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**United States Court of Appeals**  
*for the*  
**Third Circuit**

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Case No. 25-2987

MUHAMAD ALY RIFAI, M.D.,

*Appellant,*

– v. –

UNITED STATES DEPARTMENT OF JUSTICE; ADMINISTRATOR DRUG  
ENFORCEMENT ADMINISTRATION; ATTORNEY GENERAL UNITED  
STATES OF AMERICA; UNITED STATES OF AMERICA; UNITED STATES  
DRUG ENFORCEMENT ADMINISTRATION.

ON APPEAL FROM AN ORDER OF THE UNITED STATES DISTRICT COURT OF  
THE EASTERN DISTRICT OF PENNSYLVANIA IN CASE NO. 5:24-cv-01242,  
JEFFREY L. SCHMEHL, U.S. DISTRICT JUDGE

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**BRIEF FOR APPELLANT AND APPENDIX**  
**Volume 1 of 2 (Pages A1 to A17)**

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## JURISDICTIONAL STATEMENT

This Court has jurisdiction under 28 U.S.C. § 1291. The district court’s order dismissing the complaint (Appx. A1–15) was a final decision, so appeal lies as of right. Jurisdiction was originally invoked under 28 U.S.C. § 1331 and the Administrative Procedure Act (“APA”) (5 U.S.C. § 702). Plaintiff–Appellant’s notice of appeal was timely filed (within 30 days) after entry of judgment (*see* Fed. R. App. P. 4(a)). The district court’s order addressed, *inter alia*, whether 21 U.S.C. § 877 channels review of final Drug Enforcement Administration orders to the courts of appeals after final agency action. (Appx. A8–15.)

## STATEMENT OF ISSUES PRESENTED

1. Can Appellant–Plaintiff pursue structural constitutional claims (*e.g.* challenge to Administrative Law Judge (“ALJ”) removal protections, subpoena under Fourth Amendment) in the district court prior to final agency action? Under *Axon Enterprise, Inc. v. FTC*, 598 U.S. 175 (2023), some immediate constitutional challenges may be allowed; does that reasoning extend here, or is review still foreclosed until an agency decision?

2. Whether the district court erred in dismissing Appellant–Plaintiff’s complaint for lack of jurisdiction. Specifically: (a) Does 5 U.S.C. § 702 and 28 U.S.C. § 1331 authorize district-court review of Appellant–Plaintiff’s claims? (b) Is review precluded or diverted by 21 U.S.C. § 877’s final-decision scheme and the APA’s finality requirement?

**STATEMENT OF RELATED CASES AND PROCEEDINGS**

Pursuant to L.A.R. 28(a)(2), Appellant-Plaintiff states that this case has not previously been before this Court, and is not aware of any other case or proceeding that is in any way related to this matter, whether completed, pending, or about to be presented before this Court or any other court or agency, state or federal.

## STATEMENT OF THE CASE

### A. Nature of the Case

This appeal arises from the district court’s order dismissing Appellant Dr. Muhamad Aly Rifai’s (“Dr. Rifai”) civil action for lack of subject-matter jurisdiction under Federal Rule of Civil Procedure 12(b)(1). (Appx. A1–2.) Dr. Rifai sought declaratory and injunctive relief under the Administrative Procedure Act, 5 U.S.C. § 702, and 28 U.S.C. § 1331, asserting constitutional challenges to the Drug Enforcement Administration’s (“DEA”) adjudicatory system used to determine whether his certificate of registration to dispense controlled substances should be revoked. (Appx. A2.)

Dr. Rifai named as defendants the United States Department of Justice, Attorney General Pamela Bondi, Acting DEA Administrator Robert Murphy, the DEA, and the United States of America. (*Id.*)

### B. Course of Proceedings and Disposition Below

On March 22, 2024, Dr. Rifai commenced this civil action by filing his Complaint. (Appx. A4, A25–40.) On May 16, 2024, Dr. Rifai filed an emergency motion for a temporary restraining order (“TRO”) seeking to enjoin the DEA from proceeding with its administrative enforcement process. (Appx. A4, A47–103.) On June 3, 2024, at Dr. Rifai’s request, the DEA administrative law judge (“ALJ”) stayed the administrative proceedings “until the District Court renders its decision.”

(Appx. A5.) On June 4, 2024, the district court denied the TRO motion as moot. (*Id.*; Appx. A106.)

On April 25, 2025, Dr. Rifai filed his Second Amended Complaint (“SAC”) asserting six counts, including Fourth Amendment, Fifth Amendment, and structural separation-of-powers theories, and seeking injunctive and declaratory relief. (Appx. A6–7, A107–156.) Defendants moved to dismiss the SAC under Rule 12(b)(1) for lack of subject-matter jurisdiction. (Appx. A2, A157–179.)

On September 10, 2025, the district court granted Defendants’ motion, concluding that (1) no final DEA decision existed for judicial review; and (2) the Controlled Substances Act (“CSA”), including 21 U.S.C. § 877, implicitly channeled review to the courts of appeals after final agency action, precluding collateral district court jurisdiction over Dr. Rifai’s claims. (Appx. A8–15.)

### **C. Statement of Facts**

Dr. Rifai is a board-certified psychiatrist practicing in Pennsylvania and operates clinics under the name Blue Mountain Psychiatry, LLC. (Appx. A3.)

#### **1. Criminal Case and Initiation of DEA Administrative Proceedings**

On November 8, 2022, a federal grand jury indicted Dr. Rifai on four counts of healthcare fraud in Criminal Action No. 22-390 (E.D. Pa.). (Appx. A3.) On March 30, 2023, a DEA diversion investigator informed Dr. Rifai’s counsel that the DEA intended to initiate an administrative enforcement action concerning revocation of

Dr. Rifai's DEA registration. (*Id.*) On April 10, 2023, counsel informed the DEA that Dr. Rifai declined to surrender his registration and acknowledged counsel's understanding that the DEA would pursue an administrative enforcement hearing. (*Id.*)

On October 2, 2023, the DEA served Dr. Rifai with an administrative subpoena (No. CK-23-383930) seeking the medical file of a purported former patient who was in fact an undercover investigator. (Appx. A3–4, A72–73.) On October 10, 2023, Dr. Rifai (through counsel) responded and provided the requested file. (Appx. A4, A77–78.) On October 16, 2023, counsel produced additional medical records to the DEA pursuant to the subpoena. (Appx. A4.)

On November 30, 2023, the DEA issued an Order to Show Cause against Dr. Rifai's DEA registration. (Appx. A4, A79–85.) On December 28, 2023, Dr. Rifai answered and requested an administrative hearing before a DEA ALJ. (Appx. A4.) On December 29, 2023, the ALJ ordered prehearing statements and scheduled a prehearing conference for January 31, 2024; a pre-hearing ruling was issued on January 31, 2024. (*Id.*)

On February 20, 2024, Dr. Rifai filed a prehearing statement requesting postponement of the administrative hearing until after his federal criminal trial (then scheduled for April 29, 2024). (*Id.*) The DEA ALJ continued the administrative hearing to May 2, 2024, and later to May 23, 2024. (*Id.*)

On April 29, 2024, Dr. Rifai’s criminal trial began in the district court; on May 9, 2024, the jury acquitted Dr. Rifai on all four counts. (*Id.*)

## **2. TRO Proceedings, ALJ Stay, and Termination of the Administrative Hearing**

On May 16, 2024—after the criminal case had concluded—Dr. Rifai filed an emergency TRO motion seeking to enjoin the DEA from proceeding with the administrative enforcement process until after (a) the conclusion of the criminal trial and (b) the Supreme Court issued an anticipated decision in a case concerning the constitutionality of the Securities and Exchange Commission’s (“SEC”) appointment of ALJs. (*Id.*; Appx. A47–105.)

On June 3, 2024, at Dr. Rifai’s request, the DEA ALJ stayed the administrative proceedings until the district court rendered its decision (Appx. A5.) On June 4, 2024, the district court denied the TRO motion as moot. (*Id.*; Appx. A106.)

On August 20, 2024, the DEA ALJ *sua sponte* lifted the stay and ruled that the administrative hearing process would be terminated upon the DEA’s request for final agency action. (Appx. A5, A131–147.) The ALJ reasoned that Dr. Rifai had engaged in a “protracted pattern” of disregarding orders and that his “pattern of behavior has abused the administrative process,” concluding “nothing short of termination will stop the abuse.” (Appx. A5, A144.) The ALJ further found that Dr. Rifai “does not desire a hearing,” but instead “desires delay,” including delay during

which he can continue to prescribe schedule II controlled substances “despite very serious allegations against him.” (Appx. A5, A146 .) The ALJ’s ruling was prompted by what the ALJ characterized as Dr. Rifai’s pattern of delay and noncompliance with orders after the stay was lifted.

On September 5, 2024, invited by the ALJ's decision, the government requested that the DEA find Dr. Rifai in default. (Appx. A6, A192–193.) In an order dated July 5, 2025, the DEA denied that request and advised that, if the government wished to pursue the matter, it could file a new request for final agency action containing substantial record evidence supporting denial of Dr. Rifai’s registration on the grounds noted in the Order to Show Cause. (Appx. A6, A199–200.)

### **3. The Second Amended Complaint and the District Court’s Dismissal**

On April 25, 2025, Dr. Rifai filed the Second Amended Complaint, which asserted (1) a Fourth Amendment claim challenging the administrative subpoena as lacking a warrant or judicial oversight and allegedly used to aid a criminal investigation; (2) a Fifth Amendment due process claim asserting the ALJ unlawfully terminated the administrative proceedings, depriving Dr. Rifai of an opportunity to contest revocation; (3) a claim that DEA regulations exceed statutory authority and intrude on state authority to regulate medicine; (4) an Article II separation-of-powers claim alleging the ALJ is unconstitutionally insulated by two

layers of for-cause removal protection; (5) a claim for injunctive relief based on “structural harm”; and (6) a claim for declaratory relief. (Appx. A6–7, A107–130.)

The district court granted Defendants’ Rule 12(b)(1) motion and dismissed the SAC for lack of subject-matter jurisdiction. (Appx. A1–2.)

## SUMMARY OF ARGUMENT

The district court erred in dismissing this action for lack of subject-matter jurisdiction. First, although 21 U.S.C. § 877 provides for court of appeals review of “final” DEA decisions, the CSA does not expressly foreclose collateral district-court jurisdiction, and Supreme Court precedent requires careful application of the implied-preclusion framework. *Axon Enter., Inc. v. FTC*, 598 U.S. 175 (2023); *Free Enter. Fund v. Pub. Co. Accounting Oversight Bd.*, 561 U.S. 477 (2010); *Elgin v. Dep’t of Treasury*, 567 U.S. 1 (2012); *Thunder Basin Coal Co. v. Reich*, 510 U.S. 200 (1994). (Appx. A8–11.)

Second, applying the *Thunder Basin* factors properly, Dr. Rifai’s claims—particularly his structural Article II challenge and his request for injunctive relief to prevent continued subjection to an unconstitutional administrative process—are the type of claims that warrant immediate district-court review because they allege a “here-and-now” injury from being subjected to allegedly unconstitutional agency authority. *Axon*, 598 U.S. at 191. (Appx. A11.)

Third, the district court’s reliance on *NLRB v. Starbucks Corp.*, 125 F.4th 78 (3d Cir. 2024), to deny collateral jurisdiction and standing was misplaced. Even under *Starbucks* and *Lujan v. Defs. of Wildlife*, 504 U.S. 555 (1992), Dr. Rifai plausibly alleged injury in fact, traceability, and redressability: he was subjected to the challenged administrative enforcement process and alleges he was deprived of a

meaningful adjudication by an ALJ who terminated the proceedings, while also seeking prospective relief against continued subjection to the allegedly unconstitutional regime. (Appx. A5–7, A13.)

Finally, to the extent the district court treated the absence of a final Administrator order under 21 C.F.R. § 1316.67 as dispositive, that approach incorrectly assumes that later court of appeals review will necessarily be meaningful. (Appx. A8, A12.) Under *Bennett v. Spear*, 520 U.S. 154 (1997), finality turns on whether agency action marks the consummation of decisionmaking and produces legal consequences—standards that may be satisfied by the agency’s termination of the hearing process that Dr. Rifai alleges deprived him of procedural protections. (Appx. A5–6.)

Accordingly, this Court should reverse the dismissal and remand for adjudication on the merits (and any appropriate jurisdictional development consistent with the governing framework).

## ARGUMENT

### I. Standard of Review

Defendants' Rule 12(b)(1) motion was a facial jurisdictional attack. (Appx. A2.) In that posture, the district court considered the allegations of the complaint (and documents referenced therein) in the light most favorable to Dr. Rifai, and Dr. Rifai bore the burden of establishing subject-matter jurisdiction. (Appx. A3 (citing *Constitution Party of Pa. v. Aichele*, 757 F.3d 347, 358 (3d Cir. 2014); *Lincoln Ben. Life Co. v. AEI Life, LLC*, 800 F.3d 99, 105 (3d Cir. 2015)).)

### II. The District Court Erred in Concluding That the CSA's Review Scheme Implicitly Precludes Collateral District Court Jurisdiction Over Dr. Rifai's Constitutional Claims

The district court held that it lacked jurisdiction because the DEA Administrator had not issued a "final decision," and—regardless—exclusive review lies in the court of appeals under 21 U.S.C. § 877. (Appx. A8.) The court treated § 877 as implicitly divesting the district court of its ordinary jurisdiction, applying the two-step implied-preclusion analysis described in *Elgin* and *Thunder Basin* and discussed in *Axon*. (Appx. A8–10.) That conclusion was erroneous for at least three reasons.

**A. Section 877 Does Not Expressly Foreclose District-Court Jurisdiction, and Axon Requires More Than an Inference from Silence**

The district court acknowledged that § 877 does not explicitly foreclose district-court jurisdiction. (Appx. A9.) Under *Axon*, where Congress has not spoken “in so many words,” implied preclusion turns on whether exclusivity is “fairly discernible” from the scheme and whether the claims are the type Congress intended to funnel through the administrative process. *Axon*, 598 U.S. at 185; *Elgin*, 567 U.S. at 10; *Thunder Basin*, 510 U.S. at 207; *Free Enter. Fund*, 561 U.S. at 489. (Appx. A8–10.)

The district court rested its “fairly discernible” conclusion primarily on the absence of language referencing district courts in § 877. (Appx. A9–10.) But *Axon* itself cautions that where Congress does not expressly eliminate district court jurisdiction, courts must proceed to the claims-specific inquiry—because some claims, particularly structural constitutional claims, are not the type Congress can be presumed to have intended to channel exclusively through an agency’s adjudicatory pipeline. *Axon*, 598 U.S. at 185–86, 189–91; *Free Enter. Fund*, 561 U.S. at 489. (Appx. A9–11.)

**B. The Thunder Basin Factors Favor Collateral District-Court Jurisdiction Here**

Even accepting that § 877 establishes a channel for review of final DEA action in the courts of appeals, *Thunder Basin* asks whether the particular claims are of the

type Congress intended to be reviewed within that structure. *Elgin*, 567 U.S. at 15; *Free Enter. Fund*, 561 U.S. at 489; *Thunder Basin*, 510 U.S. at 212–13. (Doc 36 p 9.) Properly applied, each factor supports collateral district-court jurisdiction here.

**i. Requiring Dr. Rifai to Await a Final Administrator Order Threatens to Foreclose Meaningful Judicial Review in Practice**

The district court concluded that Dr. Rifai would have “meaningful judicial review” if the Administrator later took final action and denied registration. (Appx. A12.) But that conclusion is contingent on the issuance of a final Administrator order—something the district court itself found has not occurred. (Appx. A8.) And the record described in the memorandum indicates the administrative process has not proceeded in an ordinary, linear fashion toward a merits decision and appellate review.

After Dr. Rifai requested a stay, the ALJ stayed proceedings pending the district court’s decision. (Appx. A5.) The ALJ later lifted the stay and terminated the administrative hearing process “upon DEA’s request for final agency action,” invoking a theory of abuse of process and concluding “nothing short of termination will stop the abuse.” (*Id.*) The government later sought a default finding, but the DEA denied the request and advised the government it could file a new request for final agency action supported by substantial record evidence if it wished to proceed. (Appx. A6, A199–200.)

Those events underscore why “meaningful judicial review” cannot be assumed here: where the agency has terminated the hearing process that would ordinarily generate a record and a final order, the statutory path contemplated by § 877 risks becoming illusory. (Appx. A5–6.) In addition, *Axon* recognizes that being subjected to allegedly unconstitutional agency authority is a “here-and-now injury” and that a post hoc proceeding “cannot be undone.” *Axon*, 598 U.S. at 191. (Appx. A11.) If the injury is subjection to the allegedly unconstitutional process itself, waiting for a final order does not provide meaningful relief. *Axon*, 598 U.S. at 191. (Appx. A11.)

**ii. Dr. Rifai’s Structural and Process-Based Constitutional Claims are “Wholly Collateral” to the Merits of any Eventual Registration Decision**

The district court held that Dr. Rifai’s claims were “the very vehicle by which he seeks to reverse DEA’s administrative actions” and therefore not “wholly collateral.” (Appx. A12.) That analysis overlooks the distinction at the heart of *Axon* and *Free Enterprise*: a claim aimed at the constitutional legitimacy of the forum and decisionmaker is collateral to the “substantive decision” the agency is tasked to make. *Axon*, 598 U.S. at 189–91; *Free Enter. Fund*, 561 U.S. at 484. (Appx. A10–11.)

Here, Dr. Rifai alleged, among other things, that he was subjected to a proceeding before a DEA ALJ insulated by two layers of for-cause removal

protection in violation of Article II. (Appx. A6–7.) That is the same category of structural claim that *Axon* recognized as aligned with *Free Enterprise*. (Appx. A10–A11, A13.) And Dr. Rifai sought injunctive relief to prevent continued subjection to an allegedly unconstitutional process “independent of any final agency action or adjudication.” (Appx. A7.) Those claims do not require a court to decide whether Dr. Rifai’s prescribing practices were “inconsistent with the public interest” under the CSA; they ask whether the adjudicatory mechanism itself is constitutionally permissible and whether Dr. Rifai may be forced to undergo it. (Appx. A7–8, A10–11.)

**iii. The Claims are Outside the Agency’s Expertise, and the Agency Cannot Meaningfully Adjudicate their Constitutional Validity**

The district court acknowledged the general principle that “agency adjudications are generally ill suited to address structural constitutional challenges.” (Appx. A12 (quoting *Carr v. Saul*, 593 U.S. 83, 92 (2021)).) It nonetheless concluded that none of Dr. Rifai’s claims were outside DEA expertise because resolution would require consideration of DEA procedures such as subpoena authority and hearing termination. (Appx. A12.)

That reasoning collapses the expertise inquiry into a mere “touches-on-procedure” test, contrary to *Carr*’s recognition that structural constitutional questions are not within an agency’s technical competence. (*Id.*) A federal court’s assessment of the constitutionality of double-layer removal insulation (and of the

constitutional legitimacy of proceeding before such an officer) is not a question the DEA, as a party and institution, can be expected to resolve against itself. *Carr*, 593 U.S. at 92; *Axon*, 598 U.S. at 189–91. (Appx. A10–12.)

**C. The District Court Misapplied *Starbucks* and Erroneously Concluded Dr. Rifai Lacked Standing to Press Structural Claims**

The district court reasoned that the “here-and-now injury” theory discussed in *Axon* applies only where agency procedures have not yet commenced, relying on *NLRB v. Starbucks Corp.*, 125 F.4th 78, 88 (3d Cir. 2024). (Appx. A13.) It then concluded that, because Dr. Rifai had engaged in the administrative process (answering the Order to Show Cause and filing a prehearing statement), he needed to show “actual harm” and a causal link between the alleged removal-protection infirmity and his injury. (Appx. A13–14.)

Even under the standing formulation the district court adopted—injury in fact, traceability, and redressability—Dr. Rifai plausibly alleged concrete injury and ongoing exposure to the challenged process. *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560–61 (1992). (Appx. A13.)

First, the record reflects that Dr. Rifai was actually subjected to the administrative enforcement regime: the DEA initiated the enforcement action, issued the Order to Show Cause, scheduled and continued hearings, and later terminated the hearing process upon request for final agency action. (Appx. A3–A7.) Second, the SAC specifically alleged that the ALJ terminated the proceedings through *ultra*

*vires* action, depriving Dr. Rifai of the opportunity to contest revocation—an asserted procedural deprivation that is concrete, not speculative. (Appx. A6.) Third, Dr. Rifai sought injunctive relief to prevent “continued subjection” to the challenged process—relief that would redress that asserted injury by preventing recurrence and/or requiring constitutionally compliant proceedings. (Appx. A7.)

Moreover, *Axon*’s core point is that, for structural claims, the injury is subjection to allegedly unconstitutional agency authority in the first place; that injury is “here-and-now,” and a completed proceeding cannot later be undone. *Axon*, 598 U.S. at 191. (Appx. A11.) The district court’s standing analysis required Dr. Rifai to prove his injury “would have been lessened or eliminated” absent the alleged removal protections. (Appx. A14.) That is inconsistent with *Axon*’s recognition that the right asserted is the “right[ ] not to undergo the complained-of agency proceedings” before an allegedly illegitimate decisionmaker. *Axon*, 598 U.S. at 191. (Appx. A11.)

### **III. The Absence of a Final Administrator Order Does Not Defeat Collateral Jurisdiction Over Structural Claims and May Not Defeat APA Finality Given the Termination of the Hearing Process**

The district court concluded there was no final agency decision because the Administrator had not issued a final order supported by findings of fact and conclusions of law under 21 C.F.R. § 1316.67. (Appx. A8, A13 (n.3).) But “final agency action” under the APA turns on whether the action marks the consummation

of the agency’s decisionmaking process and whether rights or obligations have been determined or legal consequences flow. *Bennett v. Spear*, 520 U.S. 154, 178 (1997).

Here, the record reflects that the ALJ lifted the stay and terminated the administrative hearing process “upon DEA’s request for final agency action,” and the SAC alleges that termination deprived Dr. Rifai of an opportunity to contest revocation. (Appx. A5–6.) On those allegations, the termination of the adjudicatory process itself may satisfy *Bennett*’s finality principles because it conclusively ends the promised adjudicatory path and has immediate legal consequences for Dr. Rifai’s ability to obtain an adjudication on the merits. *Bennett*, 520 U.S. at 178; (Appx. A5–6.)

At minimum, to the extent the district court held that § 877’s final-order review channel necessarily provides “meaningful judicial review,” it erred by assuming a final order will reliably issue and by discounting *Axon*’s recognition that certain structural claims seek relief that cannot be provided after the fact. *Axon*, 598 U.S. at 191. (Appx. A11–12.)

#### **IV. Supplemental Post 2024 Authority Supporting District Court Jurisdiction and “Here and Now” Injury**

##### **A. Courts Continue to Read *Axon* as Preserving District Court Jurisdiction for Structural Constitutional Challenges to Agency Adjudication, Notwithstanding Statutory Review Schemes**

In *Axon Enterprise, Inc. v. FTC*, the Supreme Court held that Congress’s creation of an administrative review scheme does not automatically foreclose district

court jurisdiction over structural constitutional challenges to the tribunal itself. 598 U.S. 175 (2023). *Axon*'s analysis focuses on whether the claim can obtain meaningful judicial review through the administrative scheme, whether the claim is wholly collateral to that scheme, and whether the claim falls outside the agency's expertise. *Id.* at 185–95. Where the asserted injury is the here and now subjection to an allegedly unconstitutional proceeding, *Axon* explains that waiting for a final agency order may be inadequate because the injury is not merely the eventual outcome, but being forced to litigate before the challenged forum at all. *Id.*

Post 2024 decisions confirm that *Axon*'s jurisdictional holding applies beyond the Federal Trade Commission (“FTC”) and beyond removal only claims. In *The Vaping Dragon LLC v. U.S. Food & Drug Administration*, for example, a retailer collaterally attacked an ongoing FDA administrative enforcement proceeding seeking civil money penalties, alleging a Seventh Amendment jury trial violation. No. 1:25-cv-00081-H, Mem. Op. & Order (N.D. Tex. Feb. 2, 2026). Applying *Axon* and the *Thunder Basin/Elgin* channeling framework, the court held that Congress's review provisions for final FDA action did not implicitly preclude district court jurisdiction over a structural constitutional claim designed to stop the agency from adjudicating penalties in house. *Id.* at 9–10. The court emphasized the distinction, central to *Axon*, between standard merits questions that belong inside the agency's statutory scheme and structural constitutional challenges that agency adjudications

are generally ill suited to address. *Id.* at 24–25 (citing *Axon* and *Free Enterprise Fund*).

That reasoning maps directly onto Dr. Rifai’s jurisdictional theory. Dr. Rifai does not ask the district court to decide whether revocation is warranted under the Controlled Substances Act. Instead, he challenges the constitutionality of compelling him to proceed within an allegedly unconstitutional adjudicatory structure and without constitutionally adequate process. Under *Axon*’s framework, and as recognized in *The Vaping Dragon*, such claims are properly evaluated as structural challenges to the legitimacy of the forum itself and therefore fall within the district court’s Section 1331 jurisdiction rather than being categorically channeled into the eventual petition for review mechanism.

**B. The Fifth Circuit’s Post 2024 Decisions Reinforce That “The Proceeding is the Injury” When a Plaintiff Seeks Prospective Relief from an Allegedly Unconstitutional Agency Forum**

In *Space Exploration Technologies Corp. v. NLRB*, the Fifth Circuit affirmed preliminary injunctions halting ongoing administrative proceedings based on Article II challenges to the agency’s structure, including two layer for cause removal protections for administrative law judges. 151 F.4th 761 (5th Cir. 2025). The Court rejected the argument that district courts lack jurisdiction to hear structural constitutional challenges to agency adjudication, explaining that nothing in federal law strips federal courts of jurisdiction to hear such claims or to enjoin

unconstitutional agency proceedings. *Id.* at 771–73. The Fifth Circuit further emphasized that separation of powers violations cause immediate harm and therefore warrant immediate judicial remedy: when an agency’s structure violates the separation of powers, the harm is immediate, and the remedy must be as well. *Id.* at 779–80.

Most important for standing and irreparable injury purposes, *Space Exploration* rejected the contention that a plaintiff seeking prospective injunctive relief must prove a separate downstream injury flowing from the unconstitutional removal restrictions or other structural defects. The Court explained that the heightened causation analysis discussed in *Collins v. Yellen*, 594 U.S. 220 (2021), applies when a party seeks retrospective relief from final agency action. *Id.* By contrast, where a party seeks prospective relief to stop an ongoing or imminent allegedly unconstitutional proceeding, the proceeding itself is the injury, and no further showing of distinct harm is required. *Id.* This reasoning tracks *Axon*’s here and now injury logic: once the constitutional claim targets the legitimacy of the forum itself, later review after a final order does not fully remedy the harm of having been forced through the challenged tribunal.

Applied here, Dr. Rifai’s injury is not limited to the risk of an adverse final DEA decision. The asserted injury is being compelled to participate in an allegedly unconstitutional administrative adjudication at all, particularly where the due

process challenge is directed to the neutrality, legitimacy, and constitutional accountability of the adjudicator and process. Under *Space Exploration*'s post 2024 articulation of *Axon*, that subjection injury is sufficient to support standing and to justify prospective relief without requiring proof of a separate downstream harm beyond the constitutional violation inherent in the proceeding itself.

**C. *Jarkesy*'s Article II Removal Analysis Remains a Live and Expanding Source of Persuasive Authority After the Supreme Court's *Jarkesy* Decision**

Although the Supreme Court's decision in *SEC v. Jarkesy*, 144 S. Ct. 2117 (2024), resolved the Seventh Amendment jury trial issue in the SEC civil penalties context, the Court did not decide the separate Article II removal issue addressed by the Fifth Circuit. On remand, the Fifth Circuit held that its prior holdings were not disturbed, including its Article II analysis concerning statutory removal protections for SEC administrative law judges. *Jarkesy v. SEC*, 132 F.4th 745, 746 (5th Cir. 2024) (per curiam). The Fifth Circuit then relied on that continuing precedent in *Space Exploration* to hold that National Labor Relations Board ("NLRB") administrative law judges, like SEC administrative law judges, are inferior officers protected by at least two layers of for cause tenure protection, an arrangement the court treated as constitutionally problematic under Article II. 151 F.4th at 774.

These post 2024 decisions are relevant here for two independent reasons. First, they confirm that Article II structural challenges to administrative law judge

tenure protections are not academic; courts are actively granting injunctive relief to prevent parties from being forced to litigate within adjudicatory systems allegedly insulated from constitutionally required presidential control. Second, *Space Exploration* frames the injury from such structural defects as immediate and irreparable when the plaintiff seeks prospective relief, reinforcing Dr. Rifai's position that he had standing to challenge the DEA's adjudicatory structure in district court before suffering an adverse final order.

**D. Post 2024 Authority Continues to Treat *Lucia* as Central to Characterizing Administrative Law Judges as Officers for Article II Analysis and to Framing these Claims as Structural and Outside Agency Expertise**

*Lucia v. SEC* remains the Supreme Court's foundational decision identifying SEC administrative law judges as officers of the United States who must be appointed consistent with Article II. 585 U.S. 237 (2018). Post 2024 decisions continue to rely on *Lucia* not only for appointment principles, but also for the officer status predicate that makes administrative law judge tenure protections a serious separation of powers question. In *Space Exploration*, for example, the Fifth Circuit expressly linked its removal analysis framework to *Lucia*'s recognition that administrative law judges exercise substantial authority within enforcement adjudications and therefore qualify as inferior officers for Article II purposes. 151 F.4th at 775.

That use of *Lucia* supports Dr. Rifai's jurisdictional framing. If the adjudicator is an officer exercising significant federal power, constitutional challenges to the officer's appointment, tenure protection, and accountability go to the structure of the tribunal itself, not the merits of any revocation decision. Under *Axon* and its post 2024 applications, such claims fall outside the agency's expertise, are wholly collateral to the statutory merits review scheme, and are properly heard in district court when the plaintiff seeks to avoid unconstitutional subjection in the first place.

**E. Post 2024 District Court Decisions Confirm a Boader Trend of Granting Immediate Relief from Structurally Challenged Administrative Adjudication**

The Fifth Circuit's *Space Exploration* decision affirmed preliminary injunctions entered by multiple district courts recognizing that Article II structural challenges to administrative law judge tenure protections may warrant immediate relief to halt agency adjudication. *See Space Exploration Technologies Corp. v. NLRB*, 741 F. Supp. 3d 630 (W.D. Tex. 2024); *Energy Transfer L.P. v. NLRB*, 742 F. Supp. 3d 755 (S.D. Tex. 2024); *Aunt Bertha, Inc. v. NLRB*, 2024 WL 4202383 (N.D. Tex. Sept. 16, 2024), *aff'd sub nom. Space Exploration Technologies Corp. v. NLRB*, 151 F.4th 761 (5th Cir. 2025). Together with *The Vaping Dragon*, these cases reflect a continuing post 2024 judicial recognition that structural constitutional challenges to administrative adjudication may warrant immediate Article III review

and immediate equitable relief, particularly where waiting for a final order would force the plaintiff to endure the very proceeding alleged to be unconstitutional.

While courts remain divided on the merits of dual layer administrative law judge removal challenges, including in DEA adjacent contexts. *See Rabadi v. U.S. Drug Enforcement Administration*, 122 F.4th 371 (9th Cir. 2024), *cert. denied*, 145 S. Ct. 2846 (2025). That merits disagreement, however, strengthens rather than weakens the justification for *Axon* type jurisdiction over structural claims where the injury alleged is subjection to an unconstitutional tribunal.

## **V. Conclusion**

This Court should reverse the judgment dismissing the SAC for lack of subject-matter jurisdiction and remand for further proceedings consistent with *Axon*, *Free Enterprise*, *Thunder Basin*, and the proper application of Article III standing principles. *Axon*, 598 U.S. 175; *Free Enter. Fund*, 561 U.S. 477; *Thunder Basin*, 510 U.S. 200; *Lujan*, 504 U.S. 555. (Appx. A8–15.)

Respectfully Submitted,

Dated: February 17, 2026

s/ Ronald W. Chapman II

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**CERTIFICATION OF COUNSEL**

I, Ronald W. Chapman II, Esq., LL.M., hereby certify that:

1. I am a member of the bar of this court;
2. This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because this brief contains 5,057 words, including parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii);
3. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word in Times New Roman (14 point font);
4. The electronic version of this brief is identical to the text version in the paper copies filed with the court. This document was scanned using Vipre Virus Protection, version 3.1 (with updated definition file as of February 17, 2026) and that no viruses were detected.
5. On this date, seven hard copies of the foregoing Brief for Appellant and Appendix Volume 1 of 2 were sent to the Clerk's Office. Pursuant to Local Appellate Rules 31.1(d) and 113.4(a), I caused the foregoing Brief for Appellant and Appendix Volume 1 of 2 to be served on counsel for Appellees via the Notice of Docket Activity generated by the Court's electronic filing system (i.e., CM/ECF) and via electronic mail.

Dated: February 17, 2026  
Detroit, Michigan

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**United States Court of Appeals**  
*for the*  
**Third Circuit**

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Case No. 25-2987

MUHAMAD ALY RIFAI, M.D.,

*Appellant,*

– v. –

UNITED STATES DEPARTMENT OF JUSTICE; ADMINISTRATOR DRUG  
ENFORCEMENT ADMINISTRATION; ATTORNEY GENERAL UNITED  
STATES OF AMERICA; UNITED STATES OF AMERICA; UNITED STATES  
DRUG ENFORCEMENT ADMINISTRATION.

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ON APPEAL FROM AN ORDER OF THE UNITED STATES DISTRICT COURT OF  
THE EASTERN DISTRICT OF PENNSYLVANIA IN CASE NO. 5:24-cv-01242,  
JEFFREY L. SCHMEHL, U.S. DISTRICT JUDGE

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**APPENDIX**  
**Volume 1 of 2 (Pages A1 to A17)**

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IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

MUHAMAD ALY RIFAI	:	CIVIL ACTION
	:	
	:	
v.	:	NO. 24-cv-01242-JLS
	:	
THE UNITED STATES DEPARTMENT OF JUSTICE, et al.	:	

**ORDER**

**AND NOW**, this 10<sup>th</sup> day of September, 2025, it is **ORDERED** that:

1. The Defendants' Fed.R.Civ.P. 12(b)(1) motion to dismiss the Second Amended Complaint for lack of subject matter jurisdiction [Doc. 31] is **GRANTED**.
2. The Complaint is **DISMISSED** with prejudice.
3. The Plaintiff's motion for a preliminary injunction [Doc. 18] is **DENIED** as moot.

**BY THE COURT:**

/s/ Jeffrey L. Schmehl  
**JEFFREY L. SCHMEHL, J.**

A2

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

<b>MUHAMAD ALY RIFAI</b>	:	<b>CIVIL ACTION</b>
	:	
	:	
v.	:	<b>NO. 24-cv-01242-JLS</b>
	:	
<b>THE UNITED STATES DEPARTMENT OF JUSTICE, et al.</b>	:	

**MEMORANDUM**

**SCHMEHL, J. - /s/ JLS**

**SEPTEMBER 10, 2025**

Dr. Muhamad Aly Rifai (“Rifai”) collaterally petitions the Court for injunctive and declaratory relief under the Administrative Procedures Act (“APA”), 5 U.S.C. § 702, and 28 U.S.C. §1331, raising several constitutional challenges to the Drug Enforcement Administration’s (“DEA”) current system of adjudication for determining whether Rifai’s certificate of registration to dispense controlled substances should be revoked. Named as Defendants are the U.S. Department of Justice, Attorney General Pamela Bondi, Acting Administrator of the U.S. Drug Enforcement Administration (DEA) Robert Murphy, the DEA, and the United States of America. Presently before the court is the Defendants’ motion to dismiss Rifai’s second amended complaint (“SAC”) pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure for lack of subject matter jurisdiction. For the reasons that follow, the motion is granted.

**STANDARD OF REVIEW**

The Defendants make a “facial” attack on the Court’s jurisdiction. A “facial” attack considers a claim on its face and asserts it is insufficient to invoke the

Court's subject matter jurisdiction. *Constitution Party of Pa. v. Aichele*, 757 F.3d 347, 358 (3d Cir. 2014).

The Court considers only the allegations of the complaint and documents referenced in the complaint in the light most favorable to Dr. Rifai. Nagle. *Id.* The burden of establishing subject matter jurisdiction rests on Dr. Rifai as the party asserting jurisdiction. *Lincoln Ben. Life Co. v. AEI Life, LLC*, 800 F.3d 99, 105 (3d Cir. 2015).

Dr. Rifai is a board-certified psychiatrist who practices in the Commonwealth of Pennsylvania. SAC at ¶13. He has practiced medicine psychiatry for over twenty (20) years. *Id.* Dr Rifai also operates several clinics under the name Blue Mountain Psychiatry, LLC. *Id.* at ¶14.

#### **PROCEDURAL HISTORY**

On November 8, 2022, Rifai was indicted by a federal grand jury on four counts of healthcare fraud. *United States of America v. Muhamad Aly Rifai*, Criminal Action No. 22-390 (E.D. Pa. 2022) ECF No. 1. 2. On March 30, 2023, a DEA drug diversion investigator informed Rifai's counsel in the criminal action that DEA intended to initiate an administrative enforcement action against him concerning the revocation of Rifai's DEA registration. On April 10, 2023, Rifai's counsel informed the DEA that Rifai declined to surrender his registration to dispense controlled substances and acknowledged his understanding that the DEA would pursue an administration enforcement hearing.

On October 2, 2023, the DEA served upon Rifai a DEA administrative subpoena (number CK-23-383930) seeking the medical file of a purported former patient of Dr.

Rifai, who was in reality an undercover investigator. On October 10, 2023, Dr. Rifai, through his counsel, responded to the subpoena and provided the requested file for his former patient. On October 16, 2023, Rifai's counsel in the administrative matter, who also represents him in this action, produced medical records to the DEA pursuant to the administrative subpoena.

On November 30, 2023, the DEA issued an Order to Show Cause against Rifai's DEA registration. On December 28, 2023, Rifai filed an answer to the Order to Show Cause and requested that DEA hold an administrative hearing before a DEA Administrative Law Judge ("ALJ"). On December 29, 2023, the ALJ issued an Order for prehearing statements before conducting a prehearing conference on January 31, 2024. A pre-hearing ruling was issued on January 31, 2024.

On February 20, 2024, Rifai filed in the administrative proceeding a prehearing statement and requested that the hearing be postponed until after Rifai's federal criminal trial, which at the time was scheduled to begin April 29, 2024. On March 22, 2024, Rifai commenced this action by filing his Complaint (ECF No. 1). The DEA ALJ granted Rifai's request and continued the hearing until May 2, 2024. The ALJ later further continued the hearing until May 23, 2024. On April 29, 2024, Rifai's criminal trial began before this Court. On May 9, 2024, a jury acquitted Rifai on all four counts. On May 16, 2024, Rifai filed an emergency motion for a temporary restraining order (ECF No. 7) in this matter, seeking to enjoin DEA from proceeding with its administrative enforcement process until after both: (a) the conclusion of Rifai's criminal trial (despite the fact that the criminal case already had concluded); and (b) the Supreme Court issued its anticipated decision in a case concerning the constitutionality of the Securities

and Exchange Commission's ("SEC") appointment of ALJs. On June 3, 2024, upon Rifai's request, the DEA ALJ stayed all administrative proceedings against Rifai "until the District Court renders its decision" in this case. The following day, June 4, 2024, the Court denied as moot Rifai's emergency motion for a temporary restraining order (ECF No. 10).

On August 20, 2024, the DEA ALJ lifted the stay and ruled that the administrative hearing process would be terminated upon DEA's request for final agency action. Specifically, the ALJ stated:

As the extensive procedural history makes clear, Respondent has engaged in a protracted pattern of disregarding this tribunal's orders, making representations to this tribunal that he did not fulfill, filing required pleadings late, filing required pleadings only when forced to do so by this tribunal, delaying this case before ultimately refiling his request for a stay, engaging in combative and defiant behavior during the status conference, and generally expressing his obvious ire each time this tribunal instructs him to explain his failure to follow this tribunal's Orders. Respondent's persistent, escalating game of brinkmanship makes crystal clear that Respondent's counsel does not believe he is obligated to follow this tribunal's orders under any circumstances, and, in the recent motion, claims that he need not follow any orders from this tribunal while the case is stayed or while he has a pending collateral challenge to this tribunal's authority. Viewing this pattern as a whole, including the most recent disregard of this tribunal's orders and Respondent's legal arguments bordering on bad faith, this tribunal concludes, for the following reasons, that Respondent's pattern of behavior has abused the administrative process. Respondent's pattern of behavior and arguments also makes clear that nothing short of termination will stop the abuse of this administrative process.

ECF 16-1 at p. 15. The ALJ further found that Rifai "does not desire a hearing before [that] tribunal," but rather "desires delay, during which he can continue to prescribe schedule II controlled substances despite very serious allegations against him." *Id.* at p. 17.

On September 5, 2024, the government filed a request with the DEA for it to find Rifai in default. ECF 35-1 at p. 2. In an Order dated July 5, 2025, the DEA denied the government's request and further advised the government that if it "wishes to pursue this matter, it may file a new request for final agency action that contains substantial record evidence supporting the denial of Respondent's registration on the grounds noted in the OSC." *Id.* at pp. 9-10.

### **PETITIONER'S CLAIMS**

Rifai filed the SAC (ECF No. 29) on April 25, 2025, asserting the following claims:

1. Fourth Amendment Violation (Count I): Defendants violated Dr. Rifai's right to be free from unreasonable searches and seizures by issuing and executing an administrative subpoena without a warrant or judicial oversight, circumventing the Fourth Amendment for the purpose of aiding an ongoing federal criminal investigation and eventual prosecution. Without the documents obtained thereof, the administrative proceeding would never have been initiated. (ECF No. 29 at 14-16.)
2. Fifth Amendment Due Process Violation (Count II): Defendants violated Dr. Rifai's procedural due process rights by unlawfully terminating his administrative proceedings through ultra vires action by a DEA ALJ, depriving him of the opportunity to contest the proposed revocation of his DEA registration. (*Id.* at 16-19.)
3. Unlawful Agency Overreach (Count III): Defendants exceeded their statutory authority under the Controlled Substances Act (CSA) by promulgating and enforcing regulations that improperly intrude upon states' authority to regulate the practice of medicine and penalize practitioners based on discretionary agency-created prescribing standards. (*Id.* at 19-20.)
4. Separation of Powers Violation (Count IV): Defendants subjected Dr. Rifai to an administrative proceeding before a DEA ALJ unconstitutionally insulated by two layers of for-

cause removal protections, violating Article II's separation of powers. (Id. at 20-21.)

5. Injunctive Relief Based on Structural Harm (Count V): Dr. Rifai seeks injunctive relief to prevent his continued subjection to an unconstitutional administrative process, independent of any final agency action or adjudication. (Id. at 21.)

6. Declaratory Judgment (Count VI): Rifai seeks a declaration that the DEA's enforcement of the CSA, as applied to the facts of this case, is unconstitutional. (Id. at 22.)

[ECF 29 at ¶ 14-22.]

### **DEA REGULATORY REGIME**

The Controlled Substances Act (CSA) and its implementing regulations create restrictions on the distribution of controlled substances. 21 U.S.C. §§ 801, *et seq.*; 21 C.F.R. §§ 1300, *et seq.* The CSA requires all persons who dispense controlled substances to obtain a registration from the Attorney General. *See* 21 U.S.C. § 822(a). The Attorney General has delegated this registration authority to the DEA. *See* 28 C.F.R. § 0.100.

The DEA Administrator may suspend or revoke a license on various grounds, including a "finding that the registrant ... has committed such acts as would render his registration under section 823 of this title inconsistent with the public interest as determined under such section." 21 U.S.C. § 824(a)(4). Before revoking a registration, the DEA must issue a rule to show cause describing the grounds for revocation and conduct a hearing in accordance with the Administrative Procedures Act. *Id.* § 824(c); 21 C.F.R. § 1301.37(c). Following the hearing, the presiding ALJ issues a report recommending findings of fact and conclusions of law; the ALJ forwards this report and the administrative record to the DEA Administrator. *Id.* § 1316.65(a),(c). The

Administrator, as the Attorney General's delegate, then issues a final order, supported by findings of fact and conclusions of law. *Id.* § 1316.67. The CSA further provides that the DEA's "final determinations, findings, and conclusions" under the CSA "shall be final and conclusive decisions of the matters involved, except that any person aggrieved by a final decision" of the DEA "may obtain review of the decision in the United States Court of Appeals for the District of Columbia or for the circuit in which his principal place of business is located upon petition filed with the court and delivered to the Attorney General within thirty days after notice of the decision." 21 U.S.C. § 877.

### **DISCUSSION**

Defendants claim there has been no "final decision" by the DEA for the Court to review and, in any event, exclusive jurisdiction over Rifai's claims lies in the appropriate court of appeals pursuant to 21 U.S.C. § 877. The Court agrees.

Under the APA, "[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." 5 U.S.C. § 702. In addition, "[a]gency action made reviewable by statute and final agency action for which there is no other adequate remedy in a court are subject to judicial review." 5 U.S.C. § 704.

Generally, such review of a federal agency action occurs in federal district court. However, Congress can "divest[ ] district courts of their ordinary jurisdiction" by substituting "an alternative scheme of review" within an agency—where the agency's final decision is reviewable by an Article III court of appeals.<sup>1</sup> *Axon Enter., Inc. v. FTC*, 598

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<sup>1</sup> The Court agrees with Defendants that there has been no final agency decision in this case since the DEA Administrator has not issued a final order supported by findings of fact and conclusions of law. 21 C.F.R. section 1316.67. The DEA stated as much when it recently advised the government that if it "wishes to pursue this matter, it may file a new request for final agency action that contains substantial

U.S. 175, 185, (2023). Sometimes Congress does so in explicit terms, “providing in so many words that district court jurisdiction will yield.” *Id.* Other times, it does so implicitly, leaving open the question whether the statutory review scheme is exclusive. *Id.*

With regard to section 877, Congress did not explicitly foreclose district court jurisdiction. Therefore, the Court must inquire as to whether Congress implicitly foreclosed district court jurisdiction

To determine whether Congress implicitly divested a federal district court of jurisdiction, the Court must engage in a two-part analysis. The Court first asks whether it is “fairly discernible” from the “text, structure, and purpose” of the statutory scheme that Congress intended to preclude district court jurisdiction. *Elgin v. Department of Treasury*, 567 U.S. 1, 10 (2012)(quoting *Thunder Basin Coal Co. v. Reich*, 510 U.S. 200, 207 (1994)).The Court then asks whether the “claims at issue ‘are of the type Congress intended to be reviewed within th[e] statutory structure.’” *Free Enterprise Fund v. Public Company Accounting Oversight Bd.*, 561 U.S. 477, 489 (2010) (quoting *Thunder Basin*, 510 U.S. at 212. )

With respect to the first question, the Court finds that it is indeed “fairly discernible” from “the text, structure, and purpose” of the statutory scheme that Congress intended to preclude district court jurisdiction. Congress specifically stated that a party “aggrieved by a final decision” of the DEA Administrator may then appeal to the Court of Appeals for the District of Columbia Circuit or for the circuit in which the party's principal place of business is located. 21 U.S.C. § 877. Conspicuously absent from the statute is any language referencing the district court. If Congress intended for the district court to

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record evidence supporting the denial of Respondent’s registration on the grounds noted in the OSC.” ECF 35-1, pp. 9-10.

get involved in any part of the process, it could have easily so stated. It did not. *Morris & Dickson Co. v. Whitaker*, 360 F. Supp. 3d 434, 443 (W.D. La. 2018) (“[T]he CSA nevertheless reflects an intent to force claims related to DEA registrations to proceed through an administrative process before judicial review begins in an appeals court.”)

With respect to the second question, the Supreme Court has identified three “factors,” sometimes referred to as the “*Thunder Basin* factors,” for courts to consider. See *Thunder Basin*, 510 U.S. at 212–13. Specifically, the Court asks (1) whether precluding district court jurisdiction “could foreclose all meaningful judicial review”; (2) whether plaintiff’s “suit is wholly collateral to a statute’s review provisions”; and (3) whether the claims are “outside the agency’s expertise.” *Elgin*, 567 U.S. at 15, (quoting *Free Enter. Fund*, 561 U.S. at 489, ; *Thunder Basin*, 510 U.S. at 212–13, ).

The Supreme Court in *Axon* cited its previous decisions in *Thunder Basin* and *Elgin* as examples of the Court applying the *Thunder Basin* factors and concluding that since the challenges in both cases were to a “specific substantive decision” of an agency or the “commonplace procedures agencies use to make such a decision.” *Axon*, 598 U.S. at 189, such as fining a company (*Thunder Basin*) or firing an employee (*Elgin*), the district court lacked collateral jurisdiction over the claims. On the other hand, the *Axon* Court cited its previous decision in *Free Enterprise* as an example of a challenge “to the structure or very existence of an agency” and therefore the district court had collateral jurisdiction to hear the plaintiff’s constitutional claims. *Id.* The issue in *Free Enterprise* involved a challenge to double-for-cause removal protections for ALJs, in violation of Article II’s Vesting Clause. 561 U.S. at 484.

Since the challenge raised in *Axon* also involved double-for-cause removal protections, in violation of Article II's Vesting Clause as well as a combination of prosecutorial and adjudicatory functions in a single agency, in violation of separation-of-powers principles, the *Axon* Court concluded that the matter before it was more aligned with *Free Enterprise* than with *Thunder Bay and Elgin*.

The *Axon* Court then noted that “being subjected to unconstitutional agency authority” in an administrative proceeding such as an ALJ enjoying double-for-cause removal protection is a “here-and-now injury.” *Id.* at 191. (internal quotation marks and citation omitted). The Court further stated that since “[a] proceeding that has already happened cannot be undone,” an agency's direct review scheme should pose no independent bar to district court jurisdiction. *Id.* In other words, a person subject to such proceedings by an ALJ has a “right[ ] not to undergo the complained-of agency proceedings” and should be able to assert that right on collateral review in district courts. “The claim, again, is about subjection to an illegitimate proceeding, led by an illegitimate decisionmaker and as to that grievance, the court of appeals can do nothing: A proceeding that has already happened cannot be undone.” *Axon*, 598 U.S. at 191.

In the first instance, unlike in *Axon*, Rifai is simply not challenging the structure or very existence of the DEA in any of the first three counts in the SAC. Rather, Rifai claims the Defendants violated his Fourth Amendment rights through the issuance of an administrative subpoena (Count One), the DEA ALJ violated his Fifth Amendment procedural due process rights by terminating the hearing process (Count Two) and that the DEA, through its regulations, has encroached on the States' authority to regulate the practice of medicine (Count Three).

Applying the *Thunder Basin* factors to this case, the Court notes that whether meaningful judicial review of a claim is available is the “most important” factor of the three *Thunder Basin* factors. *Bennett v. SEC*, 844 F.3d 174, 183 n.7. (4<sup>th</sup> Cir. 2016). The importance of this factor arises from the Supreme Court's recognition “that Congress rarely allows claims about agency action to escape effective judicial review.” *Axon*, 598 U.S. at 186 .

With respect to the first *Thunder Basin* factor, if the DEA Administrator takes final action by denying Rifai's registration for the reasons stated in the DEA's Order to Show Cause, Rifai will still have access to meaningful judicial review since he will be able to raise all of his constitutional claims with the proper Court of Appeals.

With respect to the second factor, despite being constitutional in nature, Rifai's claims are nevertheless the very vehicle by which he seeks to reverse DEA's administrative actions. As result, his claims cannot be construed as “wholly collateral.” See *New Jersey Conservation Foundation v. Federal Energy Regulatory Commission*, 353 F. Supp. 3d 289, 307 (D.N.J. 2018).

With the respect to the third *Thunder Basin* factor, the Court is aware that “agency adjudications are generally ill suited to address structural constitutional challenges, which usually fall outside the adjudicator's area of technical expertise.” *Carr v. Saul*, 593 U. S. 83, 92 (2021). Yet, resolution of all of Rifai's constitutional claims requires consideration of DEA administrative procedures such as its ability to issue subpoenas, the ability of the DEA ALJ to terminate Rifai's administrative procedure, and by enforcing regulations that improperly intrude upon states' authority to regulate the

practice of medicine. Therefore, the Court finds that none of Plaintiff's claims are outside the area of expertise of the DEA.

Having determined that Congress implicitly divested the Court of jurisdiction over the first three cause of action in the SAC, the Court turns to Rifai's fourth cause of action.

Rifai's fourth cause of action could conceivably fall within the realm of *Axon* and *Free Enterprise* because, like the plaintiffs in *Axon* and *Free Enterprise*, Rifai contends that the Defendants subjected him to an administrative proceeding before a ALJ unconstitutionally insulated by two layers of for-cause removal protections, thereby violating Article II's separation of powers.<sup>2</sup>

However, our Court of Appeals recently stated that *Axon* and its "here-and-now-injury" theory only applies in cases where, unlike here<sup>3</sup>, the administrative agency procedures had not yet commenced. *National Labor Relations Board v. Starbucks Corp.*, 125 F. 4<sup>th</sup> 78, 88 (3d Cir. 2024). In a case where the administrative procedures had commenced, a petitioner would still have to establish actual harm or standing. "To establish [standing], a litigant must demonstrate that [he] was injured in fact, that the injury is "fairly traceable" to the challenged conduct, and that the injury will be "redressed by a favorable decision" from the court. *Starbucks Corp.*, *id.* quoting *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560–61 (1992) Even more recently, our Court of Appeals in *McCarthy v.*

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<sup>2</sup> "DEA ALJs are removable by the Attorney General 'only for good cause established and determined by the Merit Systems Protection Board.' *McCarthy* quoting 5 U.S.C. § 7521(a) (first layer). Members of the Merit Systems Protection Board, in turn, are removable by the President, but 'only for inefficiency, neglect of duty, or malfeasance in office.'" *McCarthy* at \* 2 quoting 5 U.S.C. § 1202(d) (second layer).

<sup>3</sup> Rifai filed an answer to the Order to Show Cause and requested that DEA hold an administrative hearing. Rifai also filed a prehearing statement in the administrative proceeding. The fact that he never received a hearing before the ALJ on the merits is due to the self-inflicted actions of his counsel. All that is left is for the DEA Administrator to issue a final order, supported by findings of fact and conclusions of law. *Id.* § 1316.67.

*United States Drug Enforcement Agency*, 2025 WL 2028399 (3d Cir. July 21, 2025)

stated:

In order to bring a removal-protection challenge, a litigant “must show that the constitutional infirmity actually caused harm.” *NLRB v. Starbucks Corp.*, 125 F.4th 78, 88 (3d Cir. 2024) (petitioner failed to link removal-protection infirmity to an actual harm and therefore could not bring challenge); see also *CFPB v. Nat’l Collegiate Master Student Loan Tr.*, 96 F. 4th 599, 607 (3d Cir. 2024) (“[A]ctions taken by an improperly insulated director are not ‘void’ and do not need to be ‘ratified’ unless a plaintiff can show that the removal provision harmed him.” (quoting *Collins v. Yellen*, 594 U.S. 220, 259 (2021))). Stated differently, a litigant must show a causal “link” between the asserted removal-protection-infirmity and an actual harm. *Nat’l Collegiate*, 96 F.4th at 615; see *Starbucks Corp.*, 125 F.4th at 88–89. McCarthy argues that the revocation of his COR is a greater injury than the injury at issue in *Starbucks*, but he fails to address the requisite causal link. McCarthy does not show, or even argue, that his injury would have been lessened or eliminated if the ALJ did not have unconstitutional removal protections. Accordingly, his removal-protection challenge fails. See *Starbucks*, 125 F.4th at 88; *Nat’l Collegiate*. 96 F. 4th at 415.

*McCarthy*, at \* 3. Similarly, Rifai does not show, or even argue, that his injury would have been lessened or eliminated if the ALJ was not unconstitutionally insulated by two layers of for-cause removal protections.

In addition, the Court notes that the ALJ was properly appointed and operating within her jurisdiction. The DEA’s administrative review process by a lawfully appointed ALJ is not inherently voided by the alleged unconstitutionality of the ALJ removal provisions. *MMJ BioPharma Cultivation Inc. v. Bondi*, 2025 WL 949233, \*2 (D.R.I. Mar. 28, 2025). (“That is, because an officer is unconstitutionally protected from removal does not mean that they lack constitutional authority to carry out the role for

which they were appointed.”. . . “[E]ven if DEA ALJs have unconstitutional removal protections, that alone does not automatically render proceedings before them void,”

For all the foregoing reasons, the Court finds that it does not have collateral jurisdiction over this matter and that the matter must be concluded before the DEA administrator after which Petitioner will, if still needed, have a meaningful judicial remedy in the appropriate Court of Appeals. As a result, the Complaint will be dismissed for lack of subject matter jurisdiction.

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

MUHAMAD ALY RIFAI, M.D.,

Plaintiff,

v.

THE UNITED STATES DEPARTMENT  
OF JUSTICE, et al.,

Defendants.

Case No. 5:24-cv-01242-JLS

**NOTICE OF APPEAL**

Notice is hereby given that MUHAMAD ALY RIFAI, M.D., appeals to the United States Court of Appeals for the Third Circuit from the Order Dismissing his Second Amended Complaint (ECF No. 37) entered in this action on September 10, 2025.

Respectfully submitted,  
CHAPMAN LAW GROUP

Dated: October 10, 2025

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**CERTIFICATE OF SERVICE**

I hereby certify that on October 10, 2025, I electronically filed the forgoing document with the clerk of court by using the CM/ECF system which will send the notice of electronic filing to all attorneys of record.

*s/ Ronald W. Chapman II*

Ronald W. Chapman II, Esq., LL.M.