18-CV-859

IN THE
UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

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-Appellants.

— v. —

JEFFERSON BEAUREGARD SESSIONS, III,
in his official capacity as United States Attorney General;
UNITED STATES DEPARTMENT OF JUSTICE;
ROBERT W. PATTERSON, 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-Appellees.

ON APPEAL FROM THE DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

APPENDIX (VOLUME 1 OF 2) FOR PLAINTIFFS-APPELLANTS

Michael S. Hiller
Lauren A. Rudick
Fatima V. Afia
Jason E. Zakai
Hiller PC
600 Madison Avenue
New York, NY 10022

Joseph A. Bondy
Law Offices of Joseph A. Bondy
1841 Broadway
Suite 910
New York, New York 10023

Pro Bono Counsel to Plaintiffs-Appellants

APPENDIX
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Michael S. Hiller (MH 9871)
HILLER, PC
Pro Bono Attorneys for Plaintiffs
600 Madison Avenue
New York, New York 10022
(212) 319-4000

Joseph A. Bondy (JB 6887)
LAW OFFICES OF JOSEPH A. BONDY
Pro Bono Attorneys for Plaintiffs
1841 Broadway, Suite 910
New York, New York 10023

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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,	**AMENDED NOTICE OF APPEAL**
Defendants.	

PLEASE TAKE NOTICE that Marvin Washington, Dean Bortell, Alexis Bortell, Jose Belen, Sebastien Cotte, Jagger Cotte, and Cannabis Cultural Association, Inc., plaintiffs in the above-captioned action (collectively, "Plaintiffs"), hereby appeal to the United States Court of Appeals for the Second Circuit from each and every part of the Opinion and Order, and subsequent Judgment, granting the defendants' motion to dismiss Plaintiffs' Amended Complaint, issued by United States District Judge Alvin K. Hellerstein, and entered in a Judgment, on the 26th day of February, 2018.

Dated: New York, New York
March 29, 2018

HILLER, PC
Pro Bono Attorneys for Plaintiffs
600 Madison Avenue
New York, New York 10022
(212) 319-4000

By: _____
Michael S. Hiller (MH 9871)
Lauren A. Rudick (LR 4186)
Jason E. Zakai (JZ 0785)
Fatima Afia (FA 0826)

LAW OFFICES OF JOSEPH A. BONDY
Pro Bono Co-Counsel for Plaintiffs
1841 Broadway, Suite 910
New York, N.Y. 10023

By: s/ Joseph A. Bondy
Joseph A. Bondy (JB 6887)

To: JOON H. KIM
Acting United States Attorney for the Southern District of New York
Attorney for the Defendants
SAMUEL DOLINGER
REBECCA S. TINIO
Assistant United States Attorneys
86 Chambers Street, 3rd Floor
New York, New York 10007
Tel.: (212) 637-2677/2774
E-mail: samuel.dolinger@usdoj.gov
rebecca.tinio@usdoj.gov

CLOSED,APPEAL,ECF

U.S. District Court
Southern District of New York (Foley Square)
CIVIL DOCKET FOR CASE #: 1:17-cv-05625-AKH

Washington et al v. Sessions et al
Assigned to: Judge Alvin K. Hellerstein
Cause: 28:1331dp Fed. Question: Violation of Due Process

Date Filed: 07/24/2017
Date Terminated: 02/26/2018
Jury Demand: None
Nature of Suit: 440 Civil Rights: Other
Jurisdiction: Federal Question

Plaintiff

Marvin Washington

represented by **Michael Steven Hiller**
Hiller PC
600 Madison Avenue
New York, NY 10022
212-319-4000
Fax: 212-753-4530
Email: mhiller@hillerpc.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

David Clifford Holland
The Law Offices of Michael Kennedy P.C.
419 Park Avenue South, 16th Floor
New York, NY 10016
212 935 4500
Fax: 212 980 6881
Email: david.holland@att.net
ATTORNEY TO BE NOTICED

Joseph Aaron Bondy
Law Offices of Joseph A. Bondy
401 Greenwich Street, 5th Floor
New York, NY 10014
(212) 219-3572
Fax: (212) 219-8456
Email: josephbondy@mac.com
ATTORNEY TO BE NOTICED

Plaintiff

Dean Bortell
as Parent/Guardian for Infant Alexis Bortell

represented by **Michael Steven Hiller**
(See above for address)
LEAD ATTORNEY

ATTORNEY TO BE NOTICED

David Clifford Holland
(See above for address)
ATTORNEY TO BE NOTICED

Joseph Aaron Bondy
(See above for address)
ATTORNEY TO BE NOTICED

Plaintiff

Alexis Bortell represented by **Michael Steven Hiller**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

David Clifford Holland
(See above for address)
ATTORNEY TO BE NOTICED

Joseph Aaron Bondy
(See above for address)
ATTORNEY TO BE NOTICED

Plaintiff

Jose Belen represented by **Michael Steven Hiller**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

David Clifford Holland
(See above for address)
ATTORNEY TO BE NOTICED

Joseph Aaron Bondy
(See above for address)
ATTORNEY TO BE NOTICED

Plaintiff

Sebastien Cotte represented by **Michael Steven Hiller**
as Parent/Guardian for Infant Jagger Cote
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

David Clifford Holland
(See above for address)
ATTORNEY TO BE NOTICED

Joseph Aaron Bondy
(See above for address)
ATTORNEY TO BE NOTICED

Plaintiff

Jagger Cotte represented by **Michael Steven Hiller**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

David Clifford Holland
(See above for address)
ATTORNEY TO BE NOTICED

Joseph Aaron Bondy
(See above for address)
ATTORNEY TO BE NOTICED

Plaintiff

Cannabis Cultural Association, Inc. represented by **Michael Steven Hiller**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

David Clifford Holland
(See above for address)
ATTORNEY TO BE NOTICED

Joseph Aaron Bondy
(See above for address)
ATTORNEY TO BE NOTICED

V.

Defendant

Jefferson Beauregard Sessions, III
in his official capacity as United States Attorney General represented by **Samuel Hilliard Dolinger**
U.S. Attorney's Office, SDNY
86 Chambers Street, 3rd Floor
New York, NY 10007
(212) 637-2677
Email: samuel.dolinger@usdoj.gov
ATTORNEY TO BE NOTICED

Defendant

United States Department of Justice represented by **Samuel Hilliard Dolinger**

(See above for address)
ATTORNEY TO BE NOTICED

Defendant

Charles Chuck Rosenberg
in his official capacity as the Acting Director of the Drug Enforcement Agency
represented by **Samuel Hilliard Dolinger**
(See above for address)
ATTORNEY TO BE NOTICED

Defendant

United States Drug Enforcement Agency
represented by **Samuel Hilliard Dolinger**
(See above for address)
ATTORNEY TO BE NOTICED

Defendant

United States of America
represented by **Samuel Hilliard Dolinger**
(See above for address)
ATTORNEY TO BE NOTICED

Defendant

Robert W. Patterson
represented by **Samuel Hilliard Dolinger**
(See above for address)
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
07/24/2017	1	COMPLAINT against Charles P. Rosenberg, Jefferson Beauregard Sessions, III, UNITED STATES OF AMERICA, US Department of Justice, United States Drug Enforcement Agency (D.E.A.). (Filing Fee $ 400.00, Receipt Number 0208-13935001)Document filed by Jagger Cotte, Alexis Bortell, Cannabis Cultural Association, Inc., Dean Bortell, Jose Belen, Marvin Washington, Sebastien Cotte. (Attachments: # 1 Exhibit Exhibit 1: Quinnipiac Poll, # 2 Exhibit Exhibit 2: Hemp for Victory, # 3 Exhibit Exhibit 3: Daily News Article, # 4 Exhibit Exhibit 4: Harper's Article, # 5 Exhibit Exhibit 5: Decision, # 6 Exhibit Exhibit 6: Cannabis Patent, # 7 Exhibit Exhibit 7: Ogden Memo, # 8 Exhibit Exhibit 8: Cole Memo, # 9 Exhibit Exhibit 9: FinCen Memo, # 10 Exhibit Exhibit 10: ASA Petition)(Hiller, Michael) (Entered: 07/24/2017)
07/24/2017	2	**FILING ERROR - DEFICIENT SUMMONS REQUEST - PARTY NAME & CAPTION ERROR** REQUEST FOR ISSUANCE OF SUMMONS as to ATTORNEY GENERAL JEFFREY B. SESSIONS III, re: 1 Complaint. Document filed by Jose Belen, Alexis Bortell, Dean Bortell, Cannabis Cultural Association, Inc., Jagger Cotte, Sebastien Cotte. (Hiller, Michael) Modified on 7/25/2017 (kl). (Entered: 07/24/2017)
07/24/2017	3	**FILING ERROR - DEFICIENT SUMMONS REQUEST - PARTY NAME & CAPTION ERROR** REQUEST FOR ISSUANCE OF SUMMONS as to DEA CHIEF CHARLES P. ROSENBERG, re: 1 Complaint,,,. Document filed by Jose Belen, Alexis Bortell, Dean Bortell, Cannabis Cultural Association, Inc., Jagger Cotte, Sebastien

		Cotte. (Hiller, Michael) Modified on 7/25/2017 (kl). (Entered: 07/24/2017)
07/24/2017	4	**FILING ERROR - DEFICIENT SUMMONS REQUEST - PARTY NAME & CAPTION ERROR** REQUEST FOR ISSUANCE OF SUMMONS as to US DRUG ENFORCEMENT ADMINISTRATION, re: 1 Complaint,,,. Document filed by Jose Belen, Alexis Bortell, Dean Bortell, Cannabis Cultural Association, Inc., Jagger Cotte, Sebastien Cotte. (Hiller, Michael) Modified on 7/25/2017 (kl). (Entered: 07/24/2017)
07/24/2017	5	**FILING ERROR - DEFICIENT SUMMONS REQUEST - PARTY NAME & CAPTION ERROR** REQUEST FOR ISSUANCE OF SUMMONS as to US DEPARTMENT OF JUSTICE, re: 1 Complaint,,,. Document filed by Jose Belen, Alexis Bortell, Dean Bortell, Cannabis Cultural Association, Inc., Jagger Cotte, Sebastien Cotte. (Hiller, Michael) Modified on 7/25/2017 (kl). (Entered: 07/24/2017)
07/24/2017	6	**FILING ERROR - DEFICIENT SUMMONS REQUEST - PARTY NAME & CAPTION ERROR** REQUEST FOR ISSUANCE OF SUMMONS as to UNITED STATES OF AMERICA, re: 1 Complaint,,,. Document filed by Jose Belen, Alexis Bortell, Dean Bortell, Cannabis Cultural Association, Inc., Jagger Cotte, Sebastien Cotte. (Hiller, Michael) Modified on 7/25/2017 (kl). (Entered: 07/24/2017)
07/24/2017	7	NOTICE OF APPEARANCE by David Clifford Holland on behalf of Jose Belen, Alexis Bortell, Dean Bortell, Cannabis Cultural Association, Inc., Jagger Cotte, Sebastien Cotte, Marvin Washington. (Holland, David) (Entered: 07/24/2017)
07/25/2017	8	NOTICE OF CHANGE OF ADDRESS by Michael Steven Hiller on behalf of Jose Belen, Alexis Bortell, Dean Bortell, Cannabis Cultural Association, Inc., Jagger Cotte, Sebastien Cotte, Marvin Washington. New Address: Hiller, PC, 600 Madison Avenue, Floor 22, New York, New York, United States 10022, 2123194000. (Hiller, Michael) (Entered: 07/25/2017)
07/25/2017	9	CIVIL COVER SHEET filed. (Hiller, Michael) (Entered: 07/25/2017)
07/25/2017		***NOTICE TO ATTORNEY REGARDING PARTY MODIFICATION. Notice to attorney Michael Steven Hiller. The party information for the following party/parties has been modified: UNITED STATES OF AMERICA, United States Drug Enforcement Agency (D.E.A.), Administrator Charles P. Rosenberg, US Department of Justice, Attorney General Jefferson Beauregard Sessions, III, Sebastien Cotte, Dean Bortell. The information for the party/parties has been modified for the following reason/reasons: party name contained a typographical error; party name was entered in all caps; party text was omitted. (kl) (Entered: 07/25/2017)
07/25/2017		CASE OPENING INITIAL ASSIGNMENT NOTICE: The above-entitled action is assigned to Judge Alvin K. Hellerstein. Please download and review the Individual Practices of the assigned District Judge, located at http://nysd.uscourts.gov/judges/District. Attorneys are responsible for providing courtesy copies to judges where their Individual Practices require such. Please download and review the ECF Rules and Instructions, located at http://nysd.uscourts.gov/ecf_filing.php. (kl) (Entered: 07/25/2017)
07/25/2017		Magistrate Judge Kevin Nathaniel Fox is so designated. Pursuant to 28 U.S.C. Section

		636(c) and Fed. R. Civ. P. 73(b)(1) parties are notified that they may consent to proceed before a United States Magistrate Judge. Parties who wish to consent may access the necessary form at the following link: http://nysd.uscourts.gov/forms.php. (kl) (Entered: 07/25/2017)
07/25/2017		Case Designated ECF. (kl) (Entered: 07/25/2017)
07/25/2017		*****NOTICE TO ATTORNEY REGARDING DEFICIENT REQUEST FOR ISSUANCE OF SUMMONS. Notice to Attorney Michael Steven Hiller to RE-FILE Document No. 6 Request for Issuance of Summons, 4 Request for Issuance of Summons, 5 Request for Issuance of Summons, 3 Request for Issuance of Summons, 2 Request for Issuance of Summons. The filing is deficient for the following reason(s): PLEASE MAKE SURE THE PARTIES ARE ENTERED ON THE SUMMONS CAPTION EXACTLY AS THEY APPEAR ON THE INITIAL PLEADING. IF THEY DO NOT FIT, PLEASE LIST FIRST PLAINTIFF/DEFENDANT AND THEN ADD "ET AL." ALSO, PLEASE ENTER THE PARTY AS TO WHO THE SUMMONS IS FOR EXACTLY AS THEY APPEAR ON THE COMPLAINT BOTH ON THE FORM AND IN DOCKET TEXT/ENTRY. Re-file the document using the event type Request for Issuance of Summons found under the event list Service of Process - select the correct filer/filers - and attach the correct summons form PDF. (kl)** (Entered: 07/25/2017)
07/25/2017	10	REQUEST FOR ISSUANCE OF SUMMONS as to JEFFERSON BEAUREGARD SESSIONS, III, in his official capacity as the United States Attorney General, re: 1 Complaint,,,. Document filed by Jose Belen, Alexis Bortell, Dean Bortell, Cannabis Cultural Association, Inc., Jagger Cotte, Sebastien Cotte, Marvin Washington. (Hiller, Michael) (Entered: 07/25/2017)
07/25/2017	11	REQUEST FOR ISSUANCE OF SUMMONS as to UNITED STATES DEPARTMENT OF JUSTICE, re: 1 Complaint,,,. Document filed by Jose Belen, Alexis Bortell, Dean Bortell, Cannabis Cultural Association, Inc., Jagger Cotte, Sebastien Cotte, Marvin Washington. (Hiller, Michael) (Entered: 07/25/2017)
07/25/2017	12	REQUEST FOR ISSUANCE OF SUMMONS as to CHARLES "CHUCK" ROSENBERG, in his official capacity as the Acting Director of the Drug Enforcement Agency, re: 1 Complaint,,,. Document filed by Jose Belen, Alexis Bortell, Dean Bortell, Cannabis Cultural Association, Inc., Jagger Cotte, Sebastien Cotte, Marvin Washington. (Hiller, Michael) (Entered: 07/25/2017)
07/25/2017	13	REQUEST FOR ISSUANCE OF SUMMONS as to UNITED STATES DRUG ENFORCEMENT AGENCY, re: 1 Complaint,,,. Document filed by Jose Belen, Alexis Bortell, Dean Bortell, Cannabis Cultural Association, Inc., Jagger Cotte, Sebastien Cotte, Marvin Washington. (Hiller, Michael) (Entered: 07/25/2017)
07/25/2017	14	REQUEST FOR ISSUANCE OF SUMMONS as to UNITED STATES OF AMERICA, re: 1 Complaint,,,. Document filed by Jose Belen, Alexis Bortell, Dean Bortell, Cannabis Cultural Association, Inc., Jagger Cotte, Sebastien Cotte, Marvin Washington. (Hiller, Michael) (Entered: 07/25/2017)
07/26/2017		NOTICE OF APPEARANCE by Joseph Aaron Bondy on behalf of Jose Belen, Alexis

	15	NOTICE OF APPEARANCE by Joseph Hiram Bondy on behalf of Alexis Bortell, Dean Bortell, Cannabis Cultural Association, Inc., Jagger Cotte, Sebastien Cotte, Marvin Washington. (Bondy, Joseph) (Entered: 07/26/2017)
07/26/2017	16	FIRST RULE 7.1 CORPORATE DISCLOSURE STATEMENT. No Corporate Parent. Document filed by Cannabis Cultural Association, Inc..(Bondy, Joseph) (Entered: 07/26/2017)
07/26/2017	17	ELECTRONIC SUMMONS ISSUED as to Jefferson Beauregard Sessions, III. (rch) (Entered: 07/26/2017)
07/26/2017	18	ELECTRONIC SUMMONS ISSUED as to United States Department of Justice. (rch) (Entered: 07/26/2017)
07/26/2017	19	ELECTRONIC SUMMONS ISSUED as to Charles Chuck Rosenberg. (rch) (Entered: 07/26/2017)
07/26/2017	20	ELECTRONIC SUMMONS ISSUED as to United States Drug Enforcement Agency. (rch) (Entered: 07/26/2017)
07/26/2017	21	ELECTRONIC SUMMONS ISSUED as to United States of America, U.S. Attorney and U.S. Attorney General. (rch) (Entered: 07/26/2017)
09/06/2017	22	AFFIDAVIT OF SERVICE of Summons and Complaint,,,. All Defendants. Service was made by Mail. Document filed by Jagger Cotte, Alexis Bortell, Cannabis Cultural Association, Inc., Dean Bortell, Jose Belen, Marvin Washington, Sebastien Cotte. (Hiller, Michael) (Entered: 09/06/2017)
09/06/2017	23	FIRST AMENDED COMPLAINT amending 1 Complaint,,, against Charles Chuck Rosenberg, Jefferson Beauregard Sessions, III, United States Department of Justice, United States Drug Enforcement Agency, United States of America.Document filed by Jagger Cotte, Alexis Bortell, Cannabis Cultural Association, Inc., Dean Bortell, Jose Belen, Marvin Washington, Sebastien Cotte. Related document: 1 Complaint,,,. (Attachments: # 1 Exhibit Poll, # 2 Exhibit Photo, # 3 Exhibit Article, # 4 Exhibit Article, # 5 Exhibit Decision, # 6 Exhibit Patent Application, # 7 Exhibit Memorandum, # 8 Exhibit Memorandum, # 9 Exhibit Memorandum, # 10 Exhibit Court Application)(Hiller, Michael) (Entered: 09/06/2017)
09/08/2017	24	NOTICE OF APPEARANCE by Samuel Hilliard Dolinger on behalf of Charles Chuck Rosenberg, Jefferson Beauregard Sessions, III, United States Department of Justice, United States Drug Enforcement Agency, United States of America. (Dolinger, Samuel) (Entered: 09/08/2017)
09/11/2017	25	AFFIDAVIT OF SERVICE of Summons and Amended Complaint,,. Charles Chuck Rosenberg served on 9/7/2017, answer due 9/28/2017; Jefferson Beauregard Sessions, III served on 9/7/2017, answer due 9/28/2017; United States Department of Justice served on 9/7/2017, answer due 9/28/2017; United States Drug Enforcement Agency served on 9/7/2017, answer due 9/28/2017; United States of America served on 9/7/2017, answer due 9/28/2017. Service was made by MAIL (Email). Document filed by Jagger Cotte; Alexis Bortell; Cannabis Cultural Association, Inc.; Dean Bortell; Jose Belen; Marvin Washington; Sebastien Cotte. (Hiller, Michael) (Entered: 09/11/2017)

09/11/2017	26	ORDER DENYING A TEMPORARY RESTRAINING ORDER: On September 7, 2017, plaintiffs filed an order to show cause seeking a temporary restraining order in this action. I heard both parties in an on-the-record hearing on September 8, 2017. Plaintiffs' motion for a temporary restraining order is denied. After considering the four requirements for issuing a temporary injunction, and for the reasons stated on the record, I hold that the requirements are not satisfied. See Am. Civil Liberties Union v. Clapper, 804 F.3d 617, 622 (2d Cir. 2015) ("A party seeking a preliminary injunction must generally show a likelihood of success on the merits, a likelihood of irreparable harm in the absence of preliminary relief, that the balance of equities tips in the party's favor, and that an injunction is in the public interest."). A complete record is required. The parties shall proceed as expeditiously as is just and proper. The hearing will consolidate the hearing on a motion for a preliminary injunction with the trial on the merits. See Fed. R. Civ. P. 65(a)(2) ("Before or after beginning the hearing on a motion for a preliminary injunction, the court may advance the trial on the merits and consolidate it with the hearing."). Discovery shall commence promptly. The parties shall confer and submit a joint letter on September 11, 2017 to outline the discovery that will be necessary in this case, along with a proposed discovery and briefing schedule. A hearing will be scheduled promptly thereafter. (Signed by Judge Alvin K. Hellerstein on 9/11/2017) (ap) (Entered: 09/11/2017)
09/11/2017	27	LETTER addressed to Judge Alvin K. Hellerstein from Samuel Dolinger dated 9/11/2017 re: request for reconsideration of the Court's scheduling determinations. Document filed by Charles Chuck Rosenberg, Jefferson Beauregard Sessions, III, United States Department of Justice, United States Drug Enforcement Agency, United States of America.(Dolinger, Samuel) (Entered: 09/11/2017)
09/11/2017	28	FIRST LETTER addressed to Judge Alvin K. Hellerstein from Lauren A. Rudick dated September 11, 2017 re: Extension to Submit Joint Scheduling Letter Regarding Discovery. Document filed by Jose Belen, Alexis Bortell, Dean Bortell, Cannabis Cultural Association, Inc., Jagger Cotte, Sebastien Cotte, Marvin Washington.(Hiller, Michael) (Entered: 09/11/2017)
09/14/2017	29	LETTER addressed to Judge Alvin K. Hellerstein from Samuel Dolinger dated 9/14/2017 re: Defendants' response to the Court's order regarding discovery scheduling. Document filed by Charles Chuck Rosenberg, Jefferson Beauregard Sessions, III, United States Department of Justice, United States Drug Enforcement Agency, United States of America.(Dolinger, Samuel) (Entered: 09/14/2017)
09/14/2017	30	FIRST LETTER addressed to Judge Alvin K. Hellerstein from Michael S. Hiller dated 9/14/17 re: Joint Scheduling Letter Regarding Discovery. Document filed by Jose Belen, Alexis Bortell, Dean Bortell, Cannabis Cultural Association, Inc., Jagger Cotte, Sebastien Cotte, Marvin Washington. (Attachments: # 1 Exhibit Email, # 2 Exhibit Email, # 3 Exhibit Email, # 4 Exhibit Email, # 5 Exhibit Email)(Hiller, Michael) (Entered: 09/14/2017)
09/15/2017	31	LETTER addressed to Judge Alvin K. Hellerstein from Samuel Dolinger dated 9/15/2017 re: Defendants' response to Plaintiffs' letter filed September 14, 2017. Document filed by Charles Chuck Rosenberg, Jefferson Beauregard Sessions, III,

		United States Department of Justice, United States Drug Enforcement Agency, United States of America.(Dolinger, Samuel) (Entered: 09/15/2017)
09/15/2017	32	SECOND LETTER addressed to Judge Alvin K. Hellerstein from Michael S. Hiller dated 9-15-17 re: Opposing Counsel's Violation of the Judge's Rules. Document filed by Jose Belen, Alexis Bortell, Dean Bortell, Cannabis Cultural Association, Inc., Jagger Cotte, Sebastien Cotte, Marvin Washington.(Hiller, Michael) (Entered: 09/15/2017)
09/20/2017	33	ORDER: At the case management conference held September 8, 2017, I suggested to the parties that discovery proceed according to a schedule to be agreed to, and that a motion to dismiss by the government be deferred. The government insists, however, that it wishes to test the legal sufficiency of the complaint before discovery, and that it can file a motion promptly. Upon reconsideration, I order as follows: 1. The government shall file its motion, pursuant to either Fed. R. Civ. P. 12(b), or, upon answering, pursuant to Fed. R. Civ. P. 12(c), by October 13, 2017. 2. Plaintiffs shall file opposition papers by November 3, 2017. 3. The government shall file reply papers by November 15, 2017. 4. Discovery shall await determination of this motion. 5. Both parties shall prepare the papers required for their Initial Disclosures pursuant to Fed. R. Civ. P. 26(a)(1), so that production can be made within seven days after the motion is determined, if it is determined favorably to plaintiffs. (Motions due by 10/13/2017. Responses due by 11/3/2017. Replies due by 11/15/2017.) (Signed by Judge Alvin K. Hellerstein on 9/20/2017) (ras) (Entered: 09/20/2017)
09/28/2017	34	TRANSCRIPT of Proceedings re: ARGUMENT held on 9/8/2017 before Judge Alvin K. Hellerstein. Court Reporter/Transcriber: Pamela Utter, (212) 805-0300. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 10/19/2017. Redacted Transcript Deadline set for 10/30/2017. Release of Transcript Restriction set for 12/27/2017.(McGuirk, Kelly) (Entered: 09/28/2017)
09/28/2017	35	NOTICE OF FILING OF OFFICIAL TRANSCRIPT Notice is hereby given that an official transcript of a ARGUMENT proceeding held on 9/8/17 has been filed by the court reporter/transcriber in the above-captioned matter. The parties have seven (7) calendar days to file with the court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript may be made remotely electronically available to the public without redaction after 90 calendar days...(McGuirk, Kelly) (Entered: 09/28/2017)
10/13/2017	36	MOTION to Dismiss . Document filed by Jefferson Beauregard Sessions, III, United States Department of Justice, United States Drug Enforcement Agency, United States of America, Robert W. Patterson.(Dolinger, Samuel) (Entered: 10/13/2017)
10/13/2017	37	MEMORANDUM OF LAW in Support re: 36 MOTION to Dismiss . . Document filed by Robert W. Patterson, Jefferson Beauregard Sessions, III, United States Department of Justice, United States Drug Enforcement Agency, United States of America. (Dolinger, Samuel) (Entered: 10/13/2017)
10/31/2017	38	FIRST LETTER addressed to Judge Alvin K. Hellerstein from Lauren A. Rudick dated October 31, 2017 re: Request for adjournment of the parties' briefing schedule.

		Document filed by Jose Belen, Alexis Bortell, Dean Bortell, Cannabis Cultural Association, Inc., Jagger Cotte, Sebastien Cotte, Marvin Washington.(Hiller, Michael) (Entered: 10/31/2017)
11/01/2017	39	MEMO ENDORSEMENT on re: 38 Letter, filed by Jose Belen, Marvin Washington, Jagger Cotte, Alexis Bortell, Dean Bortell, Sebastien Cotte, Cannabis Cultural Association, Inc. ENDORSEMENT: So ordered. (Responses due by 11/10/2017. Replies due by 11/22/2017.) (Signed by Judge Alvin K. Hellerstein on 11/1/2017) (ras) (Entered: 11/01/2017)
11/08/2017	40	CONSENT MOTION for Extension of Time to File Response/Reply as to 36 MOTION to Dismiss . . Document filed by Jose Belen, Alexis Bortell, Dean Bortell, Cannabis Cultural Association, Inc., Jagger Cotte, Sebastien Cotte.(Holland, David) (Entered: 11/08/2017)
11/09/2017	41	MEMO ENDORSEMENT granting 40 CONSENT MOTION for Extension of Time to File Response/Reply as to 36 MOTION to Dismiss. ENDORSEMENT: So ordered. (Responses due by 11/27/2017. Replies due by 12/11/2017.) (Signed by Judge Alvin K. Hellerstein on 11/9/2017) (ras) (Entered: 11/09/2017)
11/27/2017	42	ENDORSED LETTER addressed to Judge Alvin K. Hellerstein from David C. Holland dated 11/27/17 re: Plaintiffs request that the deadline by which to interpose opposition to the Government's dismissal motion be extended to Friday, December 1, 2017, and the Government's deadline to submit a Reply extended to Friday, December 15, 2017. ENDORSEMENT: So Ordered. (Responses due by 12/1/2017, Replies due by 12/15/2017.) (Signed by Judge Alvin K. Hellerstein on 11/27/2017) (mro) (Entered: 11/28/2017)
12/01/2017	43	DECLARATION of Michael S. Hiller in Opposition re: 36 MOTION to Dismiss .. Document filed by Jose Belen, Alexis Bortell, Dean Bortell, Cannabis Cultural Association, Inc., Jagger Cotte, Sebastien Cotte, Marvin Washington. (Attachments: # 1 Exhibit Amended Complaint, # 2 Exhibit Qunnipiac Poll, # 3 Exhibit Hemp for Victory, # 4 Exhibit Article, # 5 Exhibit Article, # 6 Exhibit ALJ Young Decision, # 7 Exhibit Patent Application, # 8 Exhibit Ogden Memo, # 9 Exhibit Cole Memo, # 10 Exhibit FinCEN Guidance, # 11 Exhibit ASA Request, # 12 Affidavit Aff. of Joseph A. Bondy, # 13 Affidavit Aff. Kordell Nesbitt, # 14 Affidavit Aff. of Leo Bridgewater, # 15 Affidavit Aff. of Thomas Motley)(Hiller, Michael) (Entered: 12/01/2017)
12/01/2017	44	MEMORANDUM OF LAW in Opposition re: 36 MOTION to Dismiss . . Document filed by Jose Belen, Alexis Bortell, Dean Bortell, Cannabis Cultural Association, Inc., Jagger Cotte, Sebastien Cotte, Marvin Washington. (Attachments: # 1 Appendix Chart, # 2 Appendix Kadonsky v. Lee)(Hiller, Michael) (Entered: 12/01/2017)
12/01/2017	45	MEMORANDUM OF LAW in Opposition re: 36 MOTION to Dismiss . . Document filed by Jose Belen, Alexis Bortell, Dean Bortell, Cannabis Cultural Association, Inc., Jagger Cotte, Sebastien Cotte, Marvin Washington. (Hiller, Michael) (Entered: 12/01/2017)
12/01/2017	46	MEMORANDUM OF LAW in Opposition re: 36 MOTION to Dismiss . . Document filed by Jose Belen, Alexis Bortell, Dean Bortell, Cannabis Cultural Association, Inc.,

		Jagger Cotte, Sebastien Cotte, Marvin Washington. (Hiller, Michael) (Entered: 12/01/2017)
12/13/2017	47	CONSENT LETTER MOTION for Extension of Time to File Response/Reply addressed to Judge Alvin K. Hellerstein from Samuel Dolinger dated 12/13/2017. Document filed by Robert W. Patterson, Jefferson Beauregard Sessions, III, United States Department of Justice, United States Drug Enforcement Agency, United States of America.(Dolinger, Samuel) (Entered: 12/13/2017)
12/13/2017	48	ORDER granting 47 Letter Motion for Extension of Time to File Response/Reply re 36 MOTION to Dismiss. So ordered. (Replies due by 12/29/2017.) (Signed by Judge Alvin K. Hellerstein on 12/13/2017) (ras) (Entered: 12/13/2017)
12/29/2017	49	REPLY MEMORANDUM OF LAW in Support re: 36 MOTION to Dismiss . . Document filed by Robert W. Patterson, Jefferson Beauregard Sessions, III, United States Department of Justice, United States Drug Enforcement Agency, United States of America. (Dolinger, Samuel) (Entered: 12/29/2017)
01/05/2018	50	ENDORSED LETTER addressed to Concerned Parties from Brigitte Jones dated 1/5/2018 re: You are hereby notified that you are required to appear for an oral argument. Date: February 14, 2018. Time: 2:30 pm. Place: U.S. Courthouse - Southern District of New York, 500 Pearl Street, Courtroom 14D, New York, New York, 10007. It is ORDERED that counsel to whom this Order is sent is responsible for faxing a copy to all counsel involved in this case and retaining verification of such in the case file. Do not fax such verification to Chambers. ENDORSEMENT: So Ordered. (Oral Argument set for 2/14/2018 at 02:30 PM in Courtroom 14D, 500 Pearl Street, New York, NY 10007 before Judge Alvin K. Hellerstein.) (Signed by Judge Alvin K. Hellerstein on 1/5/2018) (ras) (Entered: 01/05/2018)
01/08/2018	51	LETTER addressed to Judge Alvin K. Hellerstein from Samuel Dolinger dated 1/8/2018 re: Attorney General's memorandum regarding marijuana enforcement dated January 4, 2018. Document filed by Robert W. Patterson, Jefferson Beauregard Sessions, III, United States Department of Justice, United States Drug Enforcement Agency, United States of America. (Attachments: # 1 Exhibit A - Attorney General's Memorandum)(Dolinger, Samuel) (Entered: 01/08/2018)
01/10/2018	52	LETTER addressed to Judge Alvin K. Hellerstein from Michael S. Hiller dated January 10, 2018 re: Response to the letter submitted January 8, 2018 by Samuel Dolinger on behalf of the defendants.. Document filed by Jose Belen, Alexis Bortell, Dean Bortell, Cannabis Cultural Association, Inc., Jagger Cotte, Sebastien Cotte, Marvin Washington. (Hiller, Michael) (Entered: 01/10/2018)
01/31/2018	53	ORDER: On September 8, 2017, plaintiffs moved the Court for an order to show cause why a temporary restraining order should not issue. That same day, the Court denied plaintiff's motion, and the Court issued a written order confirming that result on September 11, 2017. The Court is now aware that none of the briefing associated with plaintiffs' motion was placed on the ECF docket. The parties shall submit all outstanding filings that were submitted to the Court but not placed on the docket no later than February 2, 2018. (Signed by Judge Alvin K. Hellerstein on 1/31/2018) (ras) (Entered: 01/31/2018)

01/31/2018		Set/Reset Deadlines: Brief due by 2/2/2018. (ras) (Entered: 01/31/2018)
01/31/2018	54	DECLARATION of Michael S. Hiller in Support re: 53 Order,,. Document filed by Jose Belen, Alexis Bortell, Dean Bortell, Cannabis Cultural Association, Inc., Jagger Cotte, Sebastien Cotte, Marvin Washington. (Attachments: # 1 Affidavit Alexis Bortell, # 2 Affidavit Dean Bortell, # 3 Affidavit Dr. Gedde, # 4 Affidavit Roger Stone, # 5 Exhibit 1, # 6 Exhibit 2, # 7 Exhibit 3, # 8 Exhibit 4, # 9 Exhibit 5, # 10 Exhibit 6, # 11 Exhibit 6 Part II, # 12 Exhibit 7, # 13 Exhibit 8, # 14 Exhibit 8 Part II, # 15 Exhibit 9, # 16 Exhibit 10, # 17 Exhibit 11, # 18 Exhibit 12, # 19 Exhibit 13, # 20 Exhibit 14, # 21 Exhibit 15, # 22 Exhibit 16, # 23 Exhibit 17, # 24 Exhibit 18, # 25 Exhibit 19, # 26 Exhibit 20, # 27 Exhibit 21, # 28 Exhibit 22, # 29 Exhibit 23, # 30 Exhibit 24)(Hiller, Michael) (Entered: 01/31/2018)
01/31/2018	55	DECLARATION of Keith Stroup in Support re: 53 Order,,. Document filed by Jose Belen, Alexis Bortell, Dean Bortell, Cannabis Cultural Association, Inc., Jagger Cotte, Sebastien Cotte, Marvin Washington. (Hiller, Michael) (Entered: 01/31/2018)
01/31/2018	56	MEMORANDUM OF LAW in Support re: 53 Order,, . Document filed by Jose Belen, Alexis Bortell, Dean Bortell, Cannabis Cultural Association, Inc., Jagger Cotte, Sebastien Cotte, Marvin Washington. (Hiller, Michael) (Entered: 01/31/2018)
01/31/2018	57	MEMORANDUM OF LAW in Opposition *to Request for a Temporary Restraining Order, dated September 8, 2017*. Document filed by Robert W. Patterson, Jefferson Beauregard Sessions, III, United States Department of Justice, United States Drug Enforcement Agency, United States of America. (Dolinger, Samuel) (Entered: 01/31/2018)
02/12/2018	58	LETTER addressed to Judge Alvin K. Hellerstein from Joseph A. Bondy, Esq. dated February 12, 2018 re: Facilitating audio/video link to Plaintiff Alexis Bortell, and moving to ceremonial courtroom. Document filed by Alexis Bortell.(Bondy, Joseph) (Entered: 02/12/2018)
02/13/2018	59	MEMO ENDORSEMENT on re: 58 LETTER addressed to Judge Alvin K. Hellerstein from Joseph A. Bondy, Esq. dated February 12, 2018 re: Facilitating audio/video link to Plaintiff Alexis Bortell, and moving to ceremonial courtroom. Document filed by Alexis Bortell. ENDORSEMENT: Oral argument will be held in Courtroom 14D. Arrangements for a direct line to plaintiff, and any others, should be made with the District Executive. (Signed by Judge Alvin K. Hellerstein on 2/12/2018) (rjm) (Entered: 02/13/2018)
02/13/2018	60	ENDORSED LETTER addressed to Concerned Parties from Brigitte Jones dated 2/13/2018 re: You are hereby notified that the previous oral argument scheduled for February 14, 2018 at 2:30 p.m. is cancelled. You are hereby notified that you are required to appear for oral argument. Date: February 14, 2018. Time: 11:00 a.m. Place: U.S. Courthouse - Southern District of New York, 500 Pearl Street, Courtroom 14D, New York, New York, 10007. It is ORDERED that counsel to whom this Order is sent is responsible for faxing a copy to all counsel involved in this case and retaining verification of such in the case file. Do not fax such verification to Chambers. ENDORSEMENT: So Ordered. (Oral Argument set for 2/14/2018 at 11:00 AM in

		Courtroom 14D, 500 Pearl Street, New York, NY 10007 before Judge Alvin K. Hellerstein.) (Signed by Judge Alvin K. Hellerstein on 2/13/2018) (ras) (Entered: 02/13/2018)
02/20/2018	61	LETTER addressed to Judge Alvin K. Hellerstein from Michael S. Hiller dated February 20, 2018 re: Motion to Dismiss. Document filed by Jose Belen, Alexis Bortell, Dean Bortell, Cannabis Cultural Association, Inc., Jagger Cotte, Sebastien Cotte, Marvin Washington.(Hiller, Michael) (Entered: 02/20/2018)
02/23/2018	62	LETTER addressed to Judge Alvin K. Hellerstein from Samuel Dolinger dated 2/23/2018 re: Defendants' response to Plaintiffs' letter dated February 20, 2018. Document filed by Robert W. Patterson, Jefferson Beauregard Sessions, III, United States Department of Justice, United States Drug Enforcement Agency, United States of America.(Dolinger, Samuel) (Entered: 02/23/2018)
02/23/2018	63	MEMO ENDORSEMENT: on re: 61 Letter, filed by Jose Belen, Marvin Washington, Jagger Cotte, Alexis Bortell, Dean Bortell, Sebastien Cotte, Cannabis Cultural Association, Inc. ENDORSEMENT: Motion for reconsideration of ruling is denied. I have reviewed all the arguments stated in this letter, which will be docketed. There is not good reason to extend the period for briefing. (Signed by Judge Alvin K. Hellerstein on 2/23/2018) (ap) (Entered: 02/23/2018)
02/26/2018	64	OPINION AND ORDER GRANTING MOTION TO DISMISS re: 36 MOTION to Dismiss, filed by United States Drug Enforcement Agency, Jefferson Beauregard Sessions, III, Robert W. Patterson, United States Department of Justice, United States of America. For the reasons stated herein, defendants' motion to dismiss the complaint is granted. Plaintiffs have already amended their complaint once, and I find that further amendments would be futile. Ruffolo v. Oppenheimer & Co., 987 F.2d 129, 131 (2d Cir. 1993). The clerk is instructed to terminate the motion (ECF 36), mark the case as closed, and tax costs as appropriate. (Signed by Judge Alvin K. Hellerstein on 2/26/2018) (ras) (Entered: 02/26/2018)
02/26/2018		Transmission to Judgments and Orders Clerk. Transmitted re: 64 Opinion and Order Granting Motion to Dismiss to the Judgments and Orders Clerk. (ras) (Entered: 02/26/2018)
02/26/2018	65	CLERK'S JUDGMENT re: 64 Memorandum & Opinion, in favor of United States Department of Justice, United States Drug Enforcement Agency, United States of America, Charles Chuck Rosenberg, Jefferson Beauregard Sessions, III, Robert W. Patterson against Cannabis Cultural Association, Inc., Alexis Bortell, Dean Bortell, Jagger Cotte, Jose Belen, Marvin Washington, Sebastien Cotte. It is hereby ORDERED, ADJUDGED AND DECREED: That for the reasons stated in the Court's Opinion and Order dated February 26, 2018, defendants' motion to dismiss the complaint is granted. Plaintiffs have already amended their complaint once, and the court finds that further amendments would be futile. Ruffolo v. Oppenheimer & Co., 987 F.2d 129, 131 (2d Cir. 1993); accordingly, the case is closed. (Signed by Clerk of Court Ruby Krajick on 02/26/2018) (Attachments: # 1 Right to Appeal)(km) (Entered: 02/26/2018)
02/26/2018		Terminate Transcript Deadlines (km) (Entered: 02/26/2018)
03/08/2018		TRANSCRIPT of Proceedings re: CONFERENCE held on 2/14/2018 before Judge

03/08/2018	66	TRANSCRIPT of Proceedings re: CONFERENCE held on 2/14/2018 before Judge Alvin K. Hellerstein. Court Reporter/Transcriber: Steven Greenblum, (212) 805-0300. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 3/29/2018. Redacted Transcript Deadline set for 4/9/2018. Release of Transcript Restriction set for 6/6/2018.(McGuirk, Kelly) (Entered: 03/08/2018)
03/08/2018	67	NOTICE OF FILING OF OFFICIAL TRANSCRIPT Notice is hereby given that an official transcript of a CONFERNECE proceeding held on 2/14/18 has been filed by the court reporter/transcriber in the above-captioned matter. The parties have seven (7) calendar days to file with the court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript may be made remotely electronically available to the public without redaction after 90 calendar days...(McGuirk, Kelly) (Entered: 03/08/2018)
03/13/2018	68	TRANSCRIPT of Proceedings re: conference held on 2/14/2018 before Judge Alvin K. Hellerstein. Court Reporter/Transcriber: Steven Greenblum, (212) 805-0300. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 4/3/2018. Redacted Transcript Deadline set for 4/13/2018. Release of Transcript Restriction set for 6/11/2018.(McGuirk, Kelly) (Entered: 03/13/2018)
03/13/2018	69	NOTICE OF FILING OF OFFICIAL TRANSCRIPT Notice is hereby given that an official transcript of a conference proceeding held on 2/14/18 has been filed by the court reporter/transcriber in the above-captioned matter. The parties have seven (7) calendar days to file with the court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript may be made remotely electronically available to the public without redaction after 90 calendar days...(McGuirk, Kelly) (Entered: 03/13/2018)
03/28/2018	70	NOTICE OF APPEAL from 65 Clerk's Judgment,,, 64 Memorandum & Opinion,,. Document filed by Jose Belen, Alexis Bortell, Dean Bortell, Cannabis Cultural Association, Inc., Jagger Cotte, Sebastien Cotte, Marvin Washington. Filing fee $ 505.00, receipt number 0208-14870190. Form C and Form D are due within 14 days to the Court of Appeals, Second Circuit. (Hiller, Michael) (Entered: 03/28/2018)
03/28/2018		Transmission of Notice of Appeal and Certified Copy of Docket Sheet to US Court of Appeals re: 70 Notice of Appeal,. (nd) (Entered: 03/28/2018)
03/28/2018		Appeal Record Sent to USCA (Electronic File). Certified Indexed record on Appeal Electronic Files for 70 Notice of Appeal, filed by Jose Belen, Marvin Washington, Jagger Cotte, Alexis Bortell, Dean Bortell, Sebastien Cotte, Cannabis Cultural Association, Inc. were transmitted to the U.S. Court of Appeals. (nd) (Entered: 03/28/2018)
03/29/2018	71	AMENDED NOTICE OF APPEAL re: 70 Notice of Appeal, 65 Clerk's Judgment,,, 64 Memorandum & Opinion,,. Document filed by Jose Belen, Alexis Bortell, Dean Bortell, Cannabis Cultural Association, Inc., Jagger Cotte, Sebastien Cotte, Marvin Washington.

		(Hiller, Michael) (Entered: 03/29/2018)
03/30/2018		Transmission of Notice of Appeal and Certified Copy of Docket Sheet to US Court of Appeals re: 71 Amended Notice of Appeal. (tp) (Entered: 03/30/2018)
03/30/2018		First Supplemental ROA Sent to USCA (Electronic File). Certified Supplemental Indexed record on Appeal Electronic Files for 71 Amended Notice of Appeal, filed by Jose Belen, Marvin Washington, Jagger Cotte, Alexis Bortell, Dean Bortell, Sebastien Cotte, Cannabis Cultural Association, Inc. were transmitted to the U.S. Court of Appeals. (tp) (Entered: 03/30/2018)

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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,	:	**AMENDED COMPLAINT**
- 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.	:	

PLAINTIFFS MARVIN WASHINGTON, DEAN BORTELL, as Parent/Guardian for Infant **ALEXIS BORTELL, JOSE BELEN, SEBASTIEN COTTE,** as Parent/Guardian for Infant **JAGGER COTTE,** and the **CANNABIS CULTURAL ASSOCIATION, INC.** (collectively, "Plaintiffs"), as and for their Amended Complaint against defendants ("Defendants"), allege as follows:

PRELIMINARY STATEMENT

1. This action is brought on behalf of two young children, their fathers, an American military veteran, a retired professional football player and a non-profit membership organization,

all of whom have suffered harm, and who are continuously threatened with additional harm, by reason of the provisions of the Controlled Substances Act ("CSA"). 21 U.S.C. §801, *et. seq.* The CSA has wrongfully and unconstitutionally criminalized the cultivation, distribution, sale, and possession of Cannabis (comprised of Cannabis *Sativa*, Cannabis *Indica*, and Cannabis *Ruderalis*), which, historically, has been harvested to produce, among other things, medicine, industrial hemp, and a substance known as tetrahydrocannabinol ("THC").[1]

2. Although not styled as a class action, this lawsuit stands to benefit tens of millions of Americans who require, but are unable to safely obtain (and in far too many instances, unable to obtain at all, safely or not), Cannabis for the treatment of their illnesses, diseases and medical conditions, the successful treatment of which is dependent upon its curative properties.[2] In addition, this lawsuit, if successful, would aid in the restoration of communities hardest hit and most egregiously stigmatized by the Federal Government's misguided, Crusades-like "War on Drugs."

3. As shown below, despite the relatively recent and inappropriate stigmatization of Cannabis in the United States as a supposed "gateway drug" used primarily used by "hippies" and minorities, there is a long and rich history, dating back thousands of years, of people from virtually every part of the world using Cannabis for medical, industrial, spiritual, and recreational purposes.[3]

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[1]Robert Deitch, HEMP - AMERICAN HISTORY REVISITED: THE PLANT WITH A DIVIDED HISTORY 3 (2003); Editors of the Encyclopedia Britannica, *Cannabis*, ENCYCLOPEDIA BRITANNICA, https://www.britannica.com/plant/cannabis-plant.

[2]Cannabis, as used in this Complaint, refers to whole-plant Cannabis, with its full spectrum of cannabinoids, including THC, which is separately mis-classified as a Schedule I drug. 21 C.F.R 1308(d)(31).

[3]Deitch, *supra* note 1 at 1; *History of Marijuana as Medicine - 2900 BC to Present*, PROCON.ORG, http://medicalmarijuana.procon.org/view.timeline.php?timelineID=000026 (last updated Jan. 30, 2017) [hereinafter referred to as "PROCON.ORG"]; Lecia Bushak, *A Brief History Of Medical Cannabis: From Ancient Anesthesia To The Modern Dispensary,* MEDICAL DAILY (Jan. 21, 2016),

Indeed, those who have cultivated, encouraged the cultivation of, and/or used Cannabis include, *inter alia*, George Washington, Thomas Jefferson, John Adams, James Madison, James Monroe, John F. Kennedy, Jimmy Carter, Bill Clinton, and Barack Obama – an assortment of the most intelligent and accomplished statesmen in American history.

4. As further shown below, the criminalization of Cannabis – a drug that has never killed anyone – arose out of the enactment of legislation underwritten by illegal racial and ethnic animus, and implemented and enforced at the federal level by those who choose to disregard its scientific properties and benefits, and/or have been motivated by hatred and outright bigotry.[4]

5. The consequences of the Federal Government's misguided War on Drugs have been disastrous. Persons of color are four times as likely as white Americans to be investigated, charged, prosecuted and incarcerated for possession and/or use of Cannabis, even though it is used in approximately equal proportions among the races. In addition, those who are administered medical Cannabis for the treatment of illnesses, disease and other health-related conditions, have been required to forfeit their First, Fifth, Ninth and Fourteenth Amendment Rights, plus their fundamental right to travel.

OVERVIEW OF THE CLAIMS

6. Plaintiffs seek a declaration that the CSA, as it pertains to the classification of

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http://www.medicaldaily.com/brief-history-medical-cannabis-ancient-anesthesia-modern-dispensary-370344 [hereinafter referred to as "MEDICAL DAILY"].

[4]Notably, although a powerful and vocal minority of public officials have continued their irrational opposition to rescheduling or de-scheduling of Cannabis, the overwhelming majority of Americans desire a change. According to an April 20, 2017 Quinnipiac Poll, nearly 94% of Americans support legalization of medical marijuana. And 60% of Americans support full legalization and de-criminalization of Cannabis for all purposes (Exh. 1).

Cannabis as a Schedule I drug, is unconstitutional, because it violates the Due Process Clause of the Fifth Amendment, an assortment of protections guaranteed by the First, Ninth and Tenth Amendments, plus the fundamental Right to Travel, the right to Equal Protection, and right to Substantive Due Process. Further, Plaintiffs seek a declaration that Congress, in enacting the CSA as it pertains to Cannabis, violated the Commerce Clause, extending the breadth of legislative power well beyond the scope contemplated by Article I of the Constitution.[5] The claims are as follows:

7. *First*, as shown below, the CSA as it pertains to Cannabis, violates the Due Process Clause of the Fifth Amendment to the United States Constitution because the CSA is so irrational as a matter of law that it cannot be said to be rationally related to any legitimate government purpose. Cannabis is classified as a Schedule I drug under the CSA, along with such psychotropic drugs as heroin, mescaline and LSD. To have been assigned this Schedule I classification, the Federal Government was required to have determined that Cannabis: (i) has a high potential for abuse; (ii) has absolutely no medical use in treatment; and (iii) cannot be used or tested safely, even under strict medical supervision ("Three Schedule I Requirements"). Significantly, however, as also shown below, the Federal Government does not believe, and upon information and belief, never has believed, that Cannabis meets or ever met the Three Schedule I Requirements.

8. Under Federal Law, it is not enough for a government, in arguing in favor of a statute's constitutionality, merely to *manufacture* a supposedly "legitimate government interest" to which a law is rationally related for the purpose of responding to a lawsuit; the government must also actually believe its own argument. And, as shown below, the Federal Government, at a minimum,

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[5]In interposing this particular claim, Plaintiffs explicitly seek the overturn of the Supreme Court's decision in *Gonzalez v. Raich*, 545 U.S. 1 (2005).

does not, and cannot possibly, believe that there is no acceptable medical use for Cannabis or that it cannot be used or tested safely under medical supervision. In other words, the Federal Government has recognized that Cannabis does not meet (or come close to meeting) two of the Three Schedule I Requirements. *Indeed, the Federal Government has admitted repeatedly in writing, and implemented national policy reflecting, that Cannabis **does**, in fact, have medical uses and can be used and tested safely under medical supervision. On that basis, the Federal Government has exploited Cannabis economically for more than a decade by securing a medical cannabis patent and entering into license agreements with medical licensees*. The Federal Government has also been dispensing medical Cannabis to Americans through a certain Investigational New Drug Program since the late 1970s for the treatment of an assortment of diseases. The notion that the Federal Government genuinely believes that Cannabis has no medical application and is so dangerous that, as with heroin, it cannot be tested even under strict medical supervision, is so absurd that it must be rejected as a matter of law. The Federal Government does not believe in the factual prerequisites underlying its own statute.

9. Because the Federal Government does not believe the factual predicate underlying its own arguments in support of the CSA as it pertains to Cannabis, the CSA is irrational and thus unconstitutional (First Cause of Action).

10. *Second*, as shown below, the CSA as it pertains to Cannabis was enacted and subsequently implemented, not to control the spread of a dangerous drug, but rather to suppress the rights and interests of those whom the Nixon Administration wrongly regarded as hostile to the interests of the United States – African Americans and protesters of the Vietnam War. In particular, members of the Nixon Administration have confirmed that, when the CSA was enacted, President

Nixon regarded those who opposed the Vietnam War as a threat to America's Cold War against Communism. And President Nixon and associates in the Nixon Administration, including and especially, Myles Ambrose (America's First Drug Czar), harbored considerable antipathy towards African Americans.

11. The Nixon Administration recognized that African Americans could not be arrested on racial grounds, and war protesters could not be prosecuted for opposing America's involvement in Vietnam. However, the members of the Nixon Administration decided that Cannabis was the drug of choice for these two groups. Consequently, the Nixon Administration ushered the CSA through Congress and insisted that Cannabis be included on Schedule I so that African Americans and war protesters could be raided, prosecuted and incarcerated without identifying the actual and unconstitutional basis for the government's actions.

12. Unfortunately, the Federal Government has been quite successful in using the CSA to harass, intimidate and incarcerate African Americans in disproportionate numbers over the years, ruining the lives of generations of black men and women and other persons of color. War protesters were similarly subjected to unconstitutional enforcement activity by the Federal Government, resulting in convictions that stained reputations and limited the career options of countless politically active Americans. In so doing, the Federal Government violated (and continues to violate) the First Amendment and the Equal Protection Clause as implied by the Due Process Clause of the Fifth Amendment to the United States Constitution (Second Cause of Action).

13. *Third*, as shown below, the CSA as it pertains to Cannabis violates the constitutional Right to Travel. As of this writing, 29 States plus Washington, DC and U.S. Territories have

legalized the use of Cannabis containing high concentrations of THC for the treatment of scores of illnesses, diseases and conditions. Indeed, more than 62% of Americans currently live in States in which Cannabis with high concentrations of THC may be recommended by physicians for medical treatment.

14. Some patients who live in State-legal medical-Cannabis jurisdictions are, for the moment, able, as a practical matter, to avail themselves of medical Cannabis, notwithstanding the provisions of the CSA, based upon a series of federal initiatives which have created temporary, *de facto* impediments to its enforcement at the federal level. However, those temporary federal initiatives do not have the force of law and, in many instances, explicitly state that they *do not* provide a legal defense to prosecutions under the CSA.

15. Thus, those who cultivate, distribute, sell, recommend and/or use medical Cannabis in conformity with State-legal medical Cannabis programs remain vulnerable to federal enforcement.

16. Worse, those patients who rely upon medical Cannabis, even in State-legal medical-Cannabis jurisdictions, cannot safely travel by airplane; cannot travel onto federal lands or into federal buildings (even if those federal lands and buildings are situated within State-legal medical-Cannabis jurisdictions); cannot enter facilities owned by the Federal Government, including military bases; and cannot travel to or through States in which medical Cannabis has not been legalized, without risk of arrest and prosecution. Consequently, the physicians who recommend medical Cannabis, the businesses that manufacture and distribute medical Cannabis, and the patients who need and use it remain at constant risk that they could be arrested, prosecuted and incarcerated by the Federal Government at any time.

17. In the context of the Right to Travel, medical Cannabis patients in particular are subjected to a Hobson's Choice of: (i) using their medication but relinquishing their Right to Travel; (ii) exercising their Right to Travel while carrying their medication with them, thereby risking seizure, arrest, prosecution, conviction and incarceration; or (iii) exercising their Right to Travel but foregoing physician-recommended medical treatment that maintains their health and lives. Engaging in an open violation of the CSA and subjecting themselves to the risk of arrest does not constitute a viable option for Plaintiffs. The alternative of leaving their life-sustaining and life-saving medication behind would threaten those Plaintiffs treating with medical Cannabis (and for whom it constitutes a life-saving and -sustaining medicine) with the loss of their health and lives which, as demonstrated below, would constitute a deprivation of their fundamental rights to Substantive Due Process (Third Cause of Action).

18. *Fourth*, the CSA as it pertains to medical Cannabis violates the Commerce Clause and the Tenth Amendment to the United States Constitution. While empowered by Article I to regulate interstate and international commerce, Congress does not have the authority to regulate purely intra-state activities which do not have any impact on the national economy. Any use of medical Cannabis that is legalized and regulated entirely within an individual State's borders does not have any appreciable impact on the national economy. And Congress, in enacting the CSA, never believed that the cultivation, distribution and sale of Cannabis, purely at the intra-state level, ever affected or will affect the national economy.

19. Regulation of doctor-patient relationships and the administration of medical advice has been, since ratification of the United States Constitution and subsequent adoption of the Tenth

Amendment, consistently interpreted as falling within the exclusive regulatory jurisdiction of the States (not the Federal Government) under the provisions of the Tenth Amendment. By injecting itself into the exclusive regulatory jurisdiction of the States, Congress exceeded its powers under the Commerce Clause and violated principles of federalism and the Tenth Amendment of the United States Constitution (Fourth Cause of Action).

20. *Fifth*, the Schedule I classification as it pertains to Cannabis constitutes a completely and utterly irrational legislative construct and thus violates the Due Process Clause of the Fifth Amendment. Specifically, under the CSA, Schedule I drugs are classified as so dangerous that they generally cannot be tested safely; however, in order to obtain the evidence necessary to persuade the Federal Government that Cannabis is safe enough to be rescheduled or de-scheduled, it must be tested. By imposing as precondition to re-classification, the testing of a purportedly un-testable drug, Congress created a legislative Gordian Knot -- a statute that functions as a one-way, dead end street.[6]

21. What transforms this poorly-conceived provision into an unconstitutional one is that Cannabis was categorized as a Schedule I drug, not because the evidence presented during the legislative process actually demonstrated that it was dangerous, but rather because certain members of Congress pretextually claimed that the data for classifying Cannabis in the first instance was, at the time, supposedly insufficient. Accordingly, Cannabis was to be tested and then rescheduled, de-scheduled or left under the provisions of Schedule I. In classifying Cannabis as a Schedule I drug in the first instance, however, Congress permanently resigned Cannabis to that designation because

[6]This is not to suggest that no one has ever obtained permission from the Federal Government to test medical Cannabis; but the vetting process renders the approval process substantially impracticable.

in the absence of testing, those seeking to petition to reclassify Cannabis are deprived of the opportunity to collect the very evidence deemed necessary by the Federal Government to reschedule or de-schedule it (Fifth Cause of Action).

22. *Sixth*, the CSA, as applied to Plaintiffs Alexis Bortell ("Alexis") and Jagger Cotte ("Jagger"), deprives them of their rights under the First Amendment to free speech and to petition the Federal Government for a redress of grievances. Specifically, Alexis and Jagger cannot travel to the Capitol in Washington, DC to petition the Federal Government to enact legislation which they regard as beneficial, or to repeal laws which they regard as harmful unless they leave their life-saving and -sustaining Cannabis medication behind – a substantial risk for each of these Plaintiffs. Thus, for example, Alexis and Jagger cannot visit their elected representatives to lobby in favor of repealing the CSA or in favor of the Marijuana Justice Act ("MJA"), which Senator Cory Booker of New Jersey is preparing to introduce during the next legislative session. The availability of other forms of communication from a distance does not, as a matter of law, constitute an effective or appropriate substitute for in-person advocacy under the First Amendment, particularly under the circumstances of this case.

23. Under principles of Substantive Due Process, the right to preserve one's health and life by continuing to treat with life-sustaining and life-saving medication, is deeply-rooted in our Nation's history and traditions, and implicit in the concept of ordered liberty. By requiring Alexis and Jagger to forfeit that fundamental right in order to exercise their First Amendment rights (and vice versa), the CSA imposes an unconstitutional Hobson's Choice upon the aforementioned Plaintiffs and thus violates the Constitution (Sixth Cause of Action).

24. *Lastly*, the Federal Government cannot maintain its position on the existing record

that continued enforcement of the CSA as it pertains to Cannabis is "substantially justified." Accordingly, under the Equal Access to Justice Act (28 U.S.C. §2412), Plaintiffs are entitled to an award of legal fees and costs.

JURISDICTION AND VENUE

25. This Court has subject matter jurisdiction over this controversy under 5 U.S.C. §8912, 28 U.S.C. §§1331,1346(a)(2), 2201 and 2202.

26. Venue is proper under 28 U.S.C. §§1391(e) and 1402(a)(1).

PLAINTIFFS

Marvin Washington

27. Plaintiff Marvin Washington ("Washington") is, and at all relevant times has been, a citizen, resident and domiciliary of the County of Dallas in the State of Texas.

28. Washington is a graduate of the University of Idaho and is a member of the University's Sports Hall of Fame.

29. From 1989 to 1999, Washington played professional football as a defensive lineman for such National Football League franchises as the New York Jets, San Francisco 49ers and Denver Broncos, winning a Super Bowl with the latter.

30. After his retirement from professional football, Washington entered the business world, working for Kannalife, a Long Island company that has been developing Cannabis-based medications to minimize the damage caused by head injuries and to reduce and ultimately eliminate opioid addiction among professional athletes. Washington is currently working with a Swiss company known as Isidiol that has launched, among other things, a line of products infused with

Cannabidiol, also known as CBD, produced in the European Union, outside the confines of the CSA.[7]

31. Washington would like to expand his business to include whole-plant Cannabis (including THC) products, but is concerned that, even in States in which whole-plant Cannabis is legal for medical and/or recreational use, he may be subject to arrest and prosecution.

32. Washington would like to avail himself of the benefits associated with the Federal Minority Business Enterprise program ("MBE") in connection with whole-plant Cannabis products, but he is ineligible for it solely because such activities would be illegal under the CSA. Were Washington to open a whole-plant Cannabis business and apply for participation in the MBE, he would be admitting to the commission of a felony under Federal Law.

33. According to the Federal Government, CBD falls within the ambit of the classification of Cannabis as a Schedule I drug, unless extracted from industrial hemp or a part of the Cannabis plant exempted from the CSA.

34. Washington is concerned that, although CBD products generally have a low concentration or no concentration of THC, his existing business could be subjected to enforcement under the CSA.

35. Washington is African American.

Dean Bortell and Alexis Bortell

36. Plaintiff Dean Bortell is, and at all relevant times has been, a citizen of Texas and Colorado, currently residing in Larkspur, Colorado ("Dean").

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[7] CBD, although part of the Cannabis plant, generally has no psychoactive effect. Nonetheless, it is currently the position of the Federal Government that the cultivation and/or sale of CBD is prohibited under the CSA.

37. Dean is a former member of the Navy, and is a 100% permanently-disabled veteran of foreign wars ("VFW").

38. As a disabled VFW, his children are entitled to receive certain veteran's benefits ("Veterans' Benefits"), including, *inter alia*, health insurance and the right to use the commissary of any nearby military base.

39. Dean is Alexis's father.

40. Alexis is, and at all relevant times has been, a citizen of Texas and Colorado, currently residing in Larkspur, Colorado.

41. Alexis is an 11-year-old girl, who lives with her parents.

42. At the age of seven, Alexis began experiencing seizures, and was eventually diagnosed with a condition known as "intractable epilepsy."

43. Intractable epilepsy is a seizure disorder in which a patient's seizures cannot be safely controlled with FDA approved medical treatments and procedures.

44. By reason of her intractable epilepsy, Alexis often suffered from multiple seizures per day, and spent most of her school-day afternoons in the nurse's office.

45. Alexis, with the assistance of her family and treatment providers, attempted to treat, control and cure her intractable epilepsy for years without success. Nothing she tried worked.

46. After two years of doctor visits, tests, urgent trips to the emergency room, and pill after pill, all with their assortment of negative side effects, her family exhausted traditional pharmaceutical options to stop what Alexis referred to as the "seizure monster." At that point, they turned to the last known option available: whole-plant Cannabis containing high concentrations of THC.

47. Whole-plant Cannabis with high THC content provided Alexis immediate relief from her seizures, but it is not legal in Texas, where she resided at the time. Accordingly, Alexis and her family were forced to move from her home State of Texas to seek life-saving treatment in Colorado. There, Alexis was thrust into a very grown-up world and joined a then-largely unknown community of Cannabis patients known as "Medical Marijuana Refugees."

48. Since being on whole-plant medical Cannabis, Alexis has gone more than two years seizure-free, without taking any other medication to control her seizures.

49. Without her use of whole-plant medical Cannabis, Alexis would likely have no quality of life, and instead be resigned to spending her days at home inside or worse, in a hospital bed, as medical care-givers surround her with offers of palliative care which fail to provide any actual palliative relief. In addition, Alexis would be subjected to traditional forms of treatment which, aside from being ineffectual, threaten her with serious and life-altering side effects, including infertility.

50. Alexis co-authored the book, Let's Talk About Medical Cannabis, which was launched on April 20, 2017. In her book, she shares her and her family's experiences as "Medical Marijuana Refugees" and gives readers a perspective into the Cannabis refugee community.

51. Alexis was also named a PACT National Pediatric Ambassador (2015-16), and received the Texas Liberty Award (along with her sister) in 2016.

52. Alexis's drive to help those around her led to her newest project, "Patches of Hope." She and her sister Avery are growing USDA certified organic garden vegetables on their family farm to donate to hungry people in need, including her beloved Medical Marijuana Refugees. Her story

and advocacy have been featured in documentaries, newspapers, magazines, TV, and on radio stations worldwide.

53. While thrilled with the success she has experienced in treating her intractable epilepsy and eliminating her daily seizures with medical Cannabis, Alexis would like to move back to Texas, where she would be eligible for free college tuition through Texas's State Department of Education. Alexis is not eligible for free state education in Colorado.

54. In addition, Alexis would like to travel to other States and to federal lands (including, for example, national parks and monuments), but cannot safely do so without fear that: (i) her parents, with whom she would travel, might be prosecuted for possession of Cannabis; or worse (ii) her parents might be subjected to proceedings which would imperil their parental rights.

55. Separate and apart from her desire to travel to other States, national parks and monuments, Alexis would like to visit, and has been invited to speak with, members of Congress at the Capitol, *inter alia*, to lobby in favor of repealing the CSA and in favor of the MJA, which would have the effect of de-scheduling Cannabis.

56. However, Alexis cannot make a trip to the Capitol and visit with her elected representatives and other public officials unless she were to leave her medical Cannabis behind, endangering her life.

57. There is no comparable substitute for the opportunity to visit public officials and engage in in-person advocacy.

58. Insofar as Alexis is a minor, she cannot vote; her ability to influence her elected representatives is limited to efforts by her to advocate in support of beneficial legislation and against laws she regards as harmful.

59. Alexis would also like to avail herself of the Veterans Benefits for which she is eligible and which she would otherwise receive were it not for her necessary Cannabis use; however, Alexis cannot enter the neighboring military base, where she would be able to avail herself of such Benefits, including, for example, commissary benefits, unless she were to leave her medication behind, risking her health. And, although currently receiving health insurance (another of the Veterans Benefits to which she is entitled) through her father's veteran's benefit plan, Alexis will almost certainly lose her eligibility within the next three years, as she would be required to enter a United States military base to renew her health insurance card – a trip she cannot safely make without taking her State-legal, but federally-illegal, medication with her. Thus, Alexis and her family are subjected to an unacceptable Hobson's Choice: (A) discontinuing the only medication that has ever eliminated her seizures (thereby resigning herself to living permanently with a dangerous and disabling illness) so that she could return to Texas; or (B) continuing to use her medication but refusing to relinquish her Right to Travel, risking arrest, prosecution and her parents' loss of parental rights; or (C) continuing to use her medication within the State of Colorado but foregoing her rights to: (i) live in Texas; (ii) receive free tuition in Texas; (iii) travel to other States; (iv) use an airplane to travel to any other State; (v) step onto federal lands or into federal buildings; (vi) access military bases; and (vii) receive her father's Veteran's Benefits ("Hobson's Choice").

Jose Belen

60. Plaintiff Jose Belen is a citizen of the State of Florida, with a residence in Seminole County ("Jose").

61. On January 16, 2002, at the age of 19, Jose enlisted in the United States Army.

62. Soon after enlisting in the Army, Jose was deployed to Germany, where he participated in training exercises and awaited further deployment.

63. On March 20, 2003, the United States Military began an invasion of Iraq, under the code-name "Operation Iraqi Freedom."

64. In or around May 2003, Jose and his battalion were deployed to Kuwait.

65. Jose's battalion was then pushed directly into active combat, receiving orders to cross the Iraq-Kuwait border and march on to enter Baghdad.

66. In connection with this mission, Jose then served in Iraq for 14 months, often witnessing brutal armed combat first-hand.

67. During his deployment, Jose came to know many of his fellow soldiers personally, developing strong, emotional bonds.

68. During his deployment, Jose was in grave danger and witnessed the killing of several fellow soldiers, including his best friend and roommate.

69. After he was honorably discharged, Jose moved to Florida.

70. It soon became clear to Jose that he was unable to forget and/or otherwise cope with his memory of the horrors of war that he had lived through in Iraq.

71. Jose developed Post-Traumatic Stress Disorder ("PTSD").

72. PTSD is an ailment which commonly afflicts members of the armed forces who have seen active combat.

73. Because of his PTSD, the Veterans Affairs Administration declared Jose "70% disabled."

74. Jose sought treatment for his PTSD from the medical staff at the Veterans Affairs Administration and other treatment centers.

75. The medical staff at the Veteran Affairs Administration issued Jose prescriptions for different opioid medications.

76. The aforesaid and described prescriptions were ineffective and often further disabling.

77. Jose's PTSD intensified, and became so severe that Jose often contemplated taking his own life.

78. Statistics show that an average of 22 American military veterans commit suicide every day.

79. Upon information and belief, most of these suicides are directly linked to PTSD.

80. Jose subsequently discovered that Cannabis is the only substance which actually reduced his PTSD symptoms.

81. Since he began treating with medical Cannabis, Jose has been able to cope with his PTSD.

82. Jose has disclosed his need for medical Cannabis to his Veterans Administration physicians.

83. Jose's treatment providers at the Veterans Administration informed Jose that they are unable to prescribe medical Cannabis because it is illegal under the CSA.

84. As with Alexis, Jose cannot, while possessing his medical Cannabis: (i) enter a military base; (ii) travel by airplane; (iii) step onto federal lands or into federal buildings; (iv) travel to States where medical Cannabis is illegal and enforced under the CSA; (v) request medical Cannabis from his treating physicians; and/or otherwise (vi) avail himself of the Veterans Benefits for which he is otherwise eligible and to which he is legally entitled. Thus, as with Alexis, Jose is subjected to a similar Hobson's Choice -- his life and health, or the exercise of his constitutional

rights and the risk of arrest.

85. Separate and apart from his desire to receive Veterans Benefits, Jose would like to visit and speak with members of Congress at the Capitol to lobby in favor of, *inter alia*, repealing the CSA and in favor of the MJA, which would have the effect of de-scheduling Cannabis.

86. However, Jose cannot make a trip to the Capitol and visit with his elected representatives and other public officials unless he were to leave his medical Cannabis behind.

87. There is no comparable substitute for the opportunity to visit public officials and engage in in-person advocacy.

Sebastien Cotte and Jagger Cotte

88. Sebastien Cotte is, and at all relevant times has been, a citizen and domiciliary of the State of Georgia, with a residence in Dekalb County ("Sebastien").

89. Jagger Cotte is, and at all relevant times has been, a citizen and domiciliary of the State of Georgia, with a residence in Dekalb County.

90. Sebastien is Jagger's father.

91. Jagger is a six-year old boy who lives with his parents, including his father, Sebastien.

92. Jagger suffers from a rare, congenital disease known as "Leigh's Disease," which disables and then kills approximately 95% of people afflicted with it (if diagnosed before age 2) by the time that they reach the age of four.

93. Consistent with his diagnosis and prognosis, Jagger, beginning at age one, became a hospice patient, unable to communicate, walk, masticate food, and/or otherwise handle any activities of daily living.

94. Worse, Jagger began experiencing near-constant pain, shrieking in agony as he tried to get through each day.

95. As Sebastien and his wife prepared for what they expected would be their son's inevitable demise, they turned to Cannabis with high concentrations of THC, in the hope of reducing his pain and prolonging his life.

96. Since he began treating with medical Cannabis with high concentrations of THC, Jagger has stopped screaming in pain, has been able to interact with his parents, and has prolonged his life by more than two years.

97. Cannabis with a THC concentration of greater than 5% is illegal in the State of Georgia.

98. Because his required dosage for effective treatment of his condition requires a THC content greater than 5%, Jagger cannot obtain his medical Cannabis in State.

99. Worse, Georgia has no regulatory protocol for the cultivation, distribution and sale of Cannabis. Thus, assuming that medical Cannabis with a THC content of 5% were sufficient to treat Jagger's condition -- and it isn't -- obtaining State-legal medical Cannabis in Georgia is impossible, as it is unavailable for purchase in a dispensary or otherwise.

100. At one point, Jagger and his family relocated to Colorado so as to facilitate the administration of his medication; however, maintaining two residences and caring for a dying child full time rendered this prospect economically infeasible. Consequently, the Cotte family returned to Georgia (by car).

101. As with Alexis and Jose, Jagger cannot travel by airplane, enter onto federal lands or into federal buildings, and/or travel to and/or through States in which medical Cannabis, by reason

of the CSA and other legislation, is illegal. Thus, Jagger is resigned to a Hobson's Choice of: (i) relinquishing his constitutional rights because of his treatment with medical Cannabis; or (ii) retaining his constitutional rights but foregoing his medical treatment and subjecting himself to the uncompromisingly painful and ultimately fatal effects of his illness; or (iii) traveling without regard to where Cannabis is legal or illegal and risking his or his father's arrest.

102. Jagger would like to visit with members of Congress at the Capitol and, through his father, lobby in favor of repealing the CSA and in favor of the MJA, which would have the effect of de-scheduling Cannabis.

103. However, Jagger cannot make a trip to the Capitol and visit with his elected representatives and other public officials unless he were to leave his medical Cannabis behind, thereby endangering his life.

104. There is no comparable substitute for the opportunity to visit public officials and engage in in-person advocacy.

105. Insofar as Jagger is a minor, he cannot vote; his ability to influence his elected representatives is limited to efforts by him (through his father) to advocate in support of beneficial legislation and against laws he regards as harmful.

Cannabis Cultural Association, Inc.

106. Cannabis Cultural Association, Inc. ("CCA") is, and at all relevant times has been, a not-for-profit corporation organized and existing under the laws of the State of New York, with a principal headquarters in the City and County of New York.

107. The CCA was founded to provide a voice and forum to assist persons of color to develop a presence in the Cannabis industry – an industry in which they are and, at all relevant times

have been, grossly under-represented except when it comes to being arrested.

108. People of color, especially black males, are up to four times as likely to be arrested in connection with Cannabis than white Americans, and make up nearly 70% of the 2.5 million people in prison for drug crimes (even though use among races is virtually equal).

109. Convictions for violations of the CSA and other statutes criminalizing cultivation, distribution and/or use of Cannabis frequently disqualify individuals from participating in State-legal medical Cannabis businesses. By reason of the foregoing, persons of color, who are disproportionately investigated and prosecuted for drug offenses, have been unfairly and inequitably excluded from the Cannabis industry.

110. Members of the CCA include persons of color who have been arrested, prosecuted, convicted and/or incarcerated for violating the CSA as it pertains to Cannabis.

DEFENDANTS

Sessions

111. Defendant Jefferson Beauregard Sessions, III ("Sessions") is, and since on or about February 8, 2017 has been, the Attorney General of the United States.[8]

112. Before his ascension to Attorney General, Sessions, from 1997 until in or about late 2016, served as a United States Senator on behalf of the people of the State of Alabama.

113. Prior to his installation as a United States Senator, Sessions was a United States Attorney for the Southern District of Alabama.

114. While serving as a United States Attorney, Sessions was nominated to serve as a United States District Court Judge; however, his nomination was withdrawn following a series of

[8]Sessions is sued only in his official capacity as Attorney General.

Senate hearings at which witnesses testified that Sessions had:

- made racially insensitive remarks to African American Assistant U.S. Attorneys;
- spoken favorably of the Ku Klux Klan;
- referred to a white civil rights attorney as "maybe" a "disgrace to his race;"
- repeatedly referred to an African American Assistant U.S. Attorney as "boy" and had instructed the latter to "be careful what you say to white folks;"
- remarked that the NAACP and ACLU were "un-American" and "Communist-inspired," and that they were trying to force civil rights "down the throats of people;" and
- complained that he had wished he could decline all civil rights cases.[9]

115. Sessions was never again nominated to sit on the Federal Bench.

116. Upon information and belief, Sessions is, and at all relevant times since 1997 has been, a citizen of Alabama, and a resident of both Alabama and Washington, DC.

117. Sessions, as Attorney General, is authorized to re-schedule, de-schedule and/or decline to re-schedule or de-schedule any drug classified under the provisions of the CSA. 21 U.S.C. §811.

118. As shown below, Sessions has announced that:

- he was "heartbroken" that former President Obama said that "Cannabis is not as dangerous as alcohol;"
- he believes that Cannabis is "a dangerous drug;"

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[9]Sessions admitted that he had made favorable comments about the Ku Klux Klan, but claimed he was not being serious and later apologized. He claimed not to remember saying that a white civil rights lawyer was "maybe" a "disgrace to his race." As to the comments about the ACLU and NAACP, Sessions claimed to have been referring to the organizations' supposed support for the Sandinistas in Nicaragua. He denied making the other above-referenced statements attributed to him.

- he believes that "good people don't smoke marijuana;" and
- he thought favorably of the Ku Klux Klan, but then changed his view when he learned that its members supposedly smoke "pot."

119. On or about May 1, 2017, Sessions sent correspondence to Congress requesting that funding be provided that could allow the United States Department of Justice ("DOJ") to resume criminal prosecutions of: (i) State-legal medical marijuana patients, (ii) State-legal businesses that provide medical Cannabis to patients, and (iii) physicians who recommend such treatment.[10]

120. On July 19, 2017, Sessions announced his intention to resume civil forfeiture activity, previously discontinued under the Obama Administration, as part of his continued war against those whom Sessions claims are engaged in dangerous, illegal drug activity.[11]

United States Department of Justice

121. Defendant DOJ is, and since in or about 1870 has been, an executive department of the United States, "with the Attorney General as its head."[12]

122. According to the mission statement contained on its website, the DOJ's purpose is:

> [t]o enforce the law and defend the interests of the United States according to the law; to ensure public safety against threats foreign and domestic; to provide federal leadership in preventing and controlling crime; to seek just punishment for those guilty of unlawful behavior; and to ensure fair and impartial administration of justice for all Americans.[13]

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[10]As discussed below, Congress had previously enacted legislation that prevents the Attorney General and Department of Justice from using legislative appropriations to prosecute those in State-legal medical Cannabis jurisdictions operating in conformity with State law.

[11]http://www.politico.com/story/2017/07/19/jeff-sessions-drug-war-seizures-240706.

[12]https://www.justice.gov/about.

[13]*Id.*

123. To the extent that the DOJ treats medical Cannabis as a dangerous and illegal substance, Plaintiffs and everyone else who may need to use, or who desire to cultivate and/or sell, medical Cannabis are at risk of investigation and prosecution by the DOJ.

Charles "Chuck" Rosenberg and the DEA

124. Defendant Charles "Chuck" Rosenberg ("Rosenberg") is, and since May 2015 has been, the acting head of the defendant Drug Enforcement Administration ("DEA").[14]

125. Defendant DEA is, and since 1973 has been, a Federal agency charged with the responsibility of investigating and, together with the DOJ, enforcing, the CSA, and any other controlled substances laws and regulations of the United States.

126. Since at least 2002, the DEA's position has been that enforcement of Federal Laws against medical Cannabis is the responsibility of the DEA.

127. On or about November 10, 2015, Rosenberg publicly announced to CBS News that he believes that "medical marijuana" is a "joke."[15]

United States of America

128. The United States of America is named as a defendant because this action challenges the constitutionality of an Act of Congress. 28 U.S.C. §2403(A).

STATEMENT OF FACTS

I. CANNABIS HAS BEEN CULTIVATED AND SAFELY USED THROUGHOUT WORLD HISTORY

10,000 BC until the Birth of Christ

[14]Rosenberg is sued only in his official capacity as Acting Administrator of the DEA.

[15]http://www.cbsnews.com/news/dea-chief-says-smoking-marijuana-as-medicine-is-a-joke.

129. Cannabis has been utilized in a multitude of ways by diverse groups of people all over the world for the last 10,000 years.[16]

130. The first documented use of Cannabis took place in the area of modern day Taiwan where hemp cords were identified in pottery found in an ancient village dating back to about 10,000 years ago.[17]

131. In 6,000 B.C., China became the first country known to utilize Cannabis seeds and oil for food and, along with Turkestan, China began cultivating hemp for the purpose of producing textiles in 4,000 B.C.[18]

132. The first documented medical use of Cannabis also occurred in China (in or around 2900 B.C.) when Chinese Emperor Fu Hsi, the father of Chinese civilization, noted that "Ma," the Chinese word for Cannabis, was a "very popular medicine that possessed both yin and yang."[19] Its popularity at that time has been confirmed by the "Pen ts'ao," a Chinese digest of herbal medicines which was first published in or about 2800 B.C.

133. The Pen ts'ao "recommended Cannabis for the treatment of constipation, gout, malaria, rheumatism, and menstrual problems."[20]

134. Hemp in particular was so important in ancient China that the Chinese people referred

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[16]*See* Deitch, *supra* note 1 at 1, 7-8; Leslie Iversen, THE SCIENCE OF MARIJUANA 122 (2000);

[17]Deitch, *supra* note 1 at 7-8; *10,000-year History of Marijuana Use in the World,* ADVANCED HOLISTIC HEALTH, http://www.advancedholistichealth.org/history.html (last visited July 20, 2017) [hereinafter referred to as "ADVANCED HOLISTIC HEALTH"].

[18]ADVANCED HOLISTIC HEALTH, *supra* note 17.

[19]Deitch, *supra* note 1 at 9.

[20]Iversen, *supra* note 16 at 122.

to their country as the "land of mulberry and hemp."[21]

135. The ancient Egyptians began to use Cannabis as medicine in or about 2000 B.C.[22]

136. The ancient Egyptians used Cannabis at that time to treat sore eyes and cataracts, inflammation, hemorrhoids, menstrual bleeding, and Glaucoma.[23] And while the ancient Chinese were the first people known to use Cannabis as medicine, "it was the ancient Egyptians who first identified cancer as an illness and then treated it with Cannabis."[24]

137. Beginning in 2,000 B.C., the use of Cannabis expanded to suit religious and spiritual purposes as well.[25] Around this time, a sacred Hindu text, *Atharvaveda*, first refers to "Bhang," an intoxicant made from the leaves of the female Cannabis plant, as one of the five sacred plants of India.[26]

138. Bhang was used in ancient India medicinally as an anesthetic and anti-phlegmatic.[27]

139. Bhang was used in ancient India religiously as an offering to the god Shiva.[28]

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[21]Deitch, *supra* note 1 at 9.

[22]Claire Rankin, *Marijuana use in ancient Egypt*, NEWS TARGET (Feb. 26, 2016), http://www.newstarget.com/2016-02-26-marijuana-use-in-ancient-egypt.html; *see also In the Matter of Rescheduling Marijuana*, 86-22 at p. 33 (1988) (in a proceeding contested by the DEA, the ALJ observed: "Uncontroverted evidence [o]n this record indicates that marijuana was being used therapeutically by mankind 2000 years before the Birth of Christ" (citation omitted).

[23]Rankin *supra* note 22; *See also* PROCON.ORG, *supra* note 3.

[24]Rankin *supra* note 22.

[25]*See* ADVANCED HOLISTIC HEALTH, *supra* note 17.

[26]*Id.*; Charukesi Ramadurai, *The Intoxicating Drug of an Indian God*, BBC (March 13, 2017), http://www.bbc.com/travel/story/20170307-the-intoxicating-drug-of-an-indian-god.

[27]PROCON.ORG, *supra* note 3.

[28]ADVANCED HOLISTIC HEALTH, *supra* note 17.

140. In approximately 1450 B.C., when the events of the Book of Exodus (30:22-23) are alleged to have occurred, Cannabis was purportedly one of the ingredients contained in the Holy anointing oil passed from God to Moses.[29]

141. According to the analyses of a number of well-respected etymologists, linguists, anthropologists, and botanists, the recipe for the Holy anointing oil contained over six pounds of "kaneh-bosem," a Hebrew term these professionals have identified as meaning Cannabis.[30]

142. The use of Cannabis as a medicinal substance continued to spread throughout Asia and Europe for centuries.

143. *The Venidad*, a Persian text dating back to 700 BC, cited Cannabis as being one of the most significant of 10,000 medicinal plants.[31]

144. By 600 B.C. India began using Cannabis to treat leprosy.[32]

145. In 200 B.C. Greece, Cannabis was utilized as a remedy for earaches, edema, and inflammation.[33]

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[29] *See* PROCON.ORG, *supra* note 3.

[30] *Id. See also* Jane Marcus, *Holy Cannabis: The Bible Tells Us So*, Huffington Post, http://www.huffingtonpost.com/jane-marcus-phd/holy-cannabis-the-bible-t_b_4784309.html (last updated Apr. 16, 2014).

[31] Rob Streisfeld, NMD, *The Role of the EndoCannabinoid System & Cannabinoids Linked to Gut Health*, NYANP 13, http://www.nyanp.org/wp-content/uploads/2015/10/Streisfeld_Cannabis-F-NYANP.pdf (last visited May 10, 2017); PROCON.ORG, *supra* note 3 (*citing* Martin Booth, CANNABIS: A HISTORY (2005)).

[32] PROCON.ORG, *supra* note 3 (*citing* Jonathan Green, CANNABIS (2002)).

[33] US NATIONAL COMMISSION ON MARIHUANA AND DRUG ABUSE, MARIHUANA, A SIGNAL OF MISUNDERSTANDING, Appendix, Chapter One, Part I (1972).

Cultivation and Use of Cannabis from the Birth of Christ Through the Period of Colonial America

146. An important Roman medical text, *De Materia Medica*, was published in 70 A.D.

147. *De Materia Medica* refers to the Cannabis plant as "produc[ing] a juice" that was "used to treat earache[s] and to suppress sexual longing."[34]

148. By 200 A.D., a Chinese physician, Hua T'o, became the first known surgeon to use Cannabis as an anesthetic during surgeries such as "organ grafts, re-sectioning of intestines, laparotomies (incisions into the loin), and thoracotomies (incisions into the chest)."[35]

149. Ancient civilizations cultivated the Cannabis plant, not merely for medicinal and religious needs, but also to produce industrial hemp for the manufacturing of items such as paper, rope, sails, and linen.

150. China was among the first known civilizations to produce paper from hemp.[36]

151. Between 900 -1200 A.D., the Arab world, Spain, Italy, England, France, and Germany all began replicating China's hemp-paper manufacturing process.[37]

152. The Venetian Republic, the first known Western European nation to industrialize around the production of hemp and the first European country to experience genuine economic progress emerging from the Dark Ages in the late 10th Century A.D., elevated the art of processing

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[34]PROCON.ORG, *supra* note 3 (*citing* Martin Booth, CANNABIS: A HISTORY (2005)).

[35]Ernest L. Abel, THE FIRST TWELVE THOUSAND YEARS 9 (1980), https://cannabis-truth.yolasite.com/resources/Abel.%20marihuana%20the%20first%20twelve%20thousand%20years.pdf; Deitch, *supra* note 1 at 10.

[36]Abel *supra* note 35 at 6-7.

[37]*Id.*

raw hemp into rope, sails and fine linen-like cloth.[38] This reliance upon Cannabis to produce industrial hemp lasted well into the Middle Ages and spread all across Europe.[39]

153. Britain became the "industrial goliath of Western Europe" in large part due to its exploitation of hemp for the manufacture of, among other things, rope and sail-commodities that were essential to its large merchant and naval fleet.[40]

154. In 1533, King Henry VIII imposed a law *mandating* that farmers grow hemp.[41]

155. Three decades after King Henry VIII's law mandating the cultivation of hemp, Queen Elizabeth I increased the mandated quota imposed on farmers growing hemp and increased the penalties for failing to meet the quota.[42]

156. Britain's reliance on Cannabis was not limited to its navy-related needs; Britain's economy had also become largely driven by its production of hemp-based domestic goods such as fabrics and cordage.[43]

157. Britain, during the 16th and 17th Centuries, utilized Cannabis for its medicinal properties as well.[44]

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[38]Deitch, *supra* note 1 at 11.

[39]*Id.*

[40]*Id.* at 11-12.

[41]*Id.* at 12.

[42]*Id.*

[43]*Id.* at 14.

[44]Queen Elizabeth I's doctor prescribed Cannabis to her to relieve her menstrual pain. *History of Cannabis,* BBC NEWS, http://news.bbc.co.uk/2/hi/programmes/panorama/1632726.stm (last visited May 10, 2017).

The Importance of Cannabis to Colonial America

158. By the 17th Century, Britain began colonizing much of the world, including the Americas in particular.

159. Britain's colonization empire was built, in part, upon its cultivation, distribution and use of hemp; however, Britain began to exhaust its geographic agricultural resources to produce adequate amounts of hemp.[45]

160. England's need for hemp was so substantial that, in 1611, after its establishment of the Jamestown Colony in the Americas, England gave direct orders to the colonists to grow hemp for the production of rope, sails, and clothing.[46]

161. In 1619, "[t]he Virginia Company, by decree of King James I ..., ordered every [property-owning] colonist ... to grow 100 [hemp] plants specifically for export."[47]

162. In 1663, the English Parliament passed legislation, granting rights and privileges of natural-born citizens to "any foreigner who settled in England or Wales and established a hemp-related industry within three years," in order to encourage those fleeing persecution in Europe to seek refuge in England.[48]

163. The value of hemp was so well-recognized in the Americas during the colonial period

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[45]Deitch, *supra* note 1 at 12. "The fundamental reason for America's predominately Protestant British heritage is that Britain encouraged its people to colonize America — and they did that primarily because Britain's domestic hemp-based industry, the lifeblood of the economy, desperately needed a stable, reliable, and relatively cheap source of raw hemp." *Id.* at 13.

[46]*Id.* at 14; *Marijuana Timeline*, PBS, http://www.pbs.org/wgbh/pages/frontline/shows/dope/etc/cron.html (last visited May 10, 2017) [hereinafter referred to as "PBS"].

[47]Deitch, *supra* note 1 at 16.

[48]*Id.* at 18.

that it was frequently used as a barter medium, and farmers were permitted to pay part of their taxes using the plant in the colonies of Virginia (1682), Maryland (1683), and Pennsylvania (1706).[49]

164. Britain's colonization of the Americas was intended to provide England with raw materials for its own production of goods.[50] However, a combination of America's first textile and shipbuilding industries created a burgeoning domestic market for local hemp, which led the colonists to retain the vast majority of American raw hemp for their own local production of rope, paper, and cloth, rather than for export to England.[51] These growing American industries, based principally upon hemp, helped pave the way for America's economic independence from England.[52]

The Founding Fathers' Cultivation, Distribution and Sale of Cannabis in All its Variations

165. Among the colonists to benefit economically from the commercial uses of hemp in the Americas were the Founding Fathers -- several of whom derived significant portions of their wealth from the production of hemp or hemp-based goods.[53]

166. The men who cultivated and/or used hemp included, *inter alia*, George Washington, Thomas Jefferson, Benjamin Franklin and one of America's richest colonists, Robert "King" Carter.[54]

167. Indeed, "Jefferson received the first United States patent for his invention of a

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[49] *Id.* at 19.

[50] *Id.* at 20.

[51] *Id.*

[52] *Id.*

[53] *Id.* at 19.

[54] *Id.*

machine that would break hemp (that is, start the process of extracting the fibers)."[55]

168. Benjamin Franklin, America's leading paper producer, became wealthy from the cultivation of hemp, since that was what paper was made from at that time.[56]

169. Hemp was so widely utilized in the late 1700s that early drafts of the Declaration of Independence and the United States Constitution were written on it;[57] many of the supplies and uniforms needed for the Revolutionary War were made from it;[58] and the first United States flag was made from hemp cloth.[59]

170. In fact, all official American flags were made of hemp until 1937, when Congress enacted the Marijuana Tax Act, discussed *infra*.[60]

171. Colonial America's use of the Cannabis plant was by no means restricted to industrial uses. "[C]olonial Americans were aware of the medicinal properties of Cannabis. It was one of the few medicines they had, and they used it as commonly as we [in America] use aspirin today."[61]

172. Some of the Founding Fathers also smoked Cannabis (known at that time as "hemp"

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[55] *Id.* Hemp was viewed so favorably by Thomas Jefferson that he was quoted as saying that "[h]emp is of first necessity to the wealth & protection of the country." Robbie Gennett, *On Role Models and their Bongs*, HUFFINGTON POST, http://www.huffingtonpost.com/robbie-gennet/on-role-models-and-their_b_164387.html (last updated May 25, 2011).

[56] *Id.* Until 1883, 75-90% of all the paper the world produced was made with hemp fiber. *Id.* at 21.

[57] Deitch, *supra* note 1 at 35; Gennett, *supra* note 55.

[58] Deitch, *supra* note 1 at 35.

[59] *Id.*

[60] *Id.*

[61] *Id.* at 25.

or "sweet hemp") for both medicinal and recreational purposes.[62]

173. Entries from George Washington's diary reveal that Washington grew hemp at his plantation, Mount Vernon, for approximately 30 years.[63]

174. George Washington specifically grew Cannabis with high THC concentrations – the very substance that today, would subject him to prosecution and incarceration under the CSA.[64]

175. Thomas Jefferson, who was also a hemp farmer, mentioned in his diary that he smoked hemp as a remedy for migraine headaches.[65]

176. James Madison stated that sweet hemp "gave him insight to create a new and democratic nation."[66]

177. The notion that Cannabis negatively impairs a user's mental or physical abilities is rendered ludicrous by the fact that the visionaries of our democratic system of government were known to use (and admitted using) Cannabis on a regular basis.[67]

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[62] *Id.* at 25-26.

[63] *Id.* at 25.

[64] *Id.* Washington's diary entries read: "'Sowed hemp [presumably Indian hemp] at muddy hole by swamp'(May 12-13, 1765);" "Began to separate the male from female plants at do [sic] — rather too late' (August 7, 1765);" and "Pulling up the (male) hemp. Was too late for the blossom hemp by three weeks or a month' (August 29, 1766)" which all indicate that he was growing the Cannabis away from the hemp for fiber and that he was trying to grow female plants, which produce high THC content. *Id.* (*citing* Washington's Diary Notes, Library of Congress (Volume 33, page 270)); *see also* George Andrews and Simon Vinkenoog, THE BOOK OF GRASS: AN ANTHOLOGY OF INDIAN HEMP 34 (1967).

[65] Deitch, at note 1 *supra* at 25.

[66] Julian Sonny, *The Presidents Who Admitted To Smoking Weed*, ELITE DAILY (Feb. 18 2013), http://elitedaily.com/news/politics/presidents-admitted-smoking-weed/.

[67] Deitch, *supra* note 1 at 27. Aside from George Washington and Thomas Jefferson, whose Cannabis use is discussed *supra*, other American Presidents known to have smoked cannabis include: James Madison, James Monroe, Andrew Jackson, Zachary Taylor, Franklin Pierce, Abraham Lincoln, John F. Kennedy, Jimmy Carter, George W. Bush, Bill Clinton, and Barack Obama. *Id.* at 26-27;

Post-Revolutionary War Use of Cannabis for Non-Medical and Medical Purposes

178. At the conclusion of the Revolutionary War in 1781, the value of industrial hemp plummeted.

179. By 1850, hemp dropped to the third most commonly-grown agricultural crop in America – it had been the first until this time – behind only cotton and tobacco.[68]

180. During the mid-19th Century, due to the introduction of more modern sailing ships, hemp became obsolete for military purposes.[69]

181. At or about the time that hemp became obsolete for military purposes, Cannabis was still a mainstream form of medicine in the West and particularly in the United States.

182. Cannabis was formally introduced into Western medicine in the 1830s by William O'Shaughnessy, a doctor working for the British East India Company.[70]

183. After experimenting with Cannabis on both animals and humans for years, Dr. O'Shaughnessy concluded that Cannabis was an "anti-convulsive remedy of the highest value"[71] and that it was highly effective in treating conditions such as rheumatoid arthritis, spasticity, and pain.[72]

184. Shortly after making the aforementioned and described discoveries, Dr.

Gennett *supra* note 55; Sonny *supra* note 66; Chris Conrad, HEMP: LIFELINE TO THE FUTURE 192 (1994).

[68]Deitch *supra* note 1 at 38.

[69]*Id.*

[70]Martin Booth, CANNABIS: A HISTORY 109-10 (2003); Steve DeAngelo, THE CANNABIS MANIFESTO: A NEW PARADIGM FOR WELLNESS 48 (2015).

[71]*Id.*

[72]DeAngelo, *supra* note 70 at 48.

O'Shaughnessy and a London pharmacist created an extract from Cannabis, later termed "Squire's Extract."

185. Dr. O'Shaughnessy put Squire's Extract on the market as an analgesic.[73]

186. After the development of Squire's Extract, Cannabis made its way further into American medicine as "Tilden's Extract."[74]

187. As early as 1840, studies regarding the medical uses of Cannabis appeared in American medical academic publications.[75]

188. By 1850, the widely-distributed *United States Pharmacopoeia,* a highly selective listing of America's most widely taken medicines, listed Cannabis as a treatment for "neuralgia, tetanus, typhus, cholera, rabies, dysentery, alcoholism, and opiate addiction, anthrax, leprosy, incontinence, snake bite, gout, convulsive-inducing conditions, tonsillitis, insanity ... []excessive menstrual bleeding[], and uterine haemorrhaging."[76]

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[73]Booth, *supra* note 70 at 112. Indeed, Squire's Extract and similar medicines became quite popular among physicians who found that the only other pain killer that was equally effective was opium, which unlike Cannabis-based products, they found to be highly addictive and riddled with adverse side effects. *Id.* at 113.

[74]*Id.* at 112-13.

[75]DeAngelo, *supra* note 70 at 50.

[76]Booth, *supra* note 70 at 113-14; Edward M. Brecher, *et al.*, *The Consumers Union Report on Licit and Illicit Drugs*, CONSUMER REPORTS MAGAZINE (1972), http://www.druglibrary.org/schaffer/Library/studies/cu/cu54.html#Anchor-35882; PROCON.ORG, *supra* note 3. Interestingly, "pharmaceutical supplies of Cannabis indica were entirely imported from India (and occasionally Madagascar), in accordance with the *Pharmacopoeia*, which specified that it come from flowering tops of the Indian variety." PROCON.ORG, *supra* note 3. However, by 1913, the U.S. Department of Agriculture Bureau of Plant Industry determined that it had succeeded in growing Cannabis of equal quality to the Indian variety. *Id.* Thus, when World War I disrupted America's receipt of foreign supplies, the United States was able to be self-sufficient in the production of Cannabis. *Id.* "By 1918, some 60,000 pounds were being produced annually, all from pharmaceutical farms east of the Mississippi." *Id.*

189. Thereafter, the *Pharmacopoeia* included Cannabis, later known as "Extractum Cannabis" or "Extract of Hemp," as a treatment for additional ailments and conditions.[77]

190. In 1860, the Ohio State Medical Society's Committee on Cannabis Indica found Cannabis to be medically effective for ailments including stomach cramps, coughs, venereal disease, post-partum depression, epilepsy, and asthma.[78]

191. By the latter half of the 19th century, "every pharmaceutical company [in America was] ... busy manufacturing [C]annabis-based patent cures [including] E.R. Squibb & Sons [which] marketed their own Chlorodyne and Corn Collodium; Parke, Davis, [which] turned out Utroval, Casadein and a veterinary [C]annabis colic cure; Eli Lilly [which] produced Dr[.] Brown's Sedative Tablets, Neurosine and the One Day Cough Cure, a mixture of [C]annabis and balsam which was a main competitor for another new cough cure released by the German pharmaceutical firm, Bayer."[79]

192. During the latter half of the 19th Century and the beginning of the 20th Century,

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[77] *Id.*; Brecher *supra* 76.

[78] Booth, *supra* note 70 at 114; DeAngelo, *supra* note 70 at 50. There is even evidence that suggests that none other than Abraham Lincoln smoked "sweet hemp." According to Huffingtonpost.com, Lincoln is reported to have written, while serving as President of the United States:

> Two of my favorite things are sitting on my front porch smoking a pipe,
> and smoking a pipe of sweet hemp and playing my Hohner harmonica.

See http://m.huffpost.com/us/entry/164387. There are those who have disputed the authenticity of the evidence underlying this claim, but it is not without significance that the claim has been reported by reputable media sources.

[79] Booth, *supra* note 70 at 116.

Cannabis was also commonly used to treat asthma in the United States.[80] Specifically, pharmaceutical companies began manufacturing cigarettes containing Cannabis ("Legal Cannabis Cigarettes") for the purpose of treating asthma in both England and the United States.[81]

193. Legal Cannabis Cigarettes were so highly regarded as a remedy for asthma in late 19th Century America that the *Boston Medical and Surgical Journal,* in its 1860 publication, advertised Legal Cannabis Cigarettes, which were manufactured by Grimault & Co., as being able to "promptly" cure or relieve "Asthma, Bronchitis, Loss of Voice, and other infections of the respiratory organs."[82]

194. Legal Cannabis Cigarettes continued to be widely advertised and recommended for the treatment of asthma in the United States until the Marijuana Tax Act of 1937 ("MTA") was enacted.

195. As discussed in greater depth *infra*, the MTA effectively outlawed Cannabis in all of its forms.[83]

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[80] *Viewers' Guide to the Botany of Desire: Based on the book by Michael Pollan,* Chapter 3, p. 7, PBS, https://www-tc.pbs.org/thebotanyofdesire/pdf/Botany_of_Desire_Viewers_Guide.pdf (last visited June 29, 2017).

[81] *Id.* Grimault & Co. manufactured "Indian cigarettes" containing Turkish tobacco and Cannabis, which "were promoted as an asthma and cough treatment which would also dull facial pain and aid insomniacs." *Id.*; *see also* Iversen *supra* note 16 at 130; Rowan Robinson, THE GREAT BOOK OF HEMP: THE COMPLETE GUIDE TO THE ENVIRONMENTAL, COMMERCIAL, AND MEDICINAL USES OF THE WORLD'S MOST EXTRAORDINARY PLANT 47 (1996).

[82] Cupples, Upham & Company, *Medical Journal Advertising Sheet*, 83 B. MED. & SURGICAL J. 260 (1870-1871).

[83] DeAngelo, *supra* note 70 at 52.

196. Nineteenth Century Americans utilized the plant for social purposes as well.[84] A "Cannabis fad" took place in the mid-1800s among intellectuals, and the open use of hashish (*i.e.*, compressed Cannabis containing a very high THC content) continued into the 20th Century.[85]

The Beginning of Marijuana Regulation and Prohibition in America

197. The Food and Drugs Act ("FDA") was enacted in 1906, requiring the labeling of over-the-counter drugs, including, *inter alia*, Cannabis.[86]

198. When the Mexican Revolution resulted in a wave of Mexican immigrants to America's Southern border States in 1910, articles in the *New York Sun, Boston Daily Globe* and other papers decried the "evils of ganjah smoking" and suggested that some immigrants used it "to key themselves up to the point of killing."[87]

199. The vast majority of stories urging the public to fear the effects of "marijuana" appeared in newspapers published by William Randolph Hearst, a man who had financial interests in the lumber and paper industries, and therefore, saw the hemp industry as an obstacle to his path to economic success.[88]

200. As a result of the hysteria created by the aforementioned and described horror stories

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[84]*See* Brecher *et al. supra* note 76, PBS *supra* note 46; The Associated Press, *As pot goes proper, a history of weed*, NY DAILY NEWS (Dec. 6, 2012), http://www.nydailynews.com/news/national/pot-proper-history-weed-article-1.1214613.

[85]Brecher, *et al.*, *supra* note 79; PBS *supra* note 46; The Associated Press *supra* note 84.

[86]PBS *supra* note 46; The Associated Press *supra* note 84; PROCON.ORG *supra* note 3.

[87]*Id.*

[88]PROCON.ORG *supra* note 3 (*citing* Mitchell Earleywine, PhD, UNDERSTANDING MARIJUANA: A NEW LOOK AT THE SCIENTIFIC EVIDENCE (2005). "William Randolph Hearst was an up-and-coming newspaper tycoon, owning twenty-eight newspapers by the mid-1920s ... Hearst then dropped the words Cannabis and hemp from his newspapers and began a propaganda campaign against 'marijuana,' (following in Anslinger's footsteps)." *Id.* (citation omitted).

published by pro-paper entrepreneurs, Cannabis became associated with Mexican immigrants, and because there was tremendous fear and prejudice with respect to these newcomers, Cannabis likewise became vilified across the country.[89]

201. The aforementioned and described xenophobia precipitated anti-Cannabis legislation across America. States across the country began outlawing Cannabis.[90]

202. By 1931, 29 states had outlawed Cannabis.[91]

203. This domino effect was largely triggered by the spread, in the 1890s, of false, racist and bigoted horror stories regarding alleged marijuana-induced violence.[92]

204. The aforementioned and described xenophobia was exacerbated by job losses associated with the Great Depression. During that time, "massive unemployment increased public resentment and fear of Mexican immigrants, escalating public and governmental concern [regarding] the [supposed] problem [associated with] marijuana."[93]

205. Harry J. Anslinger ("Anslinger"), the first U.S. Commissioner of the Federal Bureau

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[89]PBS *supra* note 46. "The prejudices and fears that greeted these peasant immigrants also extended to their traditional means of intoxication: smoking marijuana. Police officers in Texas claimed that marijuana incited violent crimes, aroused a 'lust for blood,' and gave its users 'superhuman strength.' Rumors spread that Mexicans were distributing this 'killer weed' to unsuspecting American schoolchildren .... In New Orleans newspaper articles associated the drug with African-Americans, jazz musicians, prostitutes, and underworld whites. 'The Marijuana Menace,' as sketched by anti-drug campaigners, was personified by inferior races and social deviants." Eric Schlosser, *Reefer Madness*, THE ATLANTIC (Aug. 1994), https://www.theatlantic.com/magazine/archive/1994/08/reefer-madness/303476/

[90]*See* The Associated Press *supra* note 84; PROCON.ORG *supra* note 3.

[91]PBS *supra* note 46.

[92]*See* The Associated Press *supra* note 84.

[93]PBS *supra* note 46.

of Narcotics, initially doubted the seriousness of the so-called "marijuana"[94] problem, but after the repeal of alcohol Prohibition in 1933, he began to push vigorously for the nationwide prohibition of Cannabis, ostensibly to create new work for himself.[95]

206. Anslinger then publicly claimed that the use of "evil weed" led to murder, sex crimes, and mental insanity.[96]

207. Anslinger authored sensational articles falsely associating Cannabis with violence and death, with titles such as "Marijuana: Assassin of Youth."[97]

208. Anslinger also made a series of racist statements pertaining to African Americans and Cannabis, including, *inter alia*:

(a) "Reefer makes darkies think they're as good as white men;"

(b) "Marihuana influences Negroes to look at white people in the eye, step on white men's shadows, and look at a white women [sic] twice;"

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[94]The term "'[M]arijuana' came into popular usage in the U.S. in the early 20th century because anti-cannabis factions wanted to underscore the drug's 'Mexican-ness.' It was meant to play off of anti-immigrant sentiments." Matt Thompson, *The Mysterious History Of 'Marijuana'*, NPR (July 22, 2013), http://www.npr.org/sections/codeswitch/2013/07/14/201981025/the-mysterious-history-of-marijuana.

[95]The Associated Press, *supra* note 84; Schlosser, *supra* note 89. "Harry [Anslinger] was aware of the weakness of his new position. A war on narcotics alone - cocaine and heroin, outlawed in 1914 - wasn't enough . . . they were used only by a tiny minority, and you couldn't keep an entire department alive on such small crumbs. He needed more." Cydney Adams, *The man behind the marijuana ban for all the wrong reasons*, CBS NEWS (Nov. 17, 2016), http://www.cbsnews.com/news/harry-anslinger-the-man-behind-the-marijuana-ban/.

[96] Schlosser, *supra* note 89. Much of his rhetoric was blatantly racist in nature. "He claimed that black people and Latinos were the primary users of marijuana, and it made them forget their place in the fabric of American society. He even went so far as to argue that jazz musicians were creating 'Satanic' music all thanks to the influence of pot . . . [and that] cannabis promotes interracial mixing, interracial relationships." Adams, *supra* note 95.

[97]*Id.* In this article, he said: "No one knows, when he places a marijuana cigarette to his lips, whether he will become a philosopher, a joyous reveler in a musical heaven, a mad insensate, a calm philosopher, or a murderer." *The Associated Press*, *supra* note 84.

(c) "Colored students at the University of Minnesota partying with (white) female students, smoking [marijuana] and getting their sympathy with stories of racial persecution. Result: pregnancy;"

(d) "There are 100,000 total marijuana smokers in the US, and most are Negroes, Hispanics, Filipinos and entertainers. Their Satanic music, jazz and swing, result from marijuana usage. This marijuana causes white women to seek sexual relations with Negroes, entertainers and any others;"

(e) "Marijuana is the most violence causing drug in the history of mankind. Most marijuana smokers are Negroes, Hispanics, Filipinos and entertainers;" and

(f) "The primary reason to outlaw marijuana is its effect on the degenerate races."[98]

209. The hysteria that followed was captured in propaganda films such as "Reefer Madness," which purported to show young adults turning to violence and becoming insane after smoking marijuana.[99]

210. This Cannabis-related propaganda ultimately resulted in the passage of the MTA.[100]

211. The MTA effectively outlawed Cannabis by requiring physicians and pharmacists to register and report use of the plant, as well as pay an excise tax for authorized medical and industrial uses.[101]

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[98] *AZQuotes*. Harry J. Anslinger Quotes. http://www.azquotes.com/author/23159-Harry_J_Anslinger

[99] *Id.*; PBS, *supra* note 46.

[100] PBS, *supra* note 46; Thompson, *supra* note 94.

[101] PBS, *supra* note 46. "The Federal law ... maintained the right to use marijuana for medicinal purposes but required physicians and pharmacists who prescribed or dispensed marijuana to register with federal authorities and pay an annual tax or license fee ... After the passage of the Act, prescriptions of marijuana declined ..." PROCON.ORG *supra* note 3 (*citing* Rosalie Liccardo Pacula, PhD, *State Medical Marijuana Laws: Understanding the Laws and Their Limitations*, JOURNAL OF PUBLIC HEALTH POLICY (2002).

212. The MTA was passed even though members of Congress neither understood the chemical properties of Cannabis, nor had they even read the bill itself.[102]

213. Worse, Congress enacted the MTA despite failing to garner support from the medical community for the notion that marijuana was a dangerous substance.[103]

214. During Congressional hearings regarding the proposed MTA, Dr. William Woodward testified:

> There is nothing in the medicinal use of Cannabis that has any relation to Cannabis addiction. I use the word "Cannabis" in preference to the word "marihuana," because Cannabis is the correct term for describing the plant and its products. The term "marihuana" is a mongrel word that has crept into this country over the Mexican border and has no general meaning, except as it relates to the use of Cannabis preparations for smoking ... To say, however, as has been proposed here, that the use of the drug should be prevented by a prohibitive tax, loses sight of the fact that future investigation may show that there are substantial medical uses for Cannabis.[104]

215. Despite enactment of the MTA, the United States Department of Agriculture ("DOA") and the New York Academy of Medicine ("NYAM") both recognized the beneficial uses

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[102]The following exchange between members of Congress several days after the MTA's passage provides some insight into this ignorance: "Bertrand Snell of New York, confessed, "I do not know anything about the bill." The Democratic majority leader, Sam Rayburn of Texas, educated him. "It has something to do with something that is called marihuana," Rayburn said. "I believe it is a narcotic of some kind." Jacob Sullum, *Marijuana Prohibition Is Unscientific, Unconstitutional And Unjust*, FORBES (May 14, 2015), https://www.forbes.com/sites/jacobsullum/2015/05/14/marijuana-prohibition-is-unscientific-unconstitutional-and-unjust/#3d9bbddf6cf0

[103]"[T]here was little scientific evidence that supported Anslinger's claims. He contacted 30 scientists...and 29 told him cannabis was not a dangerous drug. But it was the theory of the single [so-called] ['']expert['] who agreed with him that he presented to the public — cannabis was an evil that should be banned — and the press ran with this sensationalized version." Adams, *supra* note 95.

[104]William C. Woodward, MD, Statement to the U.S. House of Representatives Committee on Ways and Means (May 4, 1937).

of Cannabis.[105]

216. In 1942, after America lost its access to Asian fiber supplies during World War II, the DOA released a film entitled "Hemp For Victory" (Exh. 2), which encouraged farmers to grow hemp, praising its uses for production of parachutes and rope to support the war effort.[106]

217. In 1944, NYAM issued the "LaGuardia Report," concluding that, "use of marijuana did not induce violence, insanity or sex crimes, or lead to addiction or other drug use."[107]

218. Despite the lack of evidence that Cannabis is or ever was dangerous, and notwithstanding the DOA's insistence that American farmers continue growing hemp for war supplies, Anslinger continued his anti-Cannabis campaign throughout the 1940s and 1950s.[108]

219. As heroin addiction in America grew worse during the 1950s, Congress responded by increasing penalties on Cannabis-related offenses,[109] in large measure because of Anslinger's bogus claim that "marijuana" was a "gateway drug" that would eventually lead its users to heroin.[110]

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[105]The Associated Press, *supra* note 84.

[106]*Id.*; Gennett *supra* note 55.

[107] The LaGuardia Report found that: "The practice of smoking marihuana does not lead to addiction in the medical sense of the word ... The use of marihuana does not lead to morphine or heroin or cocaine addiction and no effort is made to create a market for these narcotics by stimulating the practice of marihuana smoking... Marihuana is not the determining factor in the commission of major crimes... The publicity concerning the catastrophic effects of marihuana smoking in New York City is unfounded." PROCON.ORG *supra* note 3 (*citing* LaGuardia Committee Report on Marihuana, THE MARIHUANA PROBLEM IN THE CITY OF NEW YORK (1944)).

[108]The Associated Press, *supra* note 84.

[109]Congress included "marijuana" in the Narcotics Control Act of 1956, providing stricter mandatory sentences for marijuana-related offenses. PROCON.ORG *supra* note 3; PBS *supra* note 46. Under the statute, "[a] first-offense marijuana possession carrie[d] a minimum sentence of 2-10 years with a fine of up to $20,000." PROCON.ORG *supra* note 3; PBS *supra* note 34.

[110]The Associated Press, *supra* note 84.

220. The 1960's saw a cultural shift in the way Americans viewed Cannabis. "Use of the drug became widespread among members of the white upper middle class."[111]

221. Reports requested by Presidents Kennedy and Johnson concluded that Cannabis was not a "gateway drug" nor did its use induce violence.[112]

222. In 1969, the United States Supreme Court, in *Leary v. United States*, 395 U.S. 6 (1969) struck down the MTA, ruling that it unconstitutionally violated the Fifth Amendment right against self-incrimination.[113]

II. HOW THE NIXON ADMINISTRATION'S BIGOTRY AND HOSTILITY TOWARD WAR PROTESTERS CONTRIBUTED TO ENACTMENT OF THE CSA

Enactment of the CSA and the Mis-Classification of Cannabis as a Schedule I Drug

223. After the Supreme Court decision in *Leary*, the Nixon Administration urged Congress to enact legislation that would classify drugs under separate schedules according to their medical utility, dangerousness, and addictive potential.[114] Congress heeded the President's request by passing the CSA on October 27, 1970.[115]

224. At the request of the Nixon Administration and upon the *temporary* recommendation

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[111] *Id.*; PBS, *supra* note 46.

[112] PBS, *supra* note 46.

[113] *Leary v. United States*, 395 U.S. 6 (1969); Yasmin Tayag, *Timothy Leary's Arrest For Marijuana Possession Still Matters 50 Years Later*, INVERSE (Mar. 13, 2016), https://www.inverse.com/article/12782-timothy-leary-s-arrest-for-marijuana-possession-still-matters-50-years-later.

[114] Kevin A. Sabe, *The "Local" Matters: A Brief History of the Tension Between Federal Drug Laws and State and Local Policy*, J. GLOBAL DRUG POL'Y. & PRAC. 4 (2006-2010), http://www.globaldrugpolicy.org/Issues/Vol%201%20Issue%204/The%20Local%20Matters.pdf.

[115] *The Controlled Substances Act*, Pub. L. No. 91-513, 84 Stat. 1242, https://www.gpo.gov/fdsys/pkg/STATUTE-84/pdf/STATUTE-84-Pg1236.pdf.

of the Department of Health, Education, and Welfare ("HEW"),[116] Congress placed "Marihuana"[117] under Schedule I, thereby "subject[ing Cannabis] to the most stringent controls under the bill."[118]

225. While "[t]here is almost total agreement among competent scientists and physicians that marihuana is not a narcotic drug like heroin or morphine ... [and to] equate its risks ... with the risks inherent in the use of hard narcotics is neither medically or legally defensible[,]"[119] Congress nonetheless listed Cannabis under the same schedule as opiates and opium derivatives.[120]

226. The placement of Cannabis under Schedule I was intended by Congress to be temporary and subject to further research.[121]

227. The aforementioned and described "further research" was to be conducted by the National Commission on Marihuana and Drug Abuse -- a commission established by the CSA for the purpose of studying, *inter alia,* Cannabis's pharmacological makeup and the relationship (if any)

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[116]It should be noted that HEW recommended that Cannabis remain under Schedule I only "until the completion of certain studies now underway to resolve this issue." H.R. Rep. 91-1444 at 2111 (1970). However, despite HEW's temporary recommendation, President Nixon and his Administration subsequently ignored the CSA-required report (discussed *infra*) which (i) explored the pharmacological effects of Cannabis and (ii) recommended decriminalization of the personal use and possession of Cannabis.

[117]Under the CSA, "The term 'marihuana' means all parts of the plant Cannabis sativa L., whether growing or not; the seeds thereof; the resin extracted from any part of such plant; and every compound, manufacture, salt, derivative, mixture, or preparation of such plant, its seeds or resin." Pub. L. No. 91-513, 84 Stat. 1244.

[118]H.R. Rep. 91-1444 at 2063 (1970).

[119]*Drug Abuse Control Amendment - 1970: Hearings Before the Subcomm. on Public Health and Welfare*, 91 Cong. 179 (1970) (Statement of Dr. Stanley F. Yolles).

[120]Pub. L. No. 91-513, 84 Stat. 1248-49.

[121]*See* H.R. Rep. 91-1444 at 2111 (1970); COMMON SENSE FOR DRUG POLICY, NIXON TAPES SHOW ROOTS OF MARIJUANA PROHIBITION: MISINFORMATION, CULTURE WARS AND PREJUDICE 1 (2002) [hereinafter "CSDP"].

of its use to the use of other drugs (Shafer Commission, defined hereafter).[122]

228. Upon completion of its research, the Shafer Commission was required under the CSA to submit a comprehensive report to the President and to Congress within one year after it received funding to conduct its research.[123]

229. The aforementioned and described report was to consist of the Shafer Commission's findings as well as its recommendations and proposals for legislation and administrative actions with respect to Cannabis.[124]

230. President Nixon thereafter appointed Raymond Shafer (the former "law and order" Governor of Pennsylvania) to Chair the National Commission on Marihuana and Drug Abuse which consisted of Shafer and 12 other individuals, including four medical doctors and four members of Congress ("Shafer Commission").[125]

The Shafer Commission, Created Pursuant to the CSA, Recommends De-Scheduling Cannabis for Personal Use

231. The Shafer Commission conducted "more than 50 projects, ranging from a study of the effects of marihuana on man to a field survey of enforcement of the marihuana laws in six metropolitan jurisdictions."[126]

232. Among the Shafer Commission's findings were that:

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[122]Pub. L. No. 91-513, 84 Stat. 1281.

[123]*Id.*

[124]*Id.*

[125]NATIONAL COMMISSION ON MARIHUANA AND DRUG ABUSE, MARIHUANA: A SIGNAL OF MISUNDERSTANDING, at iv (1972).

[126]*Id.* at 2.

(a) "No significant physical, biochemical, or mental abnormalities could be attributed solely to ... marihuana smoking."[127]

(b) "No verification is found of a causal relationship between marihuana use and subsequent heroin use."[128]

(c) "[T]he weight of the evidence is that marihuana does not cause violent or aggressive behavior, if anything, marihuana serves to inhibit the expression of such behavior."[129]

(d) "Neither the marihuana user nor the drug itself can be said to constitute a danger to public safety."[130]

(e) "Most users, young and old, demonstrate an average or above-average degree of social functioning, academic achievement, and job performance."[131]

(f) "Marihuana's relative potential for harm to the vast majority of individual users and its actual impact on society does not justify a social policy designed to seek out and firmly punish those who use it."[132]

(g) Despite the media's portrayal of Vietnam War protesters as being violent while high on Cannabis, the vast majority of those protesters were peaceful and the few who were violent were not under the influence of Cannabis.[133]

(h) "The actual and potential harm of use of the drug is not great enough to justify intrusion by the criminal law into private behavior, a step which our society takes only with the greatest reluctance."[134]

(i) "[A]ll policy-makers have a responsibility to consider our constitutional heritage

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[127]Id. at 61.

[128]*Id.* at 88.

[129]*Id.* at 73.

[130]*Id.* at 78.

[131]*Id.* at 96.

[132]*Id.* at 130.

[133]*Id.* at 99-100.

[134]*Id.* at 140.

> when framing public policy ... we are necessarily influenced by the high place traditionally occupied by the value of privacy in our constitutional scheme. Accordingly, we believe that government must show a compelling reason to justify invasion of the home in order to prevent personal use of marihuana. We find little in marihuana's effects or in its social impact to support such a determination."[135]

233. The Shafer Commission recommended that possession of Cannabis for personal use be de-criminalized on both the State and Federal levels.[136]

234. The Nixon Administration rejected the findings and recommendations by the Shafer Commission.

235. The Nixon Administration refused to accept the findings and recommendations by the Shafer Commission because they were not consistent with: (i) the preordained outcome Nixon demanded; and (ii) the Administration's agenda with respect to Cannabis, which was focused on racism and suppression of political and civil rights.

236. John Ehrlichman, who served as the Nixon Administration's Domestic Policy Chief and was one of the President's closest political advisors, confirmed that the enactment and enforcement of the CSA criminalizing Cannabis was directed toward political suppression and racial discrimination. In this regard, Mr. Ehrlichman said:

> You want to know what this was really all about? The Nixon campaign in 1968, and the Nixon White House after that, had two enemies: the antiwar left and black people. You understand what I'm saying? We knew we couldn't make it illegal to be either against the war or black, but by getting the public to associate the hippies with marijuana and blacks with heroin and then criminalizing both heavily, we could disrupt those communities. We could arrest their leaders, raid their homes, break up their meetings, and vilify them night after night on the evening news. Did we know we were lying about the

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[135] *Id.* at 142.

[136] *Id.* at 151.

drugs? Of course we did.

N.Y. Daily News, A. Edelman, *Nixon Aide: "War on Drugs" was tool to target "black people"* (March 23, 2016) (Exh. 3); *see also* Harper's Magazine, D. Baum, *Legalize it All: How to Win the War on Drugs* (April 2016) (Exh. 4) ("Nixon's invention of the war on drugs as a political tool was cynical ...").

237. Thus, the findings and recommendations of the Shafer Commission were irrelevant to Congress and the Nixon Administration, insofar as the purpose of the CSA was never to "protect" people from the supposed "scourge" of Cannabis use, but rather to harass, intimidate, prosecute and ultimately incarcerate those whom members of the Nixon Administration irrationally regarded as enemies.

238. The irrationality of the Nixon Administration's support for enactment of the CSA and rejection of the Shafer Commission's findings and recommendations is further revealed by tape recordings made by the former President of his Oval Office conversations.

239. Although ostensibly established for the purpose of properly educating lawmakers about Cannabis with respect to the issue of scheduling or de-criminalization,[137] the Shafer Commission was resigned by the Nixon Administration to the status of a bureaucratic, kangaroo court.

240. Nixon repeatedly made clear that the real purpose of the Shafer Commission was to justify what he had already decided to do with respect to Cannabis, ultimately linking support for its de-criminalization to Jews, whom Nixon irrationally claimed were mostly psychiatrists:

NIXON: Now, this is one thing I want. I want a Goddamn

[137]H.R. Rep. 91-1444 at 2111 (1970); CSDP, *supra* note 121 at 1.

> strong statement on marijuana. Can I get that out of this sonofabitching, uh Domestic Council?
>
> HALDERMAN: Sure.
>
> NIXON: I mean, one on marijuana that just tears the ass out of them. I see another thing in the news summary this morning about it. You know, it's a funny thing – every one of the bastards that are out for legalizing marijuana is Jewish. What the Christ is the matter with the Jews, Bob? What's the matter with them? I suppose it's because most of them are psychiatrists, you know ...[138]

241. In September 1971, before his Commission's report was issued, Raymond Shafer visited the White House to speak with Nixon about a morale problem he was experiencing on the Commission – specifically, that the members of the Shafer Commission were concerned that it was "put together by a President to merely tow the party line ..."[139]

242. In response, Nixon made absolutely clear that he did not care what the Shafer Commission's conclusions were.[140]

243. During Shafer's meeting with Nixon, the latter proceeded to direct the Shafer Commission to ignore the obvious differences between Cannabis, and heroin and other dangerous, addictive drugs:

> NIXON: I think there's a need to come out with a report that is totally, uh, uh, oblivious to some obvious, uh, differences between marijuana and other drugs, other dangerous drugs, there are differences.[141]

244. When Shafer tried to assure Nixon that the Commission would not go "off half-

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[138]Tape Recording, May 26, 1971 (Conversation 505-4).

[139]Tape Recording, September 9, 1971 (Oval Office Conversation No. 568-4).

[140]*Id.*

[141]*Id.*

cocked," ostensibly promising to conclude that Cannabis should remain a Schedule I drug, along with drugs that actually were (and are) dangerous, Nixon responded tersely, "Keep your Commission in line!"[142]

245. Nixon threatened Shafer with public recriminations, asserting that conclusions contrary to Nixon's demands "would make your Commission just look as bad as hell."[143]

246. Nixon's threats were not limited to Shafer and his Commission. When Nixon became aware that Bertram Brown, then-director of the National Institute of Mental Health, called for de-criminalization of Cannabis, Nixon responded:

> Now, did you see this statement by [Bertram] Brown, the National Institute of Mental Health, this morning? Uh, he should be out. I mean today, today. If he's a presidential appointee, [what we should] do is fire the son of bitch and I mean today! Get the son of a bitch out of here.[144]

247. In that same conversation, Nixon also tied protesters to use of Cannabis:

> ... these, uh, radical demonstrators that were here the last, ... two weeks ago. They're all on drugs. Oh yeah, horrible, it's just a – when, I say "all," virtually all. And uh, uh, just raising hell.[145]

248. The so-called "radical demonstrators" to whom Nixon was referring were those opposed to the Vietnam War, which, at the time, deeply divided the Country.

249. When the Shafer Commission issued its findings and recommendations, which controverted the Nixon Administration's preordained conclusions and agenda against African

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[142] *Id.*

[143] *Id.*

[144] Tape Recording, May 18, 1971 (Oval Office Conversation No. 500-17).

[145] *Id.*

Americans and war protesters, Nixon responded, predictably:

> Um, I met with Mr. Shafer, uh, I've read the report, uh, eh, it is a report that deserves consideration and will receive it. However, as to one aspect of the report I am in disagreement. I was before I read it, and reading it did not change my mind. Uh, I, uh, oppose the legalization of marijuana, and that includes the sale, its possession and its use.[146]

250. If incarceration of antiwar protestors and African Americans constitutes the measure of the War on Drugs' success, the Nixon Administration's efforts must be characterized as "successful." According to the *New York Daily News*, "by 1973, about 300,000 people were arrested under the law [the CSA] – the majority of whom were African American" (Exh. 3).

251. The Nixon Administration's anti-Cannabis policies thus were manifested in two distinct, but related, efforts – to usher the CSA through Congress and then to use the law as a tool to incarcerate, harass and undermine those whom members of the Nixon Administration considered hostile to their interests.

252. Those who opposed Nixon's agendas were cast aside, vilified or ignored. The Shafer Commission's conclusions which conflicted with Nixon's plans were treated similarly.

III. THE EVIDENCE CONFIRMS THAT, DESPITE THE LANGUAGE OF THE CSA AND NIXON'S ENFORCEMENT OF IT, THE FEDERAL GOVERNMENT DOES NOT AND HAS NEVER BELIEVED THAT CANNABIS MEETS THE REQUIREMENTS OF A SCHEDULE I DRUG

253. Under the CSA, drugs are classified by five Schedules, with Schedule I drugs identified as the most dangerous to human life, and Schedule V drugs regarded as the most benign.

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[146]March 24, 1972 Press Conference (Oval Office Conversation No. 693-01).

254. Cannabis is classified as a Schedule I drug under the CSA.[147]

255. To meet the requirements of a Schedule I drug under the CSA, the following elements must all be met:

1. the drug has a high potential for abuse;

2. the drug has "no currently accepted medical use in the United States;" and

3. there is a lack of accepted safety for use of the drug even under medical supervision.[148]

(the Three Schedule I Requirements, previously defined).

256. The Federal Government does not genuinely believe that Cannabis meets the Three Schedule I Requirements.

257. The Federal Government cannot genuinely believe that Cannabis meets the Three Schedule I Requirements.

258. Upon information and belief, the Federal Government has never believed that Cannabis meets the Three Schedule I Requirements.

The Federal Government Has Authorized Dispensing Medical Cannabis to Patients for More than 30 Years

259. In or about 1978, the United States began subsidizing a program pursuant to which medical patients were provided with Cannabis, directly or indirectly, by the Federal Government.

260. The aforesaid and described program, which exists to this day, is known as the Investigational New Drug Program ("IND Program").

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[147]21 C.F.R. 1308.11(d)(23) and (31) (wrongly listed as a hallucinogenic drug, along with heroin, mescaline and LSD).

[148]Pub. L. No. 91-513, 84 Stat. 1247.

261. The first patient to receive Cannabis under the auspices of the IND Program was Robert Randall.

262. Upon information and belief, Mr. Randall used medical Cannabis provided under the auspices of the IND Program to treat his Glaucoma.

263. Thereafter, at least 12 other individuals participated in the IND Program and received Cannabis for treatment of an assortment of diseases and conditions.

264. Upon information and belief, the Federal Government, as of the date of this filing, continues to sponsor and/or provide medical Cannabis to patients pursuant to the IND Program.

265. Upon information and belief, the number of patients currently receiving medical Cannabis through the IND Program is eight.

266. Pursuant to the IND Program, the Federal Government has authorized the University of Mississippi to harvest acres and acres of Cannabis.

267. Upon information and belief, the acres of land harvested by University of Mississippi produce 50,000 to 60,000 Cannabis cigarettes *per year*.

268. Upon information and belief, none of the patients who have participated in the IND Program have suffered any serious side effects from their Cannabis treatments.

269. Upon information and belief, none of the patients who have participated in the IND Program have suffered any harm from their Cannabis treatments.

270. Upon information and belief, no Federal Agencies have ever collected any scientific data from the IND Program reflecting serious adverse impacts caused by Cannabis.

271. Upon information and belief, the Federal Government does not have any information suggesting that any of the patients who have participated in the IND Program have ever suffered any

harm or serious side effects from their Cannabis treatments.

272. The Missoula Chronic Clinical Cannabis Use Study evaluated the long-term effects of heavy Cannabis use by four patients in the IND Program ("Missoula Study").

273. The Missoula Study demonstrated clinical effectiveness in these patients in treating Glaucoma, chronic musculoskeletal pain, spasm and nausea, and spasticity of multiple sclerosis.

274. All four patients who were the subject of the Missoula Study were stable with respect to their chronic conditions.

275. Upon information and belief, none of the four patients who were the subject of the Missoula Study suffered any serious side effects from their Cannabis treatments.

276. Upon information and belief, none of the four patients who were the subject of the Missoula Study suffered any harm from their Cannabis treatments.

277. Upon information and belief, the Federal Government does not have any information suggesting that any of the four patients who were the subject of the Missoula Study suffered any harm or serious side effects from their Cannabis treatments.

278. Upon information and belief, all four patients who were the subject of the Missoula Study were taking fewer standard pharmaceuticals than before they began treatment with medical Cannabis.[149]

279. The Missoula Study is one of thousands of studies which have confirmed that Cannabis provides measurable health benefits while resulting in minimal or no negative side effects.

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[149]http://~cannabis-med.org/jcant/russo chronic_use.pdf.

United States Administrative Law Judge, Francis L. Young, Concludes that Cannabis Safely Provides Medical Benefits to Patients with an Assortment of Illnesses Without Serious Side Effects

280. In 1988, Administrative Law Judge Francis Young, *In the Matter of Marijuana Rescheduling*, DEA Docket No. 86-22, issued a determination arising from a petition by the National Organization for the Reform of Marijuana Laws ("NORML") to reschedule Cannabis ("ALJ Decision") (Exh. 5).

281. In determining whether to recommend rescheduling Cannabis under the CSA, Judge Young focused on two issues – (i) whether Cannabis "has a currently accepted medical use in treatment in the United States, or a currently accepted medical use with severe restrictions;" and (ii) "whether there is a lack of accepted safety for use of the marijuana plant, even under medical supervision" (*Id.* at 6).

282. The two issues analyzed by Judge Young focus on the latter two of the Three Schedule I Requirements necessary under the CSA to classify a drug as a "Schedule I" substance (*Id.* at 8; *see also* Pub. L. No. 91-513, 84 Stat. 1247).

283. If a drug has no medically-accepted use and cannot be safely used or tested even under medical supervision, it may qualify as a Schedule I drug; if the drug does not meet either of these Schedule I Requirements, it cannot be classified as a Schedule I drug (*Id.*).

284. In resolving these issues, Judge Young made a series of "findings of fact" (ALJ Decision at 10-26, 35-38, 40-54, 56-64, Exh. 5)

285. The aforesaid and described findings of fact by Judge Young were "uncontroverted" by the parties (ALJ Decision at 10, 54, 56, Exh. 5).

286. One of the aforesaid and described parties to the proceeding over which Judge Young

presided was defendant DEA (ALJ Decision at 10).

287. Judge Young thereafter devoted the next 15 pages of the ALJ Decision to evidence adduced during the hearing process, confirming that Cannabis constitutes a recognized, well-accepted and superior method of treatment of cancer patients suffering from nausea, emesis and wasting (*Id.* at 10-25).

288. As part of his analysis, Judge Young cited to studies, patient histories, State legislative findings and other evidence of the medical efficacy of Cannabis (*Id.* at 10-26).

289. The DEA did not attempt to dispute the facts upon which the aforesaid analysis by Judge Young was based (*Id.* at 26).

290. Judge Young concluded, based upon "overwhelming" evidence, that:

> marijuana has a currently accepted medical use in treatment in the United States for nausea and vomiting resulting from chemotheraphy treatments in some cancer patients. To conclude otherwise, on this record, would be unreasonable, arbitrary and capricious (*Id.* at 34).

291. Judge Young proceeded to analyze the record with respect to the use of medical Cannabis for the treatment of multiple sclerosis, spasticity and hyperparathyroidism (*Id.* at 40-54).

292. After reviewing the extensive record, Judge Young concluded:

> [M]arijuana has a currently accepted medical use in treatment in the United States for spasticity resulting from multiple sclerosis and other causes. It would be unreasonable, arbitrary and capricious to find otherwise (*Id.* at 54).

293. The DEA did not attempt to dispute the facts comprising the "extensive record" upon which Judge Young relied in reaching the aforesaid and described conclusion pertaining to the medical efficacy of Cannabis for the treatment of spasticity resulting from multiple sclerosis and other causes.

294. Judge Young similarly concluded that medical Cannabis provides therapeutic benefits to those suffering from hyperparathyroidism (*Id.* at 54-55).

295. The DEA did not attempt to dispute the facts comprising the "extensive record" upon which Judge Young relied in reaching the aforesaid and described conclusion pertaining to the medical efficacy of Cannabis for the treatment of hyperparathyroidism.

296. After concluding that Cannabis does, in fact, have currently-accepted medical uses, Judge Young turned to the issue of whether it may be used or tested safely under medical supervision -- the third of the Three Schedule I Requirements (*Id.* at 56).

297. After reviewing the uncontroverted evidence, Judge Young ruled in a series of enumerated paragraphs that, not only is Cannabis *not* dangerous; it is extraordinarily safe. In this regard, Judge Young ruled:

> *4. Nearly all medicines have toxic, potentially lethal effects. But marijuana is not such a substance. There is no record in the extensive medical literature describing a proven, documented cannabis-induced fatality.*
>
> *5. This is a remarkable statement. First, the record on marijuana encompasses 5,000 years of human experience. Second, marijuana is now used daily by enormous numbers of people throughout the world. Estimates suggest that from 20 million to 50 million Americans routinely, albeit illegally, smoke marijuana without the benefit of direct medical supervision. Yet, despite this long history of use and the extraordinarily high numbers of social smokers, there are simply no credible medical reports to suggest that consuming marijuana has caused a single death.*
>
> *6. By contrast, aspirin, a commonly-used, over-the-counter medicine, causes hundreds of deaths each year.*

Id. at 56-57 (emphasis added).

298. Judge Young found that, to induce a lethal response to Cannabis, the patient would

be required to consume approximately 1,500 pounds of marijuana within 15 minutes -- an amount and time frame which, as a practical matter, are completely unrealistic (*Id.* at 57).

299. Judge Young thereafter concluded that:

> *In strict medical terms, marijuana is far safer than many foods we commonly consume* (*Id.* at 58) (emphasis added).

300. If these findings were not sufficiently damning to the CSA's mis-classification of Cannabis as a Schedule I drug, Judge Young made it even more clear when he wrote:

> *Marijuana, in its natural form, is one of the safest therapeutically active substances known to man. By any measure of rational analysis, marijuana can be safely used within a supervised routine of medical care.*

Id. at 58-59 (emphasis added).

301. Judge Young thereafter recommended that Cannabis be removed from Schedule I of the CSA (*Id.* at 66).

302. The DEA did not accept Judge Young's findings or recommendation.

303. The ALJ's Decision was issued years before 29 States and the District of Columbia legalized Cannabis for medical use; before eight States plus the District of Columbia legalized Cannabis for recreational use; before two U.S. Territories approved the use of whole-plant Cannabis.

States Begin to Legalize Cannabis

304. In 1996, California became the first State to legalize Cannabis for medical use.

305. Oregon, Alaska and Washington (State) followed soon thereafter and also legalized Cannabis for medical use.

306. Today, the following States have legalized Cannabis for medical and/or recreational use:

- California
- Oregon
- Alaska
- Washington (State)
- Maine
- Hawaii
- Colorado
- Nevada
- Montana
- Vermont
- New Mexico
- Michigan
- New Jersey
- Arizona
- Massachusetts
- New York
- Maryland
- Minnesota
- Florida
- Delaware
- Ohio
- Pennsylvania
- Illinois
- North Dakota
- Arkansas
- Connecticut
- New Hampshire
- Rhode Island
- West Virginia

307. In addition to the States, the following territories, protectorates and other areas under United States jurisdiction have legalized Cannabis for medical and/or recreational uses:

- Washington, DC[150]
- Puerto Rico
- Guam

308. The method of legalization of Cannabis by States and other areas within Federal jurisdiction has varied from State constitutional amendment, to legislative enactment, to voters' referenda.

309. Today, more than 62% of Americans live within a jurisdiction in which Cannabis is legal to consume for medical and/or other purposes.

310. California, the world's sixth largest economy, has legalized Cannabis for recreational purposes as well.

311. State-legal Cannabis has been available to millions of Americans for decades.

312. Cannabis has been available illegally (*i.e.*, on the "black market") to millions of Americans for approximately 100 years.

313. Upon information and belief, no credible medical report has confirmed a single fatality in the United States from the consumption of Cannabis.

314. By contrast, the following "legal" substances have caused the following number of

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[150]Although initially barring Washington, DC from implementing a medical Cannabis program in or about 1998, Congress took no action to prevent enactment of a medical legalization program in our Nation's Capitol in 2011. Thus, Washington, DC was able to institute a medical Cannabis program in 2011. Thereafter, in 2014, Washington, DC approved a decriminalization program for Cannabis. Although subjected to a mandatory 30-day review period to be undertaken by Congress under the District of Columbia Home Rule Act, Congress took no action. Thus, although afforded the opportunity to stop implementation of Washington, DC's decriminalization program, Congress decided not to do so.

deaths in the United States on an annual basis:

(a) tobacco -- 480,000 deaths per year;[151]

(b) alcohol – 88,000 deaths per year;[152]

(c) pharmaceutical opioid analgesics – 18,893 per year;[153]

(d) acetaminophen – 1,500 deaths from 2001 to 2010.[154]

The Federal Government Admits and Obtains a Medical Patent Based Upon its Assertion That Cannabis Provides Medical Benefits

315. In or about 1999, the United States Government filed a patent application, entitled:

CANNABINOIDS AS ANTI-OXIDANTS AND NEUROPROTECTANTS

See Exh. 6 ("U.S. Cannabis Patent") (capitalization and underscoring in original).

316. In the U.S. Cannabis Patent application ("U.S. Cannabis Patent Application"), the Federal Government made representations to the United States Patent and Trademark Office ("USPTO") relative to the effects of Cannabis on the human body (*Id.*).

317. In the U.S. Cannabis Patent Application, the Federal Government represented to the USPTO that Cannabis provides medical benefit to, and thus has medical uses for, patients suffering with an assortment of diseases and conditions. In this regard, the Federal Government asserted that:

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[151]https://www.cdc.gov/tobacco/data_statistics/fact_sheets/health_effects/tobacco_related_mortality/index.htm

[152]https://www.niaaa.nih.gov/alcohol-health/overview-alcohol-consumption/alcohol-facts-and-statistics.

[153]https://www.cdc.gov/nchs/data/factsheets/factsheet_drug_poisoning.pdf.

[154]http://www.huffingtonpost.com/2013/09/24/tylenol-overdose_n_3976991.html. This does not include the 78,000 Americans who are rushed to emergency rooms annually, or the 33,000 hospitalizations in the United States each year, all due to ingestion of acetaminophen. *Id.*

> Cannabinoids have been found to have antioxidant properties, unrelated to NMDA receptor antagonism. This new found property makes cannabinoids useful in the treatment and prophylaxis of wide variety of oxidation associated diseases, such as ischemic, age-related, inflammatory and autoimmune diseases. The cannabinoids are found to have particular application as neuroprotectants, for example, in limiting neurological damage following ischemic insults, such as stroke and trauma, or in the treatment of neurodegenerative diseases, such as Alzheimer's Disease, Parkinson's Disease, and HIV Dementia (*Id.* at Abstract).

318. In support of its U.S. Cannabis Patent Application, the Federal Government cited a series of studies and academic papers, which, the Federal Government represents, support its conclusion that Cannabis does, in fact, provide medical benefits, including conditions which are listed and which are not listed on the U.S. Cannabis Patent Application (*Id.*).

319. The U.S. Cannabis Patent Application directly and unmistakably controverts the Federal Government's continued classification of Cannabis as a Schedule I drug, which, it is emphasized, requires a finding that it lacks any medical use.

320. Simply put – the Federal Government cannot maintain, on its U.S. Cannabis Patent Application, that Cannabis does, in fact, have curative properties that provide medical benefits to patients suffering from an assortment of diseases while also simultaneously "finding" that Cannabis has no medical application whatsoever for purposes of application and enforcement of the CSA.[155]

The Justice Department Issues Guidelines for Prosecution of Medical Cannabis Patients (2009)

321. As State-legal Cannabis legislation and other approvals of medical Cannabis continued to pass throughout the United States, the Federal Government was confronted with a

[155]Because the U.S. Cannabis Patent was granted by the USPTO, the Federal Government is estopped from contesting the assertions contained in its Application.

problem – under the CSA, the cultivation, harvesting, extraction, distribution, sale and/or use of Cannabis was (and is) illegal; however, States were granting their citizens permission to cultivate, distribute, sell, and/or use Cannabis for medical purposes.

322. On or about October 19, 2009, defendant DOJ, while professing the importance of enforcing the CSA as it pertains to Cannabis, acknowledged the existence of State laws authorizing the use of "medical marijuana," and directed that United States Attorneys:

> should not focus federal resources in your States on individuals whose actions are in clear and unambiguous compliance with existing State laws providing for the medical use of marijuana. For example, prosecution of individuals with cancer or other serious illnesses who use marijuana as part of a recommended treatment regimen consistent with applicable State law, or those caregivers in clear and unambiguous compliance with existing state law who provide such individuals with marijuana, is unlikely to be an efficient use of limited federal resources.

See October 19, 2009 Memorandum by Deputy Attorney General of the United States, David W. Ogden ("Ogden Memorandum"), Exh. 7.

323. Thus, notwithstanding the provisions of the CSA, prohibiting cultivation, distribution, sale, possession and/or use of Cannabis, as a drug so dangerous that it cannot be tested under strict medical supervision, the DOJ expressly discouraged United States Attorneys from using federal resources to prosecute violations of the CSA by users of Cannabis for medical purposes in State-legal jurisdictions.

The Justice Department Adopts the Cole Memorandum

324. On or about August 29, 2013, defendant DOJ promulgated what has come to be known as the "Cole Memorandum" (Exh. 8).

325. Under the Cole Memorandum, the DOJ, consistent with the Ogden Memorandum,

officially recognized that patients using State-legal medical Cannabis, in accordance with the laws of the States in which they reside, and businesses cultivating and/or selling State-legal Cannabis for medical purposes, are not appropriate targets for federal investigation, prosecution and incarceration (*Id.* at 3).

326. The net effect of the Cole Memorandum was to inform medical-Cannabis businesses operating in accordance with the laws of the States in which such businesses operate, and patients who use medical Cannabis in accordance with the laws of the States in which such patients reside, that they would not be prosecuted, provided that such Cannabis businesses and medical Cannabis patients did not engage in conduct which encroached upon eight (8) specific federal priorities, identified in the Cole Memorandum as follows:

1. Preventing the distribution of marijuana to minors;

2. Preventing revenue from the sale of marijuana from going to criminal enterprises, gangs, and cartels;

3. Preventing the diversion of marijuana from States where it is legal under State law in some form to other States;

4. Preventing State-authorized marijuana activity from being used as a cover or pretext for the trafficking of other illegal drugs or other illegal activity;

5. Preventing violence and the use of firearms in the cultivation and distribution of marijuana;

6. Preventing drugged driving and the exacerbation of other adverse public health consequences allegedly associated with marijuana use;

7. Preventing the growing of marijuana on public lands and the supposed attendant public safety and environmental dangers posed by marijuana production on public lands; and

8. Preventing marijuana possession or use on federal property.

See Cole Memorandum, Exh. 8.

The Treasury Department Provides Federal Authorization to Banks to Transact with Cannabis Businesses

327. On February 14, 2014, the Financial Crimes Enforcement Network ("FinCEN") issued a Memorandum providing guidance to clarify Bank Secrecy Act ("BSA") expectations for financial institutions seeking to provide services to marijuana-related businesses ("FinCen Guidance") (Exh. 9 at 1).

328. FinCEN issued the FinCEN Guidance "in light of recent state initiatives to legalize certain marijuana-related activity and related guidance by the DOJ [*i.e.*, the Cole Memorandum] concerning marijuana-related enforcement priorities" (*Id.*).

329. In essence, the FinCEN Guidance was the Treasury Department's own version of the Cole Memorandum, except that the FinCEN Guidance was sent to private actors (banks and other financial institutions), informing them how it is that they can transact with Cannabis businesses – businesses that are technically illegal under the CSA.

330. FinCEN provides guidance and advice to banks and other financial institutions concerning how they can engage in conduct which is illegal under the CSA, as well as under 18 U.S.C. §1956 (laundering of monetary instruments).

331. By the FinCEN Guidance, the Treasury Department provided, *inter alia*, the following instructions on how to transact with Cannabis businesses:

> The Financial Crimes Enforcement Network [] is issuing guidance to clarify Bank Secrecy Act ("BSA") expectations for financial institutions seeking to provide services to marijuana-related businesses. FinCEN is issuing this guidance in light of

> recent state initiatives to legalize certain marijuana-related activity and related guidance by the U.S. Department of Justice ("DOJ") concerning marijuana-related enforcement priorities. *This FinCEN guidance clarifies **how financial institutions can provide services to marijuana-related businesses** consistent with their BSA obligations, and aligns the information provided by financial institutions in BSA reports with federal and state law enforcement priorities. **This FinCEN guidance should enhance the availability of financial services for, and the financial transparency of, marijuana-related businesses**.*

See FinCEN Guidance at 1 (Exh. 9) (emphasis added).

332. Under the provisions of the FinCEN Guidance, the Federal Government provided authorization to banks and other financial institutions to transact with Cannabis businesses.

333. Under the provisions of the FinCEN Guidance, the Treasury Department directed that financial institutions, prior to engaging in transactions with medical Cannabis businesses, undertake due diligence to ascertain whether the latter are operating in conformity with the provisions of the Cole Memorandum (*Id.*).

334. The Ogden Memorandum, Cole Memorandum and FinCEN Guidance each state, in form and substance, that the CSA has not been superseded and remains in effect; however, each aforesaid Memorandum/Guidance makes equally clear that the United States Government should not interfere with State-legal medical-Cannabis businesses, and should not otherwise enforce the CSA as against such businesses or the patients who use the products cultivated and dispensed by such businesses, provided that all such businesses and patients act in conformity with the laws of the States in which such businesses operate and in which such patients reside.

335. The 2009 Ogden Memorandum, 2013 Cole Memorandum and 2014 FinCEN Guidance cannot be reconciled with the Federal Government's classification of Cannabis as a

Schedule I drug that is so dangerous that it has no medical purpose and cannot be tested even under strict medical supervision.

The United States Surgeon General Acknowledges Medical Benefits of Cannabis Use/The DEA Removes a Series of False Statements Concerning Cannabis from its Website

336. On or about February 4, 2015, the then-United States Surgeon General, Dr. Vivek Murthy, appeared on CBS This Morning, a nationally-televised daily talk show.

337. While on CBS This Morning, the U.S. Surgeon General publically acknowledged that Cannabis can safely provide bonafide medical benefits to patients ("Surgeon General's Acknowledgment").

338. The DEA, earlier this year, removed from its website: all references to Cannabis as a supposed "gateway drug;" as a drug that causes "permanent brain damage;" and as a drug that leads to psychosis ("DEA's Website Revision").

339. The DEA's Website Revision is consistent with the Surgeon General's Acknowledgment.

340. Prior to the DEA's Website Revision, a petition was filed on behalf of Americans for Safe Access, alleging that the DEA's website contained false information ("ASA Petition") (Exh. 10).

341. The ASA Petition was filed under the Information Quality Act ("IQA") (*Id.*).

342. Under the IQA, Federal Agencies are required to devise guidelines to ensure the "quality, objectivity, utility, and integrity of information" they disseminate.[156]

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[156] 44 U.S.C. §3516, Statutory and Historical Notes.

343. These requirements are designed to ensure that, *inter alia*, the information contained on the websites maintained by Federal Agencies is accurate.

344. Upon information and belief, it was in response to the ASA Petition, asserting that the information contained on the DEA website was inaccurate, that the DEA effected its Website Revision. In other words, the DEA, rather than litigating the inaccuracy of the information contained on its website, changed that information and effected its Website Revision in recognition that the language asserting that Cannabis is a supposed "gateway drug" that causes psychosis and permanent brain damage was and is false.[157]

Congress Precludes the DOJ from Using Legislative Appropriations to Prosecute State-Legal Cannabis Cultivation, Distribution, Sale and Use

345. In December 2014, Congress enacted a rider to an omnibus appropriations bill, funding the Federal Government through September 30, 2015 ("2014 Funding Rider").

346. Under the 2014 Funding Rider, Congress expressly prohibited the DOJ from using the appropriations provided thereby to prosecute the use, distribution, possession or cultivation of medical Cannabis in States where such activities are legal.

347. The 2014 Funding Rider includes the following language:

> None of the funds made available in this Act to the Department of Justice may be used, with respect to the States of Alabama, Alaska, Arizona, California, Colorado, Connecticut, Delaware, District of Columbia, Florida, Hawaii, Illinois, Iowa, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nevada, New Hampshire, New Jersey, New Mexico, Oregon, Rhode Island, South Carolina, Tennessee, Utah, Vermont, Washington, and Wisconsin, to prevent such States from implementing their own State laws that authorize the use,

[157]The FDA also removed all references to Cannabis as a supposed "gateway drug" on its website.

distribution, possession, or cultivation of medical marijuana.

See Consolidated and Further Continuing Appropriations Act, 2015, Pub. L. No. 113-235, § 538, 128 Stat. 2130, 2217 (2014).

348. The States referenced in the 2014 Funding Rider are those that, as of the date of the 2014 Funding Rider, had established State-legal medical Cannabis programs.

349. Various short-term measures extended the 2014 Funding Rider through December 22, 2015.

350. On December 18, 2015, Congress enacted a new appropriations act, which appropriated funds through the fiscal year ending September 30, 2016, and included essentially the same rider as the 2014 Funding Rider. Consolidated Appropriations Act, 2016, Pub. L. No. 114-113, § 542, 129 Stat. 2242, 2332-33 (2015) (adding Guam and Puerto Rico and changing "prevent such States from implementing their own State laws" to "prevent any of them from implementing their own laws").

351. In 2017, Congress enacted another rider, updating the 2014 Funding Rider to include the States that added medical-Cannabis programs over the preceding three years, and again restricting the use of Congressional appropriations to prosecute only those violations of the CSA in which the defendants cultivate, distribute, and/or sell Cannabis in a manner that violates State-legal medical marijuana programs ("2017 Funding Rider"). In this regard, the 2017 Funding Rider states:

> None of the funds made available in this Act to the Department of Justice may be used, with respect to any of the States of Alabama, Alaska, Arkansas, Arizona, California, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Illinois, Iowa, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Ohio, Oklahoma,

> Oregon, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin, and Wyoming, or with respect to the District of Columbia, Guam, or Puerto Rico, to prevent any of them from implementing their own laws that authorize the use, distribution, possession, or cultivation of medical marijuana.

See Consolidated Appropriations Act, 2017, Pub. L. No. 115-31, §537 (2017).

IV. SUMMARY OF THE ALLEGATIONS AND EVIDENCE THAT THE FEDERAL GOVERNMENT DOES NOT AND CANNOT BELIEVE THAT CANNABIS MEETS THE THREE SCHEDULE I REQUIREMENTS

352. The net effect of the foregoing allegations and evidence confirms beyond serious question that the Federal Government does not and cannot believe that Cannabis: (i) has no medical use, and (ii) cannot be used or tested even under strict medical supervision. Indeed, it bears emphasis that Cannabis:

- has been widely used as a legal medication for more than 10,000 years, including by the Founding Fathers of this Country;
- was legal until the end of Prohibition threatened to leave Anslinger without any responsibilities;
- was found by the Shafer Commission to be safe enough to decriminalize for personal use;
- has been dispensed by the Federal Government to participants in the IND Program for more than 30 years without evidence of harm to any of the patients;
- was found by ALJ Young to be the safest drug available in the world, based upon evidence that the DEA never attempted to contest;
- has been used continuously as part of State-legal programs for medical purposes throughout the United States, beginning in 1996;
- has been available to millions of Americans on a daily basis for decades without a single fatality – a record that neither coffee nor aspirin can claim;

- is the subject of the successful U.S. Cannabis Patent Application, in which the Federal Government admitted (indeed, bragged) that Cannabis provides safe, medical benefits to patients suffering from an assortment of illnesses, diseases and conditions;

- was identified by the U.S. Surgeon General as having medical benefits -- a conclusion that has been separately reached by doctors, scientists, and academics during the course of conducting thousands of studies and tests;

- cannot be the subject of a federal criminal prosecution under the CSA unless cultivated, distributed, sold or used in violation of State law; and

- is the subject of established federal policy which recognizes the medical benefits of Cannabis.

353. Indeed, the notion that the Federal Government persists in classifying Cannabis as a Schedule I drug, while ignoring the undeniable addictive and lethal chemical properties of nicotine and tar, and alcohol, which kill millions of Americans every year, renders this mis-classification of Cannabis utterly irrational and absurd.

V. THE PETITIONING PROCESS IS ILLUSORY AND FUTILE

Prior Petitions to Re-Schedule and/or De-Schedule Cannabis

354. Under the CSA, members of the public are afforded the supposed opportunity to file petitions to request that medications and drugs be re-scheduled and/or de-scheduled. 21 U.S.C. §811 and 21 C.F.R. §1308.

355. The legal mechanism available to the public to file petitions to change the classification of drugs and medications previously scheduled under the auspices of the CSA is illusory. Petitions filed with the DEA and/or any other Federal agency linger for years, often decades, without any substantive action.

356. The following chart of petitions filed with the DEA, reflects the futility of the petitioning process:

Requested Action	Type of Petitioner(s)	Date Filed	Date Decided	Delay	Outcome
Transfer any injectable liquid containing Pentazocine (opioid derivative) from Schedule V to Schedule III	7 Individuals	10/5/1971	1/10/1979	8 years	Denied
Requested Action	**Type of Petitioner(s)**	**Date Filed**	**Date Decided**	**Delay**	**Outcome**
Remove Cannabis from Schedule I or transfer to Schedule V	NORML, Cannabis Corporation of America (CCA); Alliance for Cannabis Therapeutics (ACT); Individuals	5/18/72	3/26/92	20 years	Denied
Transfer Cannabis from Schedule I to Schedule II	Individual	9/6/92	5/16/94	N/A	DEA declined to accept the filing of the petition

Transfer Marinol from Schedule II to Schedule III	UNIMED Pharmaceuticals Inc. (manufacturer of Marinol)	2/3/95	7/2/99	4 years	Granted

Requested Action	Type of Petitioner(s)	Date Filed	Date Decided	Delay	Outcome
Remove Cannabis from Schedule I	Individual; High Times Magazine	7/10/95	3/20/01	5.5 years	Denied
Remove Cannabis containing 1% or less of THC from Schedule I when used for Industrial Hemp	Individual	3/23/98	12/19/00	2.5 years	Denied
Transfer Hydrocodone combination products (*i.e.*, products mixing Hydrocodone with other drugs) from Schedule III to Schedule II	Physician	Jan. 99	8/22/14	15.5 years	Granted
Transfer Cannabis to Schedule III, IV, or V	The Coalition for Rescheduling Cannabis	10/9/02	6/21/11	8.75 years	Denied
Remove Cannabis from Schedule I	Individual	May 12, 2008	Dec. 19, 2008	N/A	DEA declined to accept the filing of the petition
Transfer Cannabis to any Schedule other than Schedule I	Individual	12/17/09	7/19/16	6.5 years	Denied
Transfer Cannabis to Schedule II	Governors Chafee & Gregoire	11/30/11	7/19/16	5.5 years	Denied

Requested Action	Type of Petitioner(s)	Date Filed	Date Decided	Delay	Outcome
Remove Industrial Hemp plants (*i.e.*, Cannabis sativa L. plants with a THC concentration of not more than three tenths of one percent) from Schedule I	Hemp Industries Association ("HIA") & the Kentucky Hemp Industry Council	6/1/16	Pending	N/A	Pending

The Petition Process for Changes in the Classification of Cannabis is Futile, Rife with Delays, Subject to Systemic and Institutional Bias and Otherwise Constitutes a Hollow Remedy

357. Excluding the petitions which are either still pending or were never decided at all (because they were rejected based upon standing or other grounds), the average delay from filing a petition to reschedule a drug under the CSA to the date of the petition's resolution is approximately nine (9) years.

358. Persons seeking to re-classify a Schedule I drug or medication based upon an urgent medical need, including and especially, Alexis and Jagger, are resigned to waiting until ostensibly the drug would no longer serve any useful purpose, because the illness, disease and/or condition has resolved or the patient has died.

359. The petitioning process is a hollow remedy.

360. Worse than the entrenched, systemic delays imposed by the Federal Government is the institutional bias of government officials which all but assures denial of applications pertaining to Cannabis.

361. As referenced *supra*, in November 2015, defendant Rosenberg of the defendant DEA, which is responsible for responding to petitions to reclassify drugs under the CSA, publically

asserted that medical Cannabis is "a joke" -- essentially pre-judging any petition to re-schedule or de-schedule Cannabis.

362. As reported by Politico, defendant Sessions, "[a]s a U.S. Attorney in Alabama in the 1980s, [] said he thought the KKK 'were [sic] OK until I found out they smoked pot.'"

363. On December 5, 2016, Politico reported that, in April 2016, defendant Sessions disclosed that he believes that: "Good people don't smoke marijuana."

364. As the Attorney General of the United States, defendant Sessions would have the opportunity to reclassify Cannabis; however, as with defendant Rosenberg, defendant Sessions has pre-judged the issue.

365. Upon information and belief, Rosenberg did not review any medical or scientific studies prior to asserting, in or about November 2015, that medical Cannabis is a joke.

366. Upon information and belief, Sessions did not review any medical or scientific studies prior to issuing his statement in the 1980s, in which he said that he thought the KKK "were [sic] OK until I found out they smoked pot."

367. Upon information and belief, Sessions did not review any medical or scientific studies prior to issuing his statement on or about December 5, 2016 that "Good people don't smoke marijuana."

368. Upon information and belief, defendants Sessions and Rosenberg, in condemning medical Cannabis and those who recommend and/or use it, were not speaking from experience or an in-depth medical or scientific understanding of the chemical properties of Cannabis and its impact on the body's metabolic systems and processes; nor were their assertions the product of an analysis concerning whether medical Cannabis has been accepted by the medical community. Rather, the

opinions of defendants Sessions and Rosenberg are based upon political (not scientific) distinctions made by a diminishing minority of vocal public officials who, without conducting any scientific review or analysis, *assume* that any conduct associated with Cannabis is necessarily dangerous and otherwise bad based upon unconstitutional criteria.

369. The unconscionable delays in processing petitions, coupled with the institutional bias at the DOJ and DEA against re-classifying Cannabis, renders the petitioning process illusory and futile. In short, the Federal Government does not provide real "due process" to those aggrieved by the mis-classification of Cannabis under the CSA. This lawsuit is the only mechanism by which patients in need of medical Cannabis can lawfully and without risk of prosecution safely obtain and use it.

370. Even assuming *arguendo* that the petitioning process were not futile – and it is – it would not provide a meaningful remedy for Plaintiffs insofar as the petition process: (i) cannot resolve the substantial constitutional issues which Defendants have repeatedly declined to address in a manner consistent with the provisions of the United States Constitution; and (ii) cannot provide Plaintiffs with a genuine opportunity for adequate relief (specifically, a declaration that the CSA, as it pertains to Cannabis, is unconstitutional), insofar as the relief requested herein is beyond the authority of Defendants DEA, DOJ, Sessions and/or Rosenberg.

FIRST CAUSE OF ACTION
(On behalf of all Plaintiffs)

371. Plaintiffs repeat and reallege each and every allegation of the preceding ¶¶1-370, as if set forth fully herein.

372. Under the Due Process Clause of the Fifth Amendment, no person may be "deprived

of life, liberty or property without due process of law" ("Due Process Clause").

373. Under well-established constitutional jurisprudence, laws which are not rationally related to a legitimate interest of the Federal Government violate the Due Process Clause.

374. The CSA classifies drugs into five scheduled categories – Schedule I, Schedule II, Schedule III, Schedule IV, and Schedule V.[158]

375. Cannabis has been classified as a Schedule I drug, along with, among others, heroin, mescaline, and LSD. As such, under the CSA as it pertains to Cannabis, the cultivation, distribution, prescription, sale, and/or use of Cannabis constitutes a violation of Federal Law, subjecting those accused of such a crime to prosecution and incarceration.

376. The stated basis for enactment and implementation of the CSA as it pertains to Cannabis was that the drug meets the Three Schedule I Requirements, *i.e.*:

1. the drug has a high potential for abuse;
2. the drug has "no currently accepted medical use in the United States;" and
3. there is a lack of accepted safety for use of the drug even under medical supervision.[159]

377. In view of the facts and evidence set forth above and summarized below, the Federal Government does not believe that Cannabis meets the aforementioned Three Schedule I Requirements.

378. Cannabis has been cultivated and used as a medication for thousands of years.

379. Cannabis was cultivated and used as a medication in Colonial America and in post-

[158]Pub. L. No. 91-513, 84 Stat. 1247.

[159]*Id.*

Colonial America, including by the Framers of our Constitution.

380. Cannabis was cultivated and used throughout the 19th Century, during which it was one of America's three leading crops for cultivation.

381. Cannabis was listed in prominent pharmacological publications throughout the second half of the 19th Century and the beginning of the 20th Century as a medication that treats dozens of diseases and conditions.

382. The Shafer Commission confirmed that Cannabis is not dangerous and should be de-criminalized for personal use.

383. Since in or about 1978, the Federal Government has been continuously dispensing and/or authorizing the dispensing of Cannabis to between at least 8 to 13 patients for the treatment of an assortment of diseases, illnesses and medical conditions.

384. In 1988, ALJ Francis Young, after a review of the uncontroverted medical evidence, concluded that Cannabis provides medical benefits to patients, none of whom have been endangered by it (Exh. 5).

385. Beginning in 1996, States throughout the Country have instituted medical and recreational Cannabis programs without federal intervention.

386. Today, more than 62% of the American public resides in States in which whole-plant Cannabis is legal for medical and/or recreational purposes; thus, millions of Americans have the opportunity to use Cannabis on a daily basis.

387. Upon information and belief, there have never been any documented deaths in the United States due to the consumption of Cannabis.

388. Since 2009, the DOJ has consistently directed its U.S. Attorneys to refrain from

prosecuting patients, physicians and businesses involved in the use, cultivation and/or sale of Cannabis if the same is consistent with State-legal medical-Cannabis programs (Exhs. 8 and 9).

389. Since 2014, the Treasury Department has authorized banking and other financial institutions to engage in transactions with Cannabis businesses that act in conformity with State-legal medical-Cannabis programs (Exh. 9).

390. For the last three years, Congress has de-funded the DEA and DOJ from prosecuting individuals and businesses engaging in conduct that is consistent with State-legal medical-Cannabis programs.

391. In or about 2002, the United States Government repeatedly asserted in its U.S. Cannabis Patent Application that, based upon a series of scientific studies, Cannabis has accepted medical uses for the treatment of brain diseases and disorders (Exh. 6).

392. After obtaining a U.S. Cannabis Patent, the Federal Government executed license agreements to private businesses to engage in medical Cannabis cultivation and extraction.

393. While the Federal Government may conceivably argue that the initial and continued classification of Cannabis as a Schedule I drug is necessary because of its alleged high potential for abuse, supposed lack of medical use, and purported risks of potential harm to those who use it even under medical supervision, the foregoing history confirms that the United States Government does not believe the story it is telling.

394. Based upon the foregoing, the Federal Government, not only does not believe that Cannabis meets the Three Schedule I Requirements of the CSA, but further, upon information and belief, no rational person could reasonably believe that it meets such Requirements.

395. There is no credible evidence that Cannabis has a high potential for abuse.

396. There is no credible evidence that Cannabis lacks any medical benefit; to the contrary, the overwhelming weight of evidence confirms that Cannabis has, for millennia, from Ancient Chinese and Egyptian societies, to our Founding Fathers, to modern-day America, provided substantial medical benefits to the patients who have been treated with medical Cannabis.

397. There is no credible evidence that Cannabis poses a serious risk of harm when used under medical supervision; to the contrary, the overwhelming weight of evidence confirms that, although virtually all medications have some toxic, potentially lethal effects, "marijuana is not such a substance" (ALJ Decision at 56, Exh. 5). And no one in the United States has ever died from using Cannabis (*Id.*).[160]

398. Because Cannabis does not meet the criteria required for classification of a Schedule I drug and is, in fact, safe for use, and because the Federal Government is fully aware of the foregoing but nonetheless insists upon continuing the mis-classification of Cannabis as a Schedule I drug, the CSA and its implementation is irrational, arbitrary, capricious and is not rationally related to any legitimate government interest.

399. The only credible explanation for the enactment of the CSA and its subsequent and continuing enforcement by the Federal Government lies in the politically-repressive, xenophobic and racial animus described by John Ehrlichman and other members of the Nixon Administration – an animus proscribed by the Constitution of the United States.

400. As set forth above, the petitioning process for drug scheduling does not constitute "due process" within the meaning of the Fifth Amendment to the Constitution, insofar as the petition

[160]This allegation does not include reference to those who may have used black-market synthetic Cannabis.

process: (i) is rife with unconstitutional delays that render review impracticable for the Plaintiffs (and most medical Cannabis patients); (ii) is rife with institutional bias, by which a vocal minority of public officials refuse to consider the overwhelming weight of medical evidence establishing that Cannabis provides safe medical benefits; (iii) cannot resolve the substantial constitutional issues which Defendants have repeatedly declined to address in a manner consistent with the provisions of the United States Constitution; and (iv) cannot provide Plaintiffs with a genuine opportunity for adequate relief, insofar as the relief requested requires correcting an Act of Congress which is beyond the authority of Defendants DEA, DOJ, Sessions and/or Rosenberg.

401. Alexis, Jose, and Jagger need medical Cannabis for the treatment of their diseases and conditions, but cannot safely use it without risking their freedom or other rights to which they are legally and constitutionally entitled. Washington desires to open a Cannabis business through the use of the MBE Program, but cannot do so, as he would be ineligible to receive such benefits and would be risking potential incarceration were he to file the required paperwork for MBE benefits. The CCA seeks, on behalf of its membership, termination of disproportionate enforcement of the CSA as it pertains to Cannabis against persons of color. Defendants maintain, notwithstanding the overwhelming weight of the evidence in the record (including statements made by the Federal Government itself that Cannabis has curative properties and is safe), that Cannabis is somehow an addictive, dangerous and lethal drug on par with heroin, mescaline and LSD without any medical benefits whatsoever and thus must remain illegal and continue to be enforced in the manner practiced today.

402. Meanwhile, substances that undeniably provide no medical benefit whatsoever, are highly addictive and cause hundreds of thousands of deaths per year, including for example, tobacco,

remain widely available and un-scheduled under the CSA.

403. An actual case in controversy exists between Plaintiffs and Defendants, by which Plaintiffs need and/or desire to use and/or engage in business transactions involving Cannabis, whereas Defendants falsely and unconstitutionally maintain that possession and use of Cannabis is lethally dangerous and thus must remain illegal.

404. By reason of the foregoing, Plaintiffs are entitled to issuance of an order and judgment: (i) declaring that the CSA, as it pertains to Cannabis, is irrational, arbitrary, capricious and not rationally related to any legitimate governmental interest, and thus unconstitutional; and (ii) permanently enjoining Defendants from enforcing the CSA.

405. Plaintiffs have no remedy at law.

SECOND CAUSE OF ACTION
(On behalf of the CCA Only)

406. Plaintiffs repeat and reallege each and every allegation of the preceding ¶¶1-405, as if set forth fully herein.

407. The United States Supreme Court has consistently held that discrimination may be so unjustifiable as to constitute a violation of the Due Process Clause of the Fifth Amendment.[161]

408. The mis-classification of Cannabis as a Schedule I drug under the CSA was effectuated in an environment tainted by racial discrimination and animus, hostile to the interests of African Americans and other persons of color.

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[161] *Davis v. Passman*, 442 U.S. 228, 234-35 (1979); *Weinberger v. Wiesenfeld*, 420 U.S. 636, 638 n. 2 (1975); *Cruz v. Hauck*, 404 U.S. 59, 62 n. 10 (1971); *Bolling v. Sharpe*, 347 U.S. 497, 499 (1954).

409. The CSA, as it pertains to Cannabis, was implemented in an environment tainted by racial discrimination and animus, hostile to the interests of African Americans and other persons of color.

410. The CSA, as it pertains to Cannabis, has been enforced in a manner reflective of racial discrimination and animus, hostile to the interests of African Americans and other persons of color.

411. Although Cannabis is consumed and used equally by African Americans and White Americans, African Americans are disproportionately the subject of investigations, prosecutions, convictions and incarcerations under the CSA.

412. Upon information and belief, the racial animus underwriting the mis-classification of Cannabis as a Schedule I drug under the CSA continues to this day, resulting in convictions and the incarceration of African Americans and other persons of color in disproportionate numbers.

413. The mis-classification of Cannabis as a Schedule I drug under the CSA was also intended to suppress the First Amendment rights and interests of those protesting the Vietnam War, including such rights as freedom of speech and the right to petition the government for a redress of grievances.

414. Upon information and belief, the Federal Government tactically enforced the CSA against war protesters and persons of color insofar as members of the Nixon Administration irrationally believed such persons to be enemies of America's war on communism.

415. In enacting and disproportionately enforcing the CSA against persons of color, the Federal Government violated, and continues to violate, the Due Process Clause of the Fifth Amendment and the requirements of Equal Protection.

416. In enacting and disproportionately enforcing the CSA against those protesting the

Vietnam War, the Federal Government violated, and continues to violate, the First Amendment, the Due Process Clause of the Fifth Amendment and the requirements of Equal Protection.

417. The Federal Government lacks a compelling interest in the enactment of a statute that discriminates against persons of color, and violates and has violated the First and Fifth Amendment rights of members of the CCA, and their rights to Equal Protection.

418. Upon information and belief, even assuming *arguendo* that the Federal Government were to have a compelling interest in enacting and enforcing the CSA in the manner herein described, the CSA is not narrowly tailored to satisfy and achieve that compelling interest (whatever it might be).

419. An actual case in controversy exists between Plaintiff CCA on the one hand, and Defendants on the other, by which the CCA maintains that the CSA was enacted on the basis of racism and political suppression of the rights guaranteed under the First Amendment, and enforced in a manner that is so discriminatory as to rise to the level of a violation of Due Process and Equal Protection, whereas Defendants irrationally and unconstitutionally maintain that the CSA constitutes a valid exercise of federal power.

420. By reason of the foregoing, the CCA is entitled to issuance of an order and judgment: (i) declaring that the CSA, as it pertains to Cannabis, violates the rights of its members under the First and Fifth Amendments to the United States Constitution and under principles of Equal Protection.

421. CCA has no remedy at law.

THIRD CAUSE OF ACTION
(On behalf of all Plaintiffs except Washington)

422. Plaintiffs repeat and reallege each and every allegation of the preceding ¶¶1-421, as if set forth fully herein.

423. Freedom to travel throughout the United States, including between and among States of the Union, has long been recognized as a basic right under the Constitution.[162]

424. Alexis requires medical Cannabis to preserve and sustain her life, but cannot travel with medical Cannabis without risking prosecution, incarceration, and/or the loss of other liberty rights and interests.

425. Dean cannot travel without his wife, who, as Alexis's caregiver, cannot leave Alexis alone; thus, Dean cannot safely travel either.

426. Jagger requires medical Cannabis to live without excruciating pain and to avoid death, but cannot travel with medical Cannabis without risking prosecution, incarceration, and/or the loss of other liberty rights and interests.

427. Sebastien is required to travel in order to obtain the medical Cannabis Jagger requires to eliminate his pain and continue to live; however, if Sebastien were to travel by plane, or on land across State lines or on a federal highway, he would be threatened with seizure of Jagger's medicine, arrest, prosecution, incarceration, loss of his parental rights and/or other consequences attendant with a conviction for a felony under the CSA.

428. Plaintiffs Alexis and Jagger desire to travel to the Capitol in Washington, DC to meet with their elected representatives and other public officials to advocate in favor of enacting the MJA

[162] *See, e.g., Williams v. Fears*, 179 U.S. 270, 274 (1900).

and repealing the CSA, or otherwise de-scheduling Cannabis; however, they cannot exercise their fundamental right to travel to the Capitol, as such travel would threaten them with seizure of life-saving medicine, arrest, prosecution, incarceration, and other consequences attendant with a conviction for a felony under the CSA. Plaintiff Jose desires to travel without leaving his medication behind, but cannot do so because, under the CSA, any air travel or travel to a State where Cannabis is legal but does not exercise reciprocity (or does not otherwise permit his possession and use within the State) would expose him to seizure of his medicine, arrest, prosecution, incarceration, and other consequences attendant with a conviction for a felony under the CSA.

429. Alexis and Jagger are unconstitutionally required to choose between depriving themselves of their fundamental right to continue treating with life-sustaining and life-saving medications to preserve their lives, and depriving themselves of the opportunity to: (i) travel to other States; (ii) use an airplane to travel to any other State; (iii) step onto federal lands or into federal buildings; (iv) access military bases; and/or (v) receive certain federal benefits. Jose is unconstitutionally required to choose between depriving himself of his fundamental right to continue treating with his life-sustaining medication and depriving himself of the opportunity to: (i) travel to other States; (ii) use an airplane to travel to any other State; (iii) step onto federal lands or into federal buildings; (iv) access military bases; and/or (v) receive certain federal benefits.

430. Certain members of the CCA desire to travel between and among the States with their medical Cannabis, but cannot do so without risk of investigation, prosecution, conviction and incarceration under the CSA, which is disproportionately enforced against persons of color.

431. Defendants maintain that, notwithstanding the overwhelming weight of the evidence in the record (including statements made by the Federal Government itself that Cannabis has curative

properties and is safe), Cannabis is supposedly an addictive, dangerous and lethal drug on a par with heroin, mescaline and LSD, and without any medical benefits whatsoever and thus the CSA must be enforced.

432. An actual case in controversy exists between Plaintiffs Alexis, Dean, Jose, Sebastien, Jagger and the CCA on the one hand, and Defendants on the other, by which such Plaintiffs require the use of Cannabis and desire to travel, whereas Defendants irrationally and unconstitutionally maintain that such conduct is lethally dangerous and thus must remain illegal.

433. By reason of the foregoing, the aforesaid Plaintiffs are entitled to issuance of an order and judgment: (i) declaring that the CSA, as it pertains to Cannabis, violates their constitutional Right to Travel; and (ii) permanently enjoining Defendants from enforcing the CSA.

434. Plaintiffs have no remedy at law.

FOURTH CAUSE OF ACTION
(On behalf of all Plaintiffs)

435. Plaintiffs repeat and reallege each and every allegation of the preceding ¶¶1-434, as if set forth fully herein.

436. The framework of the United States Constitution created a government of limited and enumerated powers.

437. Under Article I, §8, cl. 3 of the United States Constitution, Congress has the limited power:

> To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes.[163]

Hereinafter, the "Commerce Clause."

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[163]U.S. Const. art. I, §8, cl. 3.

438. The Commerce Clause does not include a general power to regulate intra-State commerce.

439. The United States Constitution does not include a federal police power.

440. Under the Tenth Amendment to the United States Constitution:

> The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.[164]

441. Congress is not empowered and/or otherwise authorized to legislate as to matters of intra-State commerce that have no appreciable impact on interstate commerce or commerce with foreign nations and/or with Native American Tribes. Such commerce is reserved to the States and the people who live there.

442. Historically, the regulation of the doctor-patient relationship and decisions pertaining to dispensing medications have been reserved to the States under the Tenth Amendment.

443. The Constitution does not empower Congress to regulate doctor-patient relationships.

444. The CSA, proscribing and criminalizing the use of Cannabis, was not enacted for the purpose of regulating interstate commerce; Congress enacted the CSA based upon a series of irrational and discriminatory motives that cannot be justified or even explained when considered against an incontrovertible record that includes evidence that the United States Government has acknowledged in its U.S. Cannabis Patent Application that Cannabis is an effective treatment for, *inter alia*, Parkinson's Disease and Alzheimer's.

445. By legislating subject matter outside its constitutional delegation of enumerated powers, and encroaching upon the powers expressly reserved to the States, Congress engaged in an

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[164]U.S. Const. amend. X.

unauthorized and thus unconstitutional exercise of power that violates well-recognized principles of federalism.

446. Even assuming *arguendo* that distribution and/or sale of Cannabis that occurs on an entirely intra-state level could be deemed to have an appreciable impact on interstate commerce – and, respectfully, it cannot – individual *use* of Cannabis cannot rationally be claimed to have an effect on the national economy. Thus, it is alleged *in the alternative* that, even assuming that Congress were to have the power to regulate purely intra-state economic activity that has no relationship with interstate commerce, Congress lacks the power to regulate use as a purely intra-state, non-economic activity.

447. An actual case in controversy exists between Plaintiffs and Defendants, by which Defendants maintain that use of Cannabis is lethally dangerous and thus must remain illegal, whereas Plaintiffs maintain that the CSA, as it pertains to Cannabis, constitutes an unconstitutional exercise of power not authorized by the Constitution.

448. By reason of the foregoing, Plaintiffs are entitled to issuance of an order and judgment: (i) declaring that the CSA, as it pertains to Cannabis, constitutes an unauthorized exercise of power by Congress, rendering the CSA, as it pertains to Cannabis, unconstitutional; and (ii) permanently enjoining Defendants from enforcing the CSA.

449. Plaintiffs have no remedy at law.

FIFTH CAUSE OF ACTION
(On behalf of all Plaintiffs)

450. Plaintiffs repeat and reallege each and every allegation of the preceding ¶¶1-449, as if set forth fully herein.

451. Under the provisions of the CSA, de-scheduling or rescheduling a drug such as Cannabis must be supported by medical and/or scientific evidence – such as, for example, the evidence cited in the U.S. Cannabis Patent Application.

452. To acquire and accumulate such medical and/or scientific evidence, studies and tests must be conducted; however, because Cannabis has been classified as a Schedule I drug, it cannot legally be tested unless special permission has been obtained from the Federal Government.[165]

453. Upon information and belief, in the 47 years since the CSA was enacted, the Federal Government has granted only one application to conduct scientific and/or medical testing of Cannabis.

454. The Federal Government has thus created a legislative construct which, by design, is completely dysfunctional. The CSA requires testing and studies to reclassify Cannabis, but prevents such tests and studies from being conducted because Cannabis is supposedly so dangerous that it cannot be tested – except that the stated basis for classifying Cannabis as a Schedule I drug was that Cannabis supposedly had not yet been tested.

455. After creating the Shafer Commission to conduct such tests and studies, the Federal Government, led by the biased and unstable Nixon Administration, promptly rejected its findings.

456. By creating a process that, by its terms, necessarily requires all petitions for de-scheduling or rescheduling to be denied – and, as regards Cannabis, that is exactly what has occurred with respect to every petition – Congress enacted an irrational, arbitrary and capricious law.

457. Simply put – if, by its terms, the CSA created a petition process to allow aggrieved individuals to file futile challenges to the classification of Schedule I drugs, then the procedure

[165]Pub. L. No. 91-513, 84 Stat. 1255.

serves no lawful purpose and is thus unconstitutionally irrational and violates the Due Process Clause of the Fifth Amendment.

458. An actual case in controversy exists between Plaintiffs and Defendants, by which Plaintiffs need and/or desire to use, prescribe and/or engage in business transactions involving Cannabis, whereas Defendants falsely and unconstitutionally maintain that cultivation, distribution, possession and use of Cannabis is lethally dangerous and thus must remain illegal.

459. By reason of the foregoing, Plaintiffs are entitled to issuance of an order and judgment: (i) declaring that the CSA, as it pertains to Cannabis, constitutes an unauthorized exercise of power by Congress, rendering the CSA, as it pertains to Cannabis, unconstitutional; and (ii) permanently enjoining Defendants from enforcing the CSA as it pertains to Cannabis.

460. Plaintiffs have no remedy at law.

SIXTH CAUSE OF ACTION
(On behalf of all Plaintiffs except Washington and Jose)

461. Plaintiffs repeat and reallege each and every allegation of the preceding ¶¶1-460, as if set forth fully herein.

462. The First Amendment to the Constitution of the United States confirms that:

> Congress shall make no law ... abridging the freedom of speech ... or the right of the people to ... petition the Government for a redress of grievances.

U.S. Const. amend. I.

463. The protections afforded by the First Amendment include, *inter alia*, the right to meet with public officials into advocate in favor or against governmental action.

464. In order for Alexis, Jagger, and certain members of the CCA who treat with medical

Cannabis to meet with public officials at the Capitol, they would be required to leave their medical Cannabis behind – otherwise, under the CSA, their medicine could be seized and they (and/or, in the case of Alexis and Jagger, their parents) could be detained, arrested, prosecuted and/or incarcerated.

465. If Alexis's or Jagger's parents were to be detained, arrested, prosecuted and/or incarcerated, their parental rights could be terminated, depriving Alexis and Jagger of the opportunity to be raised by one or more of their biological parents.

466. The CSA, as applied to Alexis, Jagger, and certain members of the CCA, violates their First Amendment rights to free speech and the opportunity to petition the Government for a redress of grievances by requiring them, as a condition of their entry into the Capitol (or any federal Senate or House office building), to risk their health and their lives in order to engage in in-person advocacy with their elected representatives and other federal public officials.

467. Under the provisions of the Ninth Amendment and Substantive Due Process, Alexis, Jagger, and certain members of the CCA have a fundamental right to continue treating with a medication that, for years, has provided life-saving and -sustaining treatment of their conditions. This fundamental right to life and to preserve one's right to life is deeply rooted in this Nation's history and traditions and is implicit in the concept of ordered liberty.

468. An actual case in controversy exists between Plaintiffs Alexis, Jagger, and certain members of the CCA on the one hand, and Defendants on the other, by which such Plaintiffs need to treat with medical Cannabis while maintaining their constitutional rights to free speech and to petition the federal government for a redress of grievances through in-person advocacy, whereas Defendants unconstitutionally maintain that the CSA must be enforceable on federal lands and in federal buildings, thereby precluding such in-person advocacy. Alternatively, the Federal

Government may maintain that the aforesaid Plaintiffs may travel to Washington, DC to engage in in-person advocacy, but without their life-saving and -sustaining medication – a prospect which threatens each of the aforesaid Plaintiffs with the loss of their lives and health.

469. The Federal Government cannot require persons to sacrifice one fundamental right in order to exercise another.

470. By reason of the foregoing, Plaintiffs are entitled to issuance of an order and judgment: (i) declaring that the CSA, as applied to Alexis, Jagger, and the CCA, constitutes a violation of their First Amendment guarantees of free speech and the right to petition the Federal Government for a redress of grievances, rendering the CSA, as applied to the aforesaid Plaintiffs, unconstitutional; (ii) declaring that the CSA, as applied to Alexis, Jagger, and members of the CCA, constitutes a denial of Substantive Due Process and/or fundamental rights guaranteed by the Ninth Amendment; and (iii) permanently enjoining Defendants from enforcing the CSA as it pertains to Cannabis, as against the aforesaid Plaintiffs.

471. Plaintiffs have no remedy at law.

SEVENTH CAUSE OF ACTION
(On behalf of all Plaintiffs)

472. Plaintiffs repeat and reallege each and every allegation of the preceding ¶¶1-471, as if set forth fully herein.

473. The Federal Government cannot maintain its position on the existing record that continued enforcement of the CSA as it pertains to Cannabis is "substantially justified."

474. By reason of the foregoing, Plaintiffs are entitled to reasonable legal fees and costs pursuant to the Equal Access to Justice Act, 28 U.S.C. §2412.

WHEREFORE, for the reasons stated, Plaintiffs demand judgment, over and against Defendants, declaring that the CSA as it pertains to the cultivation, distribution, marketing, sale, prescription and use of Cannabis, is unconstitutional under the Due Process Clause of the Fifth Amendment, the Free Speech and Right to Petition Clauses of the First Amendment, the Equal Protection Clause of the Fourteenth Amendment (as implied through the Due Process Clause of the Fifth Amendment), the Right to Travel, Substantive Due Process, fundamental rights secured under the Ninth Amendment, and the Commerce Clause, together with: (i) a permanent injunction (and associated temporary relief if so required), restraining Defendants from enforcing the CSA as it pertains to Cannabis; (ii) reasonable legal fees and costs pursuant to the Equal Access to Justice Act, 28 U.S.C. §2412; and (iii) any and all other and further relief this Court deems just and proper.

Dated: New York, New York
September 6, 2017

HILLER, PC
Pro Bono Attorneys for Plaintiffs
600 Madison Avenue
New York, New York 10022
(212) 319-4000

By: _____
Michael S. Hiller (MH 9871)
Lauren A. Rudick (LR 4186)
Fatima Afia (FA 1817)[166]

[166] Admission pending.

And Pro Bono Co-Counsel for Plaintiffs

LAW OFFICES OF DAVID CLIFFORD HOLLAND, P.C.
Member, New York Cannabis Bar Association
Biltmore Plaza
155 East 29th Street | Suite 12G
New York, New York 10016

By: David C. Holland
David C. Holland

LAW OFFICES OF JOSEPH A. BONDY
1841 Broadway, Suite 910
New York, N.Y. 10023

By: Joseph A. Bondy
Joseph A. Bondy

Exhibit 1

Quinnipiac Poll
UNIVERSITY

Tim Malloy, Assistant Director
(203) 645-8043

Rubenstein
Pat Smith (212) 843-8026

FOR RELEASE: APRIL 20, 2017

U.S. VOTER SUPPORT FOR MARIJUANA HITS NEW HIGH; QUINNIPIAC UNIVERSITY NATIONAL POLL FINDS; 76 PERCENT SAY THEIR FINANCES ARE EXCELLENT OR GOOD

American voters say 60 – 34 percent "that the use of marijuana should be made legal in the U.S.," the highest level of support for legalized marijuana in a Quinnipiac University national poll. Republicans and voters over 65 years old are the only listed party, gender, education, age or racial groups to oppose legalized marijuana.

Voters also support 94 – 5 percent "allowing adults to legally use marijuana for medical purposes if their doctor prescribes it," also the highest level of support in any national poll by the independent Quinnipiac (KWIN-uh-pe-ack) University.

Voters oppose 73 – 21 percent government enforcement of federal laws against marijuana in states that have legalized medical or recreational marijuana. No group supports enforcement in states where marijuana is legal.

Voters support 76 – 18 percent reducing the classification of marijuana as a Schedule 1 drug, the same classification as heroin. Again, all listed groups support this reduction.

A total of 76 percent of American voters say their personal finance situation is "excellent" or "good," while 24 percent say "not so good" or "poor."

In every group except non-white voters, the percentage of voters saying their finances are "excellent" or "good" tops 70 percent. Among non-white voters, 65 percent say their finances are "excellent" or "good."

"From a stigmatized, dangerous drug bought in the shadows, to an accepted treatment for various ills, to a widely accepted recreational outlet, marijuana has made it to the mainstream," said Tim Malloy, assistant director of the Quinnipiac University Poll.

"The numbers fly in the face of the 'sky is falling' depiction of the nation's economic health. We all want more, but Americans say they are generally, financially healthy."

-more-

Quinnipiac University Poll/April 20, 2017 – page 2

Only 36 percent of American voters say Republicans in Congress should try again to repeal and replace Obamacare, the 2010 Affordable Care Act, while 60 percent say the Republicans should "move on."

Voters disapprove 65 – 29 percent of the way President Donald Trump is handling health care and say 54 – 22 percent that he is handling health care worse than former President Barack Obama. Another 19 percent say he is handling it about the same as President Obama.

American voters are opposed to several proposals supported by President Trump and Republicans in Congress:

- Oppose 75 – 21 percent lowering taxes on the wealthy;
- Oppose 66 – 25 percent removing regulations intended to combat climate change;
- Oppose 64 – 33 percent building a wall on the border with Mexico;
- Oppose 66 – 30 percent cutting off federal funding for Planned Parenthood, rising to 85 – 10 percent when respondents are told federal funding for Planned Parenthood does not pay for abortions.

American voters now support 57 – 38 percent allowing Syrian refugees into the U.S., reversing opposition of 51 – 43 percent in a December 23, 2015, Quinnipiac University national poll. Republicans are the only listed group opposed. White men and white voters with no college degree each are tied.

Trump's Travels

Trump spends too much time at properties owned by his company, voters say 55 – 34 percent. He does not spend enough time at the White House, 50 percent of voters say, while 2 percent say he spends too much time and 38 percent say he spends the right amount of time.

A total of 35 percent of American voters are "very comfortable" or "somewhat comfortable" with the amount spent on security so President Trump and his family can stay in places other than the White House, while 60 percent are "not so comfortable" or "not comfortable at all."

From April 12 – 18, Quinnipiac University surveyed 1,062 voters nationwide with a margin of error of +/- 3 percentage points. Live interviewers call landlines and cell phones.

The Quinnipiac University Poll, directed by Douglas Schwartz, Ph.D., conducts public opinion surveys in Pennsylvania, New York, New Jersey, Connecticut, Florida, Ohio, Virginia, Iowa, Colorado and the nation as a public service and for research.

Visit poll.qu.edu or www.facebook.com/quinnipiacpoll
Call (203) 582-5201, or follow us on Twitter @QuinnipiacPoll.

22. Would you describe the state of the nation's economy these days as excellent, good, not so good, or poor?

							WHITE..... COLLEGE DEG	
	Tot	Rep	Dem	Ind	Men	Wom	Yes	No
Excellent	4%	10%	1%	4%	7%	2%	3%	4%
Good	49	58	50	46	53	45	60	48
Not so good	31	26	32	31	28	33	27	35
Poor	14	5	15	17	11	17	9	10
DK/NA	2	1	2	2	2	2	1	3

	AGE IN YRS.....				WHITE.....			
	18-34	35-49	50-64	65+	Men	Wom	Wht	NonWht
Excellent	5%	6%	3%	3%	5%	3%	4%	6%
Good	43	46	53	51	56	52	54	35
Not so good	27	32	31	32	29	33	31	31
Poor	23	14	10	10	8	10	9	25
DK/NA	3	2	2	3	2	2	2	3

TREND: Would you describe the state of the nation's economy these days as excellent, good, not so good, or poor?

	Exclnt	Good	Not so Good	Poor	DK/NA
Apr 20, 2017	4	49	31	14	2
Apr 04, 2017	4	48	32	13	2
Mar 22, 2017	3	56	28	11	1
Mar 07, 2017	4	51	33	10	2
Feb 22, 2017	5	55	26	12	2
Jan 10, 2017	4	42	34	19	2
Nov 28, 2016	2	37	37	23	1

Link to full trend on website

23. Who do you believe is more responsible for the current state of the economy: former President Obama or President Trump?

							WHITE..... COLLEGE DEG	
	Tot	Rep	Dem	Ind	Men	Wom	Yes	No
Obama	59%	55%	63%	58%	62%	56%	63%	61%
Trump	27	37	24	25	25	28	23	26
DK/NA	14	8	12	17	13	16	14	13

	AGE IN YRS.....				WHITE.....			
	18-34	35-49	50-64	65+	Men	Wom	Wht	NonWht
Obama	60%	57%	60%	58%	63%	61%	62%	51%
Trump	24	27	27	29	24	24	24	34
DK/NA	16	16	13	13	13	14	14	15

	ECONOMY IS Q22	
	Exlnt/ Good	NtGood/ Poor
Obama	65%	52%
Trump	27	28
DK/NA	8	20

TREND: Who do you believe is more responsible for the current state of the economy: former President Obama or President Trump?

	Obama	Trump	DK/NA
Apr 20, 2017	59	27	14
Apr 04, 2017	66	18	16
Mar 22, 2017	63	22	15
Mar 07, 2017	67	19	14

24. Do you think the nation's economy is getting better, getting worse, or staying about the same?

							WHITE..... COLLEGE DEG	
	Tot	Rep	Dem	Ind	Men	Wom	Yes	No
Better	34%	69%	10%	33%	43%	25%	32%	41%
Worse	16	3	26	15	11	20	15	10
The same	49	28	63	50	45	53	50	46
DK/NA	2	-	2	2	1	2	2	2

	AGE IN YRS.....				WHITE.....			
	18-34	35-49	50-64	65+	Men	Wom	Wht	NonWht
Better	28%	27%	38%	38%	47%	29%	37%	24%
Worse	26	14	14	12	8	16	12	25
The same	43	58	46	48	43	53	48	50
DK/NA	3	1	1	2	2	3	2	1

TREND: Do you think the nation's economy is getting better, getting worse, or staying about the same?

	Better	Worse	Same	DK/NA
Apr 20, 2017	34	16	49	2
Apr 04, 2017	32	16	48	4
Mar 22, 2017	40	16	39	4
Mar 07, 2017	41	15	42	3
Feb 22, 2017	37	15	46	2
Jan 10, 2017	40	14	44	2
Nov 28, 2016	30	24	45	1

Link to full trend on website

25. Would you describe your financial situation these days as excellent, good, not so good, or poor?

							WHITE..... COLLEGE DEG	
	Tot	Rep	Dem	Ind	Men	Wom	Yes	No
Excellent	13%	20%	11%	10%	16%	10%	21%	7%
Good	63	69	60	64	63	63	65	66
Not so good	17	9	19	17	14	19	11	16
Poor	7	2	9	8	6	8	3	10
DK/NA	1	-	1	1	2	-	-	-

	AGE IN YRS.....				WHITE.....			
	18-34	35-49	50-64	65+	Men	Wom	Wht	NonWht
Excellent	8%	13%	14%	16%	17%	12%	14%	10%
Good	65	61	62	63	65	66	66	55
Not so good	22	15	15	15	13	14	14	26
Poor	4	9	8	6	5	8	7	7
DK/NA	-	2	1	-	-	-	-	3

30. Do you approve or disapprove of the way Donald Trump is handling - health care?

							WHITE..... COLLEGE DEG	
	Tot	Rep	Dem	Ind	Men	Wom	Yes	No
Approve	29%	65%	3%	27%	30%	28%	23%	42%
Disapprove	65	25	96	66	62	68	70	53
DK/NA	6	10	1	7	7	4	7	5

	AGE IN YRS.....				WHITE.....			
	18-34	35-49	50-64	65+	Men	Wom	Wht	NonWht
Approve	21%	26%	31%	36%	33%	32%	32%	19%
Disapprove	75	72	60	59	59	64	61	77
DK/NA	4	2	9	6	8	4	6	5

TREND: Do you approve or disapprove of the way Donald Trump is handling health care?

	App	Dis	DK/NA
Apr 20, 2017	29	65	6
Apr 04, 2017	28	64	9
Mar 23, 2017	29	61	10

36. As president, do you think Donald Trump should - lower taxes on the wealthy, or not?

							WHITE..... COLLEGE DEG	
	Tot	Rep	Dem	Ind	Men	Wom	Yes	No
Yes/Should	21%	41%	8%	18%	24%	18%	22%	24%
No	75	51	91	78	71	78	73	72
DK/NA	4	8	-	4	5	3	5	4

	AGE IN YRS.....				WHITE.....			
	18-34	35-49	50-64	65+	Men	Wom	Wht	NonWht
Yes/Should	15%	19%	21%	27%	26%	20%	23%	16%
No	79	79	75	66	68	77	73	80
DK/NA	6	2	5	6	5	4	4	4

TREND: As president, do you think Donald Trump should lower taxes on the wealthy, or not?

	Yes	No	DK/NA
Apr 20, 2017	21	75	4
Apr 05, 2017	21	72	7
Mar 24, 2017	22	74	5
Mar 08, 2017	21	74	5
Feb 23, 2017	18	76	6
Nov 23, 2016	29	67	4

37. As president, do you think Donald Trump should - remove specific regulations intended to combat climate change, or not?

							WHITE..... COLLEGE DEG	
	Tot	Rep	Dem	Ind	Men	Wom	Yes	No
Yes/Should	25%	49%	5%	24%	30%	20%	24%	30%
No	66	35	91	68	62	70	69	57
DK/NA	9	16	4	8	8	10	8	13

	AGE IN YRS.....				WHITE.....			
	18-34	35-49	50-64	65+	Men	Wom	Wht	NonWht
Yes/Should	14%	23%	26%	30%	33%	22%	27%	18%
No	77	71	64	57	57	67	63	76
DK/NA	9	6	9	12	10	11	10	6

TREND: As president, do you think Donald Trump should remove specific regulations intended to combat climate change, or not?

	Yes	No	DK/NA
Apr 20, 2017	25	66	9
Apr 05, 2017	28	62	10
Mar 24, 2017	29	63	8
Mar 08, 2017	29	62	9
Feb 23, 2017	27	63	10
Feb 08, 2017	29	61	10
Jan 12, 2017	32	59	9
Nov 23, 2016	31	59	9

38. As president, do you think Donald Trump should - support efforts to repeal the Affordable Care Act, also known as Obamacare, or not?

							WHITE..... COLLEGE DEG	
	Tot	Rep	Dem	Ind	Men	Wom	Yes	No
Yes/Should	44%	88%	12%	43%	48%	41%	38%	58%
No	53	10	88	54	49	58	58	41
DK/NA	2	2	1	4	4	1	4	1

	AGE IN YRS.....				WHITE.....			
	18-34	35-49	50-64	65+	Men	Wom	Wht	NonWht
Yes/Should	33%	47%	46%	46%	53%	44%	48%	33%
No	64	51	52	51	43	55	49	64
DK/NA	4	2	1	3	3	1	2	3

TREND: As president, do you think Donald Trump should support efforts to repeal the Affordable Care Act, also known as Obamacare, or not?

	Yes	No	DK/NA
Apr 20, 2017	44	53	2
Apr 05, 2017	42	54	4
Mar 23, 2017	45	51	5
Mar 08, 2017	45	51	4
Feb 23, 2017	43	54	3
Feb 08, 2017	46	50	4
Jan 12, 2017	48	47	5

40. Do you think that President Trump is handling healthcare better than former President Obama, worse than President Obama, or is he handling healthcare about the same as President Obama?

							WHITE..... COLLEGE DEG	
	Tot	Rep	Dem	Ind	Men	Wom	Yes	No
Better	22%	55%	2%	20%	24%	21%	20%	31%
Worse	54	8	91	55	48	60	56	39
About the same	19	31	6	20	22	15	18	25
DK/NA	5	7	1	6	6	4	6	4

	AGE IN YRS.....				WHITE.....			
	18-34	35-49	50-64	65+	Men	Wom	Wht	NonWht
Better	14%	20%	27%	28%	27%	25%	26%	14%
Worse	64	60	50	45	41	53	48	71
About the same	19	18	18	19	26	19	22	11
DK/NA	3	2	5	9	6	4	5	4

41. How important is it to you that health insurance be affordable for all Americans; very important, somewhat important, not so important, or not important at all?

							WHITE..... COLLEGE DEG	
	Tot	Rep	Dem	Ind	Men	Wom	Yes	No
Very important	81%	64%	95%	82%	75%	87%	79%	81%
Smwht important	14	28	5	13	18	11	16	15
Not so important	2	3	-	2	3	1	2	2
Not important at all	1	3	-	1	2	1	2	1
DK/NA	1	2	-	1	2	-	1	1

	AGE IN YRS.....				WHITE.....			
	18-34	35-49	50-64	65+	Men	Wom	Wht	NonWht
Very important	82%	80%	82%	83%	73%	86%	80%	85%
Smwht important	12	15	15	13	20	11	15	11
Not so important	4	2	1	1	3	1	2	2
Not important at all	2	2	1	1	2	1	1	1
DK/NA	1	2	1	1	2	1	1	1

TREND: How important is it to you that health insurance be affordable for all Americans: very important, somewhat important, not so important, or not important at all?

	Very Imp	Smwht Imp	NotSo Imp	NotImp Atall	DK/NA
Apr 20, 2017	81	14	2	1	1
Mar 23, 2017	85	13	1	1	1
Mar 08, 2017	84	12	2	1	1
Jan 27, 2017	84	12	2	1	-

42. As you may know, Republicans in Congress recently attempted to repeal Obamacare and replace it with a different health care law. However, the new health care law did not get enough support to pass. Do you think that Republicans in Congress should try to repeal and replace Obamacare again, or do you think they should move on to other issues?

							WHITE..... COLLEGE DEG	
	Tot	Rep	Dem	Ind	Men	Wom	Yes	No
Try again	36%	77%	7%	32%	39%	33%	34%	48%
Move on	60	21	89	64	58	63	62	50
DK/NA	4	2	4	4	4	4	4	2

	AGE IN YRS.....				WHITE.....			
	18-34	35-49	50-64	65+	Men	Wom	Wht	NonWht
Try again	24%	35%	39%	41%	45%	38%	41%	21%
Move on	72	61	57	56	52	59	56	72
DK/NA	4	4	4	3	3	3	3	7

43. Do you support or oppose building a wall along the border with Mexico?

							WHITE..... COLLEGE DEG	
	Tot	Rep	Dem	Ind	Men	Wom	Yes	No
Support	33%	77%	3%	30%	38%	29%	30%	47%
Oppose	64	20	95	67	58	69	68	50
DK/NA	3	3	1	3	4	2	2	4

	AGE IN YRS.....				WHITE.....			
	18-34	35-49	50-64	65+	Men	Wom	Wht	NonWht
Support	18%	34%	38%	39%	43%	34%	38%	20%
Oppose	77	63	60	59	53	64	59	76
DK/NA	4	3	3	2	4	2	3	3

TREND: Do you support or oppose building a wall along the border with Mexico?

	Sup	Opp	DK/NA
Apr 20, 2017	33	64	3
Apr 05, 2017	33	64	3
Feb 23, 2017	37	60	3
Feb 08, 2017	38	59	3
Nov 23, 2016	42	55	3

44. As you may know, the Mexican government has refused to pay for the border wall. Would you support or oppose building a wall along the border with Mexico if it was entirely funded by the U.S. government and citizens?

							WHITE..... COLLEGE DEG	
	Tot	Rep	Dem	Ind	Men	Wom	Yes	No
Support	31%	72%	3%	27%	36%	26%	27%	44%
Oppose	66	25	96	70	60	71	71	52
DK/NA	3	3	1	3	3	2	2	5

	AGE IN YRS.....				WHITE.....			
	18-34	35-49	50-64	65+	Men	Wom	Wht	NonWht
Support	17%	33%	35%	36%	41%	30%	36%	20%
Oppose	80	65	62	60	54	67	61	78
DK/NA	3	2	3	4	4	2	3	2

TREND: As you may know, the Mexican government has refused to pay for the border wall. Would you support or oppose building a wall along the border with Mexico if it was entirely funded by the U.S. government and citizens?

	Sup	Opp	DK/NA
Apr 20, 2017	31	66	3
Apr 05, 2017	30	67	3
Feb 23, 2017	33	65	2
Feb 08, 2017	35	63	2

45. Do you think that the use of marijuana should be made legal in the United States, or not?

							WHITE..... COLLEGE DEG	
	Tot	Rep	Dem	Ind	Men	Wom	Yes	No
Yes	60%	37%	72%	62%	64%	56%	58%	57%
No	34	59	23	31	32	36	36	37
DK/NA	6	4	5	6	4	7	6	6

	AGE IN YRS.....				WHITE.....			
	18-34	35-49	50-64	65+	Men	Wom	Wht	NonWht
Yes	79%	66%	60%	42%	64%	52%	57%	67%
No	15	29	37	51	33	40	37	28
DK/NA	6	5	3	7	4	8	6	5

TREND: Do you think that the use of marijuana should be made legal in the United States, or not?

	Yes	No	DK/NA
Apr 20, 2017	60	34	6
Feb 23, 2017	59	36	5

Link to full trend on website

46. Do you support or oppose allowing adults to legally use marijuana for medical purposes if their doctor prescribes it?

							WHITE..... COLLEGE DEG	
	Tot	Rep	Dem	Ind	Men	Wom	Yes	No
Support	94%	90%	96%	95%	91%	97%	95%	93%
Oppose	5	9	3	4	7	2	4	6
DK/NA	1	2	1	1	2	1	1	2

	AGE IN YRS.....				WHITE.....			
	18-34	35-49	50-64	65+	Men	Wom	Wht	NonWht
Support	97%	94%	93%	93%	91%	96%	94%	94%
Oppose	2	5	5	7	7	3	5	5
DK/NA	1	1	2	1	2	1	1	1

TREND: Do you support or oppose allowing adults to legally use marijuana for medical purposes if their doctor prescribes it?

	Sup	Opp	DK/NA
Apr 20, 2017	94	5	1
Feb 23, 2017	93	6	1

Link to full trend on website

47. Would you support or oppose the government enforcing federal laws against marijuana in states that have already legalized medical or recreational marijuana?

							WHITE..... COLLEGE DEG	
	Tot	Rep	Dem	Ind	Men	Wom	Yes	No
Support	21%	40%	13%	16%	23%	19%	18%	26%
Oppose	73	53	82	79	72	74	78	67
DK/NA	6	7	5	5	4	7	4	7

	AGE IN YRS.....				WHITE.....			
	18-34	35-49	50-64	65+	Men	Wom	Wht	NonWht
Support	17%	17%	21%	29%	23%	21%	22%	19%
Oppose	81	79	75	58	72	73	72	75
DK/NA	1	4	4	12	5	6	6	6

TREND: Would you support or oppose the government enforcing federal laws against marijuana in states that have already legalized medical or recreational marijuana?

	Sup	Opp	DK/NA
Apr 20, 2017	21	73	6
Feb 23, 2017	23	71	6

48. As you may know, marijuana is currently classified as a Schedule 1 drug, along with other drugs such as heroin. This group of drugs is supposed to include only drugs with a very high potential for abuse or with no accepted medical use in the U.S. Do you think that marijuana should continue to be a Schedule 1 drug, or do you think its classification should be lowered?

							WHITE..... COLLEGE DEG	
	Tot	Rep	Dem	Ind	Men	Wom	Yes	No
Continue Schedule 1	18%	35%	9%	16%	20%	16%	16%	21%
Should be lowered	76	59	85	79	75	77	79	74
DK/NA	6	6	6	5	4	7	6	5

	AGE IN YRS.....				WHITE.....			
	18-34	35-49	50-64	65+	Men	Wom	Wht	NonWht
Continue Schedule 1	10%	15%	16%	26%	20%	17%	19%	15%
Should be lowered	89	80	79	63	76	77	76	77
DK/NA	1	5	5	11	4	6	5	7

49. Do you think that the United States can fight climate change and protect jobs at the same time, or do you think that achieving one of those goals means hurting the other?

							WHITE..... COLLEGE DEG	
	Tot	Rep	Dem	Ind	Men	Wom	Yes	No
Can do both	75%	65%	82%	79%	76%	74%	81%	71%
One hurts the other	18	27	13	13	18	18	13	22
DK/NA	7	8	5	8	7	8	6	7

	AGE IN YRS.....				WHITE.....			
	18-34	35-49	50-64	65+	Men	Wom	Wht	NonWht
Can do both	78%	75%	77%	67%	74%	77%	76%	71%
One hurts the other	14	21	15	22	20	16	18	18
DK/NA	8	4	8	11	6	6	6	11

TREND: Do you think that the United States can fight climate change and protect jobs at the same time, or do you think that achieving one of those goals means hurting the other?

	CanDo Both	1Hurts Other	DK/NA
Apr 20, 2017	75	18	7
Apr 05, 2017	68	24	8

50. As you may know, Congress must pass a new budget bill by April 28th in order to prevent a government shutdown, which then must be signed by President Trump. If a government shutdown does occur, who would you blame more: Republicans in Congress, Democrats in Congress, or President Trump?

							WHITE..... COLLEGE DEG	
	Tot	Rep	Dem	Ind	Men	Wom	Yes	No
Republicans	38%	13%	64%	36%	38%	39%	48%	28%
Democrats	32	73	4	31	35	30	29	47
President Trump	15	3	23	16	11	18	12	9
DK/NA	15	12	9	18	17	13	12	16

	AGE IN YRS.....				WHITE.....			
	18-34	35-49	50-64	65+	Men	Wom	Wht	NonWht
Republicans	47%	36%	40%	35%	36%	39%	37%	41%
Democrats	20	28	38	37	41	36	38	16
President Trump	17	19	11	12	8	13	10	26
DK/NA	16	16	11	16	16	12	14	17

TREND: As you may know, Congress must pass a new budget bill by April 28th in order to prevent a government shutdown, which then must be signed by President Trump. If a government shutdown does occur, who would you blame more: Republicans in Congress, Democrats in Congress, or President Trump?

	Reps	Dems	Trump	DK/NA
Apr 20, 2017	38	32	15	15
Apr 05, 2017	36	28	18	18

51. Do you support or oppose accepting Syrian refugees into the U.S.?

							WHITE..... COLLEGE DEG	
	Tot	Rep	Dem	Ind	Men	Wom	Yes	No
Support	57%	23%	86%	58%	52%	62%	64%	46%
Oppose	38	73	10	37	43	32	31	50
DK/NA	5	4	4	5	5	5	5	4

	AGE IN YRS.....				WHITE.....			
	18-34	35-49	50-64	65+	Men	Wom	Wht	NonWht
Support	69%	57%	52%	55%	47%	61%	55%	64%
Oppose	25	40	43	37	47	34	40	30
DK/NA	6	3	4	7	5	4	5	6

51a. (If oppose accepting refugees q51) Do you support or oppose accepting Syrian refugees who are women and children into the U.S.?

	OPPOSE ACCEPTING REFUGEES Q51...			WHITE..... COLLEGE DEG	
	Tot	Men	Wom	Yes	No
Support	27%	26%	29%	23%	25%
Oppose	69	69	68	73	72
DK/NA	4	5	3	4	4

51b. Do you support or oppose accepting Syrian refugees into the U.S.? COMBINED WITH: (If oppose accepting refugees q51) Do you support or oppose accepting Syrian refugees who are women and children into the U.S.?

							WHITE..... COLLEGE DEG	
	Tot	Rep	Dem	Ind	Men	Wom	Yes	No
Support	57%	23%	86%	58%	52%	62%	64%	46%
Support if women/children	10	16	4	10	11	9	7	12
Oppose	26	55	6	25	30	22	23	36
DK/NA	7	5	5	7	7	6	6	6

	AGE IN YRS.....				WHITE.....			
	18-34	35-49	50-64	65+	Men	Wom	Wht	NonWht
Support	69%	57%	52%	55%	47%	61%	55%	64%
Support if women/children	4	15	11	8	11	8	10	9
Oppose	18	23	32	28	34	25	29	18
DK/NA	8	5	5	9	8	5	6	8

61. Do you approve or disapprove of Neil Gorsuch's appointment to the Supreme Court?

							WHITE..... COLLEGE DEG	
	Tot	Rep	Dem	Ind	Men	Wom	Yes	No
Approve	49%	88%	24%	45%	55%	44%	47%	62%
Disapprove	36	3	62	39	34	38	43	24
DK/NA	15	10	14	16	11	18	10	14

	AGE IN YRS.....				WHITE.....			
	18-34	35-49	50-64	65+	Men	Wom	Wht	NonWht
Approve	38%	42%	55%	59%	62%	48%	54%	36%
Disapprove	42	41	32	31	29	37	33	44
DK/NA	21	17	13	10	9	15	12	20

62. Do you think it was the right thing or the wrong thing for the Senate Republicans to change the Senate rules so that all Supreme Court nominees can be confirmed with 51 votes instead of 60 votes?

							WHITE..... COLLEGE DEG	
	Tot	Rep	Dem	Ind	Men	Wom	Yes	No
Right thing	35%	71%	12%	32%	39%	32%	32%	47%
Wrong thing	55	17	83	58	52	58	60	45
DK/NA	10	11	6	11	9	10	8	8

	AGE IN YRS.....				WHITE.....			
	18-34	35-49	50-64	65+	Men	Wom	Wht	NonWht
Right thing	24%	33%	41%	41%	46%	34%	39%	25%
Wrong thing	60	57	51	52	46	58	52	62
DK/NA	15	10	8	7	8	8	8	13

63. Do you think that the process of confirming Supreme Court justices has become too partisan, not partisan enough, or does the process involve the right amount of partisanship?

							WHITE..... COLLEGE DEG	
	Tot	Rep	Dem	Ind	Men	Wom	Yes	No
Too partisan	68%	62%	71%	71%	73%	64%	79%	66%
Not partisan enough	9	6	9	11	7	11	5	9
Right amount	13	22	11	10	11	15	12	15
DK/NA	9	10	9	8	8	10	5	10

	AGE IN YRS.....				WHITE.....			
	18-34	35-49	50-64	65+	Men	Wom	Wht	NonWht
Too partisan	54%	66%	71%	78%	77%	68%	72%	58%
Not partisan enough	13	13	10	3	5	8	7	15
Right amount	18	12	11	11	11	15	13	12
DK/NA	15	9	7	7	6	8	7	15

64. In your opinion, has the Trump administration been too aggressive in deporting immigrants who are here illegally, not aggressive enough, or has the Trump administration been acting appropriately when it comes to deporting immigrants who are here illegally?

							WHITE..... COLLEGE DEG	
	Tot	Rep	Dem	Ind	Men	Wom	Yes	No
Too aggressive	47%	9%	79%	46%	39%	53%	49%	32%
Not aggr. enough	11	17	4	11	14	8	10	15
Acting appropriately	37	72	9	38	41	34	35	49
DK/NA	5	3	8	5	6	5	6	4

	AGE IN YRS.....				WHITE.....			
	18-34	35-49	50-64	65+	Men	Wom	Wht	NonWht
Too aggressive	64%	46%	41%	41%	34%	46%	41%	61%
Not aggr. enough	9	15	9	11	15	10	12	8
Acting appropriately	23	35	45	42	45	39	42	26
DK/NA	4	5	5	7	6	5	5	5

TREND: In your opinion, has the Trump administration been too aggressive in deporting immigrants who are here illegally, not aggressive enough, or has the Trump administration been acting appropriately when it comes to deporting immigrants who are here illegally?

	Too Aggrsv	Not Enough	Acting Apprtly	DK/NA
Apr 20, 2017	47	11	37	5
Mar 08, 2017	49	9	38	5

65. Do you support or oppose cutting off federal government funding to Planned Parenthood?

							WHITE..... COLLEGE DEG	
	Tot	Rep	Dem	Ind	Men	Wom	Yes	No
Support	30%	62%	6%	29%	35%	25%	27%	37%
Oppose	66	31	92	67	60	72	70	58
DK/NA	4	7	2	4	5	3	3	5

	AGE IN YRS.....				WHITE.....			
	18-34	35-49	50-64	65+	Men	Wom	Wht	NonWht
Support	18%	30%	30%	36%	37%	28%	32%	22%
Oppose	78	65	66	58	58	69	64	73
DK/NA	4	4	3	5	5	3	4	5

TREND: Do you support or oppose cutting off federal government funding to Planned Parenthood?

	Sup	Opp	DK/NA
Apr 20, 2017	30	66	4
Mar 23, 2017	33	61	5
Jan 27, 2017	31	62	7

Link to full trend on website

65a. (If support cutting funding q65) If you knew that federal government funding to Planned Parenthood was being used only for non-abortion health issues such as breast cancer screening, would you still favor cutting off funding to Planned Parenthood?

	SUPPORT CUTTING FUNDING Q65.....			WHITE..... COLLEGE DEG	
	Tot	Men	Wom	Yes	No
Yes/Cut	35%	36%	33%	37%	33%
No/Don't cut	62	60	65	58	65
DK/NA	3	4	2	5	2

TREND: (If support cutting funding) If you knew that federal government funding to Planned Parenthood was being used only for non-abortion health issues such as breast cancer screening, would you still favor cutting off funding to Planned Parenthood?

	SUPPORT CUTTING FUNDING		
	YesCut	No	DK/NA
Apr 20, 2017	35	62	3
Mar 23, 2017	42	55	2
Jan 27, 2017	38	59	3
Feb 23, 2017	39	58	3

65b. Do you support or oppose cutting off federal government funding to Planned Parenthood? COMBINED WITH: (If support cutting funding q65) If you knew that federal government funding to Planned Parenthood was being used only for non-abortion health issues such as breast cancer screening, would you still favor cutting off funding to Planned Parenthood?

							WHITE..... COLLEGE DEG	
	Tot	Rep	Dem	Ind	Men	Wom	Yes	No
Cut gov funding	10%	21%	2%	11%	13%	8%	10%	12%
Do not cut	85	70	97	84	81	88	86	82
DK/NA	5	9	2	5	7	4	4	6

	AGE IN YRS.....				WHITE.....			
	18-34	35-49	50-64	65+	Men	Wom	Wht	NonWht
Cut gov funding	9%	11%	11%	10%	13%	10%	11%	8%
Do not cut	85	84	84	84	81	87	84	86
DK/NA	6	5	4	6	7	3	5	6

TREND: Do you support or oppose cutting off federal government funding to Planned Parenthood? COMBINED WITH: (If support cutting funding) If you knew that federal government funding to Planned Parenthood was being used only for non-abortion health issues such as breast cancer screening, would you still favor cutting off funding to Planned Parenthood?

	Yes	No	DK/NA
Apr 20, 2017	10	85	5
Mar 23, 2017	14	80	6
Jan 27, 2017	12	80	8

Link to full trend on website

66. How concerned are you about President Trump's relationship with Russia; very concerned, somewhat concerned, not so concerned, or not concerned at all?

							WHITE..... COLLEGE DEG	
	Tot	Rep	Dem	Ind	Men	Wom	Yes	No
Very concerned	46%	14%	73%	47%	38%	53%	46%	33%
Smwht concerned	24	26	23	22	24	23	25	28
Not so concerned	12	27	2	12	13	12	12	17
Not concerned at all	17	32	1	18	23	11	16	22
DK/NA	1	-	1	1	1	1	1	1

	AGE IN YRS.....				WHITE.....			
	18-34	35-49	50-64	65+	Men	Wom	Wht	NonWht
Very concerned	51%	48%	44%	43%	30%	47%	39%	63%
Smwht concerned	29	22	22	24	26	26	26	18
Not so concerned	12	10	13	15	16	14	15	6
Not concerned at all	8	21	21	15	26	12	19	12
DK/NA	-	-	1	3	1	-	1	1

TREND: How concerned are you about President Trump's relationship with Russia: very concerned, somewhat concerned, not so concerned, or not concerned at all?

	Very Concern	Smwht Concern	NotSo Concern	Not Concern	DK/NA
Apr 20, 2017	46	24	12	17	1
Apr 05, 2017	41	23	15	18	2
Mar 24, 2017	41	22	14	21	2
Mar 08, 2017	41	20	16	22	1

Link to full trend on website

67. Do you think that the alleged Russian interference in the 2016 election is a very important issue, a somewhat important issue, a not so important issue, or not an important issue at all?

							WHITE..... COLLEGE DEG	
	Tot	Rep	Dem	Ind	Men	Wom	Yes	No
Very important	49%	14%	80%	50%	44%	54%	53%	34%
Smwht important	17	21	15	16	17	18	17	22
Not so important	11	20	2	12	11	11	12	16
Not important at all	19	37	2	19	25	13	17	24
DIDN'T INTERFERE(VOL)	2	6	-	-	2	2	2	3
DK/NA	2	1	1	2	1	2	1	2

	AGE IN YRS.....				WHITE.....			
	18-34	35-49	50-64	65+	Men	Wom	Wht	NonWht
Very important	55%	48%	48%	49%	37%	48%	43%	65%
Smwht important	20	16	14	19	19	20	19	13
Not so important	8	10	14	11	14	15	14	3
Not important at all	14	20	21	18	27	15	20	14
DIDN'T INTERFERE(VOL)	-	3	3	1	3	2	2	1
DK/NA	2	3	1	2	1	1	1	3

TREND: Do you think that the alleged Russian interference in the 2016 election is a very important issue, a somewhat important issue, a not so important issue, or not an important issue at all?

	Very Imp	Smwht Imp	NotSo Imp	NotImp Atall	DIDN'T INTRFR	DK/NA
Apr 20, 2017	49	17	11	19	2	2
Apr 05, 2017	47	19	12	17	1	3
Mar 24, 2017	46	19	12	20	1	2
Mar 08, 2017	42	20	12	23	1	2
Feb 23, 2017	47	18	12	20	1	2
Jan 30, 2017	47	20	11	19	1	2

68. Do you support or oppose an independent commission investigating the potential links between some of Donald Trump's campaign advisors and the Russian government?

							WHITE..... COLLEGE DEG	
	Tot	Rep	Dem	Ind	Men	Wom	Yes	No
Support	68%	41%	91%	70%	66%	71%	71%	60%
Oppose	29	56	7	27	31	27	26	39
DK/NA	3	3	2	3	3	2	3	1

	AGE IN YRS.....				WHITE.....			
	18-34	35-49	50-64	65+	Men	Wom	Wht	NonWht
Support	79%	65%	67%	64%	61%	69%	65%	77%
Oppose	17	33	32	32	36	30	33	18
DK/NA	3	2	1	4	3	1	2	5

TREND: Do you support or oppose an independent commission investigating the potential links between some of Donald Trump's campaign advisors and the Russian government?

	Sup	Opp	DK/NA
Apr 20, 2017	68	29	3
Apr 05, 2017	68	27	5
Mar 24, 2017	66	29	5
Mar 08, 2017	66	30	4

69. Do you believe that individuals in the Trump campaign coordinated with the Russian government to interfere in the 2016 presidential election, or not?

							WHITE..... COLLEGE DEG	
	Tot	Rep	Dem	Ind	Men	Wom	Yes	No
Yes/Coordinated	45%	8%	77%	44%	40%	50%	47%	33%
No	45	87	14	43	50	41	41	60
DK/NA	10	5	9	13	10	9	12	7

	AGE IN YRS.....				WHITE.....			
	18-34	35-49	50-64	65+	Men	Wom	Wht	NonWht
Yes/Coordinated	56%	47%	42%	40%	32%	46%	40%	61%
No	33	44	51	47	57	45	51	29
DK/NA	10	9	7	13	10	9	10	11

TREND: Do you believe that individuals in the Trump campaign coordinated with the Russian government to interfere in the 2016 presidential election, or not?

	Yes	No	DK/NA
Apr 20, 2017	45	45	10
Apr 05, 2017	44	44	12

70. Have you heard about the recent controversy regarding the multiple sexual harassment suits against Bill O'Reilly, or not?

							WHITE..... COLLEGE DEG	
	Tot	Rep	Dem	Ind	Men	Wom	Yes	No
Yes	73%	67%	80%	72%	74%	72%	82%	68%
No	25	30	19	27	23	27	17	31
DK/NA	2	2	1	1	3	1	1	1

	AGE IN YRS.....				WHITE.....			
	18-34	35-49	50-64	65+	Men	Wom	Wht	NonWht
Yes	62%	69%	79%	78%	75%	74%	75%	68%
No	38	30	19	19	23	25	24	29
DK/NA	-	1	2	3	1	1	1	3

70a. (If heard about controversy q70) Based on what you've heard about this controversy, are you more likely to watch Bill O'Reilly's show on Fox, less likely to watch his show, or are you just as likely to watch Bill O'Reilly's show on Fox as you were before?

	HEARD ABOUT CONTROVERSY Q70.....						WHITE..... COLLEGE DEG	
	Tot	Rep	Dem	Ind	Men	Wom	Yes	No
More likely	3%	10%	--	3%	4%	3%	1%	6%
Less likely	39	20	58	36	35	43	42	28
Just as likely	49	65	30	54	54	44	49	56
DK/NA	9	5	12	7	7	10	8	10

	AGE IN YRS.....				WHITE.....			
	18-34	35-49	50-64	65+	Men	Wom	Wht	NonWht
More likely	4%	3%	3%	4%	4%	3%	3%	4%
Less likely	32	41	44	38	28	42	35	49
Just as likely	60	51	44	43	60	46	52	39
DK/NA	4	5	9	14	8	9	9	8

70b. (If heard about controversy q70) Do you believe that Fox News has handled this controversy regarding Bill O'Reilly well so far, or do you think they should have done something different? (This question was asked before it was decided that Bill O'Reilly will not be returning to Fox.)

	HEARD ABOUT CONTROVERSY Q70.....						WHITE..... COLLEGE DEG	
	Tot	Rep	Dem	Ind	Men	Wom	Yes	No
Handled well	25%	49%	11%	24%	24%	26%	18%	37%
Done something diff	50	26	70	51	52	48	55	37
DK/NA	25	26	19	26	24	26	26	25

	AGE IN YRS.....				WHITE.....			
	18-34	35-49	50-64	65+	Men	Wom	Wht	NonWht
Handled well	19%	24%	28%	25%	28%	26%	27%	18%
Done something diff	55	54	47	48	48	46	47	60
DK/NA	26	22	25	27	24	27	26	22

70c. (If heard about controversy q70) As you may know, President Trump has defended Bill O'Reilly, saying that he believes that O'Reilly has done nothing wrong. Do you think this was an appropriate thing for President Trump to say, or not?

	HEARD ABOUT CONTROVERSY Q70						WHITE COLLEGE DEG	
	Tot	Rep	Dem	Ind	Men	Wom	Yes	No
Yes/Appropriate	19%	43%	5%	17%	21%	16%	12%	30%
No	76	49	93	78	71	80	83	64
DK/NA	6	9	1	6	8	4	5	6

	AGE IN YRS				WHITE			
	18-34	35-49	50-64	65+	Men	Wom	Wht	NonWht
Yes/Appropriate	12%	17%	21%	19%	26%	16%	21%	10%
No	82	78	75	74	67	81	74	84
DK/NA	6	5	5	7	8	4	5	6

71. Do you think that President Trump spends too much time at properties that his company owns, or not?

							WHITE COLLEGE DEG	
	Tot	Rep	Dem	Ind	Men	Wom	Yes	No
Yes/Too much time	55%	16%	86%	55%	51%	58%	60%	44%
No	34	72	8	32	36	33	33	45
DK/NA	11	12	5	14	13	9	7	11

	AGE IN YRS				WHITE			
	18-34	35-49	50-64	65+	Men	Wom	Wht	NonWht
Yes/Too much time	66%	58%	51%	49%	46%	56%	52%	63%
No	22	29	42	39	42	36	39	23
DK/NA	12	13	8	11	12	7	9	14

72. Do you think President Trump is spending too much time at the White House, not enough time at the White House, or is spending about the right amount of time at the White House?

							WHITE COLLEGE DEG	
	Tot	Rep	Dem	Ind	Men	Wom	Yes	No
Too much time	2%	1%	3%	1%	2%	1%	1%	-
Not enough time	50	16	78	51	47	54	55	41
Right amount of time	38	74	14	36	40	36	36	49
DK/NA	10	9	6	11	10	9	9	10

	AGE IN YRS				WHITE			
	18-34	35-49	50-64	65+	Men	Wom	Wht	NonWht
Too much time	2%	1%	2%	2%	1%	-	1%	4%
Not enough time	56	55	48	47	42	53	48	58
Right amount of time	27	34	45	41	46	39	42	27
DK/NA	15	10	5	11	11	8	9	10

73. Based on what you've heard, how comfortable are you with the amount that is being spent on security so that President Trump and his family can stay in places that are not the White House; very comfortable, somewhat comfortable, not so comfortable, or not comfortable at all?

							WHITE..... COLLEGE DEG	
	Tot	Rep	Dem	Ind	Men	Wom	Yes	No
Very comfortable	19%	42%	6%	16%	19%	18%	16%	25%
Smwht comfortable	16	25	5	16	19	13	16	22
Not so comfortable	15	16	13	17	15	15	14	16
Not comf. at all	45	11	75	46	40	50	49	34
DK/NA	5	6	2	6	6	4	5	4

	AGE IN YRS.....				WHITE.....			
	18-34	35-49	50-64	65+	Men	Wom	Wht	NonWht
Very comfortable	12%	16%	21%	24%	22%	19%	21%	14%
Smwht comfortable	14	15	16	17	22	16	19	10
Not so comfortable	17	17	15	12	15	15	15	14
Not comf. at all	51	46	44	43	35	48	42	56
DK/NA	7	6	3	4	6	3	4	7

74. Based on what you've heard, how comfortable are you with the amount of time that President Trump is spending golfing and doing other leisure activities; very comfortable, somewhat comfortable, not so comfortable, or not comfortable at all?

							WHITE..... COLLEGE DEG	
	Tot	Rep	Dem	Ind	Men	Wom	Yes	No
Very comfortable	22%	46%	5%	20%	24%	20%	23%	29%
Smwht comfortable	20	32	13	18	20	20	18	24
Not so comfortable	14	6	18	17	14	13	15	12
Not comf. at all	38	10	62	37	33	43	39	28
DK/NA	6	6	3	8	8	5	6	7

	AGE IN YRS.....				WHITE.....			
	18-34	35-49	50-64	65+	Men	Wom	Wht	NonWht
Very comfortable	12%	18%	27%	28%	30%	22%	26%	12%
Smwht comfortable	18	20	22	19	20	21	21	17
Not so comfortable	17	17	10	13	13	14	13	15
Not comf. at all	47	40	36	32	27	39	33	51
DK/NA	6	6	5	7	10	4	6	5

76. Do you think that President Trump has more conflicts of interest than most politicians, less conflicts of interest, or about the same amount of conflicts of interest as most politicians?

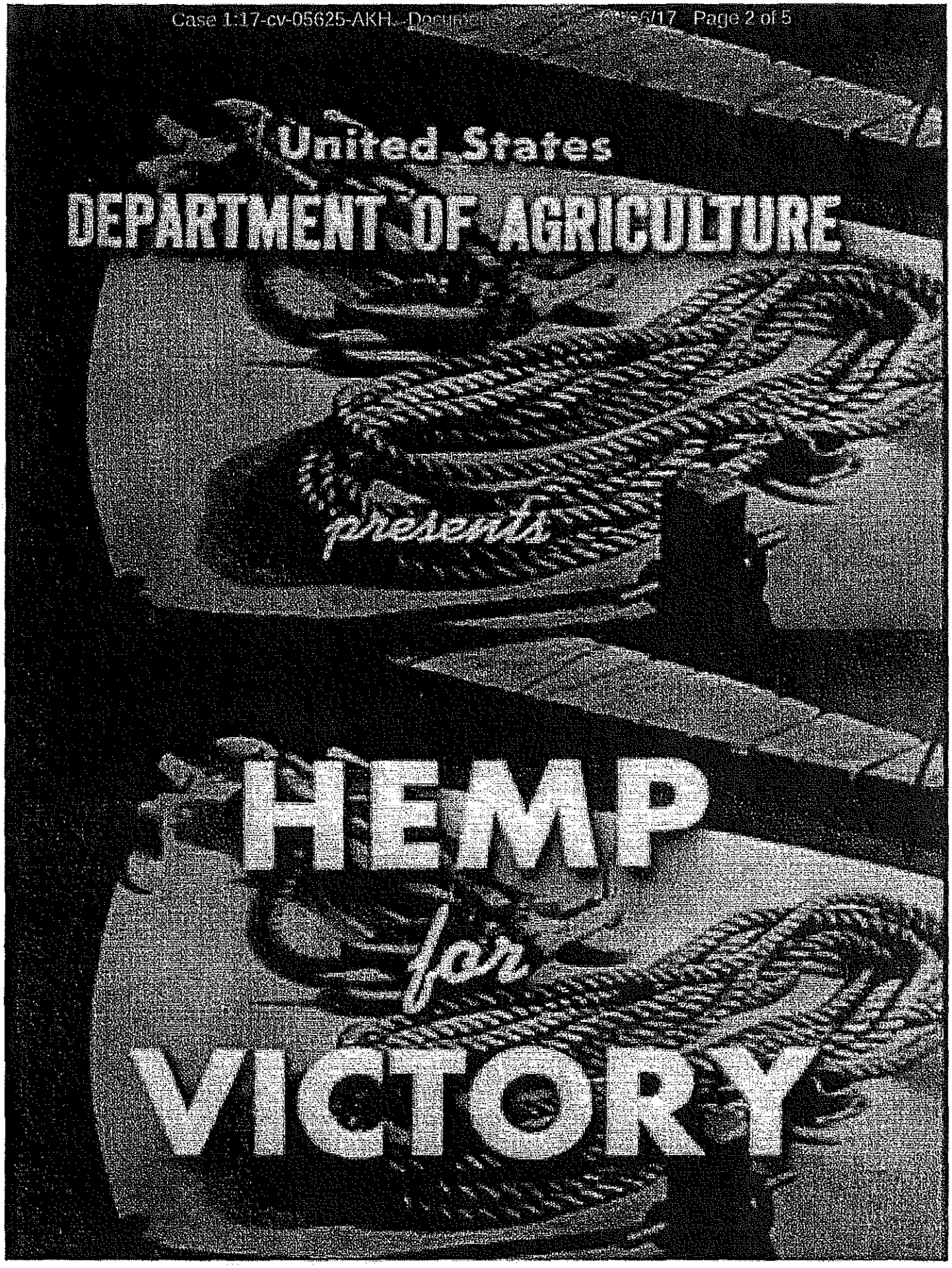
							WHITE..... COLLEGE DEG	
	Tot	Rep	Dem	Ind	Men	Wom	Yes	No
More	58%	24%	84%	61%	53%	63%	65%	50%
Less	8	12	7	7	9	7	7	6
Same	32	59	9	32	36	28	25	43
DK/NA	2	5	-	1	2	2	3	1

	AGE IN YRS.....				WHITE.....			
	18-34	35-49	50-64	65+	Men	Wom	Wht	NonWht
More	70%	55%	56%	55%	50%	64%	57%	62%
Less	7	7	9	10	8	5	6	12
Same	22	36	34	31	41	29	34	24
DK/NA	1	1	1	4	2	2	2	2

TREND: Do you think that President Trump has more conflicts of interest than most politicians, less conflicts of interest, or about the same amount of conflicts of interest as most politicians? (* "President-elect")

	More	Less	Same	DK/NA
Apr 20, 2017	58	8	32	2
Apr 04, 2017	55	10	33	2
Feb 23, 2017	57	11	29	3
Jan 26, 2017	54	12	32	2
Jan 10, 2017	52	10	35	4 *

Exhibit 2

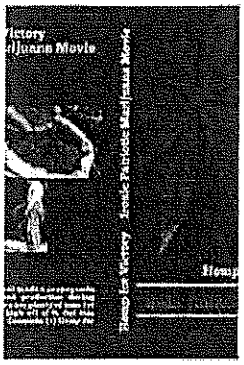

United States
DEPARTMENT OF AGRICULTURE
presents
HEMP
for
VICTORY

Hemp for Victory (1943)

7.0/10 64 | R 1h

Include WL?

15min | Documentary, Short



An informational film produced to encourage farmers to grow hemp for the war effort during WW2. The film details the many industrial uses of hemp, including cloth and cordage, as well as a detailed history of the plant's use.

Director: Raymond Evans
Writer: Brittain B. Robinson (subject matter)
Star: Lee D. Vickers

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2 photos »

Cast

Edit

Credited cast:

Lee D. Vickers	...	Narrator (voice)

See full cast »

Storyline

Edit

An informational film produced to encourage farmers to grow hemp for the war effort during WW2. The film details the many industrial uses of hemp, including cloth and cordage, as well as a detailed history of the plant's use.

Plot Summary | Add Synopsis

Plot Keywords: hemp | world war two | rope | propaganda | navy | See All (9) »

Genres: Documentary | Short

Parents Guide: View content advisory »

Details

Edit

Country: USA
Language: English

Company Credits

Production Co: U.S. Department of Agriculture See more »
Show detailed company contact information on IMDbPro »

Technical Specs

Sound Mix: Mono
Color: Black and White
Aspect Ratio: 1.33 : 1
See full technical specs »

Did You Know?

Edit

Trivia
Contrary to popular belief, prints are still in existence, and the film itself is in the public domain. Copies have been made available through education groups, and the film is also available to download on the Internet. See more »

Quotes
Narrator: For the sailor, no less than the hangman, hemp was indispensable. A 44-gun frigate like our cherished Old Ironsides took over 60 tons of hemp for rigging, including an anchor cable 25 inches in circumference. The Conestoga wagons and prairie schooners of pioneer days were covered with hemp canvas. Indeed the very word canvas comes from the Arabic word for hemp. In those days hemp was an important crop in Kentucky and Missouri. Then came cheaper imported fibers for cordage, like jute, sisal and ...
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Connections
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Frequently Asked Questions

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User Reviews

a great movie for the whole family
3 April 2006 | by (Trailamador) – See all my reviews

the movie is well-made for its time for a government publication, and has lots of interesting facts about the history of industrial hemp during the birth of this country. most viewable versions are copies of copies, so tend to be rather grainy, but the movie itself is well worth watching.

I will not speculate on why the US Government promoted industrial hemp at one time, but now campaigns against it, but there are many people who will. there are several countries in Europe that allow farmers to produce industrial hemp. Henry Ford made a car fueled by industrial hemp seed oil. one can only imagine the number of American jobs that would be created, and family farms that would be supported, by allowing vehicles to run on industrial hemp oil.

also, the Constitution was written on industrial hemp paper.

13 of 13 people found this review helpful. Was this review helpful to you? Yes No

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Exhibit 3

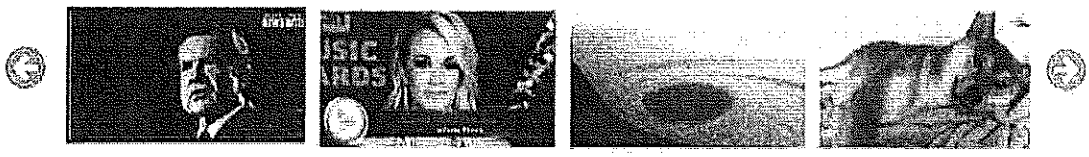
Nixon aide: 'War on Drugs' was tool to target 'black people'

BY ADAM EDELMAN

NEW YORK DAILY NEWS Updated: Wednesday, March 23, 2016, 8:38 AM

Nixon aide: 'War on Drugs' was tool to target 'black people'

NY Daily News



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The "War on Drugs" was actually a political tool to crush leftist protesters and black people, a former Nixon White House adviser admitted in a decades-old interview published Tuesday.

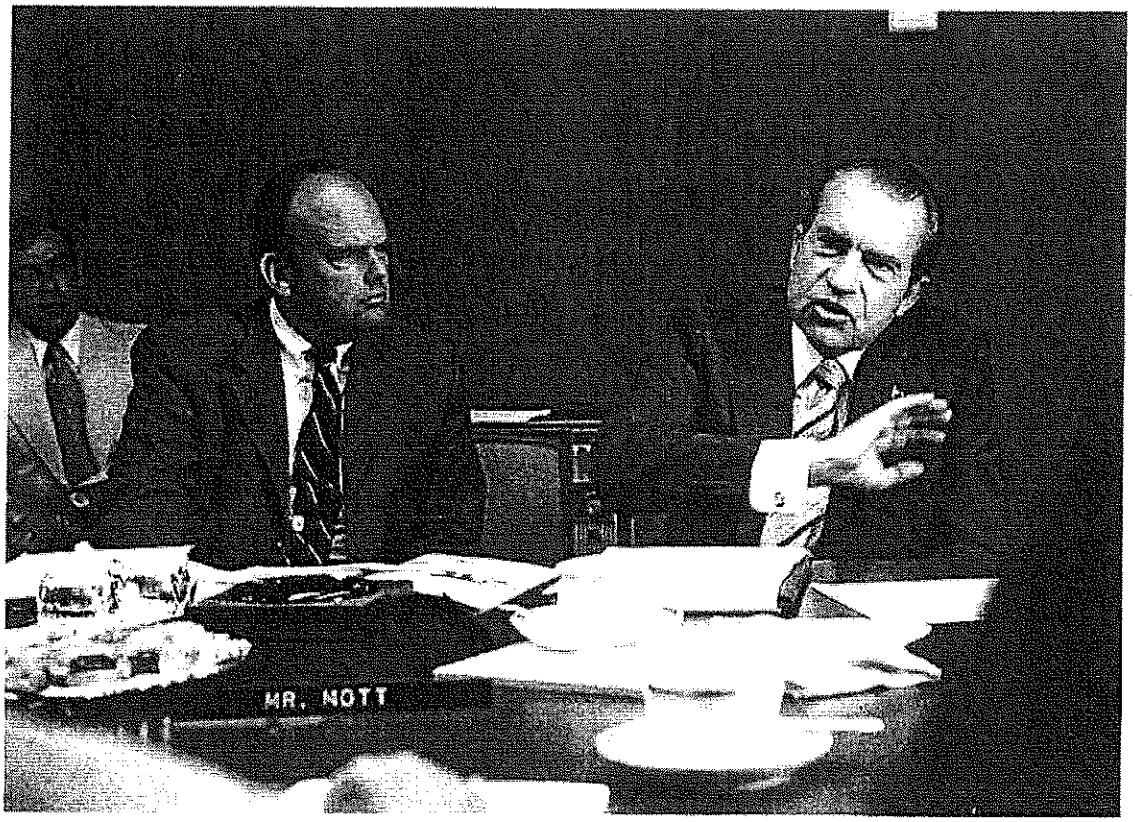
John Ehrlichman, who served as President Richard Nixon's domestic policy chief, laid bare the sinister use of his boss' controversial policy in a 1994 interview with journalist Dan Baum that the writer revisited in a new article for Harper's magazine.

KING: WHY THE WAR ON DRUGS IS REALLY A WAR ON BLACK PEOPLE

"You want to know what this was really all about," Ehrlichman, who died in 1999, said in the interview after Baum asked him about Nixon's harsh anti-drug policies.

"The Nixon campaign in 1968, and the Nixon White House after that, had two enemies: the antiwar left and black people. You understand what I'm saying," Ehrlichman continued.

"We knew we couldn't make it illegal to be either against the war or black, but by getting the public to associate the hippies with marijuana and blacks with heroin, and then criminalizing both heavily, we could disrupt those communities. We could arrest their leaders, raid their homes, break up their meetings, and vilify them night after night on the evening news. Did we know we were lying about the drugs? Of course we did."



John D. Ehrlichman (l.), a top adviser to former President Richard Nixon (r.) is seen here in a 1972 photo. Ehrlichman, who died in 1999, admitted that the administration's "War on Drugs" was actually a ploy to target left-wing protesters and African-Americans. (ASSOCIATED PRESS)

Ehrlichman served 18 months in prison after being convicted of conspiracy and perjury for his role in the Watergate scandal that toppled his boss.

The Rev. Al Sharpton said Ehrlichman's comments proved what black people had believed for decades.

"This is a frightening confirmation of what many of us have been saying for years. That this was a real attempt by government to demonize and criminalize a race of people," Sharpton told the Daily News. "And when we would raise the questions over that targeting, we were accused of all kind of things, from harboring criminality to being un-American and trying to politicize a legitimate concern."

PROTESTERS RIP DEA OVER 'WASTEFUL' DRUG WAR, IMPRISONMENTS

In 1971, Nixon labeled drug abuse "Public Enemy No. 1" and signed the Comprehensive Drug Abuse Prevention and Control Act, putting into place several new laws that cracked down on drug users. He also created the Drug Enforcement Administration.

Anti-war demonstrators in 1970 image. (CHARLES TASNADI/AP)

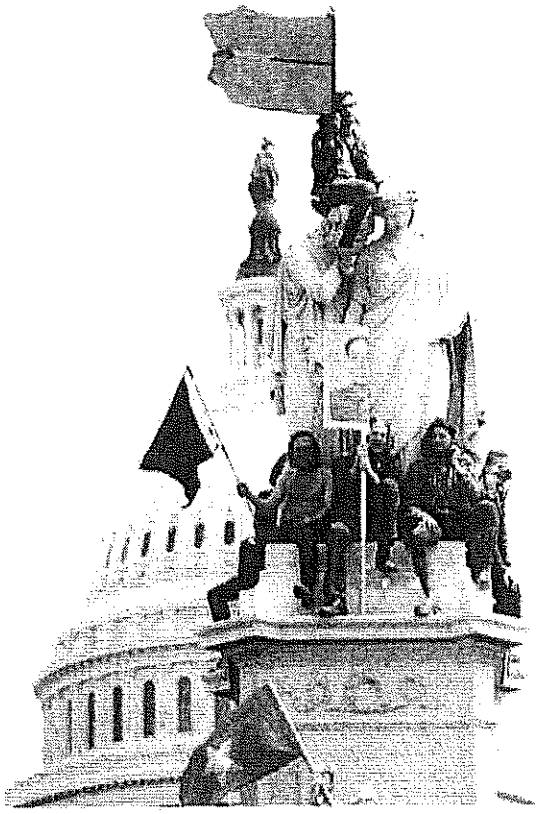
By 1973, about 300,000 people were being arrested every year under the law — the majority of whom were African-American. The drug war was continued in various forms by every President since, including President Ronald Reagan, whose wife Nancy called for people to "Just say no."

Ehrlichman's 22-year-old comments resurfaced Tuesday after Baum wrote about them in a cover story for the April issue of Harper's, titled "Legalize It All," in which he argues in favor of legalizing hard drugs.

The original 1994 interview with Ehrlichman was part of Baum's research for his 1997 book, "Smoke and Mirrors: The War on Drugs and the Politics of Failure," in which Baum laid bare decades of unsuccessful drug policy.

But the quotes never appeared in the book.

NYPD arrests a member of the Black Panthers for refusing to clear a sidewalk during a demonstration.
(STEVE STARR/AP)



Anti-war demonstrators in Washington on May 9, 1970.
(CHARLES TASNADI/AP)

Baum said Tuesday he excluded the jaw-dropping quotes because they "didn't fit."

"There are no authorial interviews in ('Smoke and Mirrors') at all; it's written to put the reader in the room as events transpire," Baum told The Huffington Post via email. "Therefore, the quote didn't fit. It did change all the reporting I did for the book, though, and changed the way I worked thereafter."

The shocking interview with Ehrlichman later surfaced in a 2012 compendium of "wild, poignant, life-changing stories" from various writers titled "The Moment," but the quotes received little media attention.

Many politicos have surmised that Ehrlichman, who would die five years later, made the stark revelations because he was angry Nixon never pardoned him of his Watergate-related offenses.

Sharpton said the damage done by the war on drugs' cruel policies doomed generations of black people.

"Think of all the lives and families that were ruined and absolutely devastated only because they were caught in a racial net from the highest end reaches of government."

Exhibit 4

HARPER'S MAGAZINE

June 2, 2017: [Paris Climate Accord][Wagner][Manila][Teibucl enclaves]
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Report — from the April 2016 issue

Legalize It All

How to win the war on drugs

By Dan Baum

In 1994, John Ehrlichman, the Watergate co-conspirator, unlocked for me one of the great mysteries of modern American history: How did the United States entangle itself in a policy of drug prohibition that has yielded so much misery and so few good results? Americans have been criminalizing psychoactive substances since San Francisco's anti-opium law of 1875, but it was Ehrlichman's boss, Richard Nixon, who declared the first "war on drugs" and set the country on the wildly punitive and counterproductive path it still pursues. I'd tracked Ehrlichman, who had been Nixon's domestic-policy adviser, to an engineering firm in Atlanta, where he was working on minority recruitment. I barely recognized him. He was much heavier than he'd been at the time of the Watergate scandal two decades earlier, and he wore a mountain-man beard that extended to the middle of his chest.

A patient drinks a dose of methadone at the Taipas rehabilitation clinic in Lisbon, Portugal © Rafael Marchante/Reuters

At the time, I was writing a book about the politics of drug prohibition. I started to ask Ehrlichman a series of earnest, wonky questions that he impatiently waved away. "You want to know what this was really all about?" he asked with the bluntness of a man who, after public disgrace and a stretch in federal prison, had little left to protect. "The Nixon campaign in 1968, and the Nixon White House after that, had two enemies: the antiwar left and black people. You understand what I'm saying? We knew we couldn't make it illegal to be either against the war or black, but by getting the public to associate the hippies with marijuana and blacks with heroin, and then criminalizing both heavily, we could disrupt those communities. We could arrest their leaders, raid their homes, break up their meetings, and vilify them night after night on the evening news. Did we know we were lying about the drugs? Of course we did."

I must have looked shocked. Ehrlichman just shrugged. Then he looked at his watch, handed me a signed copy of his steamy spy novel, *The Company*, and led me to the door.

Nixon's invention of the war on drugs as a political tool was cynical, but every president since — Democrat and Republican alike — has found it equally useful for one reason or another. Meanwhile, the growing cost of the drug war is now impossible to ignore: billions of dollars wasted, bloodshed in Latin America and on the streets of our own cities, and millions of lives destroyed by draconian punishment that doesn't end at the prison gate; one of every eight black men has been disenfranchised because of a felony conviction.

As long ago as 1949, H. L. Mencken identified in Americans "the haunting fear that someone, somewhere, may be happy," an astute articulation of our weirdly Puritan need to criminalize people's inclination to adjust how they feel. The desire for altered states of consciousness creates a market, and in suppressing that market we have created a class of genuine bad guys — pushers, gangbangers, smugglers, killers. Addiction is a hideous condition, but it's rare. Most of what we hate and fear about drugs — the violence, the overdoses, the criminality — derives from prohibition, not drugs. And there will be no victory in this war either; even the Drug Enforcement Administration concedes that the drugs it fights are becoming cheaper and more easily available.

Now, for the first time, we have an opportunity to change course. Experiments in alternatives to harsh prohibition are already under way both in this country and abroad. Twenty-three states, as well as the District of Columbia, allow medical marijuana, and four — Colorado, Washington, Oregon, and Alaska — along with D.C., have legalized pot altogether. Several more states, including Arizona, California, Maine, Massachusetts, and Nevada, will likely vote in November whether to follow suit. Portugal has decriminalized not only marijuana but cocaine and heroin, as well as all other drugs. In Vermont, heroin addicts can avoid jail by committing to state-funded treatment. Canada began a pilot program in Vancouver in 2014 to allow doctors to prescribe pharmaceutical-quality heroin to addicts, Switzerland has a similar program, and the Home Affairs Committee of Britain's House of Commons has recommended that the United Kingdom do likewise. Last July, Chile began a legislative process to legalize both medicinal and recreational marijuana use and allow households to grow as many as six plants. After telling the BBC in December that "if you fight a war for forty years and don't win, you have to sit down and think about other things to do that might be more effective," Colombian president Juan Manuel Santos legalized medical marijuana by decree. In November, the Mexican Supreme Court elevated the debate to a new plane by ruling that the prohibition of marijuana consumption violated the Mexican Constitution by interfering with "the personal sphere," the "right to dignity," and the right to "personal autonomy." The Supreme Court of Brazil is considering a similar argument.

Depending on how the issue is framed, legalization of all drugs can appeal to conservatives, who are instinctively suspicious of bloated budgets, excess government authority, and intrusions on individual liberty, as well as to liberals, who are horrified at police overreach, the brutalization of Latin America, and the criminalization of entire generations of black men. It will take some courage to move the conversation beyond marijuana to ending all drug prohibitions, but it will take less, I suspect, than most politicians believe. It's already politically permissible to criticize mandatory minimums, mass marijuana-possession arrests, police militarization, and other excesses of the drug war; even former attorney general Eric Holder and Michael Botticelli, the new drug czar — a recovering alcoholic — do so. Few in public life appear eager to defend the status quo.

This month, the General Assembly of the United Nations will be gathering for its first drug conference since 1998. The motto of the 1998 meeting was "A Drug-Free World — We Can Do It!" With all due respect, U.N., how'd that work out for you? Today the U.N. confronts a world in which those who have suffered the most have lost faith in the old strong-arm ideology. That the tide was beginning to turn was evident at the 2012 Summit of the Americas in Cartagena, Colombia, when Latin American leaders for the first time openly discussed — much to the public discomfort of President Obama — whether legalizing and regulating drugs should be the hemisphere's new approach.

When the General Assembly convenes, it also will have to contend with the startling fact that four states and the capital city of the world's most zealous drug enforcer have fully legalized marijuana. "We're confronted now with the fact that the U.S. cannot enforce domestically what it promotes elsewhere," a member of the U.N.'s International Narcotics Control Board, which monitors international compliance with the conference's directives, told me. Shortly before Oregon, Alaska, and the District of Columbia added themselves to the legal-marijuana list, the State Department's chief drug-control official, William Brownfield, abruptly reversed his stance. Whereas before he had said that the "drug control conventions cannot be changed," in 2014 he admitted that things had changed: "How could I, a representative of the government of the United States of America, be intolerant of a government that permits any experimentation with legalization of marijuana if two of the fifty states of the United States of America have chosen to walk down that road?" Throughout the drug-reform community, jaws dropped.

As the once-unimaginable step of ending the war on drugs shimmers into view, it's time to shift the conversation from *why* to *how*. To realize benefits from ending drug prohibition will take more than simply declaring that drugs are legal. The risks are tremendous. Deaths from heroin overdose in the United States rose 500 percent from 2001 to 2014, a staggering increase; and deaths from prescription drugs — which are already legal and regulated — shot up almost 300 percent, proving that where opioids are concerned, we seem to be inept not only when we prohibit but also when we regulate. A sharp increase in drug dependence or overdoses that followed the legalization of drugs would be a public-health disaster, and it could very well knock the world back into the same counterproductive prohibitionist mind-set from which we appear finally to be emerging. To minimize harm and maximize order, we'll have to design better systems than we have now for licensing, standardizing, inspecting, distributing, and taxing dangerous drugs. A million choices will arise, and we probably won't make any good decisions on the first try. Some things will get better; some things will get worse. But we do have experience on which to draw — from the end of Prohibition, in the 1930s, and from our recent history. Ending drug prohibition is a matter of imagination and management, two things on which Americans justifiably pride themselves. We can do this.

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Dan Baum is the author of four books, most recently *Gun Guys* (2013). His most recent article for *Harper's Magazine*, "How to Make Your Own AR-15," appeared in the June 2013 issue.

More from Dan Baum:

Context — June 17, 2016, 3:27 pm

How to Make Your Own AR-15

A gunman kills 49 people with an AR-15 assault rifle at an Orlando nightclub; Dan Baum investigates whether gun-control laws could ever stop the weapon from proliferating.

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Perspective — May 17, 2013, 9:00 am

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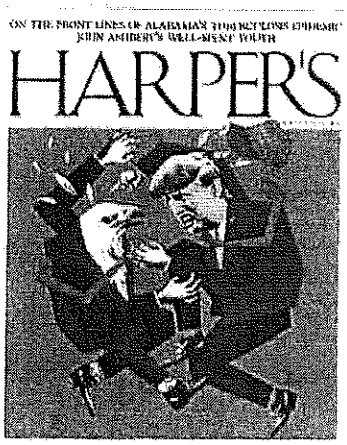
THE CURRENT ISSUE



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June 2017

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Exhibit 5

UNITED STATES DEPARTMENT OF JUSTICE

Drug Enforcement Administration

In The Matter Of

MARIJUANA RESCHEDULING PETITION

Docket No. 86-22

OPINION AND RECOMMENDED RULING, FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECISION OF ADMINISTRATIVE LAW JUDGE

FRANCIS L. YOUNG, Administrative Law Judge

APPEARANCES:

KEVIN B. ZEESE, Esq.
ARNOLD S. TREBACH, Esq.
for National Organization For The Reform of Marijuana Laws

FRANK B. STILWELL, III, Esq.
for Alliance for Cannabis Therapeutics

DAVID C. BECK, Esq.
for Cannabis Corporation of America

CARL ERIC OLSEN, Pro Se

CHARLOTTE J. MAPES, Esq.
MADELEINE R. SHIRLEY, Esq.
for the Government

KARL BERNSTEIN
for National Federation of Parents for Drug-Free Youth

VIRGINIA PELTIER, Esq.
for the International Association of Chiefs of Police

DATED: SEP 6 1988

CONTENTS

UNITED STATES DEPARTMENT OF JUSTICE

Drug Enforcement Administration

In The Matter Of

MARIJUANA RESCHEDULING PETITION

Docket No. 86-22

OPINION AND RECOMMENDED RULING, FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECISION OF ADMINISTRATIVE LAW JUDGE

I.

INTRODUCTION

This is a rulemaking pursuant to the Administrative Procedure Act, 5 U.S.C. § 551, et seq., to determine whether the marijuana plant (Cannabis sativa L) considered as a whole may lawfully be transferred from Schedule I to Schedule II of the schedules established by the Controlled Substances Act (the Act), 21 U.S.C. § 801, et seq. None of the parties is seeking to "legalize" marijuana generally or for recreational purposes. Placement in Schedule II would mean, essentially, that physicians in the United States would not violate Federal law by prescribing marijuana for their patients for legitimate therapeutic purposes. It is contrary to Federal law for physicians to do this as long as marijuana remains in Schedule I.

This proceeding had its origins on May 18, 1972 when the National Organization for the Reform of Marijuana Laws (NORML) and two other groups submitted a petition to the Bureau of Narcotics and Dangerous Drugs (BNDD)[1], predecessor

[1] The powers and authority granted by the Act to the Attorney General were delegated to the Director of BNDD and subsequently to the Administrator of DEA. 28 C.F.R. § 0.100, et seq.

agency to the Drug Enforcement Administration (DEA or the Agency), asking that marijuana be removed from Schedule I and freed of all controls entirely, or be transferred from Schedule I to Schedule V where it would be subject to only minimal controls. The Act by its terms had placed marijuana in Schedule I thereby declaring, as a matter of law, that it had no legitimate use in therapy in the United States and subjecting the substance to the strictest level of controls. The Act had been in effect for just over one year when NORML submitted its 1972 petition.

On September 1, 1972 the Director of BNDD announced his refusal to accept the petition for filing, stating that he was not authorized to institute proceedings for the action requested because of the provisions of the Single Convention on Narcotic Drugs, 1961. NORML appealed this action to the United States Court of Appeals for the District of Columbia Circuit. The court held that the Director had erred in rejecting the petition without "a reflective consideration and analysis," observing that the Director's refusal "was not the kind of agency action that promoted the kind of interchange and refinement of views that is the lifeblood of a sound administrative process." NORML v. Ingersoll, 162 U.S. App. D.C. 67, 497 F.2d 654, 659 (1974). The court remanded the matter in January 1974 for further proceedings not inconsistent with its opinion, "to be denominated a consideration on the merits." Id.

A three-day hearing was held at DEA[2] by Administrative Law Judge Lewis Parker in January 1975. The judge found in NORML's favor on several issues but the Acting Administrator of DEA entered a final order denying NORML's petition "in all respects." NORML again petitioned the court for review. Finding fault

2 DEA became the successor agency to BNDD in a reorganization carried out pursuant to Reorganization Plan No. 2 of 1973, eff. July 1, 1973. 38 Fed. Reg. 15932 (1973).

with DEA's final order the court again remanded for further proceedings not inconsistent with its opinion. NORML v. DEA, 182 U.S. App. D.C. 114, 559 F.2d 735 (1977). The Court directed the then-Acting Administrator of DEA to refer NORML's petition to the Secretary of the Department of Health, Education and Welfare (HEW) for findings and, thereafter, to comply with the rulemaking procedures outlined in the Act at 21 U.S.C. § 811 (a) and (b).

On remand the Administrator of DEA referred NORML's petition to HEW for scientific and medical evaluation. On June 4, 1979 the Secretary of HEW advised the Administrator of the results of the HEW evaluation and recommended that marijuana remain in Schedule I. Without holding any further hearing the Administrator of DEA proceeded to issue a final order ten days later denying NORML's petition and declining to initiate proceedings to transfer marijuana from Schedule I. 44 Fed. Reg. 36123 (1979). NORML went back to the Court of Appeals.

When the case was called for oral argument there was discussion of the then-present status of the matter. DEA had moved for a partial remand. The court found that "reconsideration of all the issues in this case would be appropriate" and again remanded it to DEA, observing: "We regrettably find it necessary to remind respondents [DEA and HEW] of an agency's obligation on remand not to 'do anything which is contrary to either the letter or spirit of the mandate construed in the light of the opinion of [the] court deciding the case.'" (Citations omitted.) NORML v. DEA, et al., No. 79-1660, United States Court of Appeals for the District of Columbia Circuit, unpublished order filed October 16, 1980. DEA was directed to refer all the substances at issue to the Department of Health and Human Services (HHS), successor agency to HEW, for scien-

tific and medical findings and recommendations on scheduling. DEA did so and HHS has responded. In a letter dated April 1, 1986 the then-Acting Deputy Administrator of DEA requested this administrative law judge to commence hearing procedures as to the proposed rescheduling of marijuana and its components.

After the judge conferred with counsel for NORML and DEA, a notice was published in the Federal Register on June 24, 1986 announcing that hearings would be held on NORML's petition for the rescheduling of marijuana and its components commencing on August 21, 1986 and giving any interested person who desired to participate the opportunity to do so. 51 Fed. Reg. 22946 (1986).

Of the three original petitioning organizations in 1972 only NORML is a party to the present proceeding. In addition the following entities responded to the Federal Register notice and have become parties, participating to varying degrees: the Alliance for Cannabis Therapeutics (ACT), Cannabis Corporation of America (CCA) and Carl Eric Olsen, all seeking transfer of marijuana to Schedule II; the Agency, National Federation of Parents for Drug-Free Youth (NFP) and the International Association of Chiefs of Police (IACP), all contending that marijuana should remain in Schedule I.

Preliminary prehearing sessions were held on August 21 and December 5, 1986 and on February 20, 1987.[3] During the preliminary stages, on January 20, 1987, NORML filed an amended petition for rescheduling. This new petition abandoned NORML's previous requests for the complete de-scheduling of marijuana or rescheduling to Schedule V. It asks only that marijuana be placed in Schedule II.

At a prehearing conference on February 20, 1987 this amended petition was

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3 Transcripts of these three preliminary prehearing sessions are included in the record.

discussed.[4] All parties present stipulated, for the purpose of this proceeding, that marijuana has a high potential for abuse and that abuse of the marijuana plant may lead to severe psychological or physical dependence. They then agreed that the principal issue in this proceeding would be stated thus:

> Whether the marijuana plant, considered as a whole,[5] may

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4 The transcript of this prehearing conference and of the subsequent hearing sessions comprise 15 volumes numbered as follows:

Vol. I - Prehearing Conference, October 16, 1987

Vol. II - Cross Examination, November 19, 1987

Vol. III - Cross Examination, December 8, 1987

Vol. IV - Cross Examination, December 9, 1987

Vol. V - Cross Examination, January 5, 1988

Vol. VI - Cross Examination, January 6, 1988

Vol. VII - Cross Examination, January 7, 1988

Vol. VIII - Cross Examination, January 26, 1988

Vol. IX - Cross Examination, January 27, 1988

Vol. X - Cross Examination, January 28, 1988

Vol. XI - Cross Examination, January 29, 1988

Vol. XII - Cross Examination, February 2, 1988

Vol. XIII - Cross Examination, February 4, 1988

Vol. XIV - Cross Examination, February 5, 1988

Vol. XV - Oral Argument, June 10, 1988

Pages of the transcript are cited herein by volume and page, e.g. "Tr. V-96"; "G-" identifies an Agency exhibit.

5 Throughout this opinion the term "marijuana" refers to "the marijuana plant, considered as a whole".

lawfully be transferred from Schedule I to Schedule II of the schedules established by the Controlled Substances Act.

Two subsidiary issues were agreed on, as follows:

1. Whether the marijuana plant has a currently accepted medical use in treatment in the United States, or a currently accepted medical use with severe restrictions.

2. Whether there is a lack of accepted safety for use of the marijuana plant under medical supervision.

As stated above, the parties favoring transfer from Schedule I to Schedule II are NORML, ACT, CCA and Carl Eric Olsen. Those favoring retaining marijuana in Schedule I are the Agency, NFP and IACP.

During the Spring and Summer of 1987 the parties identified their witnesses and put the direct examination testimony of each witness in writing in affidavit form. Copies of these affidavits were exchanged. Similarly, the parties assembled their proposed exhibits and exchanged copies. Opportunity was provided for each party to submit objections to the direct examination testimony and exhibits proffered by the others. The objections submitted were considered by the administrative law judge and ruled on. The testimony and exhibits not excluded were admitted into the record. Thereafter hearing sessions were held at which witnesses were subjected to cross-examination. These sessions were held in New Orleans, Louisiana on November 18 and 19, 1987; in San Francisco, California on December 8 and 9, 1987; and in Washington, D.C. on January 5 through 8 and 26 through 29, and on February 2, 4 and 5, 1988. The parties have submitted proposed findings and conclusions and briefs. Oral arguments were heard by the judge on June 10, 1988 in Washington.

II.

RECOMMENDED RULING

It is recommended that the proposed findings and conclusions submitted by the parties to the administrative law judge be rejected by the Administrator except to the extent they are included in those hereinafter set forth, for the reason that they are irrelevant or unduly repetitious or not supported by a preponderance of the evidence. 21 C.F.R. § 1316.65(a)(1).

III.

ISSUES

As noted above, the agreed issues are as follows:

Principle issue:

Whether the marijuana plant, considered as a whole, may lawfully be transferred from Schedule I to Schedule II of the schedules established by the Controlled Substances Act.

Subsidiary issues:

1. Whether the marijuana plant has a currently accepted medical use in treatment in the United States, or a currently accepted medical use with severe restrictions.

2. Whether there is a lack of accepted safety for use of the marijuana plant under medical supervision.

IV.

STATUTORY REQUIREMENTS FOR SCHEDULING

The Act provides (21 U.S.C. § 812(b)) that a drug or other substance may not be placed in any schedule unless certain specified findings are made with respect to it. The findings required for Schedule I and Schedule II are as follows:

> Schedule I. -
>
> (A) The drug or other substance has a high potential for abuse.
>
> (B) The drug or other substance has no currently accepted medical use in treatment in the United States.
>
> (C) There is a lack of accepted safety for use of the drug or other substance under medical supervision.
>
> Schedule II. -
>
> (A) The drug or other substance has a high potential for abuse.
>
> (B) The drug or other substance has a currently accepted medical use in treatment in the United States or a currently accepted medical use with severe restrictions.
>
> (C) Abuse of the drug or other substances [sic] may lead to severe psychological or physical dependence.

As noted above the parties have stipulated, for the purpose of this proceeding, that marijuana has a high potential for abuse and that abuse of it may lead to severe psychological or physical dependence. Thus the dispute between the two sides in this proceeding is narrowed to whether or not marijuana has a currently accepted medical use in treatment in the United States, and whether or not there is a lack of accepted safety for use of marijuana under medical supervision.

The issues as framed here contemplate marijuana's being placed only in

Schedule I or Schedule II. The criteria for placement in any of the other three schedules established by the Act are irrelevant to this proceeding.

V.

ACCEPTED MEDICAL USE IN TREATMENT

- CHEMOTHERAPY

With respect to whether or not marijuana has a "currently accepted medical use in treatment in the United States" for chemotherapy patients, the record shows the following facts to be uncontroverted.

Findings Of Fact

1. One of the most serious problems experienced by cancer patients undergoing chemotherapy for their cancer is severe nausea and vomiting caused by their reaction to the toxic (poisonous) chemicals administered to them in the course of this treatment. This nausea and vomiting at times becomes life threatening. The therapy itself creates a tremendous strain on the body. Some patients cannot tolerate the severe nausea and vomiting and discontinue treatment. Beginning in the 1970's there was considerable doctor-to-doctor communication in the United States concerning patients known by their doctors to be surreptitiously using marijuana with notable success to overcome or lessen their nausea and vomiting.

2. Young patients generally achieve better control over nausea and vomiting from smoking marijuana than do older patients, particularly when the older patient has not been provided with detailed information on how to smoke marijuana.

3. Marijuana cigarettes in many cases are superior to synthetic THC capsules in reducing chemotherapy-induced nausea and vomiting. Marijuana

cigarettes have an important, clear advantage over synthetic THC capsules in that the natural marijuana is inhaled and generally takes effect more quickly than the synthetic capsule which is ingested and must be processed through the digestive system before it takes effect.

4. Attempting to orally administer the synthetic THC capsule to a vomiting patient presents obvious problems - it is vomited right back up before it can have any effect.

5. Many physicians, some engaged in medical practice and some teaching in medical schools, have accepted smoking marijuana as effective in controlling or reducing the severe nausea and vomiting (emesis) experienced by some cancer patients undergoing chemotherapy for cancer.

6. Such physicians include board-certified internists, oncologists and psychiatrists. (Oncology is the treatment of cancer through the use of highly toxic chemicals, or chemotherapy.)

7. Doctors who have come to accept the usefulness of marijuana in controlling or reducing emesis resulting from chemotherapy have done so as the result of reading reports of studies and anecdotal reports in their professional literature, and as the result of observing patients and listening to reports directly from patients.

8. Some cancer patients who have acknowledged to doctors that they smoke marijuana for emesis control have indicated in their discussions that, although they may have first smoked marijuana recreationally, they accidentally found that doing so helped reduce the emesis resulting from their chemotherapy. They consistently indicated that they felt better and got symptomatic relief from the intense nausea and vomiting caused by the chemotherapy. These patients

were no longer simply getting high, but were engaged in medically treating their illness, albeit with an illegal substance. Other chemotherapy patients began smoking marijuana to control their emesis only after hearing reports that the practice had proven helpful to others. Such patients had not smoked marijuana recreationally.

9. This successful use of marijuana has given many cancer chemotherapy patients a much more positive outlook on their overall treatment, once they were relieved of the debilitating, exhausting and extremely unpleasant nausea and vomiting previously resulting from their chemotherapy treatment.

10. In about December 1977 the previously underground patient practice of using marijuana to control emesis burst into the public media in New Mexico when a young cancer patient, Lynn Pearson, began publicly to discuss his use of marijuana. Mr. Pearson besought the New Mexico legislature to pass legislation making marijuana available legally to seriously ill patients whom it might help. As a result, professionals in the public health sector in New Mexico more closely examined how marijuana might be made legally available to assist in meeting what now openly appeared to be a widely recognized patient need.

11. In many cases doctors have found that, in addition to suppressing nausea and vomiting, smoking marijuana is a highly successful appetite stimulant. The importance of appetite stimulation in cancer therapy cannot be overstated. Patients receiving chemotherapy often lose tremendous amounts of weight. They endanger their lives because they lose interest in food and in eating. The resulting sharp reduction in weight may well affect their prognosis. Marijuana smoking induces some patients to eat. The benefits are obvious, doctors have found. There is no significant loss of weight. Some patients will gain weight.

This allows them to retain strength and makes them better able to fight the cancer. Pyschologically, patients who can continue to eat even while receiving chemotherapy maintain a balanced outlook and are better able to cope with their disease and its treatment, doctors have found.

12. Synthetic anti-emetic agents have been in existence and utilized for a number of years. Since about 1980 some new synthetic agents have been developed which appear to be more effective in controlling and reducing chemotherapy-induced nausea and vomiting than were some of those available in the 1970's. But marijuana still is found more effective for this purpose in some people than any of the synthetic agents, even the newer ones.

13. By the late 1970's in the Washington, D.C. area there was a growing recognition among health care professionals and the public that marijuana had therapeutic value in reducing the adverse effects of some chemotherapy treatments. With this increasing public awareness came increasing pressure from patients on doctors for information about marijuana and its therapeutic uses. Many patients moved into forms of unsupervised self-treatment. While such self-treatment often proved very effective, it has certain hazards, ranging from arrest for purchase or use of an illegal drug to possibly serious medical complications from contaminated sources or adulterated materials. Yet, some patients are willing to run these risks to obtain relief from the debilitating nausea and vomiting caused by their chemotherapy treatments.

14. Every oncologist known to one Washington, D.C. practicing internist and board-certified oncologist has had patients who used marijuana with great success to prevent or diminish chemotherapy-induced nausea and vomiting. Chemotherapy patients reporting directly to that Washington doctor that they

have smoked marijuana medicinally vomit less and eat better than patients who do not smoke it. By gaining control over their severe nausea and vomiting these patients undergo a change of mood and have a better mental outlook than patients who, using the standard anti-emetic drugs, are unable to gain such control.

15. The vomiting induced by chemotherapeutic drugs may last up to four days following the chemotherapy treatment. The vomiting can be intense, protracted and, in some instances, is unendurable. The nausea which follows such vomiting is also deep and prolonged. Nausea may prevent a patient from taking regular food or even much water for periods of weeks at a time.

16. Nausea and vomiting of this severity degrades the quality of life for these patients, weakening them physically, and destroying the will to fight the cancer. A desire to end the chemotherapy treatment in order to escape the emesis can supersede the will to live. Thus the emesis, itself, can truly be considered a life-threatening consequence of many cancer treatments. Doctors have known such cases to occur. Doctors have known other cases where marijuana smoking has enabled the patient to endure, and thus continue, chemotherapy treatments with the result that the cancer has gone into remission and the patient has returned to a full, active satisfying life.

17. In San Francisco chemotherapy patients were surreptitiously using marijuana to control emesis by the early 1970's. By 1976 virtually every young cancer patient receiving chemotherapy at the University of California in San Francisco was using marijuana to control emesis with great success. The use of marijuana for this purpose had become generally accepted by the patients and increasingly by their physicians as a valid and effective form of treatment. This was particularly true for younger cancer patients, somewhat less common for

older ones. By 1979 about 25% to 30% of the patients seen by one San Francisco oncologist were using marijuana to control emesis, about 45 to 50 patients per year. Such percentages and numbers vary from city to city. A doctor in Kansas City who sees about 150 to 200 new cancer patients per year found that over the 15 years 1972 to 1987 about 5% of the patients he saw, or a total of about 75, used marijuana medicinally.

18. By 1987 marijuana no longer generated the intense interest in the world of oncology that it had previously, but it remains a viable tool, commonly employed, in the medical treatment of chemotherapy patients. There has evolved an unwritten but accepted standard of treatment within the community of oncologists in the San Francisco, California area which readily accepts the use of marijuana.

19. As of the Spring of 1987 in the San Francisco area, patients receiving chemotherapy commonly smoked marijuana in hospitals during their treatments. This in-hospital use, which takes place in rooms behind closed doors, does not bother staff, is expected by physicians and welcomed by nurses who, instead of having to run back and forth with containers of vomit, can treat patients whose emesis is better controlled than it would be without marijuana. Medical institutions in the Bay area where use of marijuana obtained on the streets is quite common, although discrete, include the University of California at San Francisco Hospital, the Mount Zion Hospital and the Franklin Hospital. In effect, marijuana is readily accepted throughout the oncologic community in the Bay area for its benefits in connection with chemotherapy. The same situation exists in other large metropolitan areas of the United States.

20. About 50% of the patients seen by one San Francisco oncologist

during the year 1987 were smoking marijuana medicinally. This is about 90 to 95 individuals. This number is higher than during the previous ten years due to the nature of this physician's practice which includes patients from the "tenderloin" area of San Francisco, many of whom are suffering from AIDS-related lymphosarcoma. These patients smoke marijuana to control their nausea and vomiting, not to "get high." They self-titrate, i.e., smoke the marijuana only as long as needed to overcome the nausea, to prevent vomiting.

21. The State of New Mexico set up a program in 1978 to make marijuana available to cancer patients pursuant to an act of the State legislature. The legislature had accepted marijuana as having medical use in treatment. It overwhelmingly passed this legislation so as to make marijuana available for use in therapy, not just for research. Marijuana and synthetic THC were given to patients, administered under medical supervision, to control or reduce emesis. The marijuana was in the form of cigarettes obtained from the Federal government. The program operated from 1979 until 1986, when funding for it was terminated by the State. During those seven years about 250 cancer patients in New Mexico received either marijuana cigarettes or THC. Twenty or 25 physicians in New Mexico sought and obtained marijuana cigarettes or THC for their cancer patients during that period. All of the oncologists in New Mexico accepted marijuana as effective for some of their patients. At least ten hospitals were involved in this program in New Mexico, in which cancer patients smoked their marijuana cigarettes. The hospitals accepted this medicinal marijuana smoking by patients. Voluminous reports filed by the participating physicians make it clear that marijuana is a highly effective anti-emetic substance. It was found in the New Mexico program to be far superior to the best available conventional

anti-emetic drug, Compazine, and clearly superior to synthetic THC pills. More than 90% of the patients who received marijuana within the New Mexico program reported significant or total relief from nausea and vomiting. Before the program began cancer patients were surreptitiously smoking marijuana in New Mexico to lessen or control their emesis resulting from chemotherapy treatments. They reported to physicians that it was successful for this purpose. Physicians were aware that this was going on.

22. In 1978 the Louisiana legislature became one of the first-State legislatures in the nation to recognize the efficacy of marijuana in controlling emesis by enacting legislation intended to make marijuana available by prescription for therapeutic use by chemotherapy patients. This enactment shows that there was widespread acceptance in Louisiana of the therapeutic value of marijuana. After a State Marijuana Prescription Review Board was established, pursuant to that legislation, it became apparent that, because of Federal restrictions, marijuana could be obtained legally only for use in cumbersome, formal research programs. Eventually a research program was entered into by the State, utilizing synthetic THC, but without much enthusiasm, since most professionals who had wanted to use marijuana clinically, to treat patients, had neither the time, resources nor inclination to get involved in this limited, formal study. The original purpose of the Louisiana legislation was frustrated by the Federal authorities. Some patients, who had hoped to obtain marijuana for medical use legally after enactment of the State legislation, went outside the law and obtained it illicitly. Some physicians in Louisiana accept marijuana as having a distinct medical value in the treatment of the nausea and vomiting associated with certain types of chemotherapy treatments.

23. In 1980 the State of Georgia enacted legislation authorizing a therapeutic research program for the evaluation of marijuana as a medically recognized therapeutic substance. Its enactment was supported by letters from a number of Georgia oncologists and other Georgia physicians, including the Chief of Oncology at Grady Hospital and staff oncologists at Emory University Medical Clinic. Sponsors of the legislation orginally intended the enactment of a law making marijuana available for clinical, therapeutic use by patients. The bill was referred to as the "Marijuana-as-Medicine" bill. The final legislation was crafted, however, of necessity, merely to set up a research program in order to obtain marijuana from the one legitimate source available - the Federal Government, which would not make the substance available for any purpose other than conducting a research program. The act was passed by an overwhelming majority in the lower house of the legislature and unanimously in the Senate. In January 1983 an evaluation of the program, which by then had had 44 evaluable marijuana smoking patient-participants, accepted marijuana smoking as being an effective anti-emetic agent.

24. In Boston, Massachusetts in 1977 a nurse in a hospital suggested to a chemotherapy patient, suffering greatly from the therapy and at the point of refusing further treatment, that smoking marijuana might help relieve his nausea and vomiting. The patient's doctor, when asked about it later, stated that many of his younger patients were smoking marijuana. Those who did so seemed to have less trouble with nausea and vomiting. The patient in question obtained some marijuana and smoked it, in the hospital, immediately before his next chemotherapy treatment. Doctors, nurses and orderlies coming into the room as he finished smoking realized what the patient had been doing. None of them

made any comment. The marijuana was completely successful with this patient, who accepted it as effective in controlling his nausea and vomiting. Instead of being sick for weeks following chemotherapy, and having trouble going to work, as had been the case, the patient was ready to return to work 48 hours after that chemotherapy treatment. The patient thereafter always smoked marijuana, in the hospital, before chemotherapy. The doctors were aware of it, openly approved of it and encouraged him to continue. The patient resumed eating regular meals and regained lost weight, his mood improved markedly, he became more active and outgoing and began doing things together with his wife that he had not done since beginning chemotherapy.

25. During the remaining two years of this patient's life, before his cancer ended it, he came to know other cancer patients who were smoking marijuana to relieve the adverse effects of their chemotherapy. Most of these patients had learned about using marijuana medically from their doctors who, having accepted its effectiveness, subtly encouraged them to use it.

26. A Boston psychiatrist and professor, who travels about the country, has found a minor conspiracy to break the law among oncologists and nurses in every oncology center he has visited to let patients smoke marijuana before and during cancer chemotherapy. He has talked with dozens of these health care oncologists who encourage their patients to do this and who regard this as an accepted medical usage of marijuana. He has known nurses who have obtained marijuana for patients unable to obtain it for themselves.

27. A cancer patient residing in Beaverton, Michigan smoked marijuana medicinally in the nearby hospital where he was undergoing chemotherapy from early 1979 until he died of his cancer in October of that year. He smoked it in

his hospital room after his parents made arrangements with the hospital for him to do so. Smoking marijuana controlled his post-chemotherapy nausea and vomiting, enabled him to eat regular meals again with his family, and he became outgoing and talkative. His parents accepted his marijuana smoking as effective and helpful. Two clergymen, among others, brought marijuana to this patient's home. Many people at the hospital supported the patient's marijuana therapy, none doubted its helpfulness or discouraged it. This patient was asked for help by other patients. He taught some who lived nearby how to form the marijuana cigarettes and properly inhale the smoke to obtain relief from nausea and vomiting. When an article about this patient's smoking marijuana appeared in a local newspaper, he and his family heard from many other cancer patients who were doing the same. Most of them made an effort to inform their doctors. Most physicians who knew their patients smoked marijuana medicinally approved, accepting marijuana's therapeutic helpfulness in reducing nausea and vomiting.

28. In October 1979 the Michigan legislature enacted legislation whose underlying purpose was to make marijuana available therapeutically for cancer patients and others. The State Senate passed the bill 29-5, the House of Representatives 100-0. In March 1982 the Michigan legislature passed a resolution asking the Federal Congress to try to alter Federal policies which prevent physicians from prescribing marijuana for legitimate medical applications and prohibit its use in medical treatments.

29. In Denver, Colorado a teenage cancer patient has been smoking marijuana to control nausea and vomiting since 1986. He has done this in his hospital room both before and after chemotherapy. His doctor and hospital staff know he does this. The doctor has stated that he would prescribe marijuana for

this patient if it were legal to do so. Other patients in the Denver area smoke marijuana for the same purpose. This patient's doctor, and nurses with whom he comes in contact, understand that cancer patients smoke marijuana to reduce or control emesis. They accept it.

30. In late 1980 a three year old boy was brought by his parents to a hospital in Spokane, Washington. The child was diagnosed as having cancer. Surgery was performed. Chemotherapy was begun. The child became extremely nauseated and vomited for days after each chemotherapy treatment. He could not eat regularly. He lost strength. He lost weight. His body's ability to ward off common infections, other life-threatening infections, significantly decreased. Chemotherapy's after-effects caused the child great suffering. They caused his watching parents great suffering. Several standard, available anti-emetic agents were tried by the child's doctors. None of them succeeded in controlling his nausea or vomiting. Learning of the existence of research studies with THC or marijuana the parents asked the child's doctor to arrange for their son to be the subject of such a study so that he might have access to marijuana. The doctor refused, citing the volume of paperwork and record-keeping detail required in such programs and his lack of administrative personnel to handle it.

31. The child's mother read an article about marijuana smoking helping chemotherapy patients. She obtained some marijuana from friends. She baked cookies for her child with marijuana in them. She made tea for him with marijuana in it. When the child ate these cookies or drank this tea in connection with his chemotherapy, he did not vomit. His strength returned. He regained lost weight. His spirits revived. The parents told the doctors and nurses at the hospital of their giving marijuana to their child. None objected.

They all accepted smoking marijuana as effective in controlling chemotherapy-induced nausea and vomiting. They were interested to see the results of the cookies.

32. Soon this child was riding a tricycle in the hallways of the Spokane hospital shortly after his chemotherapy treatments while other children there were still vomiting into pans, tied to intervenous bottles in an attempt to re-hydrate them, to replace the liquids they were vomiting up. Parents of some of the other patients asked the parents of this "lively" child how he seemed to tolerate his chemotherapy so well. They told of the marijuana use. Of those parents who began giving marijuana to their children, none ever reported back encountering any adverse side effects. In the vast majority of these cases, the other parents reported significant reduction in their children's vomiting and appetite stimulation as the result of marijuana. The staff, doctors and nurses at the hospital knew of this passing on of information about marijuana to other parents. They approved. They never told the first parents to hide their son's medicinal use of marijuana. They accepted the effectiveness of the cookies and the tea containing marijuana.

33. The first child's cancer went into remission. Then it returned and spread. Emotionally drained, the parents moved the family back to San Diego, California to be near their own parents. Their son was admitted to a hospital in San Diego. The parents informed the doctors, nurses and social workers there of their son's therapeutic use of marijuana. No one objected. The child's doctor in San Diego strongly supported the parent's giving marijuana to him. Here in California, as in Spokane, other parents noticed the striking difference between their children after chemotherarpy and the first child.

Other parents asked the parents of the first child about it, were told of the use of marijuana, tried it with their children, and saw dramatic improvement. They accepted its effectiveness. In the words of the mother of the first child: ". . . When your kid is riding a tricycle while his other hospital buddies are hooked up to IV needles, their heads hung over vomiting buckets, you don't need a federal agency to tell you marijuana is effective. The evidence is in front of you, so stark it cannot be ignored."[6]

34. There is at least one hospital in Tucson, Arizona where medicinal use of marijuana by chemotherapy patients is encouraged by the nursing staff and some physicians.

35. In addition to the physicians mentioned in the Findings above, mostly oncologists and other practicioners, the following doctors and health care professionals, representing several different areas of expertise, accept marijuana as medically useful in controlling or reducing emesis and testified to that effect in these proceedings:

a. George Goldstein, Ph.D., psychologist, Secretary of Health for the State of New Mexico from 1978 to 1983 and chief administrator in the implementation of the New Mexico program utilizing marijuana;

b Dr. Daniel Danzak, psychiatrist and former head of the New Mexico program utilizing marijuana;

c. Dr. Tod Mikuriya, psychiatrist and editor of Marijuana: Medical Papers, a book presenting an historical perspective of marijuana's medical use;

d. Dr. Norman Zinberg, general psychiatrist and Professor of Psychiatry at Harvard Medical School since 1951;

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6 Affidavit of Janet Andrews, ACT rebuttal witness, par. 98.

e. Dr. John Morgan, psychopharmacologist, Board-certified in Internal Medicine, full Professor and Director of Pharmacology at the City University of New York;

f. Dr. Phillip Jobe, neuropsychopharmacologist with a practice in Illinois and former Professor of Pharmacology and Psychiatry at the Louisiana State University School of Medicine in Shreveport, Louisiana, from 1974 to 1984;

g. Dr. Arthur Kaufman, formerly a general practitioner in Maryland, currently Vice-President of a private medical consulting group involved in the evaluation of the quality of care of all the U.S. military hospitals throughout the world, who has had extensive experience in drug abuse treatment and rehabilitation programs;

h. Dr. J. Thomas Ungerleider, a full Professor of Psychiatry at the University of California in Los Angeles with extensive experience in research on the medical use of drugs;

i. Dr. Andrew Weil, ethnopharmacologist, Associate Director of Social Perspectives in Medicine at the College of Medicine at the University of Arizona, with extensive research on medicinal plants; and

j. Dr. Lester Grinspoon, a practicing psychiatrist and Associate Professor at Harvard Medical School.

36. Certain law enforcement authorities have been outspoken in their acceptance of marijuana as an antiemetic agent. Robert T. Stephan, Attorney General of the State of Kansas, and himself a former cancer patient, said of chemotherapy in his affidavit in this record: "The treatment becomes a terror." His cancer is now in remission. He came to know a number of health care professionals whose medical judgment he respected. They had accepted marijuana

as having medical use in treatment. He was elected Vice President of the National Association of Attorneys General (NAAG) in 1983. He was instrumental in the adoption by that body in June 1983 of a resolution acknowledging the efficacy of marijuana for cancer and glaucoma patients. The resolution expressed the support of NAAG for legislation then pending in the Congress to make marijuana available on prescription to cancer and glaucoma patients. The resolution was adopted by an overwhelming margin. NAAG's President, the Attorney General of Montana, issued a statement that marijuana does have accepted medical uses and is improperly classified at present. The Chairman of NAAG's Criminal Law and Law Enforcement Committee, the Attorney General of Pennsylvania, issued a statement emphasizing that the proposed rescheduling of marijuana would in no way affect or impede existing efforts by law enforcement authorities to crack down on illegal drug trafficking.

37. At least one court has accepted marijuana as having medical use in treatment for chemotherapy patients. On January 23, 1978 the Superior Court of Imperial County, California issued orders authorizing a cancer patient to possess and use marijuana for therapeutic purposes under the direction of a physician. Another order authorized and directed the Sheriff of the county to release marijuana from supplies on hand and deliver it to that patient in such form as to be usable in the form of cigarettes.

38. During the period 1978-1980 polls were taken to ascertain the degree of public acceptance of marijuana as effective in treating cancer and glaucoma patients. A poll in Nebraska brought slightly over 1,000 responses - 83% favored making marijuana available by prescription, 12% were opposed, 5% were undecided. A poll in Pennsylvania elicited 1,008 responses - 83.1% favored availability by prescription, 12.2% were opposed, 4.7% were undecided. These

two surveys were conducted by professional polling companies. The Detroit Free Press conducted a telephone poll in which 85.4% of those responding favored access to marijuana by prescription. In the State of Washington the State Medical Association conducted a poll in which 80% of the doctors belonging to the Association favored controlled availability of marijuana for medical purposes.

Discussion

From the foregoing uncontroverted facts it is clear beyond any question that many people find marijuana to have, in the words of the Act, an "accepted medical use in treatment in the United States" in effecting relief for cancer patients. Oncologists, physicians treating cancer patients, accept this. Other medical practitioners and researchers accept this. Medical faculty professors accept it. Nurses performing hands-on patient care accept it.

Patients accept it. As counsel for CCA perceptively pointed out at oral argument, acceptance by the patient is of vital importance. Doctors accept a therapeutic agent or process only if it "works" for the patient. If the patient does not accept, the doctor cannot administer the treatment. The patient's informed consent is vital. The doctor ascertains the patient's acceptance by observing and listening to the patient. Acceptance by the doctor depends on what he sees in the patient and hears from the patient. Unquestionably, patients in large numbers have accepted marijuana as useful in treating their emesis. The have found that it "works". Doctors, evaluating their patients, can have no basis more sound than that for their own acceptance.

Of relevance, also, is the acceptance of marijuana by state attorneys-

general, officials whose primary concern is law enforcement. A large number of them have no fear that placing marijuana in Schedule II, thus making it available for legitimate therapy, will in any way impede existing efforts of law enforcement authorities to crack down on illegal drug trafficking.

The Act does not specify by whom a drug or substance must be "accepted [for] medical use in treatment" in order to meet the Act's "accepted" requirement for placement in Schedule II. Department of Justice witnesses told the Congress during hearings in 1970 preceeding passage of the Act that "the medical profession" would make this determination, that the matter would be "determined by the medical community." The Deputy Chief Counsel of BNDD, whose office had written the bill with this language in it, told the House subcommittee that "this basic determination . . . is not made by any part of the federal government. It is made by the medical community as to whether or not the drug has medical use or doesn't".[7]

No one would seriously contend that these Justice Department witnesses meant that the entire medical community would have to be in agreement on the usefulness of a drug or substance. Seldom, if ever, do all lawyers agree on a point of law. Seldom, if ever, do all doctors agree on a medical question. How many are required here? A majority of 51%? It would be unrealistic to attempt a plebescite of all doctors in the country on such a question every time it arises, to obtain a majority vote.

In determining whether a medical procedure utilized by a doctor is actionable as malpractice the courts have adopted the rule that it is acceptable

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7 Drug Abuse Control Amendments - 1970: Hearings on H.R. 11701 and H.R. 13743 Before the Subcommittee on Public Health and Welfare of the House Committee on Interstate and Foreign Commerce, 91st Congress, 2d Sess. 678, 696, 718 (1970) (Statement of John E. Ingersoll, Director, BNDD).

for a doctor to employ a method of treatment supported by a respectable minority of physicians.

In Hood v. Phillips, 537 S.W. 2d 291 (1976) the Texas Court of Civil Appeals was dealing with a claim of medical malpractice resulting from a surgical procedure claimed to have been unnecessary. The court quoted from an Arizona court decision holding that

> a method of treatment, as espoused and used by . . . a respectable minority of physicians in the United States, cannot be said to be an inappropriate method of treatment or to be malpractice as a matter of law even though it has not been accepted as a proper method of treatment by the medical profession generally.

Ibid. at 294. Noting that the Federal District court in the Arizona case found a "respectable minority" composed of sixty-five physicians throughout the United States, the Texas court adopted as "the better rule" to apply in its case, that

> a physician is not guilty of malpractice where the method of treatment used is supported by a respectable minority of physicians.

Ibid.

In Chumbler v. McClure, 505 F.2d 489 (6th Cir. 1974) the Federal courts were dealing with a medical malpractice case under their diversity jurisdiction, applying Tennessee law. The Court of Appeals said:

> . . . The most favorable interpretation that may be placed on the testimony adduced at trial below is that there is a division of opinion in the medical profession regarding the use of Premarin in the Treatment of cerebral vascular insufficiency, and that Dr. McClure was alone among neurosurgeons in Nashville in using such therapy. The test for malpractice and for community standards is not to be determined solely by a plebiscite. Where two or more schools of thought exist among competent members of the medical profession concerning proper medical treatment for a given ailment, each of which is supported by responsible

> medical authority, it is not malpractice to be among the minority in a given city who follow one of the accepted schools.

505 F.2d at 492 (Emphasis added). See, also, Leech v. Bralliar, 275 F.Supp. 897 (D.Ariz., 1967).

How do we ascertain whether there exists a school of thought supported by responsible medical authority, and thus "accepted"? We listen to the physicians.

> The court and jury must have a standard measure which they are to use in measuring the acts of a doctor to determine whether he exercised a reasonable degree of care and skill; they are not permitted to set up and use any arbitrary or artificial standard of measurement that the jury may wish to apply. The proper standard of measurement is to be established by testimony of physicians, for it is a medical question.

Hayes v. Brown, 133 S.E. 2d. 102(Ga., 1963) at 105.

As noted above, there is no question but that this record shows a great many physicians, and others, to have "accepted" marijuana as having a medical use in the treatment of cancer patients' emesis. True, all physicians have not "accepted" it. But to require universal, 100% acceptance would be unreasonable. Acceptance by "a respectable minority" of physicians is all that can reasonably be required. The record here establishes conclusively that at least "a respectable minority" of physicians has "accepted" marijuana as having a "medical use in treatment in the United States." That others may not makes no difference.

The administrative law judge recommended this same approach for determining whether a drug has an "accepted medical use in treatment" in The Matter Of MDMA Scheduling, Docket No. 84-48. The Adminstrator, in his first final rule in that proceeding, issued on October 8, 1986[8], declined to adopt this approach. He

8 51 Fed. Reg. 36552 (1986).

ruled, instead, that DEA's decision on whether or not a drug or other substance had an accepted medical use in treatment in the United States would be determined simply by ascertaining whether or not "the drug or other substance is lawfully marketed in the United States pursuant to the Federal Food, Drug and Cosmetic Act of 1938 . . . ."[9]

The United States Court of Appeals for the First Circuit held that the Administrator erred in so ruling.[10] That court vacated the final order of October 8, 1986 and remanded the matter of MDMA's scheduling for further consideration. The court directed that, on remand, the Administrator would not be permitted to treat the absence of interstate marketing approval by FDA as conclusive evidence on the question of accepted medical use under the Act.

In his third final rule[11] on the matter of the scheduling of MDMA the Administrator made a series of findings of fact as to MDMA, the drug there under consideration, with respect to the evidence in that record. On those findings he based his last final rule in the case.[12]

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9 Ibid., at 36558.

10 Grinspoon v. Drug Enforcement Administration, 828 F.2d 881 (1st. Cir., 1987).

11 53 Fed. Reg. 5156 (1988). A second final rule had been issued on January 20, 1988. It merely removed MDMA from Schedule I pursuant to the mandate of the Court of Appeals which had voided the first final rule placing it there. Subsequently the third final rule was issued, without any further hearings, again placing MDMA in Schedule I. There was no further appeal.

12 In neither the first nor the third final rule in the MDMA case does the Administrator take any cognizance of the statements to the Congressional committee by predecessor Agency officials that the determination as to "accepted medical use in treatment" is to be made by the medical community and not by any part of the federal government. See page 27, above. It is curious that the Administrator makes no effort whatever to show how the BNDD representatives were mistaken or to explain why he now has abandoned their interpretation. They wrote that language into the original bill.

That third final rule dealing with MDMA is dealing with a synthetic, "simple", "single-action" drug. What might be appropriate criteria for a "simple" drug like MDMA may not be appropriate for a "complex" substance with a number of active components. The criteria applied to MDMA, a synthetic drug, are not appropriate for application to marijuana, which is a natural plant substance.

The First Circuit Court of Appeals in the MDMA case told the Administrator that he should not treat the absence of FDA interstate marketing approval as conclusive evidence of lack of currently accepted medical use. The court did not forbid the Administrator from considering the absence of FDA approval as a factor when determining the existence of accepted medical use. Yet on remand, in his third final order, the Administrator adopted by reference 18 of the numbered findings he had made in the first final order. Each of these findings had to do with requirements imposed by FDA for approval of a new drug application (NDA) or of an investigational new drug exemption (IND). These requirements deal with data resulting from controlled studies and scientifically conducted investigations and tests.

Among those findings incorporated into the third final MDMA order from the first, and relied on by the Administrator, was the determination and recommendation of the FDA that the drug there in question was not "accepted". In relying on the FDA's action the Administrator apparently overlooked the fact that the FDA clearly stated that it was interpreting "accepted medical use" in the Act as being equivalent to receiving FDA approval for lawful marketing under the FDCA. Thus the Administrator accepted as a basis for his MDMA third final rule the FDA recommendation which was based upon a statutory interpretation which the Court.

of Appeals had condemned.

The Administrator in that third final rule made a series of further findings. Again, the central concern in these findings was the content of test results and the sufficiency or adequacy of studies and scientific reports. A careful reading of the criteria considered in the MDMA third final order reveals that the Administrator was really considering the question: Should the drug be accepted for medical use?; rather than the question: Has the drug been accepted for medical use? By considering little else but scientific test results and reports the Administrator was making a determination as to whether or not, in his opinion, MDMA ought to be accepted for medical use in treatment.

The Agency's arguments in the present case are to the same effect. In a word, they address the wrong question. It is not for this Agency to tell doctors whether they should or should not accept a drug or substance for medical use. The statute directs the Administrator merely to ascertain whether, in fact, doctors have done so.

The MDMA third final order mistakenly looks to FDA criteria for guidance in choosing criteria for DEA to apply. Under the Food, Drug and Cosmetic Act the FDA is deciding - properly, under that statute - whether a new drug should be introduced into interstate commerce. Thus it is appropriate for the FDA to rely heavily on test results and scientific inquiry to ascertain whether a drug is effective and whether it is safe. The FDA must look at a drug and pass judgement on its intrinsic qualities. The DEA, on the other hand, is charged by 21 U.S.C. § 812(b)(1)(B) and (2)(B) with ascertaining what it is that other people have done with respect to a drug or substance: "Have they accepted it?;" not "Should they accept it?"

In the MDMA third final order DEA is actually making the decision that doctors have to make, rather than trying to ascertain the decision which doctors have made. Consciously or not, the Agency is undertaking to tell doctors what they should or should not accept. In so doing the Agency is acting beyond the authority granted in the Act.

It is entirely proper for the Administrator to consider the pharmacology of a drug and scientific test results in connection with determining abuse potential. But abuse potential is not in issue in this marijuana proceeding.

There is another reason why DEA should not be guided by FDA criteria in ascertaining whether or not marijuana has an accepted medical use in treatment. These criteria are applied by FDA pursuant to Section 505 of the Federal Food, Drug and Cosmetic Act (FDCA), as amended.[13] When the FDA is making an inquiry pursuant to that legislation it is looking at a synthetically formed new drug. The marijuana plant is anything but a new drug. Uncontroverted evidence in this record indicates that marijuana was being used therapeutically by mankind 2000 years before the Birth of Christ.[14]

Uncontroverted evidence further establishes that in this country today "new drugs" are developed by pharmaceutical companies possessing resources sufficient to bear the enormous expense of testing a new drug, obtaining FDA approval of its efficacy and safety, and marketing it successfully. No company undertakes the investment required unless it has a patent on the drug, so it can recoup its development costs and make a profit. At oral argument Government counsel conceded that "the FDA system is constructed for pharmaceutical companies. I won't

13 21 U.S.C. § 355.

14 Alice M. O'Leary, direct, par. 9.

deny that."[15]

Since the substance being considered in this case is a natural plant rather than a synthetic new drug, it is unreasonable to make FDA-type criteria determinative of the issue in this case, particularly so when such criteria are irrelevant to the question posed by the Act: Does the substance have an accepted medical use in treatment?

Finally, the Agency in this proceeding relies in part on the FDA's recommendation that the Administrator retain marijuana in Schedule I. But, as in the MDMA case, that recommendation is based upon FDA's equating "accepted medical use" under the Act with being approved for marketing by FDA under the Food, Drug and Cosmetic Act, the interpretation condemned by the First Circuit in the MDMA case. See Attachment A, p.24, to exhibit G-1 and exhibit G-2.

The overwhelming preponderance of the evidence in this record establishes that marijuana has a currently accepted medical use in treatment in the United States for nausea and vomiting resulting from chemotheraphy treatments in some cancer patients. To conclude otherwise, on this record, would be unreasonable, arbitrary and capricious.

15 Tr. XV-37.

VI.

ACCEPTED MEDICAL USE IN TREATMENT

- GLAUCOMA

Findings of Fact

The preponderance of the evidence establishes the following facts with respect to the accepted medical use of marijuana in the treatment of glaucoma.

1. Glaucoma is a disease of the eye characterized by the excessive accumulation of fluid causing increased intraocular pressure, distorted vision and, ultimately, blindness. In its early stages this pressure can sometimes be relieved by the administration of drugs. When such medical treatment fails adequately to reduce the intraocular pressure (IOP), surgery is generally resorted to. Although useful in many cases, there is a high incidence of failure with some types of surgery. Further, serious complications can occur as a result of invasive surgery. Newer, non-invasive procedures such as laser trabeculoplasty are thought by some to offer much greater efficacy with fewer complications. Unless the IOP is relieved and brought to a satisfactory level by one means or another, the patient will go blind.

2. Two highly qualified and experienced ophthalmologists in the United States have accepted marijuana as having a medical use in treatment for glaucoma. They are John C. Merritt, M.D. and Richard D. North, M.D. Each of them is both a clinician, treating patients, and a researcher. Dr. Merritt is also a professor of ophthalmology. Dr. North has served as a medical officer in ophthalmology for the Department of Health, Education and Welfare and has worked with the Public Health Service and FDA.

3. Dr. Merritt's experience with glaucoma patients using marijuana medicinally includes one Robert Randall and, insofar as the evidence here establishes per petitioners' briefs, an unspecified number of other patients, something in excess of 40.

4. Dr. North has treated only one glaucoma patient using marijuana medicinally - the same Robert Randall mentioned immediately above. Dr. North had monitored Mr. Randall's medicinal use of marijuana for nine years as of May 1987.

5. Dr. Merritt has accepted marijuana as having an important place in the treatment of "End Stage" glaucoma. "End Stage" glaucoma, essentially, defines a patient who has already lost substantial amounts of vision; available glaucoma control drugs are no longer able adequately to reduce the intraocular pressure (IOP) to prevent further, progressive sight loss; the patient, lacking additional IOP reductions, will go blind.

6. Robert S. Hepler, M.D., is a highly qualified and experienced ophthalmologist. He has done research with respect to the effect of smoking marijuana on glaucoma. In December 1975 he prescribed marijuana for the same Robert Randall mentioned above as a research subject. Dr. Hepler found that large dosages of smoked marijuana effectively reduced Robert Randall's IOP into the safe range over an entire test day. He concluded that the only known alternative to preserve Randall's sight which would avoid the significant risks of surgery is to include marijuana as part of Randall's prescribed medical regimen. He further concluded in 1977 that, if marijuana could have been legally prescribed, he would have prescribed it for Randall as part of Randall's regular glaucoma maintenance program had he been Randall's personal physician.

Nonetheless, in 1987 Dr. Hepler was of the opinion that marijuana did not have a currently accepted medical use in the United States for the treatment of glaucoma.

7. Four glaucoma patients testified in these proceedings. Each has found marijuana to be of help in controlling IOP.

8. In 1984 the treatment of glaucoma with Cannabis was the subject of an Ophthalmology Grand Rounds at the University of California, San Francisco. A questionnaire was distributed which queried the ophthalmologists on cannabis therapy for glaucoma patients refractory to standard treatment. Many of them have glaucoma patients who have asked about marijuana. Most of the responding ophthalmologists believed that THC capsules or smoked marijuana need to be available for patients who have not benefitted significantly from standard treatment.

9. In about 1978 an unspecified number of persons in the public health service sector in New Mexico, including some physicians, accepted marijuana as having medical use in treating glaucoma.

10. A majority of an unspecified number of ophthalmologists known to Arthur Kaufman, M.D., who was formerly in general practice but now is employed as a medical program administrator, accept marijuana as having medical use in treatment of glaucoma.

11. In addition to the physicians identified and referred to in the findings above, the testimony of patients in this record establishes that no more than three or four other physicians consider marijuana to be medically useful in the treatment of glaucoma in the United States. One of those physicians actually wrote a prescription for marijuana for a patient, which, of course, she was unable to have filled.

12. There are test results showing that smoking marijuana has reduced the IOP in some glaucoma patients. There is continuing research underway in the United States as to the therapeutic effect of marijuana on glaucoma.

Discussion

Petitioners' briefs fail to show that the preponderance of the evidence in the record with respect to marijuana and glaucoma establishes that a respectable minority of physicians accepts marijuana as being useful in the treatment of glaucoma in the United States.

This conclusion is not to be taken in any way as criticism of the opinions of the ophthalmologists who testified that they accept marijuana for this purpose. The failure lies with petitioners. In their briefs they do not point out hard, specific evidence in this record sufficient to establish that a respectable minority of physicians has accepted their position.

There is a great volume of evidence here, and much discussion in the briefs, about the protracted case of Robert Randall. But when all is said and done, his experience presents but one case. The record contains sworn testimony of three ophthalmologists who have treated Mr. Randall. One of them tells us of a relatively small number of other glaucoma patients whom he has treated with marijuana and whom he knows to have responded favorably. Another of these three doctors has successfully treated only Randall with marijuana. The third testifies, despite his successful experience in treating Randall, that marijuana does not have an accepted use in such treatment.

In addition to Robert Randall, Petitioners point to the testimony of three other glaucoma patients. Their case histories are impressive, but they contribute

little to the carrying of Petitioner's burden of showing that marijuana is accepted for medical treatment of glaucoma by a respectable minority of physicians. See pages 26-29, above.

Petitioners have placed in evidence copies of a number of newspaper clippings reporting statements by persons claiming that marijuana has helped their glaucoma. The administrative law judge is unable to give significant weight to this evidence. Had these persons tesified so as to have been subject to cross-examination, a different situation would be presented. But these newspaper reports of extra-judicial statements, neither tested by informed inquiry nor supported by a doctor's opinion, are not entitled to much weight. They are of little, if any, materiality.

Beyond the evidence referred to above there is little other "hard" evidence, pointed out by petitioners, of physicans accepting marijuana for treatment of glaucoma. Such evidence as that concerning a survey of a group of San Francisco ophthalmologists is ambiguous, at best. The relevant document establishes merely that most of the doctors on the grand rounds, who responded to an inquiry, believed that the THC capsules or marijuana ought to be available.

In sum, the evidence here tending to show that marijuana is accepted for treatment of glaucoma falls far, far short of the quantum of evidence tending to show that marijuana is accepted for treatment of emesis in cancer patients. The preponderance of the evidence here, identified by petitioners in their briefs, does not establish that a respectable minority of physicians has accepted marijuana for glaucoma treatment.

VII.

ACCEPTED MEDICAL USE IN TREATMENT

- MULTIPLE SCLEROSIS, SPASTICITY

AND HYPERPARATHYROIDISM

Findings Of Fact

The preponderance of the evidence clearly establishes the following facts with respect to marijuana's use in connection with multiple sclerosis, spasticity and hyperparathyroidism.

1. Multiple sclerosis is the major cause of neurological disability among young and middle-aged adults in the United States today. It is a life-long disease. It can be extremely debilitating to some of its victims but it does not shorten the life span of most of them. Its cause is yet to be determined. It attacks the myelin sheath, the coating or insulation surrounding the message-carrying nerve fibers in the brain and spinal cord. Once the myelin sheath is destroyed, it is replaced by plaques of hardened tissue known as sclerosis. During the initial stages of the disease nerve impulses are transmitted with only minor interruptions. As the disease progresses, the plaques may completely obstruct the impulses along certain nerve systems. These obstructions produce malfunctions. The effects are sporadic in most individuals and the effects often occur episodically, triggered either by malfunction of the nerve impulses or by external factors.

2. Over time many patients develop spasticity, the involuntary and abnormal contraction of muscle or muscle fibers. (Spasticity can also result from serious injuries to the spinal cord, not related to multiple sclerosis.)

3. The symptoms of multiple sclerosis vary according to the area of

the nervous system which is affected and according to the severity of the disease. The symptoms can include one or more of the following: weakness, tingling, numbness, impaired sensation, lack of coordination, disturbances in equilibrium, double vision, loss of vision, involuntary rapid movement of the eyes (nystagmus), slurred speech, tremors, stiffness, spasticity, weakness of limbs, sexual dysfunction, paralysis, and impaired bladder and bowel functions.

4. Each person afflicted by multiple sclerosis is affected differently. In some persons, the symptoms of the disease are barely detectable, even over long periods of time. In these cases, the persons can live their lives as if they did not suffer from the disease. In others, more of the symptoms are present and acute, thereby limiting their physical capabilities. Moreover, others may experience sporadic, but acute, symptoms.

5. At this time, there is no known prevention or cure for multiple sclerosis. Instead, there are only treatments for the symptoms of the disease. There are very few drugs specifically designed to treat spasticity. These drugs often cause very serious side effects. At the present time two drugs are approved by FDA as "safe" and "effective" for the specific indication of spasticity. These drugs are Dantrium and Lioresal baclofen.

6. Unfortunately, neither Dantrium nor Lioresal is a very effective spasm control drug. Their marginal medical utility, high toxicity and potential for serious adverse effects make these drugs difficult to use in spasticity therapy.

7. As a result, many physicians routinely prescribe tranquilizers, muscle relaxants, mood elevators and sedatives such as Valium to patients experiencing spasticity. While these drugs do not directly reduce spasticity

they may weaken the patient's muscle tone, thus making the spasms less noticeable. Alternatively, they may induce sleep or so tranquilize the patient that normal mental and physical functions are impossible.

8. A healthy, athletic young woman named Valerie Cover was stricken with multiple sclerosis while in her early twenties. She consulted several medical specialists and followed all the customary regimens and prescribed methods for coping with this debilitating disease over a period of several years. None of these proved availing. Two years after first experiencing the symptoms of multiple sclerosis her active, productive life - as an athlete, Navy officer's wife and mother - was effectively over. The Social Security Administration declared her totally disabled. To move about her home she had to sit on a skateboard and push herself around. She spent most of her time in bed or sitting in a wheelchair.

9. An occasional marijuana smoker in her teens, before her marriage, she had not smoked it for five years as of February 1986. Then a neighbor suggested that marijuana just might help Mrs. Cover's multiple sclerosis, having read that it had helped cancer patient's control their emesis. Mrs. Cover acceded to the suggestion.

10. Just before smoking the marijuana cigarette produced by her neighbor, Mrs. Cover had been throwing up and suffering from spasms. Within five minutes of smoking part of the marijuana cigarette she stopped vomiting, no longer felt nauseous and noticed that the intensity of her spasms was significantly reduced. She stood up unaided.

11. Mrs. Cover began smoking marijuana whenever she felt nauseated. When she did so it controlled her vomiting, stopped the nausea and increased her

appetite. It helped ease and control her spasticity. Her limbs were much easier to control. After three months of smoking marijuana she could walk unassisted, had regained all of her lost weight, her seizures became almost nonexistent. She could again care for her children. She could drive an automobile again. She regained the ability to lead a normal life.

12. Concerned that her use of this illegal substance might jeopardize the career of her Navy officer husband, Mrs. Cover stopped smoking marijuana several times. Each time she did so, after about a month, she had retrogressed to the point that her multiple sclerosis again had her confined to bed and wheelchair or skateboard. As of the Spring of 1987 Mrs. Cover had resumed smoking marijuana regularly on an "as needed" basis. Her multiple sclerosis symptoms are under excellent control. She has obtained a full-time job. She still needs a wheelchair on rare occasions, but generally has full use of her limbs and can walk around with relative ease.

13. Mrs. Cover's doctor has accepted the effectiveness of marijuana in her case. He questioned her closely about her use of it, telling her that it is the most effective drug known in reducing vomiting. Mrs. Cover and her doctor are now in the process of filing an Investigational New Drug (IND) application with FDA so that she can legally obtain the marijuana she needs to lead a reasonably normal life.

14. Martha Hirsch is a young woman in her mid-thirties. She first exhibited symptoms of multiple sclerosis at age 19 and it was diagnosed at that time. Her condition has grown progressively worse. She has been under the care of physicians and hospitalized for treatment. Many drugs have been prescribed for her by her doctors. At one point in 1983 she listed the drugs that had been

prescribed for her. There were 17 on the list. None of them has given her the relief from her multiple sclerosis symptoms that marijuana has.

15. During the early stages in the development of her illness Ms. Hirsch found that smoking marijuana improved the quality of her life, keeping her spasms under control. Her balance improved. She seldom needed to use her cane for support. Her condition lately has deteriorated. As of May 1987 she was experiencing severe, painful spasms. She had an indwelling catheter in her bladder. She had lost her locomotive abilities and was wheelchair bound. She could seldom find marijuana on the illegal market and, when she did, she often could not afford to purchase it. When she did obtain some, however, and smoked it, her entire body seemed to relax, her spasms decreased or disappeared, she slept better and her dizzy spells vanished. The relaxation of her leg muscles after smoking marijuana has been confirmed by her personal care attendant's examination of them.

16. The personal care attendant has told Ms. Hirsch that she, the attendant, treats a number of patients who smoke marijuana for relief of multiple sclerosis symptoms. In about 1980 another patient told Ms. Hirsch that he knew many patients who smoke marijuana to relieve their spasms. Through him she met other patients and found that marijuana was commonly used by many multiple sclerosis patients. Most of these persons had told their doctors about their doing so. None of those doctors advised against the practice and some encouraged it.

17. Among the drugs prescribed by doctors for Ms. Hirsch was ACTH. This failed to give her any therapeutic benefit or to control her spasticity. It did produce a number of adverse effects, including severe nausea and vomiting which, in turn, were partly controlled by rectally administered anti-emetic

drugs.

18. Another drug prescribed for her was Lioresal, intended to reduce her spasms. It was not very effective in so doing. But it did cause Ms. Hirsch to have hallucinations. On two occasions, while using this drug, Ms. Hirsch "saw" a large fire in her bedroom and called for help. There was no fire. She stopped using that drug. Ms. Hirsch has experienced no adverse reactions with marijuana.

19. Ms. Hirsch's doctor has accepted marijuana as beneficial for her. He agreed to write her a prescription for it, if that would help her obtain it. She has asked him if he would file an IND application with FDA for her. He replied that the paperwork was "overwhelming". He indicated willingness to help in this undertaking after Ms. Hirsch found someone else willing to put the paperwork together.

20. When Greg Paufler was in his early twenties, employed by Prudential Insurance Company, he began to experience the first symptoms of multiple sclerosis. His condition worsened as the disease intensified. He had to be hospitalized. He lost the ability to walk, to stand. Diagnosed as having multiple sclerosis, a doctor prescribed ACTH for him, an intensive form of steroid therapy. He lost all control over his limbs and experienced severe, painful spasms. His arms and legs became numb.

21. ACTH had no beneficial effects. The doctor continued to prescribe it over many months. ACTH made Paufler ravenously hungry and he began gaining a great deal of weight. ACTH caused fluid retention and Paufler became bloated, rapidly gaining weight. His doctor thought Paufler should continue this steroid therapy, even though it caused the adverse effects mentioned plus the possiblity of sudden heart attack or death due to respiratory failure. Increased dosages

of this FDA-approved drug caused fluid to press against Paufler's lungs making it difficult for him to breathe and causing his legs and feet to become swollen. The steroid therapy caused severe, intense depression marked by abrupt mood shifts. Throughout, the spasms continued and Paufler's limbs remained out of control. The doctor insisted that ACTH was the only therapy likely to be of any help with the multiple sclerosis, despite its adverse effects. Another, oral, steroid was eventually substituted.

22. One day Paufler became semi-catatonic while sitting in his living room at home. He was rushed to the hospital emergency room. He nearly died. Lab reports indicated, among other things, a nearly total lack of potassium in his body. He was given massive injections of potassium in the emergency room and placed on an oral supplement. Paufler resolved to take no more steroids.

23. From time to time, prior to this point, Paufler had smoked marijuana socially with visiting friends, seek some relief from his misery in a temporary "high". He now began smoking marijuana more often. After some weeks he found that he could stand and then walk a bit. His doctor dismissed the idea that marijuana could be helpful with multiple sclerosis, and Paufler, himself, was skeptical at first. He began discontinuing it for a while, then resuming.

24. Paufler found that when he did not smoke marijuana his condition worsened, he suffered more intense spasms more frequently. When he smoked marijuana, his condition would stabilize and then improve; spasms were more controlled and less severe; he felt better; he regained control over his limbs and could walk totally unaided. His vision, often blurred and unfocused, improved. Eventually he began smoking marijuana on a daily basis. He ventured outdoors. He was soon walking half a block. His eyesight returned to normal.

His central field blindness cleared up. He could focus well enough to read again. One evening he went out with his children and found he could kick a soccer ball again.

25. Paufler has smoked marijuana regularly since 1980. Since that time his multiple sclerosis has been well controlled. His doctor has been astonished at Paufler's recovery. Paufler can now run. He can stand on one foot with his eyes closed. The contrast with his condition, several years ago, seems miraculous. Smoking marijuana when Paufler feels an attack coming on shortens the attack. Paufler's doctor has looked Paufler in the eye and told him to keep doing whatever it is he's doing because it works. Paufler and his doctor are exploring the possbility of obtaining a compassionate IND to provide legal access to marijuana for Paufler.

26. Paufler learned in about 1980 of the success of one Sam Diana, a multiple sclerosis patient, in asserting the defense of "medical necessity" in court when charged with using or possessing marijuana. He learned that doctors, researchers and other multiple sclerosis patients had supported Diana's position in the court proceeding.

27. Irwin Rosenfeld has been diagnosed as having Pseudo Pseudo Hypoparathyroidism. This uncommon disease causes bone spurs to appear and grow all over the body. Over the patient's lifetime hundreds of these spurs can grow, any one of which can become malignant at any time. The resulting cancer would spread quickly and the patient would die.

28. Even without development of a malignancy, the disease causes enormous pain. The spurs press upon adjacent body tissue, nerves and organs. In Rosenfeld's case, he could neither sit still nor lie down, nor could he walk,

without experiencing pain. Working in his furniture store in Portsmouth, Virginia, Mr. Rosenfeld was on his feet moving furniture all day long. The lifting and walking caused serious problems as muscles and tissues rubbed over the spurs of bone. He tore muscles and hemorrhaged almost daily.

29. Rosenfeld's symptoms first appeared about the age of ten. Various drugs were prescribed for him for pain relief. He was taking extremely powerful narcotics. By the age of 19 his therapy included 300 mg. of Sopor (a powerful sleeping agent) and very high doses of Dilaudid. He was found to be allergic to barbiturates. Taking massive doses of pain control drugs, as prescribed, made it very difficult for Rosenfeld to function normally. If he took enough of them to control the pain, he could barely concentrate on his schoolwork. By the time he reached his early twenties Rosenfeld's monthly drug intake was between 120 to 140 Dilaudid tablets, 30 or more Sopor sleeping pills and dozens of muscle relaxants.

30. At college in Florida Rosenfeld was introduced to marijuana by classmates. He experimented with it recreationally. He never experienced a "high" or "buzz" or "floating sensation" from it. One day he smoked marijuana while playing chess with a friend. It had been very difficult for him to sit for more than five or ten minutes at a time because of tumors in the backs of his legs. Suddenly he realized that, absorbed in his chess game, and smoking marijuana, he had remained sitting for over an hour - with no pain. He experimented further and found that his pain was reduced whenever he smoked marijuana.

31. Rosenfeld told his doctor of his discovery. The doctor opined that it was possible that the marijuana was relieving the pain. Something

certainly was - there was a drastic decrease in Rosenfeld's need for such drugs as Dilaudid and Demerol and for sleeping pills. The quality of pain relief which followed his smoking of marijuana was superior to any he had experienced before. As his dosages of powerful conventional drugs decreased, Rosenfeld became less withdrawn from the world, more able to interact and function. So he has continued to the present time.

32. After some time Rosenfeld's doctor accepted the fact that the marijuana was therapeutically helpful to Rosenfeld and submitted an IND application to FDA to obtain supplies of it legally for Rosenfeld. The doctor has insisted, however, that he not be publicly identified. After some effort the IND application was granted. Rosenfeld is receiving supplies of marijuana from NIDA. Rosenfeld testified before a committee of the Virginia legislature in about 1979 in support of legislation to make marijuana available for therapeutic purposes in that State.

33. In 1969, at age 19, David Branstetter dove into the shallow end of a swimming pool and broke his neck. He became a quadraplegic, losing control over the movement of his arms and legs. After being hospitalized for 18 months he returned home. Valium was prescribed for him to reduce the severe spasms associated with his condition. He became mildly addicted to Valium. Although it helped mask his spasms, it made Branstetter more withdrawn and less able to take care of himself. He stopped taking Valium for fear of the consequences of long-term addiction. His spasms then became uncontrollable, often becoming so bad they would throw him from his wheelchair.

34. In about 1973 Branstetter began smoking marijuana recreationally. He discovered that his severe spasms stopped whenever he smoked marijuana.

Unlike Valium, which only masked his symptoms and caused him to feel drunk and out of control, marijuana brought his spasmodic condition under control without impairing his faculties. When he was smoking marijuana regularly he was more active, alert and outgoing.

35. Marijuana controlled his spasms so well that Branstetter could go out with friends and he began to play billiards again. The longer he smoked marijuana the more he was able to use his arms and hands. Marijuana also improved his bladder control and bowel movements.

36. At times the illegal marijuana Branstetter was smoking became very expensive and sometimes was unavailable. During periods when he did not have marijuana his spasms would return, preventing Branstetter from living a "normal" life. He would begin to shake uncontrollably, his body would feel tense, and his muscles would spasm.

37. In 1979 Branstetter was arrested and convicted of possession of marijuana. He was placed on probation for two years. During that period he continued smoking marijuana and truthfully reportd this, and the reason for it, to his probation officer whenever asked about it. No action was taken against Branstetter by the court or probation authorities because of his continuing use of marijuana, except once in the wake of his publicly testifying about it before the Missouri legislature. Then, although adverse action was threatened by the judge, nothing was actually done.

38. In 1981 Branstetter and a friend, a paraplegic, participated in a research study testing the therapeutic effects of synthetic THC on spasticity. Placed on the THC Branstetter found that it did help control his spasms but appeared to became less effective with repeated use. Also, unlike marijuana,

synthetic THC had a powerful mind-altering effect he found annoying. When the study ended the researcher strongly suggested that Branstetter continue smoking marijuana to control his spasms.

39. None of Branstetter's doctors have told him to stop smoking marijuana while several, directly and indirectly, have encouraged him to continue. Branstetter knows of almost 20 other patients, paraplegics, quadraplegics and multiple sclerosis sufferers, who smoke marijuana to control their spasticity.

40. In 1981 a State of Washington Superior Court judge, sitting without a jury, found Samuel D. Diana not guilty of the charge of unlawful possession of marijuana. In so doing the judge upheld Diana's defense of medical necessity. Diana had been a multiple sclerosis patient since at least 1973. He testified that smoking marijuana relieved his symptoms of double vision, tremors, unsteady walk, impaired hearing, tendency to vomit in the mornings and stiffness in the joints of his hands and legs.

41. Among the witnesses was a physician who had examined defendant Diana before and after he had used marijuana. This doctor tesified that marijuana had been effective therapeutically for Diana, that other medication had proven ineffective for Diana and that, while marijuana may have some detrimental effects, Diana would receive more benefit than harm from smoking it. The doctor was not aware of any other drug that would be as effective as marijuana for Mr. Diana. Other witnesses included three persons afflicted with multiple sclerosis who tesified in detail as to marijuana's beneficial effect on their illness.

42. In acquitting defendant Diana of unlawful possession of marijuana the trial judge found that the three requirements for the defense of medical necessity had been established, namely: defendant's reasonable belief that his

use of marijuana was necessary to minimize the effects of multiple sclerosis; the benefits derived from its use are greater than the harm sought to be prevented by the controlled substances law; and no drug is as effective as marijuana in minimizing the effects of the disease in the defendant.

43. Denis Petro, M.D., is a neurologist of broad experience, ranging from active practice in neurology to teaching the subject in medical school and employment by FDA as a medical officer reviewing IND's and NDA's. He has also been employed by pharmaceutical companies and has served as a consultant to the State of New York. He is well acquainted with the case histories of three patients who have successfully utilized marijuana to control severe spasticity when other, FDA-approved drugs failed to do so. Dr. Petro knows of other cases of patients who, he has determined, have effectively used marijuana to control their spasticity. He has heard reports of additional patients with multiple sclerosis, paraplegia and quadriplagia doing the same. There are reports published in the literature known to Dr. Petro, over the period at least 1970 - 1986, of clinical tests demonstrating that marijuana and THC are effective in controlling or reducing spasticity in patients.

44. Large numbers of paraplegic and quadriplegic patients, particularly in Veterans Hospitals, routinely smoke marijuana to reduce spasticity. While this mode of treatment is illegal, it is generally tolerated, if not openly encouraged, by physicians in charge of such wards who accept this practice as being of benefit to their patients. There are many spinal cord injury patients in Veterans Hospitals.

45. Dr. Petro sought FDA approval to conduct research with spasticity patients using marijuana. FDA refused but, for reasons unknown to him, allowed

him to make a study using synthetic THC. He and colleagues made such a study. They concluded that synthetic THC effected a significant reduction in spasticity among multiple sclerosis patients, but study participants who had also smoked marijuana reported consistently that marijuana was more effective.

46. Dr. Petro accepts marijuana as having a medical use in the treatment of spasticity in the United States. If it were legally available and he was engaged in an active medical practice again, he would not hesitate to prescribe marijuana, when appropriate, to patients afflicted with uncontrollable spasticity.

47. Dr. Petro presented a paper to a meeting of the American Academy of Neurology. The paper was accepted for presentation. After he presented it Dr. Petro found that many of the neurologists present at this most prestigious meeting were in agreement with his acceptance of marijuana as having a medical use in the treatment of spasticity.

48. Dr. Andrew Weil, a general medicine practitioner in Tucson, Arizona, who also teaches at the University of Arizona College of Medicine, accepts marijuana as having a medical use in the treatment of spasticity. In multiple sclerosis patients the muscles become tense and rigid because their nerve supply is interrupted. Marijuana relieves this spasticity in many patients, he has found. He would prescribe it to selected patients if it were legally available.

49. Dr. Lester B. Collins, III, a neurologist, then treating about 20 multiple sclerosis patients a year, seeing two or three new ones each year, stated in 1983 that he had no doubt that marijuana worked symptomatically for some multiple sclerosis patients. He said that it does not alter the course of

the disease but it does relieve the symptoms of spasticity.

50. Dr. John P. Morgan, board certified in internal medicine, Professor of Medicine and Director of Pharmacology at CCNY Medical School in New York and Associate Professor of Medicine and Pharmacology at Mt. Sinai School of Medicine, accepts marijuana as having medical use in treatment in the United States. If he were practicing medicine and marijuana were legally available he would prescribe it when indicated to patients with legitimate medical needs.

Discussion

Based upon the rationale set out in pages 26 to 34, above, the administrative law judge concludes that, within the meaning of the Act, 21 U.S.C. § 812(b)(2)(B), marijuana "has a currently accepted medical use in treatment in the United States" for spasticity resulting from multiple sclerosis and other causes. It would be unreasonable, arbitrary and capricious to find otherwise. The facts set out above, uncontroverted by the Agency, establish beyond question that some doctors in the United States accept marijuana as helpful in such treatment for some patients. The record here shows that they constitute a significant minority of physicians. Nothing more can reasonably be required. That some doctors would have more studies and test results in hand before accepting marijuana's usefulness here is irrelevant.

The same is true with respect to the hyperparathyroidism from which Irvin Rosenfeld suffers. His disease is so rare, and so few physicians appear to be familiar with it, that acceptance by one doctor of marijuana as being useful in treating it ought to satisfy the requirement for a significant minority. The Agency points to no evidence of record tending to establish that marijuana is

not accepted by doctors in connection with this most unusual ailment. Refusal to acknowledge acceptance by a significant minority, in light of the case history detailed in this record, would be unreasonable, arbitrary and capricious.

VIII.

ACCEPTED SAFETY FOR USE UNDER MEDICAL SUPERVISION

With respect to whether or not there is "a lack of accepted safety for use of [marijuana] under medical supervision", the record shows the following facts to be uncontroverted.

Findings of Fact

1. Richard J. Gralla, M.D., an oncologist and Professor of Medicine who was an Agency witness, accepts that in treating cancer patients oncologists can use the cannabinoids with safety despite their side effects.

2. Andrew T. Weil, M.D., who now practices medicine in Tucson, Arizona and is on the faculty of the College of Medicine, University of Arizona, was a member of the first team of researchers to perform a Federal Government authorized study into the effects of marijuana on human subjects. This team made its study in 1968. These researchers determined that marijuana could be safely used under medical supervision. In the 20 years since then Dr. Weil has seen no information that would cause him to reconsider that conclusion. There is no question in his mind but that marijuana is safe for use under appropriate medical supervision.

3. The most obvious concern when dealing with drug safety is the possibility of lethal effects. Can the drug cause death?

4. Nearly all medicines have toxic, potentially lethal effects. But marijuana is not such a substance. There is no record in the extensive medical literature describing a proven, documented cannabis-induced fatality.

5. This is a remarkable statement. First, the record on marijuana encompasses 5,000 years of human experience. Second, marijuana is now used daily by enormous numbers of people throughout the world. Estimates suggest that from twenty million to fifty million Americans routinely, albeit illegally, smoke marijuana without the benefit of direct medical supervision. Yet, despite this long history of use and the extraordinarily high numbers of social smokers, there are simply no credible medical reports to suggest that consuming marijuana has caused a single death.

6. By contrast aspirin, a commonly used, over-the-counter medicine, causes hundreds of deaths each year.

7. Drugs used in medicine are routinely given what is called an LD-50. The LD-50 rating indicates at what dosage fifty percent of test animals receiving a drug will die as a result of drug induced toxicity. A number of researchers have attempted to determine marijuana's LD-50 rating in test animals, without success. Simply stated, researchers have been unable to give animals enough marijuana to induce death.

8. At present it is estimated that marijuana's LD-50 is around 1:20,000 or 1:40,000. In layman terms this means that in order to induce death a marijuana smoker would have to consume 20,000 to 40,000 times as much marijuana as is contained in one marijuana cigarette. NIDA-supplied marijuana cigarettes weigh approximately .9 grams. A smoker would theoretically have to consume nearly 1,500 pounds of marijuana within about fifteen minutes to induce a lethal response.

9. In practical terms, marijuana cannot induce a lethal response as a result of drug-related toxicity.

10. Another common medical way to determine drug safety is called the therapeuic ratio. This ratio defines the difference between a therapeutically effective dose and a dose which is capable of inducing adverse effects.

11. A commonly used over-the-counter product like aspirin has a therapeutic ratio of around 1:20. Two aspirins are the recommended dose for adult patients. Twenty times this dose, forty aspirins, may cause a lethal reaction in some patients, and will almost certainly cause gross injury to the digestive system, including extensive internal bleeding.

12. The therapeutic ratio for prescribed drugs is commonly around 1:10 or lower. Valium, a commonly used prescriptive drug, may cause very serious biological damage if patients use ten times the recommended (therapeutic) dose.

13. There are, of course, prescriptive drugs which have much lower therapeutic ratios. Many of the drugs used to treat patients with cancer, glaucoma and multiple sclerosis are highly toxic. The therapeutic ratio of some of the drugs used in antineoplastic therapies, for example, are regarded as extremely toxic poisons with therapeutic ratios that may fall below 1:1.5. These drugs also have very low LD-50 ratios and can result in toxic, even lethal reactions, while being properly employed.

14. By contrast, marijuana's therapeutic ratio, like its LD-50, is impossible to quantify because it is so high.

15. In strict medical terms marijuana is far safer than many foods we commonly consume. For example, eating ten raw potatoes can result in a toxic response. By comparison, it is physically impossible to eat enough marijuana to induce death.

16. Marijuana, in its natural form, is one of the safest therapeutically

active substances known to man. By any measure of rational analysis marijuana can be safely used within a supervised routine of medical care.

17. Some of the drugs most widely used in chemotherapy treatment of cancer have adverse effects as follows:

> Cisplatin, one of the most powerful chemo-therapeuic agents used on humans - may cause deafness; may lead to life-threatening kidney difficulties and kidney failure; adversely affects the body's immune system, suppressing the patient's ability to fight a host of common infections.
>
> Nitrogen Mustard, a drug used in therapy for Hodgkins disease - nauseates; so toxic to the skin that, if dropped on the skin, this chemical literally eats it away along with other tissues it contacts; if patient's intravenous lead slips during treatment and this drug gets on or under the skin the patient may suffer serious injury including temporary, and in extreme cases, permanent, loss of use of the arm.
>
> Procarbizine, also used for Hodgkins disease - has known psychogenic, i.e., emotional, effects.
>
> Cytoxin, also known as Cyclophosphanide - suppresses patient's immune system response; results in serious bone marrow depletion; studies indicate this drug may also cause other cancers, including cancers of the bladder.
>
> Adriamycan, has numerous adverse effects; is difficult to employ in long term therapies because it destroys the heart muscle.

While each of these agents has its particular adverse effects, as indicated above, they also cause a number of similar, disturbing adverse effects. Most of these drugs cause hair loss. Studies increasingly indicate all of these drugs may cause other forms of cancer. Death due to kidney, heart or respiratory failure is a very real possibility with all of these agents and the margin for error is minimal. Similarly, there is a danger of overdosing a patient weakened by his cancer. Put simply, there is very great risk associated with the medical

use of these chemicals agents. Despite these high risks, all of these drugs are considered "safe" for use under medical supervision and are regularly administered to patients on doctor's orders in the United States today.

18. There have been occasional instances of panic reaction in patients who have smoked marijuana. These have occurred in marijuana-naive persons, usually older persons, who are extremely anxious over the forthcoming chemotherapy and troubled over the illegality of their having obtained the marijuana. Such persons have responded to simple person-to-person communication with a doctor and have sustained no long term mental or physical damage. If marijuana could be legally obtained, and administered in an open, medically-supervised session rather than surreptitiously, the few instances of such adverse reaction doubtless would be reduced in number and severity.

19. Other reported side effects of marijuana have been minimal. Sedation often results. Sometimes mild euphoria is experienced. Short periods of increased pulse rate and of dizziness are occasionally experienced. Marijuana should not be used by persons anxious or depressed or psychotic or with certain other health problems. Physicians could readily screen out such patients if marijuana were being employed as an agent under medical supervision.

20. All drugs have "side effects" and all drugs used in medicine for their therapeutic benefits have unwanted, unintended, sometimes adverse effects.

21. In medical treatment "safety" is a relative term. A drug deemed "safe" for use in treating a life-threatening disease might be "unsafe" if prescribed for a patient with a minor ailment. The concept of drug "safety" is relative. Safety is measured against the consequences a patient would confront in the absence of therapy. The determination of "safety" is made in terms of

whether a drug's benefits outweigh its potential risks and the risks of permitting the disease to progress.

22. In the context of glaucoma therapy, it must be kept in mind that glaucoma, untreated, progressively destroys the optic nerve and results in eventual blindness. The danger, then, to patients with glaucoma is an irretrievable loss of their sight.

23. Glaucoma is not a mortal disease, but a highly specific, selectively incapacitating condition. Glaucoma assaults and destroys the patient's most evolved and critical sensory ability, his or her vision. The vast majority of patients afflicted with glaucoma are adults over the age of thirty. The onset of blindness in middle age or later throws patients into a wholely alien world. They can no longer do the work they once did. They are unable to read a newspaper, drive a car, shop, walk freely and do all the myriad things sighted people take for granted. Without lengthy periods of retaining, adaptation and great effort these individuals often lose their sense of identity and ability to function. Those who are young enough or strong-willed enough will regain a sense of place, hold meaningful jobs, but many aspects of the life they once took for granted cannot be recaptured. Other patients may never fully adjust to their new, uncertain circumstances.

24. Blindness is a very grave consequence. Protecting patients from blindness is considered so important that, for ophtholmologists generally, it justifies the use of toxic medicines and uncertain surgical procedures which in other contexts might be considered "unsafe." In practice, physicians often provide glaucoma patients with drugs which have many serious adverse effects.

25. There are only a limited number of drugs available for the

treatment of glaucoma. All of these drugs produce adverse effects. While several government witnesses lightly touched on the side effects of these drugs, none provided a full or detailed description of their known adverse consequences.

26. The adverse physical consequences resulting from the chronic use of commonly employed glaucoma control drugs include a vast range of unintended complications from mild problems like drug induced fevers, skin rashes, headaches, anorexia, asthma, pulmonary difficulties, hypertension, hypotension and muscle cramps to truly serious, even life-threatening complications including the formation of cataracts, stomach and intestinal ulcers, acute respiratory distress, increases and decreases in heart rate and pulse, disruption of heart function, chronic and acute renal disease, and bone marrow depletion.

27. Finally, each FDA-approved drug family used in glaucoma therapy is capable of producing a lethal response, even when properly prescribed and used. Epinephrine can lead to elevated blood pressure which may result in stroke or heart attack. Miotic drugs suppress respiration and can cause respiratory paralysis. Diuretic drugs so alter basic body chemistry they cause renal stones and may destroy the patient's kidneys or result in death due to heart failure. Timolol and related beta-blocking agents, the most recently approved family of glaucoma control drugs, can trigger severe asthma attacks or cause death due to sudden cardiac arrhythmias often producing cardiac arrest.

28. Both of the FDA-approved drugs used in treating the symptoms of multiple sclerosis, Dantrium and Lioresal, while accepted as "safe" can, in fact, be very dangerous substances. Dantrium or dantrolene sodium carries a boxed warning in the Physician's Desk Reference (PDR) because of its very high toxicity. Patients using this drug run a very real risk of developing sympto-

matic hepatitis (fatal and nonfatal). The list of sublethal toxic reactions also underscores just how dangerous Dantrium can be. The PDR, in part, notes Dantrium commonly causes weakness, general malaise and fatigue and goes on to note the drug can also cause constipation, GI bleeding, anorexia, gastric irritation, abdominal cramps, speech disturbances, seizure, visual disturbances, diplopia, tachycardia, erratic blood pressure, mental confusion, clinical depression, renal disturbances, myalgia, feelings of suffocation and death due to liver failure.

29. The adverse effects associated with Lioresal baclofen are somewhat less severe, but include possibly lethal consequences, even when the drug is properly prescribed and taken as directed. The range of sublethal toxic reactions is similar to those found with Dantrium.

30. Norman E. Zinberg, M.D., one of Dr. Weil's colleagues in the 1968 study mentioned in finding 2, above, accepts marijuana as being safe for use under medical supervision. If it were available by prescription he would use it for appropriate patients.

31. Lester Grinspoon, M.D., practicing psychiatrist, researcher and Associate Professor of Medicine at Harvard Medical School, accepts marijuana as safe for use under medical supervision. He believes its safety is its greatest advantage as a medicine in appropriate cases.

32. Tod H. Mikuriya, M.D., a psychiatrist practicing in Berkley, California who treats substance abusers as inpatients and outpatients, accepts marijuana as safe for use under medical supervision.

33. Richard D. North, M.D., who has treated Robert Randall for glaucoma with marijuana for nine years, accepts marijuana as safe for use by his patient

under medical supervision. Mr. Randall has smoked ten marijuana cigarettes a day during that period without any evidence of adverse mental or physical effects from it.

34. John C. Merritt, M.D., an expert in ophthalmology, who has treated Robert Randall and others with marijuana for glaucoma, accepts marijuana as being safe for use in such treatment.

35. Deborah B. Goldberg, M.D., formerly a researcher in oncology and now a practicing physician, having worked with many cancer patients, observed them, and heard many tell of smoking marijuana successfully to control emesis, accepts marijuana as proven to be an extremely safe anti-emetic agent. When compared with the other, highly toxic chemical substances routinely prescribed to cancer patients, Dr. Goldberg accepts marijuana as clearly safe for use under medical supervision. (See finding 17, above.)

36. Ivan Silverberg, M.D., board certified in oncology and practicing that specialty in the San Francisco area, has accepted marijuana as a safe anti-emitic when used under medical supervision. Although illegal, it is commonly used by patients in the San Francisco area with the knowledge and acquiesence of their doctors who readily accept it as being safe for such use.

37. It can be inferred that all of the doctors and other health care professionals referred to in the findings in Sections V, VI and VII, above, who tolerate or permit patients to self-addminister illegal marijuana for therapeutic benefit, accept the substance as safe for use under medical supervision.

Discussion

The Act, at 21 U.S.C. § 812(b)(1)(C), requires that marijuana be retained in Schedule I if "[t]here is a lack of accepted safety for use of [it] under medical supervision." If there is no lack of such safety, if it is accepted that this substance can be used with safety under medical supervision, then it is unreasonable to keep it in Schedule I.

Again we must ask - "accepted" by whom? In the MDMA proceeding the Agency's first Final Rule decided that "accepted" here meant, as in the phrase "accepted medical use in treatment", that the FDA had accepted the substance pursuant to the provisions of the Food, Drug and Cosmetic Act. 51 Fed. Reg. 36555 (1986). The Court of Appeals held that this was error. On remand, in its third Final Rule on MDMA, the Agency made the same ruling as before, relying essentially on the same findings, and on others of similar nature, just as it did with respect to "accepted medical use." 53 Fed. Reg. 5156 (1988).

The administrative law judge finds himself constrained not to follow the rationale in that MDMA third Final Order for the same reasons as set out above in Section V with respect to "accepted medical use" in oncology. See pages 30 to 33. Briefly, the Agency was looking primarily at the results of scientific tests and studies rather than at what physicians had, in fact, accepted. The Agency was wrongly basing its decision on a judgement as to whether or not doctors ought to have accepted the substance in question as safe for use under medical supervision. The criteria the Agency applied in the MDMA third Final Rule are inappropriate. The only proper question for the Agency here is: Have a significant minority of physicians accepted marijuana as safe for use under medical supervision?

The gist of the Agency's case against recognizing marijuana's acceptance as safe is to assert that more studies, more tests are needed. The Agency has presented highly qualified and respected experts, researchers and others, who hold that view. But, as demonstrated in the discussion in Section V above, it is unrealistic and unreasonable to require unanimity of opinion on the question confronting us. For the reasons there indicated, acceptance by a significant minority of doctors is all that can reasonably be required. This record makes it abundantly clear that such acceptance exists in the United States.

Findings are made above with respect to the safety of medically supervised use of marijuana by glaucoma patients. Those findings are relevant to the safety issue even though the administrative law judge does not find accepted use in treatment of glaucoma to have been shown.

Based upon the facts established in this record and set out above one must reasonably conclude that there is accepted safety for use of marijuana under medical supervision. To conclude otherwise, on this record, would be unreasonable, arbitrary and capricious.

IX.

CONCLUSION AND RECOMMENDED DECISION

Based upon the foregoing facts and reasoning, the administrative law judge concludes that the provisions of the Act permit and require the transfer of marijuana from Schedule I to Schedule II. The judge realizes that strong emotions are aroused on both sides of any discussion concerning the use of marijuana. Nonetheless it is essential for this Agency, and its Administrator, calmly and dispassionately to review the evidence of record, correctly apply the law, and act accordingly.

Marijuana can be harmful. Marijuana is abused. But the same is true of dozens of drugs or substances which are listed in Schedule II so that they can be employed in treatment by physicians in proper cases, despite their abuse potenial.

Transferring marijuana from Schedule I to Schedule II will not, of course, make it immediately available in pharmacies throughout the country for legitimate use in treatment. Other government authorities, Federal and State, will doubtless have to act before that might occur. But this Agency is not charged with responsibility, or given authority, over the myriad other regulatory decisions that may be required before marijuana can actually be legally available. This Agency is charged merely with determining the placement of marijuana pursuant to the provisions of the Act. Under our system of laws the responsibilities of other regulatory bodies are the concerns of those bodies, not of this Agency.

There are those who, in all sincerety, argue that the transfer of marijuana

to Schedule II will "send a signal" that marijuana is "OK" generally for recreational use. This argument is specious. It presents no valid reason for refraining from taking an action required by law in light of the evidence. If marijuana should be placed in Schedule II, in obedience to the law, then that is where marijuana should be placed, regardless of misinterpretation of the placement by some. The reasons for the placement can, and should, be clearly explained at the time the action is taken. The fear of sending such a signal cannot be permitted to override the legitimate need, amply demonstrated in this record, of countless suffers for the relief marijuana can provide when prescribed by a physician in a legitimate case.

The evidence in this record clearly shows that marijuana has been accepted as capable of relieving the distress of great numbers of very ill people, and doing so with safety under medical supervision. It would be unreasonable, arbitrary and capricious for DEA to continue to stand between those sufferers and the benefits of this substance in light of the evidence in this record.

The administrative law judge recommends that the Administrator conclude that the marijuana plant considered as a whole has a currently accepted medical use in treatment in the United States, that there is no lack of accepted safety for use of it under medical supervision and that it may lawfully be transferred from Schedule I to Schedule II. The judge recommends that the Administrator transfer marijuana from Schedule I to Schedule II.

Dated: SEP 6 1988

Francis L. Young
Administrative Law Judge

CERTIFICATION OF SERVICE

This is to certify that the undersigned on SEP 6 1988 , caused a copy of the foregoing to be delivered to

Madeleine R. Shirley, Esq.
Office of Chief Counsel
Drug Enforcement Administration
1405 I Street, N.W.
Washington, D.C. 20537

and caused a copy to be mailed, postage paid, to each of the following:

National Organization for the
Reform of Marijuana Laws
Attn: Kevin B. Zeese, Esq.
Zwerling, Mark, Ginsberg and Lieberman, P.C.
1001 Duke Street
Alexandria, Virginia 22313

National Federation of Parents
for Drug-Free Youth
Attn: Karl Bernstein
Vice President
8730 Georgia Avenue
Suite 200
Silver Spring, Maryland 20910

Alliance for Cannabis Therapeutics
c/o Frank B. Stilwell, III, Esq.
Steptoe & Johnson
Attorneys at Law
1330 Connecticut Avenue, N.W.
Washington, D.C. 20036

David C. Beck, Esq.
McDermott, Will & Emery
1850 K Street, N.W.
Washington, D.C. 20006
Attorney for Cannabis Corporation
of America

Carl Eric Olsen
Post Office Box 5034
Des Moines, Iowa 50306

Cannabis Corporation of
America
Attn: Laurence O. McKinney
President
c/o McKinney & Company
881 Massachusetts Avenue
Cambridge, Massachusetts 02139

International Association of
Chiefs of Police
Attn: Virginia Peltier, Esq.
Assistant Legal Counsel
13 Firstfield Road
P.O. Box 6010
Gaithersburg, Maryland 20878

(Signed)

Dianne L. Martin
Hearing Clerk

Exhibit 6

US006630507B1

(12) **United States Patent**
Hampson et al.

(10) **Patent No.: US 6,630,507 B1**
(45) **Date of Patent: Oct. 7, 2003**

(54) **CANNABINOIDS AS ANTIOXIDANTS AND NEUROPROTECTANTS**

(75) Inventors: **Aidan J. Hampson**, Irvine, CA (US); **Julius Axelrod**, Rockville, MD (US); **Maurizio Grimaldi**, Bethesda, MD (US)

(73) Assignee: **The United States of America as represented by the Department of Health and Human Services**, Washington, DC (US)

(*) Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 U.S.C. 154(b) by 0 days.

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§ 371 (c)(1),
(2), (4) Date: **Feb. 2, 2001**

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(51) **Int. Cl.**[7] **A61K 31/35**
(52) **U.S. Cl.** **514/454**
(58) **Field of Search** 514/454

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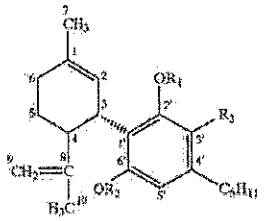
(List continued on next page.)

Primary Examiner—Kevin E. Weddington
(74) *Attorney, Agent, or Firm*—Klarquist Sparkman, LLP

(57) **ABSTRACT**

Cannabinoids have been found to have antioxidant properties, unrelated to NMDA receptor antagonism. This new found property makes cannabinoids useful in the treatment and prophylaxis of wide variety of oxidation associated diseases, such as ischemic, age-related, inflammatory and autoimmune diseases. The cannabinoids are found to have particular application as neuroprotectants, for example in limiting neurological damage following ischemic insults, such as stroke and trauma, or in the treatment of neurodegenerative diseases, such as Alzheimer's disease, Parkinson's disease and HIV dementia. Nonpsychoactive cannabinoids, such as cannabidoil, are particularly advantageous to use because they avoid toxicity that is encountered with psychoactive cannabinoids at high doses useful in the method of the present invention. A particular disclosed class of cannabinoids useful as neuroprotective antioxidants is formula (I) wherein the R group is independently selected from the group consisting of H, CH_3, and $COCH_3$.

(I)



26 Claims, 7 Drawing Sheets

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FIG. 1

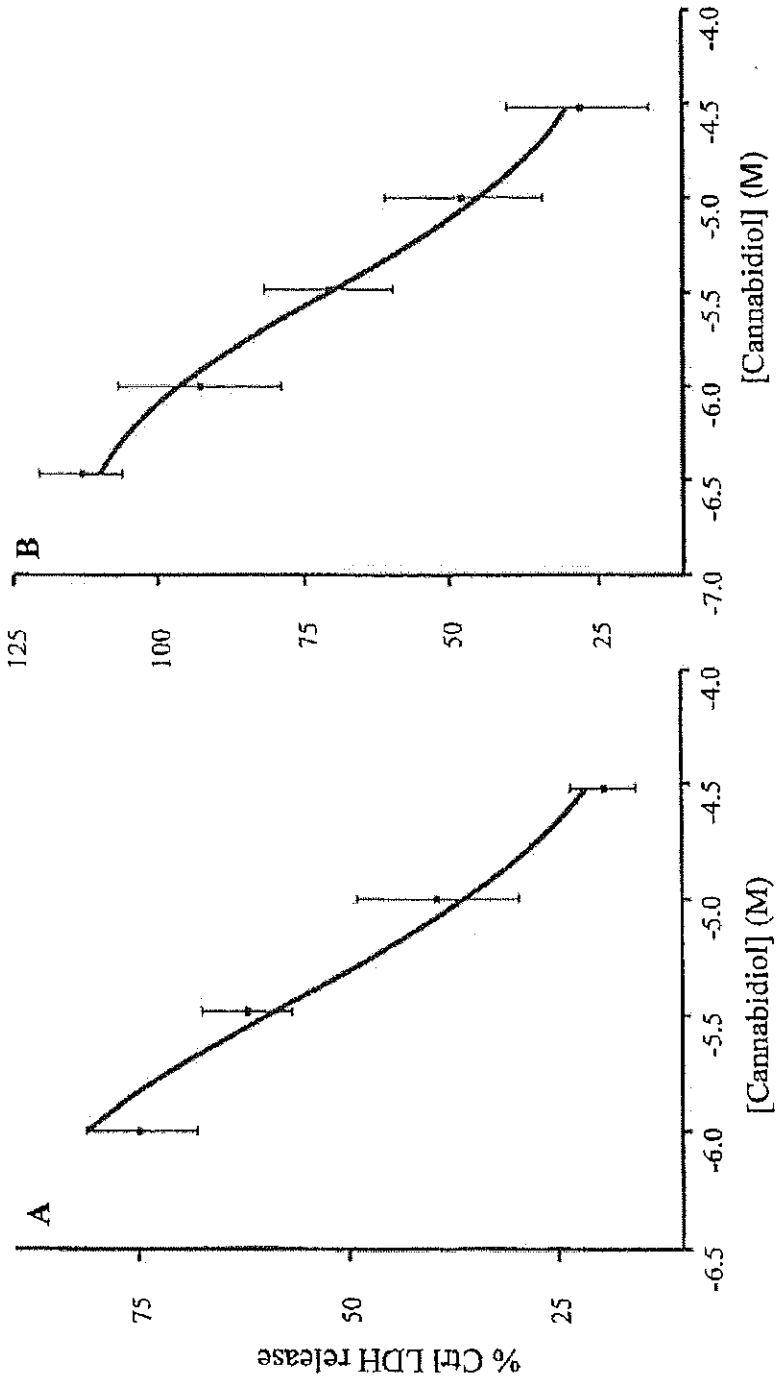
A
B
% Ctrl LDH release
[Cannabidiol] (M)
[Cannabidiol] (M)
75
50
25
125
100
75
50
25
-6.5
-6.0
-5.5
-5.0
-4.5
-4.0
-7.0
-6.5
-6.0
-5.5
-5.0
-4.5
-4.0

FIG. 2

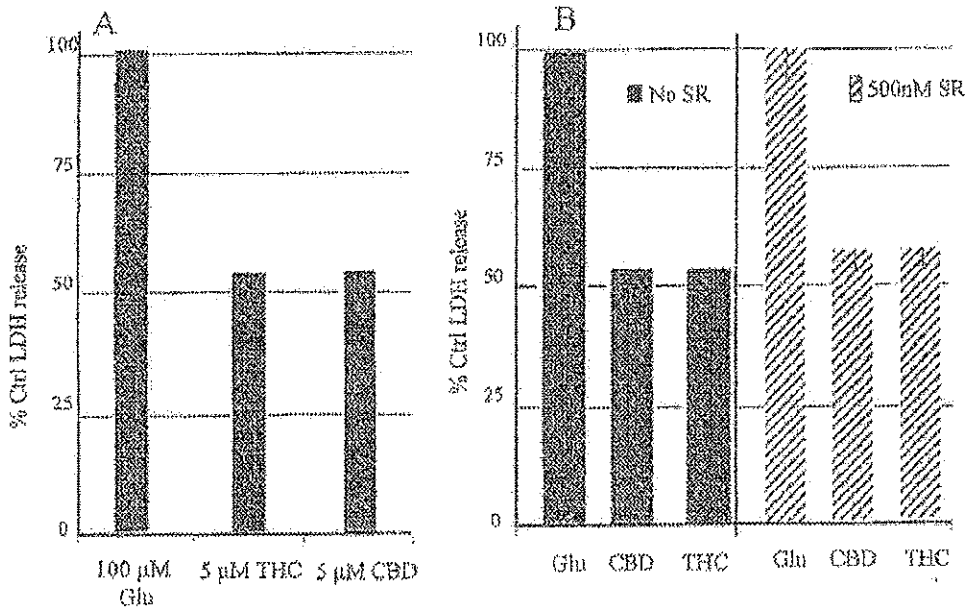
A
100
75
50
25
0
% Ctrl LDH release
100 μM Glu
5 μM THC
5 μM CBD
B
100
75
50
25
0
% Ctrl LDH release
No SR
500nM SR
Glu
CBD
THC
Glu
CBD
THC

FIG. 4

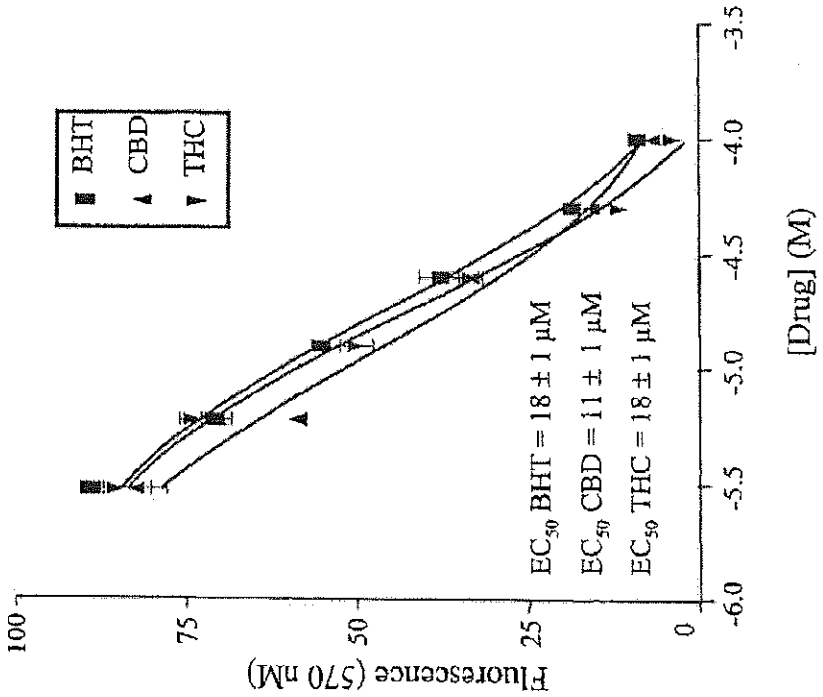

FIG. 3

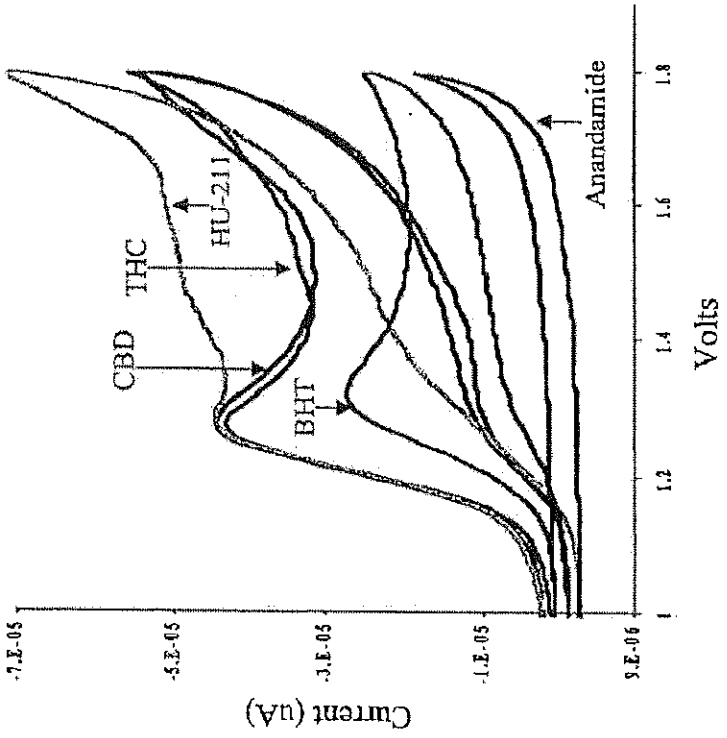

FIG. 5

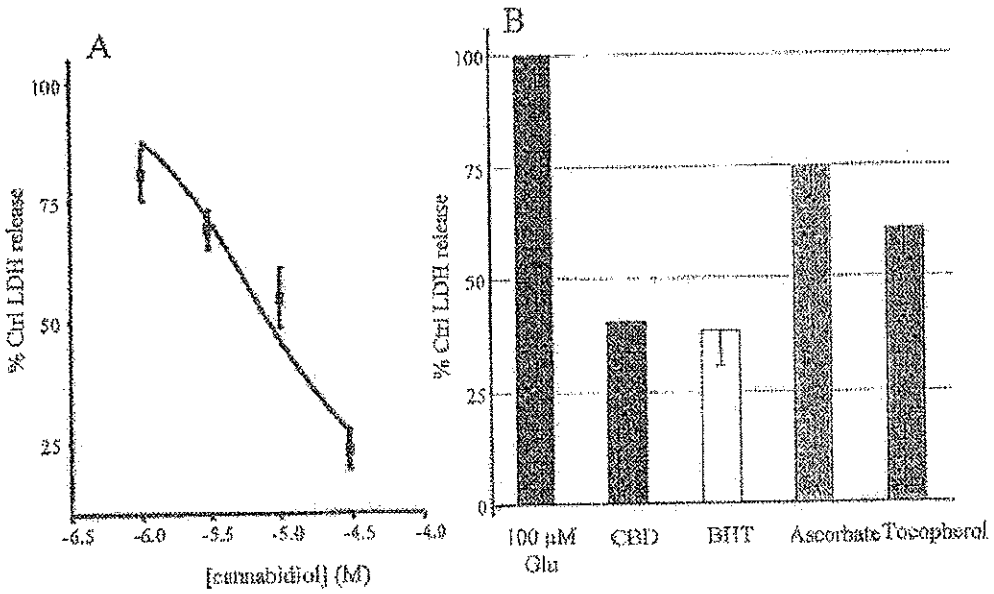
A
100
75
50
25
% Ctrl LDH release
-6.5
-6.0
-5.5
-5.0
-4.5
-4.0
[cannabidiol] (M)
B
100
75
50
25
0
% Ctrl LDH release
100 μM Glu
CBD
BHT
Ascorbate
Tocopherol

FIG. 6

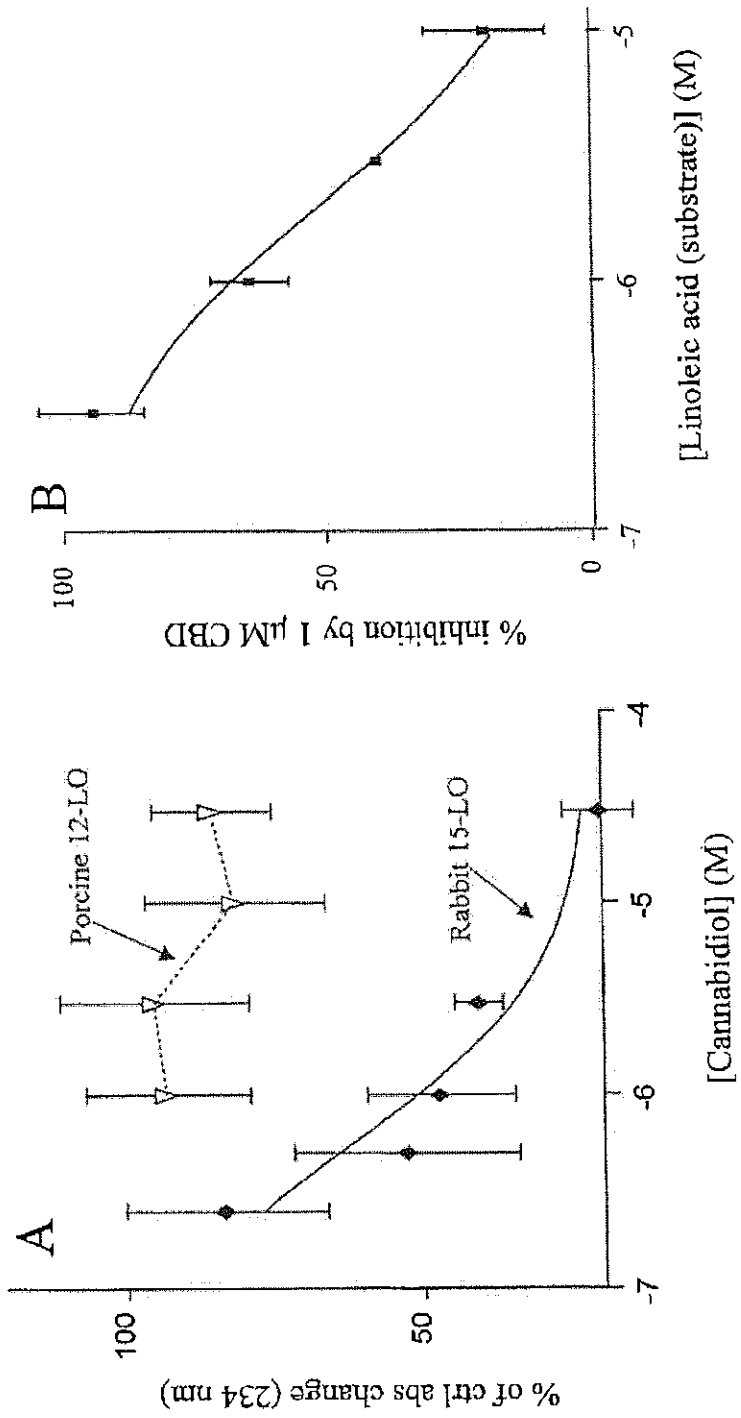
A
% of ctrl abs change (234 nm)
100
50
-7
-6
-5
-4
[Cannabidiol] (M)
Porcine 12-LO
Rabbit 15-LO
B
% inhibition by 1 μM CBD
100
50
0
-7
-6
-5
[Linoleic acid (substrate)] (M)

FIG. 7

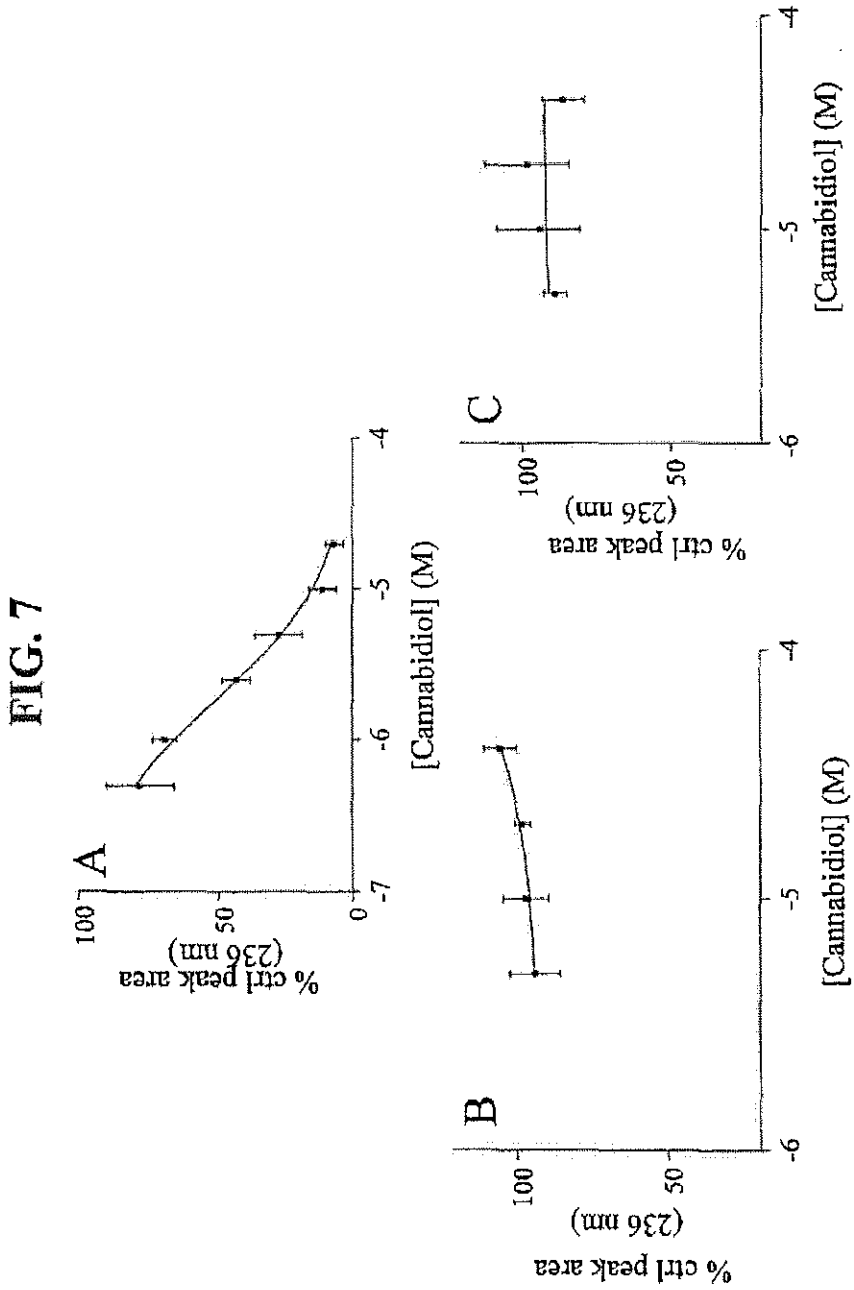

FIG. 8

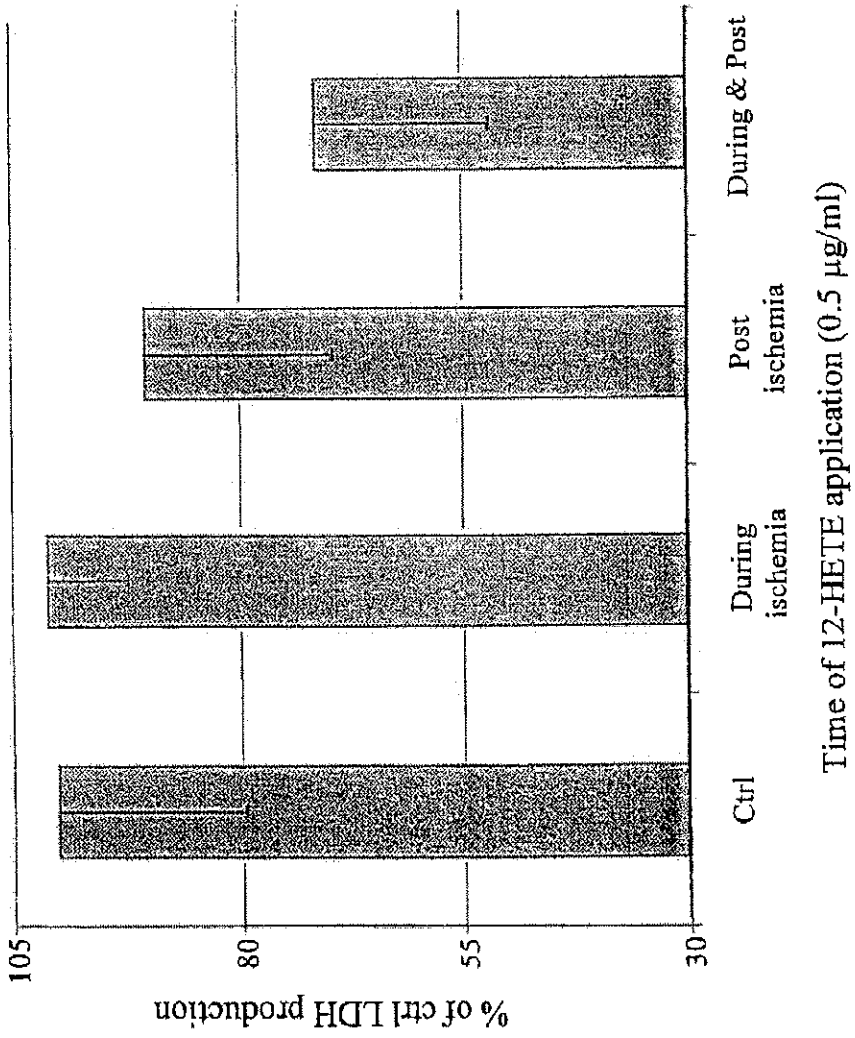
% of ctrl LDH production
105
80
55
30
Ctrl
During ischemia
Post ischemia
During & Post
Time of 12-HETE application (0.5 µg/ml)

Exhibit 7

U.S. Department of Justice

Office of the Deputy Attorney General

The Deputy Attorney General

Washington, D.C. 20530

October 19, 2009

MEMORANDUM FOR SELECTED UNITED STATES ATTORNEYS

FROM: David W. Ogden
Deputy Attorney General

SUBJECT: Investigations and Prosecutions in States Authorizing the Medical Use of Marijuana

This memorandum provides clarification and guidance to federal prosecutors in States that have enacted laws authorizing the medical use of marijuana. These laws vary in their substantive provisions and in the extent of state regulatory oversight, both among the enacting States and among local jurisdictions within those States. Rather than developing different guidelines for every possible variant of state and local law, this memorandum provides uniform guidance to focus federal investigations and prosecutions in these States on core federal enforcement priorities.

The Department of Justice is committed to the enforcement of the Controlled Substances Act in all States. Congress has determined that marijuana is a dangerous drug, and the illegal distribution and sale of marijuana is a serious crime and provides a significant source of revenue to large-scale criminal enterprises, gangs, and cartels. One timely example underscores the importance of our efforts to prosecute significant marijuana traffickers: marijuana distribution in the United States remains the single largest source of revenue for the Mexican cartels.

The Department is also committed to making efficient and rational use of its limited investigative and prosecutorial resources. In general, United States Attorneys are vested with "plenary authority with regard to federal criminal matters" within their districts. USAM 9-2.001. In exercising this authority, United States Attorneys are "invested by statute and delegation from the Attorney General with the broadest discretion in the exercise of such authority." *Id.* This authority should, of course, be exercised consistent with Department priorities and guidance.

The prosecution of significant traffickers of illegal drugs, including marijuana, and the disruption of illegal drug manufacturing and trafficking networks continues to be a core priority in the Department's efforts against narcotics and dangerous drugs, and the Department's investigative and prosecutorial resources should be directed towards these objectives. As a general matter, pursuit of these priorities should not focus federal resources in your States on

individuals whose actions are in clear and unambiguous compliance with existing state laws providing for the medical use of marijuana. For example, prosecution of individuals with cancer or other serious illnesses who use marijuana as part of a recommended treatment regimen consistent with applicable state law, or those caregivers in clear and unambiguous compliance with existing state law who provide such individuals with marijuana, is unlikely to be an efficient use of limited federal resources. On the other hand, prosecution of commercial enterprises that unlawfully market and sell marijuana for profit continues to be an enforcement priority of the Department. To be sure, claims of compliance with state or local law may mask operations inconsistent with the terms, conditions, or purposes of those laws, and federal law enforcement should not be deterred by such assertions when otherwise pursuing the Department's core enforcement priorities.

Typically, when any of the following characteristics is present, the conduct will not be in clear and unambiguous compliance with applicable state law and may indicate illegal drug trafficking activity of potential federal interest:

- unlawful possession or unlawful use of firearms;
- violence;
- sales to minors;
- financial and marketing activities inconsistent with the terms, conditions, or purposes of state law, including evidence of money laundering activity and/or financial gains or excessive amounts of cash inconsistent with purported compliance with state or local law;
- amounts of marijuana inconsistent with purported compliance with state or local law;
- illegal possession or sale of other controlled substances; or
- ties to other criminal enterprises.

Of course, no State can authorize violations of federal law, and the list of factors above is not intended to describe exhaustively when a federal prosecution may be warranted. Accordingly, in prosecutions under the Controlled Substances Act, federal prosecutors are not expected to charge, prove, or otherwise establish any state law violations. Indeed, this memorandum does not alter in any way the Department's authority to enforce federal law, including laws prohibiting the manufacture, production, distribution, possession, or use of marijuana on federal property. This guidance regarding resource allocation does not "legalize" marijuana or provide a legal defense to a violation of federal law, nor is it intended to create any privileges, benefits, or rights, substantive or procedural, enforceable by any individual, party or witness in any administrative, civil, or criminal matter. Nor does clear and unambiguous compliance with state law or the absence of one or all of the above factors create a legal defense to a violation of the Controlled Substances Act. Rather, this memorandum is intended solely as a guide to the exercise of investigative and prosecutorial discretion.

Finally, nothing herein precludes investigation or prosecution where there is a reasonable basis to believe that compliance with state law is being invoked as a pretext for the production or distribution of marijuana for purposes not authorized by state law. Nor does this guidance preclude investigation or prosecution, even when there is clear and unambiguous compliance with existing state law, in particular circumstances where investigation or prosecution otherwise serves important federal interests.

Your offices should continue to review marijuana cases for prosecution on a case-by-case basis, consistent with the guidance on resource allocation and federal priorities set forth herein, the consideration of requests for federal assistance from state and local law enforcement authorities, and the Principles of Federal Prosecution.

cc: All United States Attorneys

Lanny A. Breuer
Assistant Attorney General
Criminal Division

B. Todd Jones
United States Attorney
District of Minnesota
Chair, Attorney General's Advisory Committee

Michele M. Leonhart
Acting Administrator
Drug Enforcement Administration

H. Marshall Jarrett
Director
Executive Office for United States Attorneys

Kevin L. Perkins
Assistant Director
Criminal Investigative Division
Federal Bureau of Investigation

Exhibit 8

U.S. Department of Justice

Office of the Deputy Attorney General

The Deputy Attorney General

Washington, D.C. 20530

August 29, 2013

MEMORANDUM FOR ALL UNITED STATES ATTORNEYS

FROM: James M. Cole
Deputy Attorney General

SUBJECT: Guidance Regarding Marijuana Enforcement

In October 2009 and June 2011, the Department issued guidance to federal prosecutors concerning marijuana enforcement under the Controlled Substances Act (CSA). This memorandum updates that guidance in light of state ballot initiatives that legalize under state law the possession of small amounts of marijuana and provide for the regulation of marijuana production, processing, and sale. The guidance set forth herein applies to all federal enforcement activity, including civil enforcement and criminal investigations and prosecutions, concerning marijuana in all states.

As the Department noted in its previous guidance, Congress has determined that marijuana is a dangerous drug and that the illegal distribution and sale of marijuana is a serious crime that provides a significant source of revenue to large-scale criminal enterprises, gangs, and cartels. The Department of Justice is committed to enforcement of the CSA consistent with those determinations. The Department is also committed to using its limited investigative and prosecutorial resources to address the most significant threats in the most effective, consistent, and rational way. In furtherance of those objectives, as several states enacted laws relating to the use of marijuana for medical purposes, the Department in recent years has focused its efforts on certain enforcement priorities that are particularly important to the federal government:

- Preventing the distribution of marijuana to minors;
- Preventing revenue from the sale of marijuana from going to criminal enterprises, gangs, and cartels;
- Preventing the diversion of marijuana from states where it is legal under state law in some form to other states;
- Preventing state-authorized marijuana activity from being used as a cover or pretext for the trafficking of other illegal drugs or other illegal activity;

- Preventing violence and the use of firearms in the cultivation and distribution of marijuana;
- Preventing drugged driving and the exacerbation of other adverse public health consequences associated with marijuana use;
- Preventing the growing of marijuana on public lands and the attendant public safety and environmental dangers posed by marijuana production on public lands; and
- Preventing marijuana possession or use on federal property.

These priorities will continue to guide the Department's enforcement of the CSA against marijuana-related conduct. Thus, this memorandum serves as guidance to Department attorneys and law enforcement to focus their enforcement resources and efforts, including prosecution, on persons or organizations whose conduct interferes with any one or more of these priorities, regardless of state law.[1]

Outside of these enforcement priorities, the federal government has traditionally relied on states and local law enforcement agencies to address marijuana activity through enforcement of their own narcotics laws. For example, the Department of Justice has not historically devoted resources to prosecuting individuals whose conduct is limited to possession of small amounts of marijuana for personal use on private property. Instead, the Department has left such lower-level or localized activity to state and local authorities and has stepped in to enforce the CSA only when the use, possession, cultivation, or distribution of marijuana has threatened to cause one of the harms identified above.

The enactment of state laws that endeavor to authorize marijuana production, distribution, and possession by establishing a regulatory scheme for these purposes affects this traditional joint federal-state approach to narcotics enforcement. The Department's guidance in this memorandum rests on its expectation that states and local governments that have enacted laws authorizing marijuana-related conduct will implement strong and effective regulatory and enforcement systems that will address the threat those state laws could pose to public safety, public health, and other law enforcement interests. A system adequate to that task must not only contain robust controls and procedures on paper; it must also be effective in practice. Jurisdictions that have implemented systems that provide for regulation of marijuana activity

[1] These enforcement priorities are listed in general terms; each encompasses a variety of conduct that may merit civil or criminal enforcement of the CSA. By way of example only, the Department's interest in preventing the distribution of marijuana to minors would call for enforcement not just when an individual or entity sells or transfers marijuana to a minor, but also when marijuana trafficking takes place near an area associated with minors; when marijuana or marijuana-infused products are marketed in a manner to appeal to minors; or when marijuana is being diverted, directly or indirectly, and purposefully or otherwise, to minors.

must provide the necessary resources and demonstrate the willingness to enforce their laws and regulations in a manner that ensures they do not undermine federal enforcement priorities.

In jurisdictions that have enacted laws legalizing marijuana in some form and that have also implemented strong and effective regulatory and enforcement systems to control the cultivation, distribution, sale, and possession of marijuana, conduct in compliance with those laws and regulations is less likely to threaten the federal priorities set forth above. Indeed, a robust system may affirmatively address those priorities by, for example, implementing effective measures to prevent diversion of marijuana outside of the regulated system and to other states, prohibiting access to marijuana by minors, and replacing an illicit marijuana trade that funds criminal enterprises with a tightly regulated market in which revenues are tracked and accounted for. In those circumstances, consistent with the traditional allocation of federal-state efforts in this area, enforcement of state law by state and local law enforcement and regulatory bodies should remain the primary means of addressing marijuana-related activity. If state enforcement efforts are not sufficiently robust to protect against the harms set forth above, the federal government may seek to challenge the regulatory structure itself in addition to continuing to bring individual enforcement actions, including criminal prosecutions, focused on those harms.

The Department's previous memoranda specifically addressed the exercise of prosecutorial discretion in states with laws authorizing marijuana cultivation and distribution for medical use. In those contexts, the Department advised that it likely was not an efficient use of federal resources to focus enforcement efforts on seriously ill individuals, or on their individual caregivers. In doing so, the previous guidance drew a distinction between the seriously ill and their caregivers, on the one hand, and large-scale, for-profit commercial enterprises, on the other, and advised that the latter continued to be appropriate targets for federal enforcement and prosecution. In drawing this distinction, the Department relied on the common-sense judgment that the size of a marijuana operation was a reasonable proxy for assessing whether marijuana trafficking implicates the federal enforcement priorities set forth above.

As explained above, however, both the existence of a strong and effective state regulatory system, and an operation's compliance with such a system, may allay the threat that an operation's size poses to federal enforcement interests. Accordingly, in exercising prosecutorial discretion, prosecutors should not consider the size or commercial nature of a marijuana operation alone as a proxy for assessing whether marijuana trafficking implicates the Department's enforcement priorities listed above. Rather, prosecutors should continue to review marijuana cases on a case-by-case basis and weigh all available information and evidence, including, but not limited to, whether the operation is demonstrably in compliance with a strong and effective state regulatory system. A marijuana operation's large scale or for-profit nature may be a relevant consideration for assessing the extent to which it undermines a particular federal enforcement priority. The primary question in all cases – and in all jurisdictions – should be whether the conduct at issue implicates one or more of the enforcement priorities listed above.

As with the Department's previous statements on this subject, this memorandum is intended solely as a guide to the exercise of investigative and prosecutorial discretion. This memorandum does not alter in any way the Department's authority to enforce federal law, including federal laws relating to marijuana, regardless of state law. Neither the guidance herein nor any state or local law provides a legal defense to a violation of federal law, including any civil or criminal violation of the CSA. Even in jurisdictions with strong and effective regulatory systems, evidence that particular conduct threatens federal priorities will subject that person or entity to federal enforcement action, based on the circumstances. This memorandum is not intended to, does not, and may not be relied upon to create any rights, substantive or procedural, enforceable at law by any party in any matter civil or criminal. It applies prospectively to the exercise of prosecutorial discretion in future cases and does not provide defendants or subjects of enforcement action with a basis for reconsideration of any pending civil action or criminal prosecution. Finally, nothing herein precludes investigation or prosecution, even in the absence of any one of the factors listed above, in particular circumstances where investigation and prosecution otherwise serves an important federal interest.

cc: Mythili Raman
Acting Assistant Attorney General, Criminal Division

Loretta E. Lynch
United States Attorney
Eastern District of New York
Chair, Attorney General's Advisory Committee

Michele M. Leonhart
Administrator
Drug Enforcement Administration

H. Marshall Jarrett
Director
Executive Office for United States Attorneys

Ronald T. Hosko
Assistant Director
Criminal Investigative Division
Federal Bureau of Investigation

Exhibit 9

Department of the Treasury
Financial Crimes Enforcement Network

Guidance

FIN-2014-G001
Issued: February 14, 2014
Subject: BSA Expectations Regarding Marijuana-Related Businesses

The Financial Crimes Enforcement Network ("FinCEN") is issuing guidance to clarify Bank Secrecy Act ("BSA") expectations for financial institutions seeking to provide services to marijuana-related businesses. FinCEN is issuing this guidance in light of recent state initiatives to legalize certain marijuana-related activity and related guidance by the U.S. Department of Justice ("DOJ") concerning marijuana-related enforcement priorities. This FinCEN guidance clarifies how financial institutions can provide services to marijuana-related businesses consistent with their BSA obligations, and aligns the information provided by financial institutions in BSA reports with federal and state law enforcement priorities. This FinCEN guidance should enhance the availability of financial services for, and the financial transparency of, marijuana-related businesses.

Marijuana Laws and Law Enforcement Priorities

The Controlled Substances Act ("CSA") makes it illegal under federal law to manufacture, distribute, or dispense marijuana.[1] Many states impose and enforce similar prohibitions. Notwithstanding the federal ban, as of the date of this guidance, 20 states and the District of Columbia have legalized certain marijuana-related activity. In light of these developments, U.S. Department of Justice Deputy Attorney General James M. Cole issued a memorandum (the "Cole Memo") to all United States Attorneys providing updated guidance to federal prosecutors concerning marijuana enforcement under the CSA.[2] The Cole Memo guidance applies to all of DOJ's federal enforcement activity, including civil enforcement and criminal investigations and prosecutions, concerning marijuana in all states.

The Cole Memo reiterates Congress's determination that marijuana is a dangerous drug and that the illegal distribution and sale of marijuana is a serious crime that provides a significant source of revenue to large-scale criminal enterprises, gangs, and cartels. The Cole Memo notes that DOJ is committed to enforcement of the CSA consistent with those determinations. It also notes that DOJ is committed to using its investigative and prosecutorial resources to address the most

[1] Controlled Substances Act, 21 U.S.C. § 801, *et seq.*
[2] James M. Cole, Deputy Attorney General, U.S. Department of Justice, *Memorandum for All United States Attorneys: Guidance Regarding Marijuana Enforcement* (August 29, 2013), *available at* http://www.justice.gov/iso/opa/resources/3052013829132756857467.pdf.

significant threats in the most effective, consistent, and rational way. In furtherance of those objectives, the Cole Memo provides guidance to DOJ attorneys and law enforcement to focus their enforcement resources on persons or organizations whose conduct interferes with any one or more of the following important priorities (the "Cole Memo priorities"):[3]

- Preventing the distribution of marijuana to minors;
- Preventing revenue from the sale of marijuana from going to criminal enterprises, gangs, and cartels;
- Preventing the diversion of marijuana from states where it is legal under state law in some form to other states;
- Preventing state-authorized marijuana activity from being used as a cover or pretext for the trafficking of other illegal drugs or other illegal activity;
- Preventing violence and the use of firearms in the cultivation and distribution of marijuana;
- Preventing drugged driving and the exacerbation of other adverse public health consequences associated with marijuana use;
- Preventing the growing of marijuana on public lands and the attendant public safety and environmental dangers posed by marijuana production on public lands; and
- Preventing marijuana possession or use on federal property.

Concurrently with this FinCEN guidance, Deputy Attorney General Cole is issuing supplemental guidance directing that prosecutors also consider these enforcement priorities with respect to federal money laundering, unlicensed money transmitter, and BSA offenses predicated on marijuana-related violations of the CSA.[4]

Providing Financial Services to Marijuana-Related Businesses

This FinCEN guidance clarifies how financial institutions can provide services to marijuana-related businesses consistent with their BSA obligations. In general, the decision to open, close, or refuse any particular account or relationship should be made by each financial institution based on a number of factors specific to that institution. These factors may include its particular business objectives, an evaluation of the risks associated with offering a particular product or service, and its capacity to manage those risks effectively. Thorough customer due diligence is a critical aspect of making this assessment.

In assessing the risk of providing services to a marijuana-related business, a financial institution should conduct customer due diligence that includes: (i) verifying with the appropriate state authorities whether the business is duly licensed and registered; (ii) reviewing the license application (and related documentation) submitted by the business for obtaining a state license to operate its marijuana-related business; (iii) requesting from state licensing and enforcement authorities available information about the business and related parties; (iv) developing an understanding of the normal and expected activity for the business, including the types of

[3] The Cole Memo notes that these enforcement priorities are listed in general terms; each encompasses a variety of conduct that may merit civil or criminal enforcement of the CSA.

[4] James M. Cole, Deputy Attorney General, U.S. Department of Justice, *Memorandum for All United States Attorneys: Guidance Regarding Marijuana Related Financial Crimes* (February 14, 2014).

products to be sold and the type of customers to be served (e.g., medical versus recreational customers); (v) ongoing monitoring of publicly available sources for adverse information about the business and related parties; (vi) ongoing monitoring for suspicious activity, including for any of the red flags described in this guidance; and (vii) refreshing information obtained as part of customer due diligence on a periodic basis and commensurate with the risk. With respect to information regarding state licensure obtained in connection with such customer due diligence, a financial institution may reasonably rely on the accuracy of information provided by state licensing authorities, where states make such information available.

As part of its customer due diligence, a financial institution should consider whether a marijuana-related business implicates one of the Cole Memo priorities or violates state law. This is a particularly important factor for a financial institution to consider when assessing the risk of providing financial services to a marijuana-related business. Considering this factor also enables the financial institution to provide information in BSA reports pertinent to law enforcement's priorities. A financial institution that decides to provide financial services to a marijuana-related business would be required to file suspicious activity reports ("SARs") as described below.

Filing Suspicious Activity Reports on Marijuana-Related Businesses

The obligation to file a SAR is unaffected by any state law that legalizes marijuana-related activity. A financial institution is required to file a SAR if, consistent with FinCEN regulations, the financial institution knows, suspects, or has reason to suspect that a transaction conducted or attempted by, at, or through the financial institution: (i) involves funds derived from illegal activity or is an attempt to disguise funds derived from illegal activity; (ii) is designed to evade regulations promulgated under the BSA, or (iii) lacks a business or apparent lawful purpose.[5] Because federal law prohibits the distribution and sale of marijuana, financial transactions involving a marijuana-related business would generally involve funds derived from illegal activity. Therefore, a financial institution is required to file a SAR on activity involving a marijuana-related business (including those duly licensed under state law), in accordance with this guidance and FinCEN's suspicious activity reporting requirements and related thresholds.

One of the BSA's purposes is to require financial institutions to file reports that are highly useful in criminal investigations and proceedings. The guidance below furthers this objective by assisting financial institutions in determining how to file a SAR that facilitates law enforcement's access to information pertinent to a priority.

"Marijuana Limited" SAR Filings

A financial institution providing financial services to a marijuana-related business that it reasonably believes, based on its customer due diligence, does not implicate one of the Cole Memo priorities or violate state law should file a "Marijuana Limited" SAR. The content of this

[5] *See, e.g.*, 31 CFR § 1020.320. Financial institutions shall file with FinCEN, to the extent and in the manner required, a report of any suspicious transaction relevant to a possible violation of law or regulation. A financial institution may also file with FinCEN a SAR with respect to any suspicious transaction that it believes is relevant to the possible violation of any law or regulation but whose reporting is not required by FinCEN regulations.

SAR should be limited to the following information: (i) identifying information of the subject and related parties; (ii) addresses of the subject and related parties; (iii) the fact that the filing institution is filing the SAR solely because the subject is engaged in a marijuana-related business; and (iv) the fact that no additional suspicious activity has been identified. Financial institutions should use the term "MARIJUANA LIMITED" in the narrative section.

A financial institution should follow FinCEN's existing guidance on the timing of filing continuing activity reports for the same activity initially reported on a "Marijuana Limited" SAR.[6] The continuing activity report may contain the same limited content as the initial SAR, plus details about the amount of deposits, withdrawals, and transfers in the account since the last SAR. However, if, in the course of conducting customer due diligence (including ongoing monitoring for red flags), the financial institution detects changes in activity that potentially implicate one of the Cole Memo priorities or violate state law, the financial institution should file a "Marijuana Priority" SAR.

"Marijuana Priority" SAR Filings

A financial institution filing a SAR on a marijuana-related business that it reasonably believes, based on its customer due diligence, implicates one of the Cole Memo priorities or violates state law should file a "Marijuana Priority" SAR. The content of this SAR should include comprehensive detail in accordance with existing regulations and guidance. Details particularly relevant to law enforcement in this context include: (i) identifying information of the subject and related parties; (ii) addresses of the subject and related parties; (iii) details regarding the enforcement priorities the financial institution believes have been implicated; and (iv) dates, amounts, and other relevant details of financial transactions involved in the suspicious activity. Financial institutions should use the term "MARIJUANA PRIORITY" in the narrative section to help law enforcement distinguish these SARs.[7]

"Marijuana Termination" SAR Filings

If a financial institution deems it necessary to terminate a relationship with a marijuana-related business in order to maintain an effective anti-money laundering compliance program, it should

[6] Frequently Asked Questions Regarding the FinCEN Suspicious Activity Report (Question #16), *available at:* http://fincen.gov/whatsnew/html/sar_faqs.html (providing guidance on the filing timeframe for submitting a continuing activity report).

[7] FinCEN recognizes that a financial institution filing a SAR on a marijuana-related business may not always be well-positioned to determine whether the business implicates one of the Cole Memo priorities or violates state law, and thus which terms would be most appropriate to include (i.e., "Marijuana Limited" or "Marijuana Priority"). For example, a financial institution could be providing services to another domestic financial institution that, in turn, provides financial services to a marijuana-related business. Similarly, a financial institution could be providing services to a non-financial customer that provides goods or services to a marijuana-related business (e.g., a commercial landlord that leases property to a marijuana-related business). In such circumstances where services are being provided indirectly, the financial institution may file SARs based on existing regulations and guidance without distinguishing between "Marijuana Limited" and "Marijuana Priority." Whether the financial institution decides to provide indirect services to a marijuana-related business is a risk-based decision that depends on a number of factors specific to that institution and the relevant circumstances. In making this decision, the institution should consider the Cole Memo priorities, to the extent applicable.

file a SAR and note in the narrative the basis for the termination. Financial institutions should use the term "MARIJUANA TERMINATION" in the narrative section. To the extent the financial institution becomes aware that the marijuana-related business seeks to move to a second financial institution, FinCEN urges the first institution to use Section 314(b) voluntary information sharing (if it qualifies) to alert the second financial institution of potential illegal activity. See *Section 314(b) Fact Sheet* for more information.[8]

Red Flags to Distinguish Priority SARs

The following red flags indicate that a marijuana-related business may be engaged in activity that implicates one of the Cole Memo priorities or violates state law. These red flags indicate only possible signs of such activity, and also do not constitute an exhaustive list. It is thus important to view any red flag(s) in the context of other indicators and facts, such as the financial institution's knowledge about the underlying parties obtained through its customer due diligence. Further, the presence of any of these red flags in a given transaction or business arrangement may indicate a need for additional due diligence, which could include seeking information from other involved financial institutions under Section 314(b). These red flags are based primarily upon schemes and typologies described in SARs or identified by our law enforcement and regulatory partners, and may be updated in future guidance.

- A customer appears to be using a state-licensed marijuana-related business as a front or pretext to launder money derived from other criminal activity (i.e., not related to marijuana) or derived from marijuana-related activity not permitted under state law. Relevant indicia could include:
    - The business receives substantially more revenue than may reasonably be expected given the relevant limitations imposed by the state in which it operates.
    - The business receives substantially more revenue than its local competitors or than might be expected given the population demographics.
    - The business is depositing more cash than is commensurate with the amount of marijuana-related revenue it is reporting for federal and state tax purposes.
    - The business is unable to demonstrate that its revenue is derived exclusively from the sale of marijuana in compliance with state law, as opposed to revenue derived from (i) the sale of other illicit drugs, (ii) the sale of marijuana not in compliance with state law, or (iii) other illegal activity.
    - The business makes cash deposits or withdrawals over a short period of time that are excessive relative to local competitors or the expected activity of the business.

[8] Information Sharing Between Financial Institutions: Section 314(b) Fact Sheet, *available at: http://fincen.gov/statutes_regs/patriot/pdf/314bfactsheet.pdf.*

- Deposits apparently structured to avoid Currency Transaction Report ("CTR") requirements.
- Rapid movement of funds, such as cash deposits followed by immediate cash withdrawals.
- Deposits by third parties with no apparent connection to the accountholder.
- Excessive commingling of funds with the personal account of the business's owner(s) or manager(s), or with accounts of seemingly unrelated businesses.
- Individuals conducting transactions for the business appear to be acting on behalf of other, undisclosed parties of interest.
- Financial statements provided by the business to the financial institution are inconsistent with actual account activity.
- A surge in activity by third parties offering goods or services to marijuana-related businesses, such as equipment suppliers or shipping servicers.

- The business is unable to produce satisfactory documentation or evidence to demonstrate that it is duly licensed and operating consistently with state law.
- The business is unable to demonstrate the legitimate source of significant outside investments.
- A customer seeks to conceal or disguise involvement in marijuana-related business activity. For example, the customer may be using a business with a non-descript name (e.g., a "consulting," "holding," or "management" company) that purports to engage in commercial activity unrelated to marijuana, but is depositing cash that smells like marijuana.
- Review of publicly available sources and databases about the business, its owner(s), manager(s), or other related parties, reveal negative information, such as a criminal record, involvement in the illegal purchase or sale of drugs, violence, or other potential connections to illicit activity.
- The business, its owner(s), manager(s), or other related parties are, or have been, subject to an enforcement action by the state or local authorities responsible for administering or enforcing marijuana-related laws or regulations.
- A marijuana-related business engages in international or interstate activity, including by receiving cash deposits from locations outside the state in which the business operates, making or receiving frequent or large interstate transfers, or otherwise transacting with persons or entities located in different states or countries.

- The owner(s) or manager(s) of a marijuana-related business reside outside the state in which the business is located.

- A marijuana-related business is located on federal property or the marijuana sold by the business was grown on federal property.

- A marijuana-related business's proximity to a school is not compliant with state law.

- A marijuana-related business purporting to be a "non-profit" is engaged in commercial activity inconsistent with that classification, or is making excessive payments to its manager(s) or employee(s).

Currency Transaction Reports and Form 8300's

Financial institutions and other persons subject to FinCEN's regulations must report currency transactions in connection with marijuana-related businesses the same as they would in any other context, consistent with existing regulations and with the same thresholds that apply. For example, banks and money services businesses would need to file CTRs on the receipt or withdrawal by any person of more than $10,000 in cash per day. Similarly, any person or entity engaged in a non-financial trade or business would need to report transactions in which they receive more than $10,000 in cash and other monetary instruments for the purchase of goods or services on FinCEN Form 8300 (Report of Cash Payments Over $10,000 Received in a Trade or Business). A business engaged in marijuana-related activity may not be treated as a non-listed business under 31 C.F.R. § 1020.315(e)(8), and therefore, is not eligible for consideration for an exemption with respect to a bank's CTR obligations under 31 C.F.R. § 1020.315(b)(6).

* * * * *

FinCEN's enforcement priorities in connection with this guidance will focus on matters of systemic or significant failures, and not isolated lapses in technical compliance. Financial institutions with questions about this guidance are encouraged to contact FinCEN's Resource Center at (800) 767-2825, where industry questions can be addressed and monitored for the purpose of providing any necessary additional guidance.

Exhibit 10

BEFORE THE UNITED STATES DEPARTMENT OF JUSTICE INFORMATION QUALITY GUIDELINES STAFF

Re: DEA's "The Dangers and Consequences of Marijuana Abuse" and "Drugs of Abuse"

REQUEST FOR CORRECTION OF INFORMATION DISSEMINATED BY DEA REGARDING MARIJUANA (CANNABIS)

INFORMATION QUALITY ACT REQUEST FOR CORRECTION

DATE: DECEMBER 5, 2016

SUBMITTED BY: AMERICANS FOR SAFE ACCESS FOUNDATION

Attorneys for Petitioner

Vickie L. Feeman
vfeeman@orrick.com
Rick Fukushima
rfukushima@orrick.com
Alex Fields
afields@orrick.com
Orrick, Herrington & Sutcliffe LLP
1000 Marsh Road
Menlo Park, CA 94025
Phone: (650) 614-7400

Executive Director for Petitioner

Steph Sherer
1624 U Street, NW
Suite 200
Washington, D.C. 20009
Phone: (202) 857-4272
Fax: (202) 618-6977
info@safeaccessnow.org
Americans for Safe Access

Request for Correction Pursuant to the DOJ's Information Quality Guidelines

ISSUE

The Drug Enforcement Agency's ("DEA") website (dea.gov) contains inaccurate statements that do not meet the standards of quality required by the Department of Justice ("DOJ") and Office of Management and Budget ("OMB") under the Information Quality Act ("IQA"). In particular, the DEA continues to disseminate certain statements about the health risks of medical cannabis use that have been incontrovertibly refuted by the DEA itself in its recent "Denial of Petition to Initiate Proceedings to Reschedule Marijuana" (the "DPR"), issued August 12, 2016. In fact, the DEA's recent statements confirm scientific facts about medical cannabis that have long been accepted by a majority of the scientific community. Accordingly, Americans for Safe Access ("ASA") requests that the DEA correct or remove from the dea.gov website the inaccurate statements described below in Section II (a)-(d). At minimum, the corrections should comport with the DEA's statements in the DPR.

PETITIONER

Americans for Safe Access Foundation ("ASA"), a non-profit advocacy group that represents the interests of medical cannabis patients and caregivers, files this Request for Correction of inaccurate information, disseminated by the DEA, relating to certain purported health effects of cannabis use. ASA brings this action on behalf of patients, their families, medical providers, scientists, and veterans across the United States who are deeply and immediately affected by the DEA's controverted statements. The seriously ill patients that ASA represents suffer variously from cancer and the side-effects of its treatments, multiple sclerosis, HIV/AIDS, spinal injury, chronic seizures, and other medical conditions that produce chronic pain, nausea, loss of appetite and spasticity. Many of these persons who use medical cannabis to treat these symptoms do not respond to conventional treatment options, cannot tolerate certain medications, or have serious health needs not treatable by pharmaceutical medicine. If patients, who currently have access to medical cannabis under state programs, were to lose access, they would be irreparably harmed. And, patients in need of medical cannabis, but without access, are already being seriously harmed.

The DEA's misinformation informs the opinions and actions of Congress. As a result of this misinformation, there is a substantial risk that Congress will fail to reauthorize the Rohrabacher-Farr Medical Cannabis Amendment ("the Amendment") (discussed below)—failure to reauthorize would encourage the DOJ to dismantle state medical cannabis systems and prosecute medical cannabis users and providers throughout the nation. Furthermore, the CARERS Act (discussed below) has yet to receive a vote, due in part to the dissemination of DEA misinformation. ASA's members reside in every United States Congressional District—they have been negatively affected by Congress' continuing refusal to hold a vote on the CARERS Act, and they will be negatively affected by Congress' failure to reauthorize the Amendment.

RELIEF REQUESTED

ASA requests corrections to DEA disseminated information as described in Section II (a)-(d).

ASA files this Request for Correction pursuant to the Information Quality Act amendments to the Paperwork Reduction Act, 44 U.S.C. § 3516 Statutory and Historical Notes, P.L. 106-554 ("Information Quality Act"), as implemented through the Office of Management and Budget's "Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies," 67 Fed. Reg. 8452 (Feb. 22, 2002) ("OMB Guidelines"), and the "DOJ Information Quality Guidelines," https://www.justice.gov/iqpr/information-quality ("DOJ Guidelines").

FACTUAL BACKGROUND

For years, the DEA has published scientifically inaccurate information about the health effects of medical cannabis, directly influencing the action – and inaction – of Congress. The Compassionate Access, Research Expansion, and Respect States Act ("CARERS") is a prime example. Three senators introduced CARERS in March 2015 and an identical bill was introduced in the House later that month. The legislation seeks to protect patient access to medical cannabis in states with existing medical cannabis programs from federal intervention, thereby codifying the collection of DOJ memoranda that currently govern federal policy of medical cannabis enforcement against the states.[1] Notably, CARERS would also reschedule cannabis from Schedule I to Schedule II status, thus easing current restrictions on medical and scientific research of the substance.[2] Furthermore, the Act would exclude cannabidiols (cannabis derivatives with less than 0.3% THC content) from the definition of cannabis entirely,[3] permit businesses acting in conformity with state cannabis laws to access banking services,[4] mandate the issuance of additional licenses to cultivate cannabis for FDA approved research,[5] and grant VA dependent veterans access to state medical cannabis programs.[6]

Since the CARERS Act was introduced in March of 2015, it has received additional support in the Senate and House, but it seems unlikely that there will be a formal vote on the bill before the new administration commences in January 2017. Proponents of the Act believe that it is less likely to pass once the new Congress is sworn in and the new administration takes control. The House bill is sitting in four committees and subcommittees; the Senate analog sits in the Senate Judiciary Committee.[7] Committee leadership in both chambers have denied the respective bills a

[1] https://www.congress.gov/bill/114th-congress/senate-bill/683/text, at Section 2 (The Controlled Substances Act, "shall not apply to any person acting in compliance with State law relating to the production, possession, distribution, dispensation, administration, laboratory testing, or delivery of medical marihuana.").

[2] *Id.* at Section 3.

[3] *Id.* at Section 4.

[4] *Id.* at Section 6.

[5] *Id.* at Section 7.

[6] *Id.* at Section 8.

[7] H.R. 1538 has been assigned to the (1) House Energy and Commerce Subcommittee on Health; (2) House Judiciary Subcommittee on Crime, Terrorism, Homeland Security, and Investigations; (3) House Financial Services

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MARVIN WASHINGTON, et al.,

Plaintiffs,

-v-

JEFFERSON BEAUREGARD SESSIONS, III, et al.,

Defendants.

17 Civ. 5625 (AKH)

NOTICE OF MOTION

PLEASE TAKE NOTICE that upon the accompanying Memorandum of Law in Support of Defendants' Motion to Dismiss, Defendants the United States of America; Jefferson B. Sessions, III, in his official capacity as Attorney General of the United States; the United States Department of Justice; Robert W. Patterson,[1] in his official capacity as the Acting Administrator of the Drug Enforcement Administration ("DEA"); and the DEA (collectively, "Defendants"), hereby move this Court for an order dismissing the Amended Complaint pursuant to Rules 8, 12(b)(1), and 12(b)(6) of the Federal Rules of Civil Procedure.

PLEASE TAKE FURTHER NOTICE that, pursuant to the Court's order dated September 20, 2017, Plaintiffs' opposition must be filed by November 3, 2017, and Defendants' reply must be filed by November 15, 2017. Dkt. No. 33.

[1] Pursuant to Fed. R. Civ. P. 25(d), Robert W. Patterson, in his official capacity as Acting Administrator of the DEA, is automatically substituted as a defendant for Charles Rosenberg.

Dated: October 13, 2017
New York, New York

JOON H. KIM
Acting United States Attorney for the
Southern District of New York
Attorney for the Defendants

By: /s/ Samuel Dolinger
SAMUEL DOLINGER
REBECCA S. TINIO
Assistant United States Attorneys
86 Chambers Street, 3rd Floor
New York, New York 10007
Tel.: (212) 637-2677/2774
E-mail: samuel.dolinger@usdoj.gov
rebecca.tinio@usdoj.gov