

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 BROWN'S MOTION FOR LEAVE**

These are hearing proceedings being conducted in connection with a notice of proposed rulemaking (NPRM) issued by the Department of Justice on May 21, 2024,<sup>1</sup> and a general notice of hearing (GnOH) issued by the (then) Drug Enforcement Administration (DEA) Administrator on August 29, 2024.<sup>2</sup>

On January 13, 2025, this tribunal issued an order (Stay Order) which, *inter alia*, denied a motion to reconsider (MTR/IAR) procedural rulings related to requests for a collateral hearing and an unequivocally *ultra vires* request to relieve the (then) Administrator from her role as the proponent of the NPRM. The MTR/IAR was filed on behalf of a subset of the Designated Participants (DPs) in these hearing proceedings, one of which was a consolidated group designated as OCO, *et al.*<sup>3</sup> All relief in the MTR/IAR was denied, except that part of the motion that sought leave to file an interlocutory appeal<sup>4</sup> on the matter upon denial and a corresponding request for a stay of proceedings. MTR/IAR at 43-44.

After hours, two days later, counsel for OCO, *et al.* (Matthew Zorn, Esq.) filed a remarkable document bearing the caption "Notice of Clarification, Withdrawal, and Response to January 13, 2025 Order" (Notice or Not.) wherein, he informs the tribunal and the parties that, contrary to unambiguous representations set forth in the MTR/IAR, one of the consolidated parties (Ellen Brown) did not consent to the filing of MTR/IAR and, as it turns out, is

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<sup>1</sup> 89 Fed. Reg. 44597 (2024).

<sup>2</sup> 89 Fed. Reg. 70148 (2024).

<sup>3</sup> Connecticut Office of the Cannabis Ombudsman (OCO), The Doc App, and Ellen Brown.

<sup>4</sup> 21 C.F.R. § 1316.62.

affirmatively opposed to all the relief sought therein.<sup>5</sup> The Notice ascribes this peculiar dynamic to an inadvertent clerical and communication error.<sup>6</sup> The Notice further advises that Ms. Brown will petition to be severed from the consolidation and will seek to proceed on her own. This plan is somewhat impaired by a previous order from this tribunal which held that she lacked sufficient standing under the Administrative Procedure Act (APA) to independently continue in the hearing proceedings as a DP. Naturally, this turn of events was not to Ms. Brown's advantage.

Comes now Ms. Brown, who, on January 19, 2025, filed a motion for leave (Motion for Leave or Mot.) seeking relief from her present unenviable circumstances. In her Motion for Leave, Ms. Brown indicates that her view of her representation experience differs markedly from that of the account supplied by Mr. Zorn in the Notice he prepared and filed (and not in a positive way). Ms. Brown specifically seeks two avenues of relief: (1) reconsideration of the initial determination that she did not possess sufficient APA standing to continue independently in these proceedings; and (2) time and leave to identify a potential consolidation DP, and should she be successful in that endeavor, to continue her participation through that (hopefully happier) consolidation. Mot. at 1-3. The Motion for Leave avers that this requested relief "would be an appropriate remedy to the *previous* acts and omissions of Mr. Zorn that prejudiced [Ms. Brown] and landed [her] in the situation that [she is] in now." *Id.* at 2 (emphasis in original).

There is no question that Ms. Brown's representation experience (irrespective of which version is fully credited) has been suboptimal. That said, at this procedural juncture, Ms. Brown has not alleged any sufficient new grounds (*e.g.*, change in law, newly discovered evidence, or a need to prevent manifest injustice) that would justify reconsideration of the issue of her APA standing. *See Intera Corp. v. Henderson*, 428 F.3d 605, 620 (6th Cir. 2005), *cert. denied*, 547 U.S. 1070 (2006); *Firestone v. Firestone*, 76 F.3d 1205, 1208 (D.C. Cir. 1996); *EEOC v. Lockheed Martin Corp.*, 116 F.3d 110, 112 (4th Cir. 1997). Thus, that portion of the Motion for Leave which seeks reconsideration of her lack of sufficient APA standing to independently continue in these proceedings is **DENIED**.

However, it is likewise apparent that Ms. Brown currently stands in an untenable situation that does not appear to be of her own making. Accordingly, that aspect of her Motion

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<sup>5</sup> The Notice also provides a sort of oblique foreshadowing that OCO, *et al.*'s counsel would seek to withdraw from further representation of Ms. Brown in the future, but no such motion has yet been filed.

<sup>6</sup> Not. at 1.

for Leave which seeks additional time to seek consolidation with another DP, as well as leave to enter into such a consolidation and continue as a participant in these proceedings is herein **GRANTED** to the extent that this be accomplished **no later than 2:00 p.m. Eastern Time on February 12, 2025**, with notification to the tribunal and the other parties to this litigation forthwith.

Dated: January 22, 2025

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JOHN J. MULROONEY, II  
Chief Administrative Law Judge

### **CERTIFICATE OF SERVICE**

This is to certify that the undersigned, on January 22, 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@hklaw.com; (10) David G. Evans, Esq., Counsel for Cannabis Industry Victims Educating Litigators, Community Anti-Drug Coalitions of America, Kenneth Finn, Drug Enforcement Association of Federal Narcotics Agents, and National Drug and Alcohol Screening Association, via email at 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; (16) Matthew Zorn, Esq., Counsel for OCO, *et al.*, via email at mzorn@yettercoleman.com; and (17) Ellen Brown, via email at ellen@greenpathtraining.com.

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Tayonna Eubanks  
Secretary (CTR)  
Office of Administrative Law Judges

cc: The Acting Administrator via ADDO