

IN THE SUPREME COURT OF THE STATE OF NEVADA

DEPARTMENT OF HEALTH AND
HUMAN SERVICES, NEVADA
DIVISION OF PUBLIC AND
BEHAVIORAL HEALTH, MEDICAL
MARIJUANA ESTABLISHMENT
PROGRAM,

Appellant,

vs.

SAMANTHA INC., d/b/a
SAMANTHA'S REMEDIES, a Domestic
Corporation,

Respondent.

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APPELLANT'S OPENING BRIEF

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JURISDICTIONAL STATEMENT

Pursuant to NRS 233B.150, this is an appeal from the final order of the Eighth Judicial District Court which reviewed a decision of the Division of Public and Behavioral Health of the Department of Health and Human Services (hereinafter “the Division”). The petition for judicial review involved the scoring and ranking of an application for a medical marijuana dispensary in a competitive process for twelve dispensaries located in the City of Las Vegas. The final Order was filed July 27, 2016. (Appellant’s Appendix, (“App.”) pp. 35-37). Notice of Entry of Order with an unfiled copy of the Order was filed August 3, 2016. (App. pp. 145-155) The appeal in this matter was filed August 18, 2016 with the District Court and filed August 25, 2016 with the Nevada Supreme Court. (App. p. 160).

This case was the subject of a writ proceeding in the matter of *The State of Nevada Department of Health and Human Services, Division of Public and Behavioral Health vs. The Eighth Judicial District Court of the State of Nevada, In and For the County of Clark and the Honorable Douglas Smith, District Judge with Real Party in Interest Samantha Inc. d/b/a Samantha’s Remedies, a domestic corporation*, Case No. 67423. This full Court concluded that the Court’s intervention by way of extraordinary relief was not warranted and denied the petition. The Division preserved the argument in their briefing on the petition for

judicial review but the District Court did not address the issue again in its final order. (App. pp. 74-76) Therefore, the Division also appeals the order denying the dismissal of the petition for judicial review filed on February 13, 2016. (App. p. 33-34) Samantha's Remedies submitted the order but did not prepare a notice of entry of the order so the Division filed notice of entry on August 25, 2016 for the purpose of correcting any deficiency in this appeal. (App. pp.156-159)

ROUTING STATEMENT

An administrative agency appeal is presumptively assigned to the Court of Appeals. However, the Supreme Court heard the issue of first impression raised in the writ concerning judicial review of the registration of medical marijuana establishments.

STATEMENT OF ISSUES

Did the District Court have subject matter jurisdiction to hear a petition for judicial review concerning a medical marijuana establishment when notice and opportunity were not required by law?

Did the Division err as a matter of law or abuse its discretion in scoring and ranking the application of Samantha's Remedies?

Did the District Court act in excess of its authority in ordering the Division to issue a registration if SAMANTHA REMEDIES was ranked in the top twelve in the

City of Las Vegas when twelve registrations had already been issued by the Division?

STATEMENT OF THE CASE AND RELEVANT FACTS

The Division has the authority to issue certificates of registration for medical marijuana establishments pursuant to NRS 453A.322. The Nevada Legislature specified that the Division could accept applications only for ten business days once a calendar year as described in NRS 453.324(4). Further, the Legislature directed the Division to issue all resulting registrations within 90 days according to NRS 453A.322(3). The registration of dispensaries was a competitive process because Clark County was limited to 40 dispensaries with the Clark County Commission allocating 12 to the City of Las Vegas pursuant to NRS 453A.324 and NRS 453A.326.

The Division scored and ranked hundreds of applications using a tool developed according to the considerations set forth in NRS 453A.328 and the criteria set forth in regulation and the announcement of the application process by the Division. Each application included specific sections where the applicant was not identified to the reviewers to ensure objectivity in this competitive process. The Division relied solely on the applications submitted in their determination and the final scores for each section were the result of a comparison of similar applicants by

a consistent team of reviewers. The Division issued registrations during the prescribed 90 day time period which ended on November 3, 2014. In areas where a local government issued business licenses, any registration was deemed provisional by law until the establishment was in compliance with local requirements according to NRS 453A.326(3).

On December 8, 2014, SAMANTHA INC., doing business as SAMANTHA'S REMEDIES, a domestic corporation (hereinafter "SAMANTHA'S REMEDIES") filed a Petition for Judicial Review. (App. pp. 1-32) SAMANTHA REMEDIES challenged the decision of the Division because its application did not score in the top twelve dispensaries for the City of Las Vegas. On December 24, 2014, the Division filed a motion to dismiss the petition for judicial review. The District Court considered the pleadings and heard oral argument on January 27, 2015. On February 13, 2015, the Court issued an order denying the motion to dismiss.

In its Order, the District Court reiterated the argument brought by the Division that the review and ranking of the medical marijuana dispensaries applications was not a "contested case" for purposes of judicial review because the Nevada Legislature had designated such a registration as revocable privilege and did not provide an opportunity for hearing. However, the District Court concluded that

“judicial review must be available for this administrative decision.” (App. pp. 33-34) The Division filed a writ to challenge the denial of the motion to dismiss. The District Court entered a stay of further proceedings on February 27, 2015 until the matter could be heard by the Nevada Supreme Court. The full panel of Nevada Supreme Court heard oral argument on October 6, 2015.

After the Nevada Supreme Court declined to rule on the merits of the writ on January 22, 2016, the matter returned to the District Court on February 16, 2016. Because the Nevada Legislature did not provide for any type of hearing in the application process and all records were confidential according to NRS 453A.700, the Division did not create a “record” that could be used for a meaningful review by a district court through the judicial review process created in Chapter 233B of the Nevada Revised Statutes. Therefore, the parties sought clarification of which confidential records should be produced to the Court as the record on review. In an order dated March 10, 2016, the District Court ordered that the application of SAMANTHA REMEDIES be filed with the court and the contents of the tool used by the Division to evaluate the application was ordered to be submitted for an in camera inspection. (App. pp. 35-37) Over the objection of the Division, the Court issued a minute order that the tool be produced to SAMANTHA REMEDIES at a hearing on March 29, 2016. (App. p. 38)

The Division filed twelve volumes consisting of 595 pages of the application on March 10, 2016. When SAMANTHA REMEDIES filed their opening brief, they alerted the Division that transmittal did not contain the non-identified criteria of the application. The Division corrected their error and filed an additional six volumes of the non-identified criteria response (which included the categories of Adequacy of Building Size; Care, Quality and Safekeeping; and Impact on the Community) on May 26, 2016. In addition, SAMANTHA REMEDIES submitted large blueprint size drawings and plans to the Court that were not part of the record filed by the Division.

The District Court heard argument on July 12, 2016. In addition to preserving the argument that the District Court lacked jurisdiction through a petition of judicial review, the Division argued that the Division was entitled to deference in its factual determinations and was not arbitrary or capricious. The Division pointed out that SAMANTHA REMEDIES scored very well with above average points in the following categories: 1) Taxes Paid and Beneficial Contributions; 2) Care, Quality, Safekeeping; and 3) Convenient to Serve Needs (more than double the average score). (App. p. 78) SAMANTHA REMDIES scored just a few points below the average score for the remaining categories: 1) Organizational Structure; 2) Likely Impact on the Community; 3) Adequacy of Building Size and Construction Plans.

(App. p. 78) Finally, the Division asked the Court to take judicial notice of the other cases disputing the ranking of the twelve dispensaries in the City of Las Vegas. (App. pp. 87-119)

The final Order filed July 27, 2016 directed the Division to set aside the score of SAMANTHA REMEDIES' application for a medical marijuana dispensary and re-evaluate the application separately and using criteria that would differ from the process used for other applicants. The Court instructed the Division to consider information contained in other sections of the application in reviewing the three areas where SAMANTHA REMEDIES scored lower than average. Further, the District Court ordered the Division to issue a registration to SAMANTHA REMEDIES if the revised score resulted in SAMANTHA REMEDIES being ranked in the top twelve dispensaries in the City of Las Vegas. (App. pp. 137-144)

SUMMARY OF ARGUMENT

Although this Court declined to rule on this issue when raised in a writ, the Division requests this Court to determine whether SAMANTHA REMEDIES can challenge the process of the Division in registering dispensaries in the City through a petition for judicial review in this appeal. Both the precedence of this Court as well as further confirmation by the Nevada Legislature establish that the District Court did not have subject matter jurisdiction to review this application process for

medical marijuana establishments under Chapter 233B of the Nevada Revised Statutes. The Division submits that the Nevada Legislature did not create a right to a petition for judicial review in Chapter 453A of the Nevada Revised Statutes for medical marijuana establishments.

In this case, the District Court did not give proper deference to the requirements set by the Nevada Legislature and implemented by the Division. The decision of the District Court demonstrates why the process provided in Chapter 233B is improper when there is no administrative hearing or clear record for the Court to review. Any review of this competitive application process should give other parties who are impacted the opportunity to participate and therefore a petition for judicial review is not appropriate.

ARGUMENT

I. Standard of Review

The de novo standard of review is applied when this Court addresses purely legal issues, “including the administrative construction of statutes.” *Holiday Ret. Corp. v. State, Div. of Indus. Relations*, 128 Nev. ___, 274 P.3d 759, 761 (2012). Otherwise, this Court reviews the administrative decision in the same manner as the District Court and factual findings of the agency should only be overturned if they are not supported by evidence that a reasonable mind could accept as adequately

supporting the agency's conclusions. *Elizondo v. Hood Mach., Inc.*, 129 Nev. ___, 312 P.3d 479, 482 (2013). Therefore, the factual determinations of the Division are reviewed by this Court for clear error "in view of the reliable, probative and substantial evidence on the whole record" or for an "abuse of discretion." NRS 233B.135(3)(e) and (f).

II. District Court Lacked Subject Matter Jurisdiction to Hear a Petition for Judicial Review

NRS 233B.130(1) provides for judicial review of a decision by any party "who is identified as a party of record by an agency in an administrative proceeding" and is "aggrieved by a final decision in a contested case." NRS 233B.032 defines "contested case" to mean the following:

. . . a proceeding, including but not restricted to rate making and licensing, in which the legal rights, duties or privileges of a party are required by law to be determined by an agency after an opportunity for hearing, or in which an administrative penalty may be imposed.

This Court ruled that judicial review was not available for process server's licenses denied by the Private Investigator's Board because the statutes did not require notice and opportunity for hearing and thus, was not a "contested case." *Private Investigator's Licensing Bd. v. Atherley*, 98 Nev.514, 654 P.2d 1019 (1982). This Court has twice reviewed and cited to the *Atherley* decision with approval. *See*,

State, Purchasing Div. v. George's Equip. Co., 105 Nev. 798, 804, 783 P.2d 949, 953 (1989) (Hearing afforded an unsuccessful bidder on a government contract did not constitute a “contested case.”) and *Citizens for Honest & Responsible Gov't v. Secretary of State*, 116 Nev. 939, 951, 11 P.3d 121, 129 (2000) (Legislature did not provide for a hearing to contest the decision of the validity of a recall petition by the Secretary of State.)

After this case was filed, the Nevada Legislature in 2015 codified the precedence of this Court by amending NRS 233B.127 to expressly provide that “[t]he provisions of NRS 233B.121 to 233B.150 do not apply to the grant, denial or renewal of a license unless notice and opportunity for hearing are required by law to be provided by the applicant before the grant, denial or renewal of the license.” NRS 233B.034 continues to define “license” to include a “registration” as issued by the Division to medical marijuana establishments. “[W]here a former statute is amended, or a doubtful interpretation of a former statute rendered certain by subsequent legislation, it has been held that such amendment is persuasive evidence of what the Legislature intended by the first statute.” *In re Estate of Thomas*, 116 Nev. 492, 495, 998 P.2d 560, 562 (2000) (citation omitted) Therefore, the Nevada Legislature clearly intended to only provide a right to judicial review for “contested cases” when the state agency provides notice and hearing before denying an application.

A review of the entire chapter of NRS 453A reveals that the Nevada Legislature did not intend to provide for notice and opportunity for hearing prior to a denial or revocation of a registration of a medical marijuana establishment. NRS 453A.320 provides the following:

The purpose for registering medical marijuana establishments and medical marijuana establishment agents is to protect the public health and safety and the general welfare of the people of this State. Any medical marijuana establishment registration certificate issued pursuant to NRS 453A.322 and any medical marijuana establishment agent registration card issued pursuant to NRS 453A.332 is a revocable privilege and the holder of such a certificate or card, as applicable, does not acquire thereby any vested right.

The Nevada Legislature provided that this “revocable privilege” does not implicate any property rights for due process concerns. This Court continues to follow the “plain meaning rule” to find that when “the words of the statute have a definite and ordinary meaning, this court will not look beyond the plain language of the statute, unless it is clear that this meaning was not intended.” *Harris Associates v. Clark County School Dist.* 119 Nev. 638, 641-642, 81 P.3d 532, 534 (2003). Therefore, neither the Legislature nor the Division created any administrative hearing proceeding to appeal a denial or a revocation of a registration of a medical marijuana establishment which would meet the definition of a “contested case” for purposes of judicial review under Chapter 233B of the Nevada Revised Statutes.

The Nevada Legislature did not include language for notice and hearing for medical marijuana establishments in Chapter 453A of the Nevada Revised Statutes. *Cf.* NRS 449.170 (medical facilities and facilities for the dependent) and NRS 446.880 (food establishments) where Nevada Legislature explicitly provide for notice and hearing. Instead the Nevada Legislature provided for the revocation of the registration of an existing establishment “immediately” as set forth in NRS 453A.340 with no hearing process. The Nevada Supreme Court has ruled that statutes should be interpreted to avoid a reading which would render part of the statute redundant or meaningless when a substantive interpretation can be given. *Board of County Comm’rs Clark County v. White*, 102 Nev. 587, 590, 729 P.2d 1347, 1350 (1986). Because the Nevada Legislature allowed for the revocation of a registration without notice or hearing, applicants for the registration should not have the ability to petition a Court to review the competitive scoring and ranking of these confidential applications after the denial of an application for a “revocable privilege” of a registration of an establishment.

In contrast, the Nevada Legislature did give a direct right to judicial review, without any provision for notice and opportunity for hearing, to patients when an application for a registry identification card is denied according to NRS 453A.210 or revoked under NRS 453A.225, as well as when a request for a new qualifying

chronic or debilitating medical condition is denied under NRS 453A.700 by the Division. The Division submits that the omission of such language creating judicial review for establishments in the same chapter further underscores the conclusion that the Legislature did not intend to create such a remedy for judicial review for the denial of an application for a revocable privilege of a medical marijuana dispensary. The Nevada Supreme Court has recognized that where the legislature could easily have inserted exception language into the statute but chose not to, the court would not judicially create an exception. *State Dep't of Motor Vehicles & Public Safety v. Brown*, 104 Nev. 524, 526, 762 P.2d 882, 883 (1988).

Although the District Court found that “judicial review must be available for administrative decisions,” the District Court did not address how NRS 233B can provide a remedy when the medical marijuana application process did not meet the definition of a contested case. (App. p. 34) It is the prerogative of the Legislature, not the Court to change or rewrite a statute. *Breen v. Caesars Palace*, 102 Nev. 79, 86-87, 715 P.2d 1070, 1075 (1986). The District Court did not have subject matter jurisdiction to hear this case under Chapter 233B of the Nevada Revised Statutes and should have dismissed this case as a matter of law.

III. The Scoring and Ranking of the Application of SAMANTHA REMEDIES by the Division was Not Clear Error or An Abuse of Discretion.

If this Court finds that petition for judicial review is available, the scoring and ranking process used by the Division was appropriate. SAMANTHA REMEDIES challenged the decision of the Division because its application did not score in the top twelve dispensaries for the City of Las Vegas. As provided in Chapter 233B of the Nevada Revised Statutes, the decision of the Division in scoring and ranking applications for medical marijuana establishments is entitled to deference in this review. “The court shall not substitute its judgment for that of the agency as to the weight of evidence on a question of fact.” NRS 233B.135(3). The assignment of a score was not a legal determination and instead the Division was required to make factual determinations in reviewing the applications. This Court has confirmed that

[a]n agency charged with the duty of administering an act is impliedly clothed with power to construe it as a necessary precedent to administrative action [and] great deference should be given to the agency's interpretation when it is within the language of the statute.

City of Reno v. Reno Police Protective Ass'n, 118 Nev. 889, 900, 59 P.3d 1212, 1219 (2002) citations omitted. The final decision of the agency shall be deemed reasonable and lawful until reversed or set aside in whole or in part by the court.”

NRS 233B.135(2). Therefore, SAMANTHA REMEDIES has the burden in challenging the decision to demonstrate that the scoring by the Division was invalid.

In the District Court below, SAMANTHA REMEDIES argued that the Division was arbitrary and capricious but did not identify what score should have been assessed and only suggests that the score should have been higher. (App. pp. 39-66) SAMANTHA REMEDIES ignores the competitive nature of the application process when they suggest that their application should be reviewed in terms of total points possible rather than in comparison to other applicants. SAMANTHA REMEDIES takes an inconsistent position that the scoring process was arbitrary when SAMANTHA REMEDIES actually benefitted from the process that was used by the Division to be ranked so highly.

With the 90 day time period for assessing hundreds of applications, the Division had to rely on the information and explanation supplied by the applicant and did not conduct any independent inspection of the actual proposed establishment. The Division trained a team of contractors who utilized a standardized scoring tool. With the tool, the Division examined the applications with consideration of the following statutory “criteria of merit”:

1. The total financial resources of the applicant, both liquid and illiquid;
2. The previous experience of the persons who are proposed to be owners, officers or board members of the proposed medical marijuana establishment at operating other businesses or nonprofit organizations;
3. The educational achievements of the persons who are proposed to be owners, officers or board members of the proposed medical marijuana establishment;
4. Any demonstrated knowledge or expertise on the part of the persons who are proposed to be owners, officers or board members of the proposed medical marijuana establishment with respect to the compassionate use of marijuana to treat medical conditions;
5. Whether the proposed location of the proposed medical marijuana establishment would be convenient to serve the needs of persons who are authorized to engage in the medical use of marijuana;
6. The likely impact of the proposed medical marijuana establishment on the community in which it is proposed to be located;
7. The adequacy of the size of the proposed medical marijuana establishment to serve the needs of persons who are authorized to engage in the medical use of marijuana;
8. Whether the applicant has an integrated plan for the care, quality and safekeeping of medical marijuana from seed to sale;
9. The amount of taxes paid to, or other beneficial financial contributions made to, the State of Nevada or its political subdivisions by the applicant or the persons who are proposed to be owners, officers or board members of the proposed medical marijuana establishment; and
10. Any other criteria of merit that the Division determines to be relevant.

NRS 453A.328. Therefore, any dispute SAMANTHA REMEDIES has with this criteria is not properly before this Court because the Division acted within the confines of the statutory requirements. SAMANTHA REMEDIES did not point to any deviations from the statutory criteria to argue that the Division abused its discretion.

Some categories on the application were designated as part of the non-identified criteria response (NICR) which means that the reviewers would not have access to

the identified information as part of their assessment. The purpose of this approach was to ensure an objective process without influence by applicants. SAMANTHA REMEDIES scored above average in one of the NICR areas (Care, Quality and Safekeeping) and slightly below average in the other two (Likely Impact on Community and Adequacy of Building Size and Construction Plans). (App. p. 78) This demonstrates that the Division did review the NICR materials submitted and all were found sufficient for registration—otherwise the score would have been zero points. However, other applicants received a higher score because they presented a stronger application according to the tool.

The District Court found that “there is no substantial evidence to support the Application’s score” and ordered the Division to set aside the initial scores for SAMANTHA REMEDIES and re-evaluate their application. (App. p. 141, 143) The District Court found that the tool used by the Division “did not reasonably correspond to the Request for Applications” and directed the reviewers to use the same tool but to look at the entire application rather than at each section separately. (App. p. 141, 143) Finally, the District Court found the Division had not considered blueprint size drawings and plans and should make that part of the review. (App. p. 141, 143) According to NRS 233B.131(3), the District Court may consider other evidence and an agency can modify its decision based on that evidence. However,

the remedy fashioned by the Court defeats the legislative scheme for a restricted application period in a competitive process.

First, the Division cannot replicate the review that was done by the specific teams in place at the Division in 2014 which makes ranking inconsistent. Second, this would be a review of SAMANTHA REMEDIES' application separately without comparison to the other applicants so the Division would be unable to assess the proper score. Third, the alteration of the review process would treat SAMANTHA REMEDIES differently than other applicants who were competing for the limited number of dispensaries. Therefore, not only has SAMANTHA REMEDIES failed to demonstrate that the scoring and ranking by the Division was in error, but this second review of the application of SAMANTHA REMEDIES as ordered by the District Court could result in disparities in the ranking and undermine the Legislative intent for an expedited opening of a limited number of dispensaries to serve patients.

IV. District Court Exceeded Its Authority and Relief Sought by Petitioner is Not Available through a Petition for Judicial Review.

SAMANTHA REMEDIES was seeking a dispensary registration in the City of Las Vegas where the available twelve registrations had already been issued by the Division after a competitive application process. The decision of the District Court demonstrates the futility of seeking this remedy through a petition for judicial review

because the District Court did not have the authority to order the Division to issue a registration to SAMANTHA REMEDIES when no such registration is available. The Nevada Legislature only authorized the Division to issue registration certificates “not later than 90 days after receiving an application to operate a medical marijuana establishment” as set forth in NRS 453A.322(3). Therefore, the Division does not have statutory authority to issue more than twelve registrations or advance the applicants from the 2014 application pool after the 90 day period which had already run as of November 3, 2014. The Legislature affirmed this interpretation in the last session when they established a “one time extension period opened by the Division in calendar year 2014 for the purpose of issuing eleven additional registrations by September 1, 2015” in Section 5 of Senate Bill 276. (App. p. 84)

The Division is unable to issue a registration to SAMANTHA REMEDIES unless another dispensary in the City of Las Vegas has their registration revoked or rescinded. The Division requested the District Court to take judicial notice that two other Courts have reviewed this issue for dispensaries in the City of Las Vegas and SAMANTHA REMEDIES had been denied intervention in both cases. (App. pp. 87-119, 133) Until those cases which are currently on appeal before this Court are resolved, the Division cannot identify the ranking of the top twelve dispensaries in the City of Las Vegas.

Under the theory argued by SAMANTA REMEDIES the revocation of the registration of another dispensary would be subject to a petition for judicial review. Another court could apply a different scoring process which resulted in a different score for that registrant. This approach of every applicant filing a separate petition for judicial review could lead to multiple courts making conflicting decisions about the scoring and ranking of dispensaries.

Any review of this competitive application process must include other parties who are impacted and therefore a petition for judicial review is not the appropriate mechanism to challenge the scoring and ranking process. Other parties have an opportunity to participate when challenges to the practices of the Division are brought through declaratory relief or mandamus with notice to the real parties in interest. Therefore, the Nevada Legislature was correct in not providing for an administrative hearing or establishing a right to a petition for judicial review in Chapter 453A of the Nevada Revised Statutes for medical marijuana establishments.

CONCLUSION

The District Court lacked jurisdiction to hear this petition for judicial review because the application process was not a contested case. The Division is entitled to deference in scoring and ranking applications for medical marijuana dispensaries. The Division was not arbitrary and capricious and acted within the parameters of

legislative requirements. Finally, the District Court exceeded its authority to order the Division to issue a registration to SAMANTHA REMEDIES without addressing the removal of the registration of another dispensary. The Division respectfully requests this Court to overturn the decision of the District Court.

Dated: October 5, 2016.

ADAM PAUL LAXALT
Attorney General

By: /s/ Linda C. Anderson
Linda C. Anderson
Chief Deputy Attorney General

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the type face requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this brief has been prepared in proportional spaced typeface using Microsoft Word 2010 in Times New Roman in 14 point font size. I further certify that his brief complies with the page or type-volume limitations of NRAP 32(a)(7) because excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it does not exceed thirty (30) pages. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular N.R.A.P.28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

Dated: October 5, 2016.

ADAM PAUL LAXALT
Attorney General

By: /s/ Linda C. Anderson
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Chief Deputy Attorney General

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing by using the electronic filing system on the 5th day of October, 2016. The Following participants in this case are registered electronic filing system users and will be served electronically:

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