



Psychedelics As Medicine: Right To Try Case Versus DEA

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In what could be a groundbreaking case for psychedelic medicine, VS counsel [Shane Pennington](#) is part of a team working on an exciting and very important Ninth Circuit challenge to the U.S. Drug Enforcement Administration's (DEA) refusal to accommodate state and federal right to try laws.

I'm honored to be part of the litigation team on the case, *AIMS et al. v. US DEA*, No. 21-70544 (9th Cir.), with Kathryn Tucker of Emerge Law Group, Matthew Zorn of Yetter Coleman LLP, and James Williams, Andrew Kline, Thomas Tobin and Holly Martinez of Perkins Coie LLP.

As background, Dr. Sunil Aggarwal and the Advanced Integrative Medical Science Institute (AIMS) filed suit against the DEA in March 2021 over its refusal to accommodate right to try laws to permit him to legally treat his terminally ill patients with psilocybin. In the case, Dr. Aggarwal cited the federal [Right to Try Act](#) (RTT), a version of which has been enacted in 41 states as well. RTT laws permit certain patients who have been diagnosed with life-threatening diseases or conditions access to investigational medications not yet approved for general use by the U.S. Food and Drug Administration (FDA).

One of our main arguments keys in on [21 U.S.C. § 902](#)—a provision of the Controlled Substances Act that, until now, has gone almost entirely unnoticed:

“Nothing in this chapter, except this part and, to the extent of any inconsistency, sections 827(e) and 829 of this title, shall be construed as in any way affecting, modifying, repealing, or superseding the provisions of the Federal Food, Drug, and Cosmetic Act”

This case marks the first time that a federal appellate court will be asked to weigh in on the meaning of this important provision governing the interrelation of DEA’s and FDA’s spheres of authority.

Several prominent organizations and a bipartisan coalition of states are in the list of amici supporting Dr. Aggarwal’s and AIMS’s lawsuit. They include ACLU Washington, End of Life Washington, the Cato Institute, and the Goldwater Institute. [Read this article from Marijuana Moment](#) for more details on the amicus brief from attorneys general representing eight U.S. states and Washington, DC.

The case is scheduled for oral arguments on September 2, 2021.