

In the United States Court of Appeals for the First Circuit

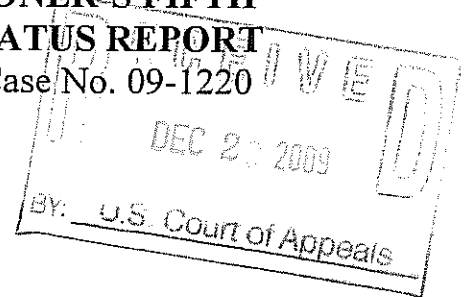
LYLE E. CRAKER, Ph.D., Petitioner)

v.)

DRUG ENFORCEMENT)
ADMINISTRATION, Respondent)

**PETITIONER'S FIFTH
STATUS REPORT**

Case No. 09-1220



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.

On September 4, 2009, Petitioner filed his third Status Report with the Court.

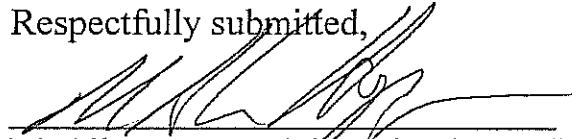
On November 2, 2009, Petitioner filed his fourth Status Report with the Court.

II. DEVELOPMENTS SINCE THE LAST STATUS REPORT

As of the date of filing this Fifth Status Report, DEA has not further responded to Petitioner's Motion to Reconsider. Petitioner therefore requests that the Court continue to hold the appellate proceedings in abeyance.

Date: Dec. 28, 2009

Respectfully submitted,



M. Allen Hopper (First Circuit Bar # 1134851)
American Civil Liberties Union Foundation
1101 Pacific Avenue, Suite 333
Santa Cruz, CA 95060
Tel: (831) 471-9000
Fax: (831) 471-9676
Email: ahopper@aclu.org

John Reinstein (First Circuit Bar # 32180)
ACLU of Massachusetts
211 Congress Street
Boston, MA 02110
Tel: (617) 482-3170
Fax: (617) 451-0009
Email: reinstein@aclum.org

CERTIFICATE OF SERVICE

I, Neel Agrawal, declare:

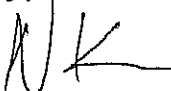
I am a resident of the County of Santa Cruz, California; that I am over eighteen (18) years of age and not a party to the within-entitled cause of action; that I am employed in the County of Santa Cruz, California; and that my business address is 1101 Pacific Ave., Suite 333, Santa Cruz, CA 95060.

On December 28, 2009, I sent via U.S. Postal Service First-Class Mail for service, a copy of **Petitioner's Fifth Status Report**, to the following:

Teresa A. Waullbaum (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 28th day of December, 2009.



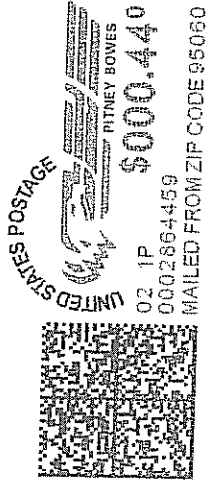
Neel Agrawal

AMERICAN CIVIL LIBERTIES
UNION FOUNDATION
DRUG LAW
REFORM PROJECT
1101 PACIFIC AVENUE, SUITE 333
SANTA CRUZ, CA 95060



RECEIVED JAN 04 2010

ACLU Drug Law Reform Project
1101 Pacific Avenue, Ste. 333
Santa Cruz, CA 95060



9506087510 0097

