

## YetterColeman LLP

December 22, 2020

### *Via ECF*

Molly C. Dwyer, Clerk  
Ninth Circuit Court of Appeals  
95 Seventh Street  
San Francisco, CA 94103-1526

Re: 20-71433; *Suzanne Sisley, M.D. v. U.S. Drug Enforcement Administration*; in  
the Ninth Circuit Court of Appeals

Dear Ms. Dwyer:

Respondents' reliance on *Zyszkiewicz v. Barr*, No. 20-5213 (D.C. Cir. Dec. 2, 2020)—an unpublished, per curiam judgment with “no precedential value” according to the panel that issued it, D.C. Cir. Rule 36(e)—is telling.

Seeking review of DEA's April 21, 2020 final decision denying his rulemaking petition, Zyszkiewicz filed a pro se mandamus action in district court. *Zyszkiewicz v. Barr*, 2020 WL 3572908 (D.D.C. June 30, 2020). The district court dismissed sua sponte, correctly noting that Zyszkiewicz had an “adequate remedy available”—namely, a petition for review in a Court of Appeals under § 877 like the one Petitioners filed here. The D.C. Circuit affirmed.

Insofar as Respondents suggest *Zyszkiewicz* supports their premise that § 877 deprives all “person[s] aggrieved” by DEA's denial of a rulemaking petition of judicial review except the party that submitted it, they are deeply mistaken. Plucking the per curiam judgment's reference to an “adequate alternative remedy under the [CSA]” out of context, Respondents assert that because Petitioners could submit a separate petition to DEA and obtain a denial years later, they too have an “adequate alternative remedy.” Ltr. 1. But the “adequate alternative remedy” in *Zyszkiewicz* for those aggrieved by the 2020 Denial is the very petition for review Petitioners filed in this Court—one seeking direct review under § 877. Notably, neither the district court nor the D.C. Circuit addressed *Darby*, which forecloses the possibility of further exhaustion now that Petitioners have filed a petition for review under § 877.

Unlike Petitioners, Zyszkiewicz failed to pursue judicial review under § 877. That is why his improper mandamus action was dismissed. Petitioners, by contrast, submitted a timely petition for review under § 877. *Zyszkiewicz*'s dismissal on grounds that § 877 provided a proper means for seeking review of the 2020 Denial thus confirms that as “person[s] aggrieved” by DEA's 2020 Denial, Petitioners are entitled to judicial review in this Court under § 877. That ends the inquiry.

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Yours very truly,

YETTER COLEMAN LLP

By: /s/Matthew C. Zorn

Matthew C. Zorn

MZ:dd

cc: *Via ECF*  
Jeffrey Bossert Clark  
Acting Assistant Attorney General  
Mark B. Stern  
Daniel Aguilar  
Attorneys, Appellate Staff  
Civil Division, Room 7266  
Department of Justice  
950 Pennsylvania, NW  
Washington, DC 20530

**CERTIFICATE OF COMPLIANCE**

No. 20-71433

I hereby certify that this document complies with the requirements of Federal Rule of Appellate Procedure 28(j) because contains 323 words.

By: /s/Matthew C. Zorn

Matthew C. Zorn