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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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MARVIN WASHINGTON; DEAN :  
BORTELL, as Parent of Infant ALEXIS :  
BORTELL; JOSE BELEN; SEBASTIEN :  
COTTE, as Parent of Infant JAGGER :  
COTTE; and CANNABIS CULTURAL :  
ASSOCIATION, INC., :  
: :  
Plaintiffs, :  
:

- against -

17 Civ. 5625

:  
JEFFERSON BEAUREGARD SESSIONS, :  
III, in his official capacity as United States :  
Attorney General; UNITED STATES :  
DEPARTMENT OF JUSTICE; CHARLES :  
"CHUCK" ROSENBERG, in his official :  
capacity as the Acting Director of the Drug :  
Enforcement Administration; UNITED :  
STATES DRUG ENFORCEMENT :  
ADMINISTRATION; and the :  
UNITED STATES OF AMERICA, :  
: :  
Defendants. :  
:

**DECLARATION OF MICHAEL S. HILLER  
IN SUPPORT OF PLAINTIFF'S  
ORDER TO SHOW CAUSE**

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**MICHAEL S. HILLER**, an attorney admitted to the practice of law before the Courts of the State of New York, and the Southern District of New York, pursuant to 28 U.S.C. §1746, declares under penalty of perjury that the following is true and correct:

1. I am the managing principal of Hiller, PC, attorneys for Plaintiffs in the above-captioned action. I submit this Declaration in Support of the Order to Show Cause for a Temporary Restraining Order and Preliminary Injunction or, in the alternative, Preliminary Injunctive Relief on an Expedited Basis. The evidence and legal arguments in support of the Order to Show Cause are set forth in the Exhibits annexed hereto; the accompanying Declaration of Keith Stroup, Esq., founder of, and general counsel to, the National Organization for the Reform of Marijuana Laws (NORML); the Affidavits of Plaintiffs Dean and Alexis Bortell; the Affidavit of Margaret Gedde, MD, Alexis's physician; and the accompanying Memorandum of Law. The purpose of this Declaration is to provide information required under the Federal Rules of Civil Procedure.

#### **STATEMENT OF URGENCY**

2. As reflected in the annexed papers, Alexis Bortell ("Alexis"), an 11-year old girl and well-known spokesperson, author, and advocate for medical cannabis, seeks an order, restraining and enjoining Defendants from enforcing the Controlled Substances Act ("CSA") as to her alone, only for the purpose of allowing her to enter onto federal lands with the Cannabis medication necessary for her health and safety, as recommended by her physician, Dr. Margaret Gedde ("Cannabis Medication"). The urgency associated with this application stems from an August 31, 2017 invitation from NORML to Alexis, to join NORML and its members during certain lobbying days – September 10-12, 2017 – in Washington, DC, to advocate in favor of the soon-to-be introduced

Marijuana Justice Act (“MJA”), as well as other proposed legislation pertaining to the legalization of Cannabis (Stroup Dec. ¶¶6-10).

3. In addition, Congressman Lou Correa, upon learning of NORML’s overture to Alexis, extended a similar invitation to meet with her during NORML’s lobbying days (Exh. 1).

4. For the reasons set forth in the accompanying papers, in the absence of injunctive relief from this Court, Alexis cannot legally and safely travel to Washington, DC and meet with members of Congress (or anyone else for that matter). As explained in her and her physician’s Affidavits, Alexis must possess – at all times – Medical Cannabis, which, although legal in her home state of Colorado, remains illegal under the CSA. This federal illegality exists notwithstanding that 29 States plus Washington, D.C. and assorted U.S. Territories have enacted statutes that legalize medical and/or adult-use cannabis.<sup>1</sup>

5. Were Alexis to join NORML and meet with Congressman Correa (among other Representatives and Senators), she would be required to leave her life-saving and life-sustaining medication behind – something which her physician, Margaret Gedde, MD, has made clear would place Alexis’s health and life in jeopardy (Gedde Aff. ¶¶8, 11). Rather than subject Alexis to the Hobson’s Choice of choosing between her rights to life and health on the one hand, and her rights, *inter alia*, to Free Speech, to Petition the Government for a Redress of Grievances, and to Travel on the other, she merely requests, on a temporary basis, the opportunity to travel to Washington, DC with her Cannabis Medicine without fear of seizure, arrest or prosecution.

6. The broader relief requested as part of the request for a preliminary injunction

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<sup>1</sup>Although Washington, DC permits possession of, and treatment with, medical Cannabis, that law does not apply to federal lands within Washington, DC.

pending judgment herein pertains to Alexis's desire to be able to leave the State where she currently resides by air travel. Alexis would also like to enter onto federal lands around the Country, including, *inter alia*, a military base located in the state of Colorado, where she would otherwise be eligible to receive military benefits by reason of both of her parents' military service. Currently, the federal illegality of her Cannabis Medicine precludes her from traveling by air and from entering onto federal lands (Dean Bortell Aff. ¶¶1, 9; Alexis Bortell Aff. ¶¶1, 13, and 16).

#### **NOTICE TO DEFENDANTS' COUNSEL**

7. I notified the U.S. Attorneys' Office by telephone yesterday morning of our intention to file this application. Initially, we received no response. Accordingly, we faxed written correspondence to the U.S. Attorney's Office, as well as to Attorney General Jefferson Sessions (Letter with Fax Confirmations, Exh. 2). Thereafter, I personally spoke with the Chief of the Civil Division at the U.S. Attorney's Office, Jeffrey Oestericher, and made additional disclosures to him regarding the nature and scope of this request, and offered to accommodate him with respect to the timing of submission of this request. Shortly thereafter, I spoke with Samuel Dolinger, the Assistant U.S. Attorney assigned to this case. Mr. Dolinger requested that, due to scheduling issues in his office, we delay filing this application until tomorrow, September 8th.

8. During my call with Mr. Dolinger, he questioned the timing of Alexis's request and asked why more notice had not been provided. Under the Federal Rules, however, we provided defendants with more time than they were entitled to receive -- 48 hours notice. Further, we *delayed* the timing of our application to accommodate Mr. Dolinger. And, although not required, we informed Mr. Dolinger of our intention to provide him with copies of our papers a day in advance of the filing.

**Exhibit List**

- Exh. 1: Congressman Correa to Alexis Bortell, September 6, 2017
- Exh. 2: Notice to U.S. Attorney's Office, September 6, 2017
- Exh. 3: Hemp for Victory Printout (1943)
- Exh. 4: J. Ehrlichman quote, NY Daily News, March 23, 2016
- Exh. 5: J. Ehrlichman quote, Harper's Magazine September 6, 2017
- Exh. 6: Amended Complaint
- Exh. 7: Missoula Study (selected pages)
- Exh. 8: Judge Young Decision, September 6, 1988
- Exh. 9: U.S. Cannabis Patent, October 7, 2003
- Exh. 10: Ogden Memorandum, October 19, 2009
- Exh. 11: Cole Memorandum, August 29, 2013
- Exh. 12: FinCEN Guidance February 14, 2014
- Exh. 13: AG Sessions Creates Task Force, March 31, 2017
- Exh. 14: AG Sessions Letter May 1, 2017
- Exh. 15: AG Sessions Letter, July 24, 2017
- Exh. 16: Transcripts of Nixon Tapes (selected)

Exh. 17: Federal Government Licenses U.S. Patent

Exh. 18: U.S. Surgeon General Acknowledges Cannabis Effective Medical Treatment

Exh. 19: Rohrabacher-Farr Amendments

Exh. 20: Quinnipiac Poll April 20, 2017

Exh. 21: Bortell Farm Photographs

Exh. 22: Alexis Video Diary

Exh. 23: NYTimes Article 6-9-14

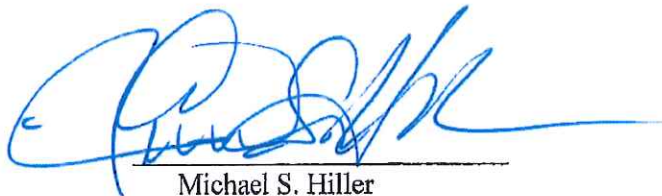
Exh. 24: U.S. Cannabis Patent Application

**NO PRIOR REQUEST FOR RELIEF SOUGHT HEREBY**

9. The relief requested herein has not been previously requested in this or any other Court.

**WHEREFORE**, it is respectfully requested that the Court grant the relief set forth in the annexed Order to Show Cause, including the temporarily relief referenced therein, together with any and all other and further relief this Court deems proper.

Dated: New York, New York  
September 7, 2017



Michael S. Hiller