

public interest.<sup>31</sup> And here, too, it is appropriate to draw an adverse inference from Respondent's failure to testify. See *MacKay*, 664 F.3d at 820.

Contrary to the ALJ's understanding, the existence of a pending criminal prosecution does not preclude the Agency from drawing an adverse inference from Respondent's failure to testify. See *id.* Indeed, as the Tenth Circuit recognized in *MacKay*, "[n]ot only is it permissible to conduct a civil [administrative] proceeding at the same time as a related criminal proceeding, even if that necessitates invocation of the Fifth Amendment privilege, but it is even permissible for the trier of fact to draw adverse inferences from the invocation of the Fifth Amendment in a civil [administrative] proceeding." *Id.* (quoting *Keating*, 45 F.3d at 326). See also *Baxter*, 425 U.S. at 318 ("[T]he Fifth Amendment does not forbid adverse inferences against parties to civil actions when they refuse to testify in response to probative evidence offered against them \* \* \*"); *Hoxie*, 419 F.3d at 483. Moreover, "the Fifth Amendment privilege is not 'a sword whereby a claimant asserting the privilege [is] freed from adducing proof in support of a burden which would otherwise have been his.'" *Grider Drug #1 & Grider Drug #2*, 77 FR 44069, 44104 (2012) (quoting *United States v. Rylander*, 460 U.S. 752, 758 (1983)).

I therefore hold that Respondent has failed to rebut the Government's *prima facie* case. Moreover, as the Supreme Court explained in *Gonzales*, the core purpose of the Act's prescription requirement is to prevent the diversion of controlled substances to those who seek the drugs for the purpose of engaging in self-abuse or selling them to others. See 546 U.S. at 274 ("the prescription requirement \* \* \* ensures patients use controlled substances under the supervision of a doctor so as to prevent addiction and recreational abuse. As a corollary, [it] also bars doctors from peddling to patients who crave the drugs for those prohibited uses.") (citing *Moore*, 423 U.S. at 135 & 143).<sup>32</sup>

<sup>31</sup> Respondent did not even put on evidence that Mr. Gomez, who clearly falsified the urine drug screens of two of the undercover agents to show they were taking drugs when they were not, had been fired.

<sup>32</sup> See *Jayam Krishna-Iyer*, 74 FR at 463 (quoting National Center on Addiction and Substance Abuse, *Under the Counter: The Diversion and Abuse of Controlled Prescription Drugs in the U.S.* 3 (2005) [hereinafter, *Under the Counter*]). As noted in *Krishna-Iyer*, "[t]he diversion of controlled substances has become an increasingly grave threat to this nation's public health and safety. According to The National Center on Addiction and Substance Abuse (CASA), '[t]he number of people who admit

As I have previously explained, the Agency has revoked other practitioners' registrations for committing as few as two acts of diversion, see *Krishna-Iyer*, 74 FR at 463 (citing *Alan H. Olefsky*, 57 FR at 928–29), and the Agency can revoke based on a single act of intentional or knowing diversion. See *MacKay*, 75 FR at 49977. Because Respondent's misconduct in diverting controlled substances is egregious and he has failed to accept responsibility for his misconduct and demonstrate why he can be entrusted with a registration, I conclude that his continued registration is inconsistent with the public interest. 21 U.S.C. 824(a)(4). Accordingly, I will order that Respondent's registration be revoked and that any pending application be denied.

#### Order

Pursuant to the authority vested in me by 21 U.S.C. 823(f) and 824(a), as well as 28 CFR 0.100(b), I order that DEA Certificate of Registration FM0624139, issued to T.J. McNichol, M.D., be, and it hereby is, revoked. I further order that any application of T.J. McNichol, M.D., to renew or modify his registration, be, and it hereby is, denied. This Order is effectively immediately.<sup>33</sup>

Dated: August 29, 2012.

**Michele M. Leonhart,**

*Administrator.*

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abusing controlled prescription drugs increased from 7.8 million in 1992 to 15.1 million in 2003." 74 FR at 463 (quoting *Under the Counter*, at 3). CASA also found that "[a]pproximately six percent of the U.S. population (15.1 million people) admitted abusing controlled prescription drugs in 2003, 23 percent more than the combined number abusing cocaine (5.9 million), hallucinogens (4.0 million), inhalants (2.1 million) and heroin (328,000)." *Id.* (quoting *Under the Counter*, at 3). Finally, CASA found that "[b]etween 1992 and 2003, there has been a \* \* \* 140.5 percent increase in the self-reported abuse of prescription opioids," and in the same period, the "abuse of controlled prescription drugs has been growing at a rate twice that of marijuana abuse, five times greater than cocaine abuse and 60 times greater than heroin abuse." *Id.* (quoting *Under the Counter*, at 4).

<sup>33</sup> For the same reasons which led me to order the immediate suspension of Respondent's registration, I conclude that the public interest necessitates that this Order be effective immediately. 21 CFR 1316.67

## DEPARTMENT OF JUSTICE

### Office of Justice Programs

[OMB Number 1121–0224]

#### Agency Information Collection Activities: Proposed Collection; Comment Request; National Youth Gang Survey

**ACTION:** 60-Day notice of information collection under review.

The U.S. Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention, will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for "60 days" until November 16, 2012. This process is conducted in accordance with 5 CFR 1320.10.

If you have additional comments, especially on the estimated public burden or associated response time, or suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Mr. Dennis Mondoro, (202) 514–3913, Office of Juvenile Justice and Delinquency Prevention, Office of Justice Programs, U.S. Department of Justice, 810 Seventh Street NW., Washington, DC 20531. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology;

e.g., permitting electronic submission of responses.

### Overview of This Information Collection

1. *Type of Information Collection:* Extension of a currently approved collection.

2. *Title of the Form/Collection:* National Youth Gang Survey.

3. *Agency form number, if any, and the applicable component of the U.S. Department of Justice sponsoring the collection:* Office of Juvenile Justice and Delinquency Prevention, Office of Justice Programs, United States Department of Justice.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:*

*Primary:* Local, state, or tribal law enforcement agencies.

*Other:* None.

*Abstract:* This collection will gather information related to youth and their activities for research and assessment purposes.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 2,100 respondents will take ten minutes each to complete the survey.

6. *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 425 total annual burden hours associated with this collection.

If additional information is required, contact Jerri Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., Room 2E-508, Washington, DC 20530.

Dated: September 11, 2012.

**Jerri Murray,**

*Department Clearance Officer, United States Department of Justice.*

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## DEPARTMENT OF LABOR

### Office of the Secretary

#### Agency Information Collection Activities; Submission for OMB Review; Comment Request: Weekly Claims and Extended Benefits Data and Weekly Initial and Continued Weeks Claimed

**ACTION:** Notice.

**SUMMARY:** The Department of Labor (DOL) is submitting the Employment

and Training Administration (ETA) sponsored information collection request (ICR) titled, "Weekly Claims and Extended Benefits Data and Weekly Initial and Continued Weeks Claimed," to the Office of Management and Budget (OMB) for review and approval for continued use in accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501 *et seq.*).

**DATES:** Submit comments on or before October 17, 2012.

**ADDRESSES:** A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the *RegInfo.gov* Web site, <http://www.reginfo.gov/public/do/PRAMain>, on the day following publication of this notice or by contacting Michel Smyth by telephone at 202-693-4129 (this is not a toll-free number) or sending an email to [DOL\\_PRA\\_PUBLIC@dol.gov](mailto:DOL_PRA_PUBLIC@dol.gov).

Submit comments about this request to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL-ETA, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503, Fax: 202-395-6881 (this is not a toll-free number), email: [OIRA\\_submission@omb.eop.gov](mailto:OIRA_submission@omb.eop.gov).

**FOR FURTHER INFORMATION CONTACT:** Michel Smyth by telephone at 202-693-4129 (this is not a toll-free number) or by email at [DOL\\_PRA\\_PUBLIC@dol.gov](mailto:DOL_PRA_PUBLIC@dol.gov).

**Authority:** 44 U.S.C. 3507(a)(1)(D).

**SUPPLEMENTARY INFORMATION:** Forms ETA-538 and ETA-539 are computerized weekly reports that contain information on initial Unemployment Insurance claims and continued weeks claimed. These figures are important economic indicators. Form ETA-538 provides information allowing release of national unemployment claims information to the public five days after the close of the reference period. Form ETA-539 contains more detailed weekly claims information and the State's 13-week insured unemployment rate that is used to determine eligibility for the Extended Benefits program.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a

collection of information if the collection of information does not display a valid Control Number. See 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1205-0028. The current approval is scheduled to expire on September 30, 2012; however, it should be noted that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. For additional information, see the related notice published in the **Federal Register** on June 12, 2012 (77 FR 35060).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within 30 days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1205-0028. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

*Agency:* DOL-ETA.

*Title of Collection:* Weekly Claims and Extended Benefits Data and Weekly Initial and Continued Weeks Claimed.

*OMB Control Number:* 1205-0028.

*Affected Public:* State, Local, and Tribal Governments.

*Total Estimated Number of Respondents:* 53.

*Total Estimated Number of Responses:* 5,512.

*Total Estimated Annual Burden Hours:* 3,675.

*Total Estimated Annual Other Costs Burden:* \$0.