NO. 24-1019

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

REV. BRYAN A. KRUMM, CNP,

Petitioner,

v.

U.S. DRUG ENFORCEMENT ADMINISTRATION
ANNE MILGRAM, DIRECTOR

Respondent.

In Petition for Writ of Mandamus to the United States Drug Enforcement Agency to Enforce Requirements of the Controlled Substances Act, 21 U.S.C. 801 et. seq.

PETITION FOR REHEARING EN BANC

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May 1, 2024

PETITION FOR REHEARING EN BANC

Petitioner respectfully requests that this court allow a Rehearing En Banc in case 24-1019, Rev. Bryan A. Krumm, CNP V. U.S. Drug Enforcement Administration, Anne Milgram, Director

The decision of the division conflicts with controlling authority under the Controlled Substances Act, 21 U.S. Code § 811(b), which clearly states.

> "The Attorney General shall, before initiating proceedings under subsection (a) to control a drug or other substance or to remove a drug or other substance entirely from the schedules, and after gathering the necessary data, request from the Secretary a scientific and medical evaluation, and his recommendations, as to whether such drug or other substance should be so controlled or removed as a controlled substance. In making such evaluation and recommendations, the Secretary shall consider the factors listed in paragraphs (2), (3), (6), (7), and (8) of subsection (c) and any scientific or medical considerations involved in paragraphs (1), (4), and (5) of such subsection. The recommendations of the Secretary shall include recommendations with respect to the appropriate schedule, if any, under which such drug or other substance should be listed. The evaluation and the recommendations of the Secretary shall be made in writing and submitted to the Attorney General within a reasonable time. The recommendations of the Secretary to the Attorney General shall be binding on the Attorney General as to such scientific and medical matters, and if the Secretary recommends that a drug or other substance not be controlled, the Attorney General shall not control the drug or other substance. If the Attorney General determines that these facts and all other relevant data constitute substantial evidence of potential for abuse such as to warrant control or substantial evidence that the drug or other substance should be removed entirely from the schedules, he shall initiate proceedings for control or removal, as the case may be, under subsection (a)."

The DEA has chosen to ignore the recommendations of FDA and the Secretary of Health, and have refused to comply with their clear statutory duty to move Cannabis to Schedule 3 of the CSA. The DEA failed to even respond to my Petition for Writ of Mandamus, presumably because they have no justifiable cause to excuse their ongoing violation of the Controlled Substance Act. Consideration by the full court is necessary to secure and maintain uniformity of the Court's decisions

Furthermore, this proceeding involves a question of exceptional importance regarding the health and welfare of American Citizens. "Should American Citizens have access to a safe, effective, FDA approved medication that can save countless lives and alleviate the suffering of millions of Americans?

Petitioner recognizes that En Banc Hearing or rehearing is not favored and ordinarily will not be ordered. However, Rule 35 allows a Petition for Rehearing En Banc to be filed when:

(1) en banc consideration is necessary to secure or maintain uniformity of the court's decisions; or

(2) the proceeding involves a question of exceptional importance.

In their denial of my Petition, the division claimed that Petitioner has not shown that "no adequate alternative remedy exists" to pursue his requested relief. Citizens for Resp. & Ethics in Wash. v. Trump, 924 F.3d 602, 606 (D.C. Cir. 2019).

The division further suggested that petitioner can submit to the Drug Enforcement Agency a new rescheduling petition under 21 U.S.C. § 811(a), and then I can petition for review of any denial of such a petition.

This suggestion is not only unreasonable and arbitrary, but it demonstrates the futility of the administrative process laid out in the Controlled Substances Act. On December 2, 2020, the "United States" officially recognized the medical value of Cannabis by declaring that "the legitimate use of a Cannabis preparation has been established through scientific research and declared that Cannabis no longer meets the criterion for placement in Schedule IV of the Single Convention" (Commission on Narcotic Drugs Reconvened sixty-third session, Statements following the voting on the WHO scheduling recommendations on cannabis and cannabis-related substances, id at p12). On December 8, 2020 I filed a Rescheduling petition for Cannabis, because Cannabis was then officially recognized as having medical value by the United States. My Rescheduling Petition initiated a review by FDA. My rescheduling petition is still pending with the DEA, even though the FDA long ago completed its review and HHS transmitted those findings to the DEA, along with the recommendation that Cannabis be moved into Schedule 3 of the CSA. On September 23, 2022, the DEA claimed the petition was stalled pending review by the FDA. On August 29, 2023, FDA concluded the review of my rescheduling petition and recommended that

Cannabis be moved to Schedule 3 of the CSA, and HHS transmitted that recommendation to DEA. DEA's failure to act on my rescheduling petition is the basis for this Petition for Writ of Mandamus. There is no reason to expect a new rescheduling petition would be treated differently than the rescheduling petition I already have under review by the DEA. Nor would filing a new Rescheduling Petition force the DEA to comply with the clear statutory language of the CSA, 21 U.S.C. 801 et seq.

Once transmitted, the evaluation and recommendations of HHS are binding on the DEA Administrator with respect to scientific and medical matters, 21 U.S.C. 811(b). The Administrative Procedure Act, 5 U.S.C. 701 et seq. ("APA") requires agencies presented with such petitions to decide the petition "within a reasonable period of time." 5 U.S.C. 555(b). The DEA has ignored its clear statutory duty to comply with the recommendation of HHS for 8 months, jeopardizing the lives of countless Americans and causing needless suffering for millions of citizens. The recommendation of the Division was to have me file a new rescheduling petition with the DEA so I can once again wait years before getting a response that can be appealed, all while American Citizens continue to suffer and die needlessly.

In accordance with the laws of the United States, DEA must remove Cannabis from Schedule 1 of the CSA if it has any accepted medical use in the United States, which it now has. FDA has concluded that Cannabis should be

removed from schedule 1 of the CSA and placed into Schedule 3. HHS has forwarded that recommendation to DEA. DEA has failed to comply with the Law by continuing Schedule 1 placement of Cannabis in the CSA, after the United States has officially recognized that Cannabis has medical use. "The recommendations of the Secretary to the Attorney General "shall" be binding on the Attorney General as to such scientific and medical matters", 21 U.S.C. 811(b). The CSA does not give the DEA administrator the authority to determine whether or not a drug should be used as medicine. DEA Docket No. 86-22, 57 Fed. Reg. 10,499, 10,506 (March 26, 1992) DEA is openly defying its legal obligation to follow the recommendation of FDA and HHS to move Cannabis to Schedule 3, with complete disregard for the health, safety and welfare of American Citizens.

REQUEST FOR RELIEF

Whereas: The panel erred in its dismissal of my Petition for Writ of Mandamus; and

Whereas: Writ of Mandamus is necessary in order to protect the health, safety and welfare of American Citizens who are currently being harmed by DEA's failure to fulfill its duties under the CSA, 21 U.S.C. 801 et seq.; and

Whereas: Writ of Mandamus is appropriate because DEA is violating both United States and International Law by keeping Cannabis in the most restrictive schedule of the CSA, 21 U.S.C. 801 et seq.; and

Whereas: A writ of mandamus is warranted where "(1) no other adequate means exist to attain the relief [the party] desires, (2) the party's right to issuance of the writ is clear and indisputable, and (3) the writ is appropriate under the circumstances." *Hollingsworth v. Perry, 558 U.S. 183, 190 (2010) (quoting Cheney v. United States Dist. Ct., 542 U.S. 367, 380–81 (2004)*) (internal quotation marks and alterations omitted); and

Whereas, petitioner has demonstrated the futility of the Administrative processes available to him; and

Now, as of April 30, 2024, (the eve of the filing of this Petition for Rehearing en Banc) the Attorney General has ordered DEA to to begin proceedings to move Cannabis to Schedule 3 of the CSA, even though this Court was unwilling to do the same. However, this action by the Attorney General has not rendered my Petition for Rehearing en Banc moot.

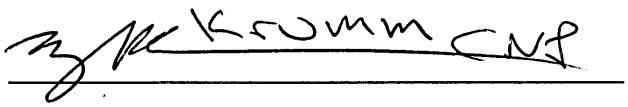
Petitioner still respectfully requests that this Court, allow a Rehearing en Banc, and that this Court issue a Writ of Mandamus to the DEA ordering the DEA to immediately remove Cannabis from Schedule 1 of the CSA, and place it into Schedule 3. Because the DEA has history of unreasonable delays, which have lasted many years before they have acted on previous rescheduling petitions, Cannabis must be immediately removed from Schedule 1 of the CSA and moved to Schedule 3. Any rules and regulations required to transfer Cannabis to Schedule 3 must be expedited in order to protect the health, safety and welfare of the American

People. Although this request may no longer be considered an issue for this Court, issuance of a Writ of Mandamus will give this Court an opportunity to be on the right side of History. Two unqualified Justices appointed by Donald Trump, and pushed through by Mitch McConnell, should not be allowed to represent the opinion of this Court. This Court has an opportunity to begin to win back the trust of the American People, who too often see the Courts as being more invested in Politics, than in Justice.

The indisputable evidence indicates that the Petitioner has proven his case against the DEA and that this Court should issue a Writ of Mandamus to the DEA to immediately move Cannabis to Schedule 3 in order to protect the Health, Safety and Welfare of the American People. Because Petitioner has presented indisputable evidence proving that Cannabis has "accepted medical use in the United States; and because FDA and HHS have recommended that Cannabis be placed in Schedule 3 of the CSA; and because DEA waited 8 months without acting on the recommendation of FDA and HHS. The DEA has demonstrated that they can not be trusted to faithfully execute their responsibilities to the American People, and therefore they can not be allowed to delay proceedings that will allow American Citizens access to life saving, FDA approved medication.

Respectfully Submitted

May 1, 2024



Rev. Bryan A. Krumm, CNP

CERTIFICATE OF SERVICE

I, Rev. Bryan A. Krumm, CNP, Petitioner, hereby certify that on May 1, 2024 I served a copy of the foregoing Petition for Rehearing En Banc by certified mail to:

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/s/ Krumm CNP

May 1, 2024

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