

NO. 23-1007

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

REBECCA SNYDER, ET. AL.,**Petitioners,**

v.

MERRICK B. GARLAND, ATTORNEY GENERAL, ET. AL.,**Respondents.**

**RESPONDENTS' REPLY TO PETITIONERS' RESPONSE TO MOTION
TO DISMISS EMERGENCY PETITION FOR REVIEW AND A STAY**

Respondents, through their undersigned attorney, moved to dismiss Rebecca Snyder, et. al.'s (Petitioners) "Emergency Petition for Review and a Stay" on March 6, 2023. ECF Doc. # 1988806. On March 16, 2023, Petitioners filed their response and opposition to the motion to dismiss. ECF Doc. # 1990515. For the reasons stated below and in the motion to dismiss, this Court should dismiss the petition with prejudice.

I. JURISDICTION

Petitioners have not established that the order of a subordinate Drug Enforcement Administration (DEA) Administrative Law Judge (ALJ) denying their request to intervene in a hearing regarding the revocation of a practitioner's

DEA registration was a final order conferring statutory jurisdiction on this Court under 21 U.S.C. §877.¹ Petitioners' reasoning that the ALJ's denial of their motion to intervene was final, "because it was simply, to grant Petitioners' motion to intervene, or not, and that was the end of it," Pet. Resp. at p. 5, is flawed. Under their definition of "final" any decision made during an administrative proceeding would be appealable to a court of appeals. The pre-hearing ruling of the ALJ, a subordinate official, was not a final order of the DEA Administrator, pursuant to 21 C.F.R. § 1316.67, and is not appealable to this Court under 21 U.S.C. § 877.

II. LEGAL ARGUMENT

Assuming this Court does have jurisdiction, Petitioners are not entitled to relief.

A. The Petitioners' Request is Moot

Petitioners moved to intervene in the DEA administrative hearing, seeking to lift the immediate suspension of Dr. Bockoff's registration and to participate in the hearing. Pet. at p. 14.² The administrative hearing concluded on January 24, 2023, and their Petition is moot.

¹ The administrative proceedings concerned the October 22, 2022, immediate suspension and proposed revocation of Dr. David Bockoff's DEA registration as a practitioner authorizing him to prescribe controlled substances.

² Furthermore, these arguments were presented to, and rejected by, the federal district court in California that denied Dr. Bockoff's request for a temporary restraining order to stay the immediate suspension. *See Bockoff v. Garland*, No. 22-cv-9046 (C.D. Cal. Dec. 15, 2022).

B. Petitioners Are Not Entitled to Intervene

Petitioners claim they are entitled to intervene to seek dissolution of the immediate suspension order, so that Dr. Bockoff may resume prescribing controlled substances to them. (Pet. at p. 8). Petitioners do not qualify as “interested parties” or have standing to intervene under the CSA and its corresponding regulations. *See Nichols v. Bd. of Trs.*, 835 F.2d 881, 896 (D.C. Cir. 1987) (intervention typically requires standing and the analysis is an individualized one, within the context of the regulations and the statutory scheme as a whole). Petitioners continue to rely on Federal Rule of Civil Procedure 24 to support their request to intervene, despite the inapplicability of the Federal Rules of Civil Procedure to administrative proceedings. *McClelland v. Andrus*, 606 F.2d 1278, 1285 (D.C. Cir. 1979)

Furthermore, Petitioners do not have a procedural due process right to intervene in the administrative hearing. Dr. Bockoff, as a registrant, “is entitled to a hearing because the registration is considered a property interest that cannot be revoked without affording a registrant due process through notice and an opportunity to be heard.” *Lujan v. G & G Fire Sprinklers, Inc.*, 532 U.S. 189, 196 (2001). Petitioners have had since October 25, 2022, to find a new physician and their unwillingness to do so does not warrant intervention.

CONCLUSION

For the foregoing reasons, the “Emergency Petition for Review and a Stay” should be dismissed with prejudice.

Respectfully submitted,

/s/ Anita J. Gay

Anita J. Gay,
Trial Attorney
U.S. Department of Justice
Criminal Division
Narcotic and Dangerous Drug Section
145 N Street, N.E., Suite 2E-300
Washington, DC 20002
Telephone: (202) 353-7629
Facsimile: (202) 514-6112
E-mail: anita.gay2@usdoj.gov

Dated: March 24, 2023

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

I hereby certify that the foregoing Motion to Dismiss Petitioners' Emergency Petition For Review and a Stay was prepared in 14 point proportionally spaced Times New Roman type in Microsoft Word 2013 and that the response contains 854 words. The response complies with the requirements of Federal Rules of Appellate Procedure 27(d)(2)(A) and 32(a)(5).

/s/ Anita J. Gay
Anita J. Gay

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing, Respondents' Motion to Dismiss Petitioners' Emergency Petition for Review and a Stay with the Clerk of Court, United States Court of Appeals for the District of Columbia Circuit by using the appellate CM/ECF system on March 24, 2023. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

/s/ Anita J. Gay

Anita J. Gay

Trial Attorney

U.S. Department of Justice

Criminal Division

Narcotic and Dangerous Drug Section

145 N Street, N.E., Suite 2E-300

Washington, DC 20002

Phone: (202) 353-7629

Fax: (202) 514-6112

anita.gay2@usdoj.gov

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