dea.gov/foia>

Sincerely,

DEA



U.S. Department of Justice
Drug Enforcement Administration
FOIA and Privacy Act Unit
8701 Morrisette Drive
Springfield, VA 22152

February 15, 2024

EXHIBIT

A-7

Case Number: 23-00647-F

Subject: Official DEA Administrative Law hearing transcript from January 19-24, 2023 Case No: R1-20-2010; Subpoena No: R1-23-031355 and if possible, Order of said hearing. (Date Range for Record Search: From 01/01/2023 To 05/12/2023)

David Bockoff

Sent via e-mail: bockoff@gmail.com

Dear David Bockoff:

This letter responds to your Freedom of Information Act/Privacy Act (FOIA/PA) request dated May 12, 2023, addressed to the Drug Enforcement Administration (DEA), FOIA/PA Unit, seeking access to information regarding the above subject.

A determination has been made to deny your request pursuant to subsections of the FOIA, 5 U.S.C. § 552, as referenced at the end of this letter. An enclosure with this letter explains these exemptions in more detail. Please be advised that for each of the exemptions cited, it is reasonably foreseeable that disclosure of the information withheld would harm the interests protected by these exemptions.

The rules and regulations of the DEA applicable to FOIA/PA requests are contained in the Code of Federal Regulations, Title 28, Part 16, as amended. They are published in the Federal Register available to the public (see <https://www.ecfr.gov/current/title-28/chapter-I/part-16>).

For your information, Congress excluded three discrete categories of law enforcement and national security records from the requirements of the FOIA. See 5 U.S.C. § 552(c). This response is limited to those records that are subject to the requirements of the FOIA. This is a standard notification that is given to all our requesters and should not be taken as an indication that excluded records do, or do not, exist.

You may contact our FOIA Public Liaison at (571) 776-2300 for any further assistance and to discuss any aspect of your request. Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, Room 2510, 8601 Adelphi Road, College Park, Maryland 20740-6001; e-mail at ogis@nara.gov; telephone at (202) 741-5770; toll free at 1-877-684-6448; or facsimile at (202) 741-5769.

Case Number: 23-00647-F

Page 2

If you are not satisfied with DEA's determination in response to this request, you may administratively appeal by writing to the Director, Office of Information Policy (OIP), United States Department of Justice, 441 G Street, NW, 6th Floor, Washington, D.C. 20530, or you may submit an appeal through OIP's FOIA STAR portal by creating an account following the instructions on OIP's website: <https://www.justice.gov/oip/submit-and-track-request-or-appeal>. Your appeal must be postmarked or electronically transmitted within 90 days of the date of my response to your request. If you submit your appeal by mail, both the letter and the envelope should be clearly marked "Freedom of Information Act Appeal."

If you have any questions regarding this letter, you may contact our Requester Service Center at (571) 776-2300.

Sincerely,

FOIA/PA Unit
FOIA & Information Law Section
Office of Chief Counsel
Drug Enforcement Administration

Case Number: 23-00647-F

Page 3

APPLICABLE SECTIONS OF THE FREEDOM OF INFORMATION AND/OR PRIVACY ACT:

**Freedom of Information Act
5 U.S.C. § 552**

**Privacy Act
5 U.S.C. § 552a**

(b)(1) (b)(5) (b)(7)(C)

(d)(5) (k)(2)

(b)(2) (b)(6) (b)(7)(D)

(j)(2) (k)(5)

(b)(3) (b)(7)(A) (b)(7)(E)

(k)(1) (k)(6)

(b)(4) (b)(7)(B) (b)(7)(F)

Enclosures

FOIA EXEMPTIONS
SUBSECTIONS OF TITLE 5, UNITED STATES CODE, SECTION 552

- (b)(1):** Information that is classified to protect national security.
- (b)(2):** Information related solely to the internal personnel rules and practices of an agency.
- (b)(3):** Information that is prohibited from disclosure by another federal law.
- (b)(4):** Trade secrets or commercial or financial information that is confidential or privileged.
- (b)(5):** Privileged communications within or between agencies, including those protected by the:
 - (1) Deliberative Process Privilege (provided the records were created less than 25 years before the date on which they were requested); (2) Attorney-Work Product Privilege; or (3) Attorney-Client Privilege.
- (b)(6):** Information that, if disclosed, would invade another individual's personal privacy.
- (b)(7):** Information compiled for law enforcement purposes that: 7(A) Could reasonably be expected to interfere with enforcement proceedings; 7(B) Would deprive a person of a right to a fair trial or an impartial adjudication; 7(C) Could reasonably be expected to constitute an unwarranted invasion of personal privacy; 7(D) Could reasonably be expected to disclose the identity of a confidential source; 7(E) Would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law; or 7(F) Could reasonably be expected to endanger the life or physical safety of any individual.
- (b)(8):** Information that concerns the supervision of financial institutions.
- (b)(9):** Geological information on wells.

PRIVACY ACT EXEMPTIONS
SUBSECTIONS OF TITLE 5, UNITED STATES CODE, SECTION 552a

- (d)(5):** Information compiled in reasonable anticipation of a civil action proceeding.
- (j)(2):** Material reporting investigative efforts pertaining to the enforcement of criminal law including efforts to prevent, control, or reduce crime or to apprehend criminals.
- (k)(1):** Information that is currently and properly classified pursuant to an executive order in the interest of the national defense or foreign policy, for example, information involving intelligence sources or methods.
- (k)(2):** Investigatory material compiled for law enforcement purposes, other than criminal, which did not result in loss of a right, benefit or privilege under Federal programs, or which would identify a source who furnished information pursuant to a promise that his/her identity would be held in confidence.
- (k)(3):** Material maintained in connection with providing protective services to the President of the United States or any other individual pursuant to the authority of Title 18, United States Code, Section 3056.
- (k)(4):** Required by statute to be maintained and used solely as statistical records.
- (k)(5):** Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment or for access to classified information, the disclosure of which would reveal the identity of the person who furnished information pursuant to a promise that his/her identity would be held in confidence.
- (k)(6):** Testing or examination material used to determine individual qualifications for appointment or promotion in federal government service, the release of which would compromise the testing or examination process.
- (k)(7):** Material used to determine potential for promotion in the armed services, the disclosure of which would reveal the identity of the person who furnished the material pursuant to a promise that his/her identity would be held in confidence.

B. Sworn Affidavits by Surviving Intervenors:

1. Gemi Spaulding, ADDENDUM, at p. 23.
2. Wilbert Louis Ogden, ADDENDUM, at p. 30.
3. Clarisa Knopf, by caretaker ADDENDUM, at p. 34.
4. Dustin Parker, ADDENDUM, at p. 39.
5. Michelle Gubbay-Snyder, ADDENDUM, at p. 44
6. Lera Anne Fuqua, ADDENDUM, at p. 48
7. Regina Dolan, ADDENDUM, at p. 53.
8. Piper McKee-Wright ADDENDUM, at p. 57.
9. Rodney Summers.¹ ADDENDUM, at p. 61

¹ Each of these patients, seeking to intervene, have signed an extensive HIPPA waiver as to the disclosure of their identities, their medical records, and any privacy or discussion of this information.

PETITIONER’S AFFIDAVIT

In support of a motion to re-consider *en banc*
an order entered by a three judge panel of this Court on February 20, 2024.
Case No. 23-1007

**IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

GEMI SPAULDING, et. al.,

Petitioners,

v.

MERRICK B. GARLAND, Attorney General, et. al.

Respondents.

On Petition for Review from the Order and
Final decision of DEA Trial Judge – Docket No. 23-5
Before the Honorable Teresa A. Wallbaum (TAW)

PETITIONERS’ AFFIDAVIT – Gemi Spaulding

I, Gemi Spaulding, do hereby swear or affirm and state under penalty of
perjury, as follows:

1. My name is Gemi Spaulding.
2. I am a chronic pain patient.

3. I am submitting this affidavit in support of petitioners' motion for this entire court to re-hear and re-consider *en banc* the *per curiam* order wrongly entered by a three-judge panel of this Court, on February 20, 2024.
4. Dr. Bockoff was my pain doctor until the DEA Administrator suspended his authority to write prescriptions for my pain without any evidence or cause to stop prescribing as he had; it goes without saying that no notice was given to rebut this order or to prepare for the pain the order caused.
5. I am an "interested person," as that term has meaning in the Administrative Procedure Act, and I sought to intervene in the sealed closed-door DEA Administrative proceedings because the DOJ and the DEA Administrator cut off my prescriptions.
6. Other patients and myself sought to have our side of the facts told; no one else, certainly not the government, nor the doctor's counsel, would represent our "interests."
7. At the outset, we were eleven patients, who identified as petitioners below to intervene before the sealed DEA Administrative proceedings, as of November 22, 2022.
8. Dr. Bockoff was our doctor; he treated the eleven of us, and 240 chronic pain patients in all including us petitioners.

9. Several patients have died since we sought to intervene, and 2 patients have been removed as Petitioners in the above captioned case since they died while this case was pending.
10. The Administrative Procedure Act (APA) provides an “interested person” may “intervene” to have his or her say in an administrative proceeding.
11. By those terms, cutting off the prescription of a chronic pain patient certainly makes that patient an “interested person.”
12. A panel of this DC Circuit Court denied petitioners’ request to intervene in the Administrative proceeding by way of a *per curiam* order, entered on February 20, 2024, insisting that we petitioners had no right to judicial review of the ALJ’s abhorrent decision, denying the relief to intervene that we most respectfully still demand.
13. Among the errors that this three-judge panel made was its conclusion that we patients made “no creditable [sic] factual submissions regarding the injuries” suffered. See *Per Curiam* order at p.3, 1st full paragraph.
14. Not “Creditable” means “not worthy of belief.” Persons are literally dying and a panel of this Court thinks what we say has “no creditable” standing.
15. A panel of this Court doesn’t “believe” us despite our filings. But that’s the sorry story of the DEA as well.

16. This Court denies the truth that we petitioners are in pain, and not addicts, but pain patients, and Doctor Bockoff was treating our condition.
17. Pain patients in the closed DEA proceedings, and now on appeal, suffer a government that sees nothing and hears nothing wrong, like those radiations we can't sense and the light we cannot see, although the facts of chronic pain are sensible and visible, and truly known to any fair observer.
18. The three-judge panel suggested that there was a requirement that we petitioners needed to submit an affidavit under oath.
19. Before this *per curiam* order, no one mentioned any such requirement.
20. Still, at the last page of the panel's *per curiam* order, at page 3, the *per curiam* order references Federal Rules of Civil Procedure, Rule 56(c)(4)(covering summary judgments), and claims to gather case authority from a dispute about a certificate of public convenience (see *Ass'n of Flight Attendants-CWA-AFL-CIO v. United States DOT*, 564 F.3d 462 (DC Circuit 2009)).
21. Accordingly, to make it absolutely clear, that there is pain and suffering and death an increasing possibility, absent necessary pain medications, we hereby swear this is true, by separately filing affidavits attesting to the pain we suffer.

22. In the original emergency motion our counsel filed, on November 22, 2022, it was plainly noted that “[T]he patients seeking to intervene have provided descriptions of themselves and their various medical conditions requiring prescriptions that DEA presently withholds and forbids.” See Joint Appendix on Appeal, at p.33, as more precisely outlined in fn 1.
23. When we first filed our petition to intervene before the ALJ, we submitted an Exhibit 1 that provided, in my case, a brief “outline of how I got to where I am today,” meaning, this was my own passage, over a long time from healthy to chronic pain patient. See Joint Appendix at p. 64-65. I worked as a biological laboratory technician in a Veterans Administration medical research facility where in 1991 I contracted a rare bacterial infection that did not respond to antibiotics available at the times. I am an intervenor in this case. I was approved as an OWCP Federal Workers Compensation Claimant in the 1990s and I have remained an approved claimant since then. I have lived with permanent damage and complications of the bacterial infection ever since.
24. Other petitioning patients are filing affidavits that their pain is also true, thus in opposition to the three-judge panel’s mistaken order and in support of petitioners’ request for a rehearing *en banc*.
25. There are other reasons for this request for a re-hearing.

26. A panel of this Court entered this order even though it contradicted other decisions of this Court and express statutory authority.
27. The ALJ declaimed that petitioners sought to intervene “to seek immediate dissolution of the ISO.” The Court claimed it had no power to do so. See DEA ALJ “Order denying Patients’ Emergency Motion to Intervene,” served on petitioners on December 22, 2022, at Joint Appendix at p. 116, 1st full paragraph.
28. But that was not our “ask” when submitting our petition to the ALJ, not our petition for relief. We asked instead that the Administrative Tribunal and the ALJ “recommend the immediate suspension or dissolution of the DEA Order suspending Dr. Bockoff’s authority to prescribe and treat chronic pain patients (underscoring supplied).” See Original Motion to Intervene, November 22, 2022, at Joint Appendix at p. 34, Relief requested, at par. (b).
29. I have filed this brief affidavit to redress misleading information in the three-judge panel’s *per curiam* order, denying us petitioners any relief, hiding this order as the ALJ did below.

30.If this Court has any questions, we can of course supplement our submission to the Court in response to any request.

RESPECTFULLY SUBMITTED,

GEMI SPAULDING

Gemi Spaulding
Affiant

State of Hawaii
City and County of Honolulu

Sworn and subscribed before me, a Notary Public, in and for the State of

Hawaii,

County of HONOLULU, on the 21st day of MARCH, 2024.

[Signature]

Notary Public

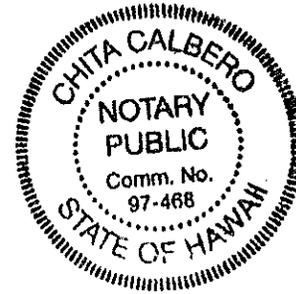
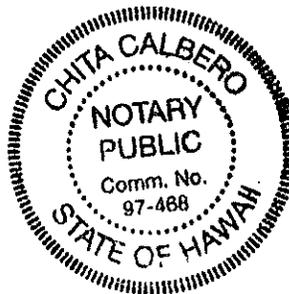
Chita Calbero
Notary Public, State of Hawaii
My Commission Expires:
June 18, 2026

My Commission expires _____

Doc. Date: 03/21/2024 # Pages: 7
Notary Name: Chita Calbero First Circuit
Doc Description: RETIREMENT AFFIDAVIT

[Signature]
Notary Signature

03/21/2024
Date



PETITIONER’s AFFIDAVIT

In support of a motion to reconsider *en banc*
an order entered by a three judge panel of this Court on February 20, 2024.
Case No. 23-1007

**IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

GEMI SPAULDING, et. al.,

Petitioners,

v.

MERRICK B. GARLAND, Attorney General, et. al.

Respondents.

On Petition for Review from the Order and
Final decision of DEA Trial Judge – Docket No. 23-5
Before the Honorable Teresa A. Wallbaum (TAW)

PETITIONER’s AFFIDAVIT – Wilbert Louis Ogden

I, Wilbert Louis Ogden, do hereby swear or affirm and state under penalty of
perjury, as follows:

1. My name is Wilbert Louis Ogden.
2. I am a chronic pain patient.

3. I am submitting this affidavit in support of petitioners' joint motion for this entire court to rehear and reconsider *en banc* the *per curiam* order wrongly entered by a three-judge panel of this Court, on February 20, 2024.
4. Dr. Bockoff was my pain doctor until the DEA Administrator suspended his authority to write prescriptions for my pain without any evidence or just cause to stop prescribing pain medication.
5. It goes without saying that no notice was given to any pain patient petitioner so any of Dr. Bockoff's pain patients could rebut this order and seek to ameliorate the pain that was sure to follow the DEA's summary order.
6. I am an "interested person," as that term has meaning in the Administrative Procedure Act (APA), and I sought to intervene in the sealed closed-door DEA Administrative proceedings because the DOJ and the DEA Administrator cut off my pain prescriptions.
7. Other patients and myself sought to have our side of the facts told; no one else, certainly not the government, nor the doctor's counsel, would represent our "interests" – notwithstanding the government and administrative court's suggestion to the contrary.

8. I have reviewed an affidavit filed with this Court by our leading petitioning intervenor Gemi Spaulding and I swear under oath and incorporate by reference all of her claims, with one understandable exception – and that is the distinct aspects of my personal background of chronic pain and treatment.
9. When we first filed our petition to intervene before the ALJ, we submitted an Exhibit 1 that provided, in my case, as is true of all the other surviving petitioners, a brief description of each patient’s chronic pain. See Joint Appendix on Appeal, at p. 33, as more precisely outlined in fn 1.
10. My pain began at age 6 in 1956; I am now 74 years old. The pain got so bad as an adult that, in my mid-40s, I was couch-bound and I could not continue my career doing electrical construction. It took many years to arrive at correct diagnoses for the causes of my constant severe incurable pain. My primary diagnoses are the genetic connective tissue disorder Ehlers-Danlos Syndrome, Arachnoiditis of the cervical spine, and Adhesive Arachnoiditis of the lumbar Spine. With Dr. Bockoff’s care and prescribed medications, I had effective pain relief and was able to engage in activities around my home and enjoy life with my wife. Pain medication is crucial to my health and survival. Obviously, I am

incorporating by reference the full statement originally submitted. See Joint Appendix at pp. 65-66.

11.If this Court has any questions, we can of course supplement our submission to the Court in response to any request.

RESPECTFULLY SUBMITTED,

WILBERT LOUIS OGDEN

Wilbert Louis Ogden
Affiant

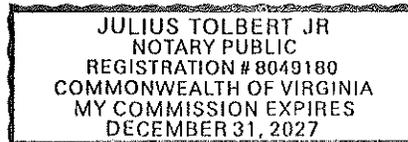
Sworn and subscribed before me, a Notary Public, in and for the State of

Virginia,

County of Chesterfield, on the 29th day of March, 2024.

Julius Tolbert Jr
Notary Public

My Commission expires 12/31/2027



PETITIONER's AFFIDAVIT

In support of a motion to re-consider *en banc*
an order entered by a three judge panel of this Court on February 20, 2024.
Case No. 23-1007

**IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

GEMI SPAULDING, et. al.,

Petitioners,

v.

MERRICK B. GARLAND, Attorney General, et. al.

Respondents.

On Petition for Review from the Order and
Final decision of DEA Trial Judge – Docket No. 23-5
Before the Honorable Teresa A. Wallbaum (TAW)

PETITIONER's AFFIDAVIT – by Caretaker, Ted Knopf

I, Ted Knopf, do hereby swear or affirm and state under penalty of perjury,
as follows:

1. My name is Ted Knopf.
2. I am the caretaker for my wife, Clarisa Knopf, a chronic pain patient.

3. I am submitting this affidavit in support of petitioners' joint motion for this entire court to re-hear and re-consider *en banc* the *per curiam* order wrongly entered by a three-judge panel of this Court, on February 20, 2024.
4. Dr. Bockoff was my wife's pain doctor until the DEA Administrator suspended his authority to write prescriptions for my wife's pain without any evidence or just cause to stop prescribing pain medication.
5. It goes without saying that no notice was given to any pain patient petitioner so any of Dr. Bockoff's pain patients could rebut this order and seek to ameliorate the pain that was sure to follow the DEA's summary order.
6. My wife Clarisa is an "interested person," and so may I be, as a caretaker, as that term has meaning in the Administrative Procedure Act (APA), and we sought to intervene in the sealed closed-door DEA Administrative proceedings because the DOJ and the DEA Administrator cut off my wife's pain prescriptions.
7. Other patients and caretakers and myself, on behalf of my wife, sought to have our side of the facts told; no one else, certainly not the government, nor the doctor's counsel, would represent our "interests" – notwithstanding the government and administrative court's suggestion to the contrary.
8. I have reviewed an affidavit filed with this Court by our leading petitioning intervenor Gemi Spaulding and I swear under oath and incorporate by

reference all of her claims, with one understandable exception – and that is the distinct aspects of my wife’s personal background of chronic pain and treatment.

9. When we first filed our petition to intervene before the ALJ, we submitted an Exhibit 1 that provided, in my wife’s case, as is true of all the other surviving petitioners, a brief description of each patient’s chronic pain. See Joint Appendix on Appeal, at p. 33, as more precisely outlined in fn 1.
10. In my wife’s case, her health was forever altered by multiple traumatic head and neck injuries from serious car accidents that resulted in both head and neck intractable pain at levels that made it impossible for her to function. With the right diagnosis and pain medication, my wife has been able to function. Please review my wife’s medical condition and why pain medication is crucial to her health and survival. Obviously, I am incorporating by reference the full statement originally submitted. See Joint Appendix at pp. 66-67.
11. If this Court has any questions, we can of course supplement our submission

to the Court in response to any request.

RESPECTFULLY SUBMITTED,

TED KNOFF



Affiant

Sworn and subscribed before me, a Notary Public, in and for the State of

County of _____, on the _____ day of _____, 2024.

See attached

Notary Public

My Commission expires _____

JURAT

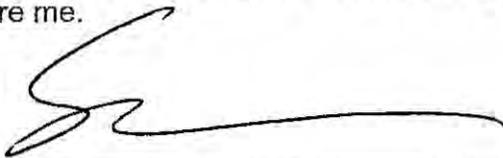
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of Marin

Subscribed and sworn to (or affirmed) before me on this 27th day of Mar,
2024 by Ted Knopf

proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.



Signature (Seal)



OPTIONAL INFORMATION

INSTRUCTIONS

DESCRIPTION OF THE ATTACHED DOCUMENT

Petitioner's Affidavit
(Title or description of attached document)

(Title or description of attached document continued)

Number of Pages _____ Document Date _____

Additional Information

The wording of all Jurats completed in California after January 1, 2015 must be in the form as set forth within this Jurat. There are no exceptions. If a Jurat to be completed does not follow this form, the notary must correct the verbiage by using a jurat stamp containing the correct wording or attaching a separate jurat form such as this one which does contain the proper wording. In addition, the notary must require an oath or affirmation from the document signer regarding the truthfulness of the contents of the document. The document must be signed AFTER the oath or affirmation. If the document was previously signed, it must be re-signed in front of the notary public during the jurat process.

- State and county information must be the state and county where the document signer(s) personally appeared before the notary public.
- Date of notarization must be the date the signer(s) personally appeared which must also be the same date the jurat process is completed.
- Print the name(s) of the document signer(s) who personally appear at the time of notarization.
- Signature of the notary public must match the signature on file with the office of the county clerk.
- The notary seal impression must be clear and photographically reproducible. Impression must not cover text or lines. If seal impression smudges, re-seal if a sufficient area permits, otherwise complete a different jurat form.
 - ❖ Additional information is not required but could help to ensure this jurat is not misused or attached to a different document.
 - ❖ Indicate title or type of attached document, number of pages and date.
- Securely attach this document to the signed document with a staple.

PETITIONER’s AFFIDAVIT

In support of a motion to re-consider *en banc*
an order entered by a three judge panel of this Court on February 20, 2024.
Case No. 23-1007

**IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

GEMI SPAULDING, et. al.,

Petitioners,

v.

MERRICK B. GARLAND, Attorney General, et. al.

Respondents.

On Petition for Review from the Order and
Final decision of DEA Trial Judge – Docket No. 23-5
Before the Honorable Teresa A. Wallbaum (TAW)

PETITIONER’s AFFIDAVIT – Dustin Parker

I, Dustin Parker, do hereby swear or affirm and state under penalty of
perjury, as follows:

1. My name is Dustin Parker.
2. I am a chronic pain patient.

3. I am submitting this affidavit in support of petitioners' joint motion for this entire court to re-hear and re-consider *en banc* the *per curiam* order wrongly entered by a three-judge panel of this Court, on February 20, 2024.
4. Dr. Bockoff was my pain doctor until the DEA Administrator suspended his authority to write prescriptions for my pain without any evidence or just cause to stop prescribing pain medication.
5. It goes without saying that no notice was given to any pain patient petitioner so any of Dr. Bockoff's pain patients could rebut this order and seek to ameliorate the pain that was sure to follow the DEA's summary order.
6. I am an "interested person," as that term has meaning in the Administrative Procedure Act (APA), and we petitioners sought to intervene in the sealed closed-door DEA Administrative proceedings because the DOJ and the DEA Administrator cut off my pain prescriptions.
7. Other patients and caretakers have sought to have our side of the facts told; no one else, certainly not the government, nor the doctor's counsel, would represent our "interests" – notwithstanding the government and administrative court's suggestion to the contrary.
8. I have reviewed an affidavit filed with this Court by our leading petitioning intervenor Gemi Spaulding and I swear under oath and incorporate by reference all of her claims, with one understandable exception – and that is

the distinct aspects of my personal background of chronic pain and treatment.

9. When we first filed our petition to intervene before the ALJ, we submitted an Exhibit 1 that provided, in my case, as is true of all the other surviving petitioners, a brief description of each patient's chronic pain. See Joint Appendix on Appeal, at p. 33, as more precisely outlined in fn 1.
10. In my case, I have Lumbar Sacral Adhesive Arachnoiditis, because I suffered a broken back in a terrible accident and couldn't stand or walk afterwards. Going through rehabilitation and seeking treatments I suffered complications resulting in progressive Adhesive Arachnoiditis . I now suffer from severe unremitting intractable pain. Dr. Bockoff's pain medication allows some more normal function. My wife, Shelley D. Parker, has added some further details and I swear to the truth and accuracy of her remarks as well. See Joint Appendix at pp. 67-69.
11. If this Court has any questions, we can of course supplement our submission

to the Court in response to any request.

RESPECTFULLY SUBMITTED,

DUSTIN PARKER

Dustin Z Parker

Affiant

Sworn and subscribed before me, a Notary Public, in and for the State of

County of _____, on the _____ day of _____, 2024.

Notary Public

My Commission expires _____

SEE ATTACHED
CERTIFICATE BY
NOTARY PUBLIC

CALIFORNIA JURAT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document, to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA }

COUNTY OF TULARE }

Subscribed and sworn to (or affirmed) before me on this 29th day of MARCH, 2024
Date Month Year

by DUSTIN LEE PARKER

Name of Signers

proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.

Signature: *Grisel Carrillo*
Signature of Notary Public



Seal
Place Notary Seal Above

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent attachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: _____

Document Date: _____

Number of Pages: _____

Signer(s) Other Than Named Above: _____

PETITIONER's AFFIDAVIT

In support of a motion to re-consider *en banc*
an order entered by a three judge panel of this Court on February 20, 2024.
Case No. 23-1007

**IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

GEMI SPAULDING, et. al.,

Petitioners,

v.

MERRICK B. GARLAND, Attorney General, et. al.

Respondents.

On Petition for Review from the Order and
Final decision of DEA Trial Judge – Docket No. 23-5
Before the Honorable Teresa A. Wallbaum (TAW)

PETITIONER's AFFIDAVIT – Michelle Gubbay-Snyder

I, Michelle Gubbay-Snyder, do hereby swear or affirm and state under
penalty of perjury, as follows:

1. My name is Michelle Gubbay-Snyder.
2. I am a chronic pain patient.

3. I am submitting this affidavit in support of petitioners' joint motion for this entire court to re-hear and re-consider *en banc* the *per curiam* order wrongly entered by a three-judge panel of this Court, on February 20, 2024.
4. Dr. Bockoff was my pain doctor until the DEA Administrator suspended his authority to write prescriptions for my pain without any evidence or just cause to stop prescribing pain medication.
5. It goes without saying that no notice was given to any pain patient petitioner so any of Dr. Bockoff's pain patients could rebut this order and seek to ameliorate the pain that was sure to follow the DEA's summary order.
6. I am an "interested person," as that term has meaning in the Administrative Procedure Act (APA), and we petitioners sought to intervene in the sealed closed-door DEA Administrative proceedings because the DOJ and the DEA Administrator cut off my pain prescriptions.
7. Other patients and caretakers have sought to have our side of the facts told; no one else, certainly not the government, nor the doctor's counsel, would represent our "interests" – notwithstanding the government and administrative court's suggestion to the contrary.
8. I have reviewed an affidavit filed with this Court by our leading petitioning intervenor Gemi Spaulding and I swear under oath and incorporate by reference all of her claims, with one understandable exception – and that is

the distinct aspects of my personal background of chronic pain and treatment.

9. When we first filed our petition to intervene before the ALJ, we submitted an Exhibit 1 that provided, in my case, as is true of all the other surviving petitioners, a brief description of each patient's chronic pain. See Joint Appendix on Appeal, at p. 33, as more precisely outlined in fn 1.

10. In my case, I suffered a rare post viral immune disorder in my early 20s, and constant pain, debilitating pain, followed. An auto accident worsened my condition, and the treatment and pain medication by Dr. Bockoff allowed me to function. I swear to the truth and accuracy of my remarks as originally stated. See Joint Appendix at pp. 69-70.

11. If this Court has any questions, we can of course supplement our submission

to the Court in response to any request.

RESPECTFULLY SUBMITTED,

MICHELLE GUBBAY-SNYDER

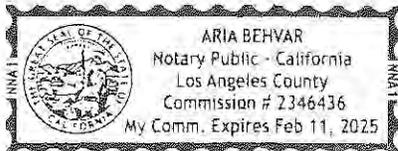


Affiant

Sworn and subscribed before me, a Notary Public, in and for the State of

California,

County of Ventura, on the 30th day of March, 2024.



Notary Public

My Commission expires 2/11/2025

PETITIONER’s AFFIDAVIT

In support of a motion to reconsider *en banc*
an order entered by a three judge panel of this Court on February 20, 2024.
Case No. 23-1007

**IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

GEMI SPAULDING, et. al.,

Petitioners,

v.

MERRICK B. GARLAND, Attorney General, et. al.

Respondents.

On Petition for Review from the Order and
Final decision of DEA Trial Judge – Docket No. 23-5
Before the Honorable Teresa A. Wallbaum (TAW)

PETITIONER’s AFFIDAVIT – Lera Anne Fuqua

I, Lera Anne Fuqua, do hereby swear or affirm and state under penalty of
perjury, as follows:

1. My name is Lera Anne Fuqua.
2. I am a chronic pain patient.

3. I am submitting this affidavit in support of petitioners' joint motion for this entire court to rehear and reconsider *en banc* the *per curiam* order wrongly entered by a three-judge panel of this Court, on February 20, 2024.
4. Dr. Bockoff was my pain doctor until the DEA Administrator suspended his authority to write prescriptions for my pain without any evidence or just cause to stop prescribing pain medication.
5. It goes without saying that no notice was given to any pain patient petitioner so any of Dr. Bockoff's pain patients could rebut this order and seek to ameliorate the pain that was sure to follow the DEA's summary order.
6. I am an "interested person," as that term has meaning in the Administrative Procedure Act (APA), and we petitioners sought to intervene in the sealed closed-door DEA Administrative proceedings because the DOJ and the DEA Administrator cut off our pain prescriptions.
7. Other patients and caretakers have sought to have our side of the facts told; no one else, certainly not the government, nor the doctor's counsel, would represent our "interests" – notwithstanding the government and administrative court's suggestion to the contrary.
8. I have reviewed an affidavit filed with this Court by our leading petitioning intervenor Gemi Spaulding and I swear under oath and incorporate by reference all of her claims, with one understandable exception – and that is

the distinct aspects of my personal background of chronic pain and treatment.

9. When we originally filed our petition to intervene before the ALJ, we submitted an Exhibit 1 that provided, in my case, as is true of all the other surviving petitioners, a brief description of each patient's chronic pain. See Joint Appendix on Appeal, at p. 33, as more precisely outlined in fn 1.
10. I am a former nurse and the medical knowledge I have has allowed me to have a good understanding of the pathology of my conditions and the mechanisms of action of various medications. I have primary generalized dystonia and arachnoiditis. At my worst, my dystonia caused involuntary movements/spasms severe enough that I was unable to sit up straight and required a power chair with tilt, recline, shoulder straps, and lateral supports. My fingers were curled and prevented me from even cutting my own food. Though it was a very difficult trip, I attended the oral arguments because the pain relief I receive from my medications allows me the ability to function and live independently. The period of time that I was forced to go without pain treatment was incredibly difficult. Withdrawal and uncontrolled pain caused my normally healthy blood pressure to remain above 180/100mmHg and triggered diastolic heart failure that continues to be a significant problem, impacting my daily life and mobility. I know that I was fortunate

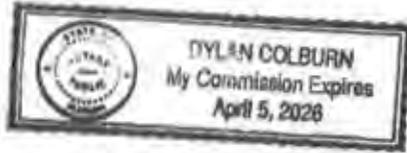
to have survived this ordeal; Jessica Fujimaki, a fellow Bockoff patient, died from the physiologic effects of opioid withdrawal. I believe that, should I again have to experience having no pain medication at all, it is likely I would not survive. Obviously, I am incorporating by reference the full statement originally submitted. See Joint Appendix at pp. 70-71. (Enclosed is a picture of patient Louis Ogden (left), his caretaker Kristen Ogden (center), and myself in a wheelchair (right) (at oral argument).



11. If this Court has any questions, we can of course supplement our submission to the Court in response to any request.

RESPECTFULLY SUBMITTED,

LERA ANNE FUQUA



[Handwritten Signature]
Affiant

Sworn and subscribed before me, a Notary Public, in and for the State of Alabama.

County of Jefferson, on the 29 day of March, 2024.

[Handwritten Signature]
Notary Public

My Commission expires 4/5/2026

PETITIONER’s AFFIDAVIT

In support of a motion to re-consider *en banc*
an order entered by a three judge panel of this Court on February 20, 2024.
Case No. 23-1007

**IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

GEMI SPAULDING, et. al.,

Petitioners,

v.

MERRICK B. GARLAND, Attorney General, et. al.

Respondents.

On Petition for Review from the Order and
Final decision of DEA Trial Judge – Docket No. 23-5
Before the Honorable Teresa A. Wallbaum (TAW)

PETITIONER’s AFFIDAVIT – Regina Dolan

I, Regina Dolan, do hereby swear or affirm and state under penalty of
perjury, as follows:

1. My name is Regina Dolan.
2. I am a chronic pain patient.

3. I am submitting this affidavit in support of petitioners' joint motion for this entire court to re-hear and re-consider *en banc* the *per curiam* order wrongly entered by a three-judge panel of this Court, on February 20, 2024.
4. Dr. Bockoff was my pain doctor until the DEA Administrator suspended his authority to write prescriptions for my pain without any evidence or just cause to stop prescribing pain medication.
5. It goes without saying that no notice was given to any pain patient petitioner so any of Dr. Bockoff's pain patients could rebut this order and seek to ameliorate the pain that was sure to follow the DEA's summary order.
6. I am an "interested person," as that term has meaning in the Administrative Procedure Act (APA), and we petitioners sought to intervene in the sealed closed-door DEA Administrative proceedings because the DOJ and the DEA Administrator cut off our pain prescriptions.
7. Other patients and caretakers have sought to have our side of the facts told; no one else, certainly not the government, nor the doctor's counsel, would represent our "interests" – notwithstanding the government and DEA administrative court's suggestion to the contrary.
8. I have reviewed an affidavit filed with this Court by our leading petitioning intervenor Gemi Spaulding and I swear under oath and incorporate by reference all of her claims, with one understandable exception – and that is

the distinct aspects of my personal background of chronic pain and treatment.

9. When we first filed our petition to intervene before the ALJ, we submitted an Exhibit 1 that provided, in my case, as is true of all the other surviving petitioners, a brief description of each patient's chronic pain. See Joint Appendix on Appeal, at p. 33, as more precisely outlined in fn 1.

10. In my case, I have been suffering from intractable pain since 1999 when I was 26 years of age. I was diagnosed with fibromyalgia, Epstein-Barr, Chronic Fatigue Syndrome, autoimmune disorder, and a benign brain tumor that was ultimately treated with radiation, causing lingering side effects. Tests showed that my body rapidly metabolizes opioid analgesics, requiring higher doses. With Dr. Bockoff, my average pain level went from 8+ to 3+, allowing me to function. I incorporate by reference all that I said earlier and swear that this is the truth of the matter. See Joint Appendix at pp. 72-73.

11. If this Court has any questions, we can of course supplement our submission

to the Court in response to any request.

RESPECTFULLY SUBMITTED,

REGINA DOLAN

Regina Dolan
Affiant

Sworn and subscribed before me, a Notary Public, in and for the State of

COLORADO,

County of DOUGLAS, on the 28th day of March, 2024.

**TATIANA EKATERINA ZIMMERER
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 20234034810
MY COMMISSION EXPIRES 09/12/2027**

T. Zimmerer
Notary Public

My Commission expires 09/12/2027

PETITIONER's AFFIDAVIT

In support of a motion to re-consider *en banc*
an order entered by a three judge panel of this Court on February 20, 2024.
Case No. 23-1007

**IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

GEMI SPAULDING, et. al.,

Petitioners,

v.

MERRICK B. GARLAND, Attorney General, et. al.

Respondents.

On Petition for Review from the Order and
Final decision of DEA Trial Judge – Docket No. 23-5
Before the Honorable Teresa A. Wallbaum (TAW)

PETITIONER's AFFIDAVIT – Piper McKee-Wright

I, Piper McKee Wright, do hereby swear or affirm and state under penalty of
perjury, as follows:

1. My name is Piper McKee-Wright.
2. I am a chronic pain patient.

3. I am submitting this affidavit in support of petitioners' joint motion for this entire court to re-hear and re-consider *en banc* the *per curiam* order wrongly entered by a three-judge panel of this Court, on February 20, 2024.
4. Dr. Bockoff was my pain doctor until the DEA Administrator suspended his authority to write prescriptions for my pain without any evidence or just cause to stop prescribing pain medication.
5. It goes without saying that no notice was given to any pain patient petitioner so any of Dr. Bockoff's pain patients could rebut this order and seek to ameliorate the pain that was sure to follow the DEA's summary order.
6. I am an "interested person," as that term has meaning in the Administrative Procedure Act (APA), and we petitioners sought to intervene in the sealed closed-door DEA Administrative proceedings because the DOJ and the DEA Administrator cut off our pain prescriptions.
7. Other patients and caretakers have sought to have our side of the facts told; no one else, certainly not the government, nor the doctor's counsel, would represent our "interests" – notwithstanding the government and DEA administrative court's suggestion to the contrary.
8. I have reviewed an affidavit filed with this Court by our leading petitioning intervenor Gemi Spaulding and I swear under oath and incorporate by reference all of her claims, with one understandable exception – and that is

the distinct aspects of my personal background of chronic pain and treatment.

9. When we first filed our petition to intervene before the ALJ, we submitted an Exhibit 1 that provided, in my case, as is true of all the other surviving petitioners, a brief description of each patient's chronic pain. See Joint Appendix on Appeal, at p. 33, as more precisely outlined in fn 1.

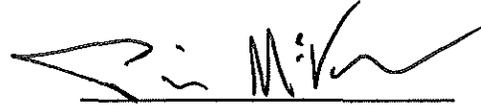
10. In my case, in 2005, my spinal cord was cut during a spinal fusion surgery to repair my scoliosis. I was paralyzed and have had my left hip replaced 3 x as a result. Without pain medication I was told I might not live to 40 years of age. Dr. Bockoff has prescribed the necessary pain medication. I incorporate by reference all that I said earlier and swear that this is the truth of the matter. See Joint Appendix at pp. 74-75.

11. If this Court has any questions, we can of course supplement our submission

to the Court in response to any request.

RESPECTFULLY SUBMITTED,

PIPER MCKEE-WRIGHT



Affiant

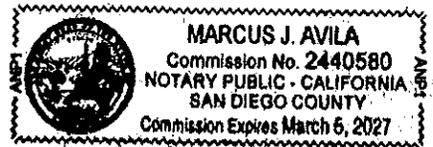
Sworn and subscribed before me, a Notary Public, in and for the State of

California,

County of San Diego, on the 28 day of March, 2024.

Marcus J Avila, Notary Public MA
Notary Public

My Commission expires March 5, 2027



PETITIONER's AFFIDAVIT

In support of a motion to re-consider *en banc*

an order entered by a three judge panel of this Court on February 20, 2024.

Case No. 23-1007

**IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

GEMI SPAULDING, et. al.,

Petitioners,

v.

MERRICK B. GARLAND, Attorney General, et. al.

Respondents.

On Petition for Review from the Order and
Final decision of DEA Trial Judge – Docket No. 23-5
Before the Honorable Teresa A. Wallbaum (TAW)

PETITIONER's AFFIDAVIT – Rodney Summers

I, Rodney Summers, do hereby swear or affirm and state under penalty of perjury, as follows:

1. My name is Rodney Summers.
2. I am a chronic pain patient.
3. I am submitting this affidavit in support of petitioners' joint motion for this entire court to re-hear and re-consider *en banc* the *per curiam* order wrongly entered by a three-judge panel of this Court, on February 20, 2024.
4. Dr. Bockoff was my pain doctor until the DEA Administrator suspended his authority to write prescriptions for my pain without any evidence or just cause to stop prescribing pain medication.
5. It goes without saying that no notice was given to any pain patient petitioner so any of Dr. Bockoff's pain patients could rebut this order and seek to ameliorate the pain that was sure to follow the DEA's summary order.
6. I am an "interested person," as that term has meaning in the Administrative Procedure Act (APA), and we petitioners sought to intervene in the sealed closed-door DEA Administrative proceedings because the DOJ and the DEA Administrator cut off our pain prescriptions.
7. Other patients and caretakers have sought to have our side of the facts told; no one else, certainly not the government, nor the doctor's counsel, would represent our "interests" – notwithstanding the government and DEA administrative court's suggestion to the contrary.

8. I have reviewed an affidavit filed with this Court by our leading petitioning intervenor Gemi Spaulding and I swear under oath and incorporate by reference all of her claims, with one understandable exception – and that is the distinct aspects of my personal background of chronic pain and treatment.

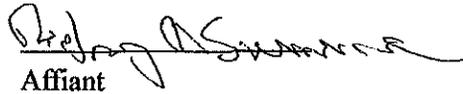
9. When we first filed our petition to intervene before the ALJ, we submitted an Exhibit 1 that provided, in my case, as is true of all the other surviving petitioners, a brief description of each patient’s chronic pain. See Joint Appendix on Appeal, at p. 33, as more precisely outlined in fn 1.

10. In my case, in 2005, I was injured while working for the Missouri Department of Transportation, had two failed back surgeries, suffered damage to my L4-L5, L5-S1. A Workers’ Compensation Judge granted me full disability so I would have access to pain medication for the rest of my life. The DEA Administrator cut off my pain medication. Dr. Bockoff has prescribed the necessary pain medication. I incorporate by reference all that I said earlier and swear that this is the truth of the matter. See Joint Appendix at pp. 75-76.

11. If this Court has any questions, we can of course supplement our submission

to the Court in response to any request.

**RESPECTFULLY SUBMITTED,
RODNEY SUMMERS**


Affiant

Sworn and subscribed before me, a Notary Public, in and for the State of

ARIZONA,

County of MARICOPA, on the 29 day of MARCH, 2024.



Notary Public

My Commission expires 05/12/2027

