



U. S. Department of Justice
Drug Enforcement Administration
Office of Administrative Law Judges
8701 Morrisette Drive
Springfield, Virginia 22152

www.dea.gov

January 15, 2025

The Honorable Anne Milgram
Administrator
Drug Enforcement Administration
8701 Morrisette Drive
Springfield, Virginia 22152

**Re: Interlocutory Appeal
Proposed Rescheduling of Marijuana
Docket No. 24-44**

Administrator Milgram:

Pursuant to 21 C.F.R. § 1316.62, I transmit to you this Interlocutory Appeal (IA), for which leave was granted by me in an order (the *Ex Parte* Reconsideration Order or EPRO), dated January 13, 2025. This IA concerns hearing proceedings being conducted in accordance with a Notice of Proposed Rulemaking to reschedule marijuana issued by the Department of Justice on May 21, 2024 (89 Fed. Reg. 44597 (2024)) (the NPRM), and a General Notice of Hearing (89 Fed. Reg. 70148 (2024)) (the GNoH) issued by you on August 29, 2024. As discussed in further detail, *infra*, this Interlocutory Appeal (and its attendant delay of the proceedings) is at the exclusive request of a subset of Designated Participants who filed the motions that form the basis of this appeal (the Interlocutory Appellants). The Government timely opposed both underlying motions as well as leave for this Interlocutory Appeal.

The *Ex Parte* Reconsideration Order, *inter alia*, denied reconsideration of an earlier order (the *Ex Parte* Order or EPO) I issued on November 27, 2024. The EPO denied the relief requested by some (but not all) Designated Participants who identify as supporters of the proposed rescheduling of marijuana. The denied relief included a petition to have you and your Agency removed as the proponent of the NPRM. The EPRO, like the EPO that preceded it, is based on allegations that certain members of the Drug Enforcement Administration (DEA) have engaged in improper *ex parte* communications which, at least in the view of the Interlocutory Appellants, has resulted in an irrevocable taint to the proceedings. Contrary to the request of the Interlocutory Appellants, no hearing has been conducted on these allegations, no evidence or testimony was received on the underlying factual allegations, and no facts have been found.

By this transmittal, I certify and transmit the *Ex Parte* Reconsideration Order, the *Ex Parte* Order, a transcript of the preliminary hearing conducted on December 2, 2024,¹ as well as the parties' filings, and other documents related to this Interlocutory Appeal, as listed on Enclosure 1. Additionally, for your convenience, I have enclosed a table of contents listing all procedural exhibits (Administrative Law Judge Exhibits) included in the record so far. Any additional procedural documentation that might facilitate your review of this matter will be promptly furnished by this office upon your request or the request of your adjudication staff.

Inasmuch as the Interlocutory Appellants represent only a subset of the Designated Participants in this case, it is my respectful recommendation that, in addition to the Government and the Interlocutory Appellants, all Designated Participants be included in any briefing schedule you issue and that all DPs on both sides of the NPRM be afforded the opportunity to brief the issues in this IA.

Respectfully,

John J. Mulrooney, II
Chief Administrative Law Judge

cc: Government and All Designated Participants

Enclosures

¹ Although I have preliminarily reviewed and certified this transcript for purposes of this Interlocutory Appeal, at the conclusion of the hearing proceedings in this matter, the parties will be afforded the opportunity to review and offer proposed corrections to this and all transcripts in accordance with 21 C.F.R. § 1316.63(b).

Enclosure 1
In the Matter of Proposed Rescheduling of Marijuana
Docket No. 24-44

INDEX OF TRANSMITTED RECORD

1. *Ex Parte* Reconsideration Order (ALJ Ex. 3.50)
2. *Ex Parte* Order (ALJ Ex. 3.23)
3. Motion Requesting Supplementation of Record and Disqualification (*Ex Parte* Motion) (ALJ Ex. 45)
4. Briefing Order Regarding *Ex Parte* Motion (ALJ Ex. 3.12)
5. Supplemental Briefing Order Regarding *Ex Parte* Motion (ALJ Ex. 3.14)
6. Government's Opposition to *Ex Parte* Motion (ALJ Ex. 53)
7. Smart Approaches to Marijuana Response to *Ex Parte* Motion (ALJ Ex. 55)
8. Motion for Reconsideration of *Ex Parte* Order (*Ex Parte* Reconsideration Motion) (ALJ Ex. 110)
9. Supplement to the *Ex Parte* Reconsideration Motion (ALJ Ex. 111)
10. Briefing Order Regarding *Ex Parte* Reconsideration Motion (ALJ Ex. 3.42)
11. Government's Opposition to *Ex Parte* Reconsideration Motion (ALJ Ex. 116)
12. Docket Sheet
13. Notice of Proposed Rulemaking (ALJ Ex. 1.0)
14. General Notice of Hearing (ALJ Ex. 2.0)
15. Letter Authorizing Hearing (ALJ Ex. 2.01)
16. Letter Authorizing Hearing Participants (ALJ Ex. 2.02)
17. Preliminary Hearing Transcript
18. Administrative Law Judge Exhibits Table of Contents

UNITED STATES DEPARTMENT OF JUSTICE

Drug Enforcement Administration

In the Matter of

**Schedules of Controlled Substances:
Proposed Rescheduling of Marijuana**

**DEA Docket No. 1362
Hearing Docket No. 24-44**

ORDER REGARDING INTERLOCUTORY APPELLANT BROWN'S NOTICE

Hearing proceedings in this marijuana rescheduling case are currently in a stay status, pending resolution of an interlocutory appeal request (MTR/IAR) filed by three Designated Participants (DPs), one of which is the consolidated DP of OCO, *et al.* ALJ Exs. 3.50, 110. OCO, *et al.* is a consolidated group of three persons/entities: (1) the Connecticut Office of the Cannabis Ombudsman (OCO); (2) The Doc App; and (3) Ellen Brown (Brown). Two of the consolidated entities (The Doc App and Brown) were held to lack sufficient standing to independently continue in these proceedings. ALJ Ex. 3.01 at 28-30, 40-41. OCO was likewise held to lack standing under the Administrative Procedure Act, but found to have made a sufficient demonstration to continue its participation in these hearing proceedings. *Id.* at 32-34. Brown and The Doc App were permitted to continue in the proceedings upon their consolidation with OCO. ALJ Ex. 65 (Notice of Joinder).

The MTR/IAR sought reconsideration of a prior ruling issued in this forum, and in the alternative, leave to file an interlocutory appeal with the DEA Administrator. ALJ Ex. 110. Upon the denial of the former, the latter was granted, and the record was promptly transmitted to the Administrator where it presently resides, awaiting a ruling by the Agency head. The now-consolidated Designated Participant of OCO, *et al.* is currently (and has always been) represented by Matthew Zorn, Esq.¹ As discussed, *supra*, OCO, *et al.* was one of the movants in

¹ Mr. Zorn had previously filed motions on behalf of another entity, Doctors for Drug Policy Reform (the D4DPR filings), where he identified himself as a D4DPR board member. *See, e.g.*, ALJ Ex. 39 at 5; *see also*, ALJ Ex. 85 at Ex. C (counsel of record). The common thread among the D4DPR filings was the pursuit of that organization's status as a Designated Participant, which ultimately bore no fruit. ALJ Exs. 3.15, 3.24. D4DPR was excluded from hearing participation by the Administrator at a stage before I was assigned to the case, which placed the issue beyond my ability to review.

the MTR/IAR, and is consequently, one of the Interlocutory Appellants. ALJ Ex. 110. That much of the procedural history is clear.

After business hours last night, a filing bearing the caption “Notice of Clarification, Withdrawal, and Response to January 13, 2025 Order” (Notice or Not.) was filed by Mr. Zorn, in his capacity as counsel for OCO, *et al.* The Notice, *inter alia*, informs the tribunal and the parties that, contrary to unambiguous representations in the MTR/IAR, only one of of OCO, *et al.*’s members, OCO, actually consented to the filing of the MTR/IAR. Not. at 1. More specifically, the Notice (the caption of which ironically includes the word “Clarification,”) sets forth the following:

The [MTR/IAR’s] unfortunate reference to “OCO, *et al.*” was due to an inadvertent clerical and communication error. Brown did not support the [MTR/IAR], does not support an interlocutory appeal, and does not support a stay.

Id. The Notice further informs that “Mr. Zorn must withdraw from representing Brown and that Brown will no longer be proceeding with OCO.”² *Id.*

Notwithstanding the reality that Brown was held to be ineligible to proceed independently in these proceedings, the Notice outlines the following anticipated course of action:

[O]nce the unconsolidation is approved ... [she] will be sending her MTR [sic] and Good Cause [sic] it relates [sic] to her options for continuing in these proceedings in order to preserve maximum due process for the Designated Participant [sic]. Ms. Brown would like the option to consolidate with a different DP or have her independent participation regained in light of this situation and providing the court the [] approved expert witness [sic].

Id.

Naturally, this aspirational scenario provides some precarious implications for (at least) Brown, not the least of which is that she presently stands unconsolidated and will shortly be unrepresented. Because she is unconsolidated, there is no “independent participation” to be “regained.” *Id.* It is challenging to understand how such a communication failure could have occurred between Mr. Zorn and one of two or three clients.³ In short, to the extent Brown sought

² Notwithstanding the caption of the filing, Mr. Zorn has included no separate motion to withdraw, much less a prayer for relief in the filing that asks for withdrawal.

³ Independently (yet equally) confusing is the current status of The Doc App. Although a separate filing from OCO, *et al.* (ALJ Ex. 96 at 6 n.3) withdrew notice of the *testimony* Nick Garulay, the CEO of that company, there is no indication that The Doc App has withdrawn from OCO, *et al.* The purported withdrawal states the following: “[Mr. Zorn] and OCO parties also wish to inform the Tribunal that they will withdraw Mr. Garulay as a live witness and will instead will [sic] submit an affidavit by the January 3, 2025 date.” *Id.*

to be heard in these proceedings, Mr. Zorn’s “clerical and communication error” has placed her in quite a pickle. As things currently stand, in addition to being unrepresented, upon being detached from her consolidated status with OCO, *et al.*, she may have no viable role in the hearing proceedings. The Notice has provided no viable plan for Brown to repair or even address these difficulties.

The Notice is herein **FORWARDED** to the Administrator for such purposes (if any) she deems appropriate.⁴

Dated: January 16, 2025

JOHN J. MULROONEY, II
Chief Administrative Law Judge

CERTIFICATE OF SERVICE

This is to certify that the undersigned, on January 16, 2025, caused a copy of the foregoing to be delivered to the following recipients: (1) Julie L. Hamilton, Esq., Counsel for the Government, via email at julie.l.hamilton@dea.gov; James J. Schwartz, Esq., Counsel for the Government, via email at james.j.schwartz@dea.gov; Jarrett T. Lonich, Esq., Counsel for the Government, via email at jarrett.t.lonich@dea.gov; and S. Taylor Johnston, Esq., Counsel for the Government, via email at stephen.t.johnston@dea.gov; (2) the DEA Government Mailbox, via email at dea.registration.litigation@dea.gov; (3) Shane Pennington, Esq., Counsel for Village Farms International, via email at spennington@porterwright.com; and Tristan Cavanaugh, Esq., Counsel for Village Farms International, via email at tcavanaugh@porterwright.com; (4) Nikolas S. Komyati, Esq., Counsel for National Cannabis Industry Association, via email at nkomyati@foxrothschild.com; William Bogot, Esq., Counsel for National Cannabis Industry Association, via email at wbogot@foxrothschild.com; and Khurshid Khoja, Esq., Counsel for National Cannabis Industry Association, via email at khurshid@greenbridgelaw.com; (5) Dante Picazo for Cannabis Bioscience International Holdings, via email at ir@cbih.net; (6) Andrew J. Kline, Esq., Counsel for Hemp for Victory, via email at AKline@perkinscoie.com; and Abdul Kallon, Esq., Counsel for Hemp for Victory, via email at and AKallon@perkinscoie.com; (7) Scheril Murray Powell, Esq., Counsel for Veteran’s Initiative 22, via email at smpesquire@outlook.com; and David C. Holland, Esq., Counsel for Veterans Initiative 22, via email at dch@hollandlitigation.com; (8) Kelly Fair, Esq., Counsel for The Commonwealth Project, via email at Kelly.Fair@dentons.com; Joanne Caceres, Esq., Counsel for The Commonwealth Project, via email at joanne.caceres@dentons.com; and Lauren M. Estevez, Esq., Counsel for The Commonwealth Project, via email at lauren.estevez@dentons.com; (9) Rafe Petersen, Esq., Counsel for Ari Kirshenbaum, via email at Rafe.Petersen@hkllaw.com; (10) David G. Evans, Esq., Counsel for Cannabis Industry Victims Educating Litigators, Community Anti-Drug Coalitions of America, Kenneth Finn, International Academy on the Science and Impacts of Cannabis, and National Drug and Alcohol Screening Association, via email at

⁴ The Notice also provides some information regarding its proposed exhibits. All decisions regarding proposed exhibits and potential sanctions for noncompliance are reserved for such time as those documents may be offered into evidence.

thinkon908@aol.com; (11) Patrick Philbin, Esq., Counsel for Smart Approaches to Marijuana, via email at pphilbin@torridonlaw.com; and Chase Harrington, Esq., Counsel for Smart Approaches to Marijuana, via email at charrington@torridonlaw.com; (12) Eric Hamilton, Esq., Counsel for the State of Nebraska, via email at eric.hamilton@nebraska.gov; and Zachary Viglianco, Esq., for the State of Nebraska, via email at zachary.viglianco@nebraska.gov; (13) Gene Voegtlin for International Association of Chiefs of Police, via email at voegtlin@theiacp.org; (14) Patrick Kenneally, Esq. Counsel for Drug Enforcement Association of Federal Narcotics Agents, via email at pdkenneally78@gmail.com; (15) Reed N. Smith, Esq., Counsel for the Tennessee Bureau of Investigation, via email at Reed.Smith@ag.tn.gov; and Jacob Durst, Esq., Counsel for Tennessee Bureau of Investigation, via email at Jacob.Durst@ag.tn.gov; and (16) Matthew Zorn, Esq., Counsel for OCO, *et al.*, via email at mzorn@yettercoleman.com.

Brionna Hood
Secretary (CTR)
Office of Administrative Law Judges

cc: The Administrator via ADDO