

In the United States Court of Appeals for the First Circuit

LYLE E. CRAKER, Ph.D., Petitioner

v.

**PETITIONER'S ELEVENTH
STATUS REPORT**

Case No. 09-1220

DRUG ENFORCEMENT
ADMINISTRATION, Respondent

I. BACKGROUND

On February 13, 2009, Petitioner filed his Petition for Review in this matter, seeking review of the Drug Enforcement Administration's *Order Denying Professor Craker's Application For a Registration as a Bulk Manufacturer of Marijuana*, published on January 14, 2009, at 74 Fed. Reg. 2101-03 ("Final Order"). On that same date Petitioner also filed with this Court a Motion to Stay and Hold Appellate Proceedings in Abeyance pending the outcome of his Motion for Reconsideration of the Final Order, still pending before the Agency. On February 24, 2009, Respondent filed a non-opposition to Petitioner's request for Stay and Abeyance. On March 12, 2009, this Court granted Petitioner's motion and ordered Petitioner to file a status report every 60 days and to promptly inform the Court when DEA adjudicates his Motion to Reconsider.

On March 24, 2009, DEA attorneys requested additional time to respond to the Motion to Reconsider; on March 26, 2009 the Acting

Administrator granted that request and extended the effective date of the Final Order to May 1, 2009; and, on April 13, 2009, DEA submitted its opposition to the Motion to Reconsider. On May 6, 2009, undersigned counsel for Petitioner spoke to counsel for Respondents Teresa Wallbaum, Acting Deputy Chief for Policy and Appeals, U.S. Department of Justice, Criminal Division, Narcotic and Dangerous Drug Section. Ms. Wallbaum stated that she had inquired with DEA and was informed that the Acting Administrator intends to issue a written Order adjudicating Petitioner's pending Motion to Reconsider, but had not yet done so. Ms. Wallbaum further stated that DEA also confirmed that it is not unusual to have a motion to reconsider still pending after the effective date of a final agency order. Finally, Ms. Wallbaum stated that Respondent agreed that the Court should continue to hold the appellate proceedings in abeyance until DEA has adjudicated the Motion to Reconsider. On May 8, 2009, Petitioner filed his first Status Report with the Court.

On May 18, 2009, DEA issued an Order responding to Petitioner's Motion to Reconsider. The May 18 Order required Petitioner to provide a list of witnesses he seeks to call if DEA grants his request to reopen the administrative hearing proceedings. The Order further required a summary

of proposed testimony and estimated time to complete it, and extended the effective date of the Final Order again, this time until July 1, 2009.

On June 5, 2009, Petitioner submitted to DEA a Witness and Document List in Support of his Motion for Reconsideration, identifying the following new witnesses:

- Jeremy Sare, formerly of the Drugs Strategy Directorate, Home Office, Government of the United Kingdom;
- Peter Barton Hutt, former Chief Counsel for the Food and Drug Administration;
- Professor Frederick Scherer, John F. Kennedy School of Government, Harvard University;
- Dr. John Halpern, Professor of Psychiatry, Harvard University Medical School; and
- Dr. Anand K. Parekh, U.S. Department of Health and Human Services.

On July 7, 2009, Petitioner filed his second Status Report with the Court.

In accordance with this Court's order, Petitioner filed subsequent status reports with this Court on September 4, 2009; November 2, 2009;

December 28, 2009; February 25, 2010; April 22, 2010; June 18, 2010;
August 16, 2010; and October 15, 2010.

II. DEVELOPMENTS SINCE THE LAST STATUS REPORT

On December 2, 2010, DEA issued an order amending its original order in minor respects, denying Petitioner's request to present additional witnesses, denying judicial notice as to certain documents and taking judicial notice of certain others, and – most significantly for purposes of the timing of the instant Petition for Review – inviting Petitioner Craker to submit additional evidence and briefing to the DEA by March 7, 2011. The government will have the opportunity to respond within 30 days.

As the administrative process continues, Petitioner requests that the Court continue to hold the appellate proceedings in abeyance.

December 13, 2010 Respectfully submitted,

/s/ John Reinstein

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CERTIFICATE OF SERVICE

I, Neel Agrawal, declare:


I am a resident of the County of Santa Cruz, California; that I am over eighteen (18) years of age and not a party to the within-entitled cause of action; that I am employed in the County of Santa Cruz, California; and that my business address is 1101 Pacific Ave., Suite 333, Santa Cruz CA 95060.

On December 13, 2010, I sent via U.S. Postal Service First-Class Mail for service, a copy of **Petitioner's Eleventh Status Report**, to the following:

Teresa A. Wallbaum (First Circuit Bar #33038)
Acting Deputy Chief for Policy & Appeals
U.S. Department of Justice
Narcotic and Dangerous Drug Section
1400 New York Ave., NW (Bond Building)
Washington, D.C. 20005
Tel.: (202) 616-5193
Fax: (202) 514-6112
Teresa.Wallbaum@usdoj.gov

I declare under penalty of perjury under the laws of the state of California that the foregoing is true and correct to the best of my knowledge.

Dated this 13th day of December, 2010.



Neel Agrawal