

**UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**
[SET FOR ARGUMENT ON SEPTEMBER 12, 2012]

HOLIDAY CVS, L.L.C.,)	
)	
Plaintiff-Appellant,)	
)	
v.)	Case No. 12-5072,
)	consolidated with
ERIC H. HOLDER, JR., et al.,)	Case No. 12-1128
)	
Defendants-Appellees.)	
)	

MOTION TO FILE
GOVERNMENT’S RULE 28(J) LETTER
AND ATTACHMENT UNDER SEAL

The defendants-appellees respectfully move for leave to file their Rule 28(j) letter of September 11, 2012, and attachment, under seal. Defendants-appellees do so at the request of the plaintiff-appellant, Holiday CVS.

1. In the above-captioned litigation, plaintiff seeks to enjoin two emergency orders issued by the Drug Enforcement Administration to two pharmacies owned and operated by the plaintiff. Those orders – “Immediate Suspension Orders” or “ISOs” – temporarily suspended the controlled substance registrations of CVS/Pharmacy Nos. 219 and 5195.

The ISOs were issued in conjunction with orders to show cause why the pharmacies’ registrations should not be suspended or revoked pursuant to 21

U.S.C. § 824. An administrative proceeding was held regarding suspension or revocation, including a hearing before the Chief Administrative Law Judge. The Chief Administrative Law Judge issued a Recommended Decision in June 2012, and the parties were given an opportunity to file exceptions to the Recommended Decision. The complete record was provided to the Administrator for a final ruling.

2. On September 11, 2012, the Administrator served the parties with her final decision and order revoking the certificates of registration issued to CVS/Pharmacy Nos. 219 and 5195. The Administrator's decision "adopt[ed] the ALJ's recommended rulings, findings of fact (except as discussed [in the Administrator's decision]), conclusions of law, and proposed sanction." Order 1. The Administrator's order provides that it will become effective thirty days from the date of publication in the Federal Register. Order 31.¹

3. At the request of plaintiff's counsel, the Administrator has agreed to give plaintiff one week to file any request to have information that plaintiff believes to be confidential redacted prior to publication in the Federal Register. Publication is being withheld accordingly.

¹ Because it was adopted by the Administrator, the ALJ's Recommended Decision will be part of the decision and order published in the Federal Register.

4. Relatedly, at the request of plaintiff's counsel, we ask this Court to file under seal the government's 28(j) letter and attached copy of the Administrator's decision and order. At this time, we take no position on the appropriateness of any forthcoming redaction request plaintiff may submit to the agency. As a precautionary measure, however, in light of the Administrator's withholding of Federal Register publication, we ask this Court to file these materials under seal.

Respectfully submitted,

/s/ Samantha L. Chaifetz
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CERTIFICATE OF SERVICE

I hereby certify that on this 11th day of September, 2012, I caused a copy of the foregoing motion to be served in hard copy to the Court and mailed to counsel of record in this matter.

/s/ Samantha L. Chaifetz
Samantha L. Chaifetz