



U. S. Department of Justice
Drug Enforcement Administration
Office of Administrative Law Judges
8701 Morrisette Drive
Springfield, Virginia 22152

www.dea.gov

January 15, 2025

The Honorable Anne Milgram
Administrator
Drug Enforcement Administration
8701 Morrisette Drive
Springfield, Virginia 22152

**Re: Interlocutory Appeal
Proposed Rescheduling of Marijuana
Docket No. 24-44**

Administrator Milgram:

Pursuant to 21 C.F.R. § 1316.62, I transmit to you this Interlocutory Appeal (IA), for which leave was granted by me in an order (the *Ex Parte* Reconsideration Order or EPRO), dated January 13, 2025. This IA concerns hearing proceedings being conducted in accordance with a Notice of Proposed Rulemaking to reschedule marijuana issued by the Department of Justice on May 21, 2024 (89 Fed. Reg. 44597 (2024)) (the NPRM), and a General Notice of Hearing (89 Fed. Reg. 70148 (2024)) (the GNoH) issued by you on August 29, 2024. As discussed in further detail, *infra*, this Interlocutory Appeal (and its attendant delay of the proceedings) is at the exclusive request of a subset of Designated Participants who filed the motions that form the basis of this appeal (the Interlocutory Appellants). The Government timely opposed both underlying motions as well as leave for this Interlocutory Appeal.

The *Ex Parte* Reconsideration Order, *inter alia*, denied reconsideration of an earlier order (the *Ex Parte* Order or EPO) I issued on November 27, 2024. The EPO denied the relief requested by some (but not all) Designated Participants who identify as supporters of the proposed rescheduling of marijuana. The denied relief included a petition to have you and your Agency removed as the proponent of the NPRM. The EPRO, like the EPO that preceded it, is based on allegations that certain members of the Drug Enforcement Administration (DEA) have engaged in improper *ex parte* communications which, at least in the view of the Interlocutory Appellants, has resulted in an irrevocable taint to the proceedings. Contrary to the request of the Interlocutory Appellants, no hearing has been conducted on these allegations, no evidence or testimony was received on the underlying factual allegations, and no facts have been found.

By this transmittal, I certify and transmit the *Ex Parte* Reconsideration Order, the *Ex Parte* Order, a transcript of the preliminary hearing conducted on December 2, 2024,¹ as well as the parties' filings, and other documents related to this Interlocutory Appeal, as listed on Enclosure 1. Additionally, for your convenience, I have enclosed a table of contents listing all procedural exhibits (Administrative Law Judge Exhibits) included in the record so far. Any additional procedural documentation that might facilitate your review of this matter will be promptly furnished by this office upon your request or the request of your adjudication staff.

Inasmuch as the Interlocutory Appellants represent only a subset of the Designated Participants in this case, it is my respectful recommendation that, in addition to the Government and the Interlocutory Appellants, all Designated Participants be included in any briefing schedule you issue and that all DPs on both sides of the NPRM be afforded the opportunity to brief the issues in this IA.

Respectfully,

John J. Mulrooney, II
Chief Administrative Law Judge

cc: Government and All Designated Participants

Enclosures

¹ Although I have preliminarily reviewed and certified this transcript for purposes of this Interlocutory Appeal, at the conclusion of the hearing proceedings in this matter, the parties will be afforded the opportunity to review and offer proposed corrections to this and all transcripts in accordance with 21 C.F.R. § 1316.63(b).

Enclosure 1
In the Matter of Proposed Rescheduling of Marijuana
Docket No. 24-44

INDEX OF TRANSMITTED RECORD

1. *Ex Parte* Reconsideration Order (ALJ Ex. 3.50)
2. *Ex Parte* Order (ALJ Ex. 3.23)
3. Motion Requesting Supplementation of Record and Disqualification (*Ex Parte* Motion) (ALJ Ex. 45)
4. Briefing Order Regarding *Ex Parte* Motion (ALJ Ex. 3.12)
5. Supplemental Briefing Order Regarding *Ex Parte* Motion (ALJ Ex. 3.14)
6. Government's Opposition to *Ex Parte* Motion (ALJ Ex. 53)
7. Smart Approaches to Marijuana Response to *Ex Parte* Motion (ALJ Ex. 55)
8. Motion for Reconsideration of *Ex Parte* Order (*Ex Parte* Reconsideration Motion) (ALJ Ex. 110)
9. Supplement to the *Ex Parte* Reconsideration Motion (ALJ Ex. 111)
10. Briefing Order Regarding *Ex Parte* Reconsideration Motion (ALJ Ex. 3.42)
11. Government's Opposition to *Ex Parte* Reconsideration Motion (ALJ Ex. 116)
12. Docket Sheet
13. Notice of Proposed Rulemaking (ALJ Ex. 1.0)
14. General Notice of Hearing (ALJ Ex. 2.0)
15. Letter Authorizing Hearing (ALJ Ex. 2.01)
16. Letter Authorizing Hearing Participants (ALJ Ex. 2.02)
17. Preliminary Hearing Transcript
18. Administrative Law Judge Exhibits Table of Contents