

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 18-1058

September Term, 2018

DEA-01/16/18 Letter

Filed On: September 24, 2018

Bryan A. Krumm, CNP,

Petitioner

v.

Drug Enforcement Administration,

Respondent

**PETITION FOR REVIEW FROM AN ORDER OF THE DRUG ENFORCEMENT
ADMINISTRATION**

BEFORE: Henderson, Griffith, and Katsas, Circuit Judges

J U D G M E N T

This petition for review of an order of the Drug Enforcement Administration was considered on the briefs and the record materials filed by the parties. See Fed. R. App. P. 34(a)(2); D.C. Cir. Rule 34(j). Upon consideration of the foregoing and the motion for summary judgment, it is

ORDERED AND ADJUDGED that the petition for review be denied. Petitioner has failed to show that the Drug Enforcement Administration (“DEA”) acted arbitrarily and capriciously in denying his petition to reschedule marijuana under the Controlled Substances Act, 21 U.S.C. §§ 801-971. See Americans for Safe Access v. DEA, 706 F.3d 438, 449 (D.C. Cir. 2013). While petitioner challenges the DEA’s five-part test for determining whether a drug has a currently accepted medical use in the United States, this court has expressly approved that test. See id. Petitioner has not shown that the DEA’s application of the test in this case was arbitrary and capricious. In addition, petitioner’s argument that the DEA was required to engage in public notice and comment prior to denying his rescheduling petition is unavailing because neither the Controlled Substances Act nor the Administrative Procedure Act requires notice and comment prior to denying such a petition. It is

FURTHER ORDERED that the motion for summary judgment be denied.

Pursuant to D.C. Circuit Rule 36, this disposition will not be published. The Clerk is directed to withhold issuance of the mandate herein until seven days after resolution

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 18-1058

September Term, 2018

of any timely petition for rehearing or petition for rehearing en banc. See Fed. R. App. P. 41(b); D.C. Cir. Rule 41.

Per Curiam