



9th Circuit won't address dying patients' plea to use magic mushrooms

By Barbara Grzincic

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A federal appeals court on Monday ducked a case brought by a hospice doctor and two cancer patients who want the federal Drug Enforcement Administration to allow them to use psilocybin, a federally classed Schedule I drug and the active ingredient in hallucinogenic mushrooms, to treat anxiety and depression in terminally ill patients.

The 9th U.S. Circuit Court of Appeals said it lacked jurisdiction to decide the case brought by Dr. Sunil Aggarwal of the Seattle-based Advanced Integrative Medical Science Institute (AIMS) and two of his patients, Erinn Baldeschwiler and Michal Bloom.

The procedural stalemate is a de facto win for the DEA in a test case on the interaction of the federal Controlled Substances Act, which bans possession and therapeutic use of psilocybin, and federal and state right-to-try laws, which are designed to ease access to investigational new drugs for dying patients.

AIMS' attorney Kathryn Tucker of Emerge Law Group wrote to the DEA in January 2021 for "guidance" on obtaining and prescribing psilocybin under right-to-try laws. (The petitioners are also represented on appeal by attorneys from Perkins Coie, Yetter Coleman and Vicente Sederberg.)

The DEA responded that right-to-try laws create no exemption from the Controlled Substances Act.

AIMS and the women then asked the 9th Circuit to order the agency to "accommodate" therapeutic use of psilocybin, arguing that current research in the U.S. and abroad has shown it is highly effective at treating end-of-life depression. Their petition drew amicus support from the conservative Goldwater and Cato institutes, the American Civil Liberties Union, several end-of-life groups, law professors and the attorneys general of Washington and seven other states with right-to-try laws.

However, the three-judge panel agreed with the DEA, which argued that the agency had only given AIMS informal guidance and had not taken any “final agency action” that a court could review.

The DEA’s attorneys at the U.S. Justice Department declined to comment on Monday.

In an emailed statement, Tucker said she will immediately initiate two procedures designed to require a formal decision from the DEA, which the appeals court can review if necessary.

“Time is of the essence,” Tucker said.

The case is *Advanced Ingegrative Medical Science Institute v. U.S. Drug Enforcement Administration*, 9th U.S. Circuit Court of Appeals, No. 21-70544.

For plaintiffs: James Williams of Perkins Coie; Shane Pennington of Vicente Sederberg; Kathryn Tucker of Emerge Law; and Matt Zorn of Yetter Coleman

For DEA: Thomas Pulham of the U.S. Department of Justice