

# 9th Circuit Hears Argument Regarding DEA Process for Drug Rescheduling and Remands for Further Consideration

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The Ninth Circuit Court of Appeals recently heard [oral argument](#) in the case of *Aggarwal v. U.S. Drug Enforcement Administration* over whether the DEA's process to consider controlled substances reclassification was unlawful and, in a remarkably fast turnaround, [remanded the case](#) for the DEA to consider the petition in more detail.

According to the petitioner, the DEA erred when it summarily denied his petition to move psilocybin, the active ingredient in psychedelic mushrooms, from Schedule I to Schedule II. The petitioner claimed that he had presented significant evidence to support rescheduling due to the purported medical benefits of psilocybin (including use in treating depression) but that the agency denied it in a two-paragraph denial letter asserting that since the FDA had not yet approved a psilocybin-based treatment, there was no basis for moving the drug into Schedule II.

The petitioner contended that in refusing to consider the evidence presented to it, the DEA “will have effectively rewritten this statute so that it can front-run petitions—meritorious petitions like the one that we submitted—make up the law, and deny them without ever getting HHS’ opinion on them.” The petitioner further argued that DEA’s position would be tantamount to “control [of] the practice of medicine.”

Conversely, the DEA argued that it was justified in denying the petition since the petitioner failed to conform its petition to the five-factor test considered by the agency in rescheduling a controlled substance. As the U.S. Attorney argued, “[t]he rescheduling petition here did not so much as attempt to address the five elements of the test, let alone attempt to satisfy them.” The DEA also pushed back on the claim that it did not consider the substance of the rescheduling petition, putting the onus on the petitioner himself: “In the absence of FDA approval, petitioners do have to make a showing according to this five-part test, and that has been repeatedly upheld by the courts of appeals. And there was no showing in that respect at all.”

The parties also sparred on whether the argument should be remanded for the DEA to “more robustly articulate its position.” The petitioner claimed that such a remand would be “fruitless” and that continuing to delay the petition based upon a purportedly unlawful five-part test constitutes an injustice the court should not permit or

tolerate. Ultimately, the Ninth Circuit agreed with the DEA and remanded the case for the DEA to “either clarify its pathway for denying [Petitioner’s] petition or reevaluate [Petitioner’s] petition on an open record.”

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