

Mark O. Morris (4636)
Ben T. Welch (13397)
SNELL & WILMER L.L.P.
15 West South Temple, Suite 1200
Gateway Tower West
Salt Lake City, Utah 84101
Telephone: 801.257.1900
Facsimile: 801.257.1800
Email: mmorris@swlaw.com
bwelch@swlaw.com

Attorneys for Plaintiff Ridley's Family Markets, Inc.

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH**

RIDLEY'S FAMILY MARKETS, INC.,

Plaintiff,

vs.

MERRICK B. GARLAND, UNITED STATES
DEPARTMENT OF JUSTICE; ANNE
MILGRAM, UNITED STATES DRUG
ENFORCEMENT ADMINISTRATION;
JOHN J. MULROONEY, II, CHIEF
ADMINISTRATIVE LAW JUDGE, UNITED
STATES DRUG ENFORCEMENT
AGENCY; and THE UNITED STATES OF
AMERICA,

Defendants.

COMPLAINT FOR DECLARATORY AND
INJUNCTIVE RELIEF

Case No. 1:24-cv-00050-DAO

Magistrate Judge Daphne A. Oberg

Ridley's Family Markets, Inc. ("**Ridley's**") complains of Defendants U.S. Attorney General Merrick B. Garland, United States Department of Justice, Anne Milgram, United States Drug Enforcement Administration, John J. Mulrooney, II, Chief Administrative Law Judge, United States Drug Enforcement Agency, and The United States of America as follows:

1. Ridley's brings this action to stop an unlawful adjudicative process in and by a federal agency, conducted by an administrative law judge ("ALJ") who is unconstitutionally shielded from the President's supervision. In the event that these unlawful DEA proceedings result in adverse findings against Ridley's, the DEA's ALJ likely will permanently and wrongfully revoke Ridley's ability to dispense controlled substances to the rural community of Morgan, Utah, causing disruption to the community as well as significant financial harm to Ridley's. Such insupportable adverse findings by the DEA's ALJ also will prejudice Ridley's defense in a pending civil lawsuit against the Government, which has completed fact and expert discovery and is merely awaiting a trial date.

2. The United States Department of Justice ("DOJ") Drug Enforcement Administration ("DEA") has initiated a proceeding to determine whether to revoke the DEA Certificate of Registration for one of Ridley's pharmacies (Ridley's Pharmacy #1161) for at least five-year old alleged violations of the Controlled Substances Act ("CSA") purportedly using its prospective public interest standard, 21 U.S.C. § 823(g)(1), to judge evidence that is over five years old, and is subsequent to the DEA already renewing the license for the same store in the interim and with full knowledge of same facts on which the current civil action is predicated.

3. Chief ALJ Mulrooney, presiding over the DEA proceeding, is an executive officer whom the Attorney General may not remove except "for good cause as established and determined by the Merit Systems Protection Board." 5 U.S.C. § 7521(a). And MSPB Members, in turn, may be removed by the President "only for inefficiency, neglect of duty, or malfeasance in office." *Id.* § 1202(d).

4. Under Supreme Court precedent, this scheme violates the United States

Constitution. Article II vests the “entire” power to execute federal law in the President “alone.” *Seila Law LLC v. CFPB*, 140 S. Ct. 2183, 2197 (2020). Exercising that power means that the President must have “authority to remove those who assist him” in his task. *Free Enter. Fund v. Pub. Co. Acct. Oversight Bd.*, 561 U.S. 477, 513–14 (2010). Under Article II, the “general rule” is that the President has “unrestricted removal power” over inferior officers. *Seila Law*, 140 S. Ct. at 2198.

5. That rule has one narrow exception: Congress may impose modest removal protections on inferior officers “with limited duties and no policymaking or administrative authority.” *Id.* at 2198–2200. DEA ALJs, however, hold continuing offices with extensive duties, similar to Article III judges, and are granted by regulation “all powers necessary” to carry out those duties. 21 C.F.R. § 1316.52; *see also* 5 U.S.C. 556(c)(1)–(11) (enumerating duties). DEA ALJs, including Defendant Mulrooney, fall outside the Supreme Court’s narrow exception and must be removable at will by the President or Attorney General, which they and he are not.

6. ALJs’ dual-layer removal protections demand heightened scrutiny, and the Supreme Court invalidated a scheme on these exact grounds. *See Free Enterprise*, 561 U.S. at 484, 495. The Fifth Circuit followed suit, finding the SEC’s ALJ removal protections unconstitutional—in a scheme analogous to the DEA’s here. *See Jarkesy v. SEC*, 34 F.4th 446, 463–65 (5th Cir. 2022).

7. The remedy for this unconstitutional scheme is to enjoin the pending administrative proceedings and declare them unlawful.

8. This Court offers Ridley’s its only opportunity for meaningful judicial review to prevent its subjection to an unconstitutional proceeding. The Supreme Court recently made clear

that federal courts can and should hear claims like this one without waiting for agency proceedings to conclude since subjection to “an illegitimate proceeding, led by an illegitimate decisionmaker” is a “here-and-now injury” that is “impossible to remedy once the proceeding is over.” *Axon Enter. Inc. v. FTC*, 143 S. Ct 890, 903 (2023).

THE PARTIES

9. Plaintiff Ridley’s Family Markets, Inc., is a Wyoming corporation with its principal place of business in Twin Falls, Idaho.

10. Defendant Merrick B. Garland is the Attorney General, the head of the United States Department of Justice. He is sued in his official capacity.

11. Defendant Anne Milgram is the Administrator of the United States Department of Justice Drug Enforcement Administration. She issues final orders and decisions based on Administrative Law Judge recommendations and is sued in her official capacity.

12. Defendant John J. Mulrooney, II is the Chief Administrative Law Judge of the Drug Enforcement Administration. He is sued in his official capacity.

13. The United States of America is named in accordance with 5 U.S.C. § 702. This is an action in a court of the United States seeking relief other than money damages and stating a claim that an agency or an officer thereof acted or failed to act in an official capacity.

JURISDICTION AND VENUE

14. This civil action arises under the Constitution and laws of the United States and seeks relief against the United States. This Court thus has subject matter jurisdiction under 28 U.S.C. § 1331 and § 1346(a)(2). Ridley’s has a cause of action to sue for equitable relief, *see, e.g., Free Enter. Fund*, 561 U.S. at 491 n.2, and for declaratory relief, *see* 28 U.S.C. § 2201. The United

States has waived its sovereign immunity from this suit under 5 U.S.C. § 702.

15. Venue is proper in this district under 28 U.S.C. § 1391(e)(1)(B). Defendants are the United States and officers of an agency of the United States acting in their official capacity. A substantial part of the events giving rise to this action occurred in this district. Ridley's Morgan location holds current Utah Class A pharmacy and controlled substance licenses in the State of Utah. The allegations underlying the DEA Order to Show Cause, requiring Ridley's to submit to an unconstitutional administrative proceeding, occurred in Morgan, Utah.

BACKGROUND

16. Ridley's operates Ridley's Pharmacy #1161 under DEA Certificate of Registration Number FR2858340 from within its Family Market, serving the small local community of surrounding Morgan, Utah.

17. In early 2019, the DEA began investigating Ridley's Pharmacy #1161 as part of a broader investigation into a forgery scheme in which forged prescriptions for controlled substances for two individuals were presented and filled at Ridley's Pharmacy #1161 among many other pharmacies. None of pharmacists who ultimately filled the prescriptions were aware or had knowledge of the forgeries. They believed they were valid prescriptions under the CSA. Ridley's cooperated in all aspects of the DEA's investigation.

18. On December 4, 2020, the United States filed a civil action against Ridley's seeking civil penalties and injunctive relief for filling these prescriptions for controlled substances between June 2017 and February 2019. The lawsuit alleged that Ridley's violated the Controlled Substances Act ("CSA"), specifically 21 U.S.C. §§ 842(a)(1) and 829, and its implementing regulations 21 C.F.R. §§ 1306.04 and 1306.06.

19. This Court subsequently granted Ridley's Motion to Dismiss on three of the United States' four claims. *See U.S. v. Ridley's Family Markets, Inc.*, 2021 WL 2322478 (D. Utah, June 7, 2021).

20. Throughout extended discovery and motion practice in the civil case, Ridley's has continued to serve the Morgan community consistent with the CSA and all other state and federal laws, statutes, and regulations. In fact, the DEA renewed Ridley's Certificate of Registration on April 12, 2023.

21. Yet on December 7, 2023, nearly five years after the latest of Ridley's alleged violations and on the eve of expert discovery cut-off in the civil case, the DEA Assistant Administrator issued an Order to Show Cause (the "**Order**") to Ridley's Pharmacy #1161.

22. The Order requires Ridley's to show cause through an unlawful "adjudicative" process as to why the DEA should not revoke its DEA Certificate of Registration pursuant to 21 U.S.C. § 824(a)(4) and deny any applications for renewal because Ridley's continued registration is purportedly "inconsistent with the public interest," as defined in 21 U.S.C. § 823(g)(1). (*See* Order to Show Cause, attached as **Exhibit 1.**)

23. As a result, Ridley's had just thirty days to answer the Order and request an administrative hearing or else the DEA Administrator would, on their own and without hearing any evidence or argument from Ridley's, consider the factual allegations in the Order admitted and enter a default final Order.

24. To prevent default, Ridley's timely submitted its Answer and Request for Hearing on January 10, 2024. Ridley's also submitted its Corrective Action Plan that, without admitting fault for any prior conduct, detailed a host of changes that had been implemented since 2019 and

a recent audit indicating that this pharmacy's compliance with the law and professional standards was exemplary, thereby demonstrating that Ridley's Pharmacy #1161 posed, and had posed no danger to the community or public interest since it became aware of the forgery issues.

25. On January 24, 2024, the Assistant Administrator of the DEA Diversion Control Division denied Ridley's request to discontinue or defer the administrative proceeding, further stating that no potential modification of the Corrective Action Plan could or would change his mind. (*See Proposed Corrective Action Plan Correspondence, attached as **Exhibit 2.***)

26. Ridley's trial before Chief ALJ Mulrooney is set to begin on June 4, 2024, and to continue until June 7, 2024.

CLAIM FOR RELIEF

27. Ridley's repeats and realleges each allegation in paragraphs 1-26 above as if fully set forth here.

28. Defendant Chief ALJ Mulrooney and all other DEA ALJs are inferior executive officers of the United States.

29. Defendant Chief ALJ Mulrooney and all other DEA ALJs are insulated from removal by the President, pursuant to 5 U.S.C. § 7521(a) and 5 U.S.C. § 1202(d), in violation of Article II of the Constitution of the United States of America.

30. These statutes must be interpreted as written and in accordance with appropriate canons of construction. Any attempt to sever either removal restriction would be akin to rewriting the statute and thus contrary to congressional intent.

31. As a result, Defendant Chief ALJ Mulrooney and all other DEA ALJs lack the constitutional authority to conduct the pending adjudication against Ridley's.

PRAYER FOR RELIEF

WHEREFORE, Ridley's respectfully requests and is entitled to:

(1) Permanent and preliminary injunctive relief enjoining DEA and DOJ from carrying out an administrative proceeding against Ridley's, including the Order to Show Cause at issue or any other proceedings regarding Ridley's DEA registrations unless and until a constitutionally valid system is in place;

(2) Declaratory judgment that Defendants may not proceed with the DEA adjudication pending against Ridley's under the current statutes, regulatory provisions, and policies providing for the removal of DEA ALJs as applied by DEA and DOJ; and

(3) Such other and further relief as this Court may deem just and proper, including reasonable attorneys' fees and costs of this action.

DATED this 25th day of March, 2024.

Respectfully submitted,

SNELL & WILMER L.L.P.

/s/ Mark O. Morris

Mark O. Morris
Benjamin T. Welch

*Attorneys for Plaintiff Ridley's Family
Markets, Inc.*