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September 13, 2019

Via ECF

Catherine O'Hagan Wolfe, Clerk of Court
United States Court of Appeals
for the Second Circuit
Thurgood Marshall U.S. Courthouse
40 Foley Square
New York, New York 10007

Re: *Washington, et al. v. Barr, et al.*, Docket No. 18-859-cv (2d. Cir.)

Dear Madam Clerk:

We represent Plaintiffs in the above-entitled action.[1] This letter is sent in brief response to the correspondence sent to the Court by Defendants' counsel. In his letter, Defendants' counsel asserts that the Court should decline from endorsing our correspondence to extend Plaintiffs' time to file an action because, according to opposing counsel, we have not yet shown that: (i) an action against the DEA would be necessary ("New Action"); and (ii) the New Action would be decided within sufficient time to meet the new proposed deadline -- December 31, 2020. Opposing counsel's arguments should be rejected.

First, the assertion that we have not yet shown that the New Action is necessary is false. As reflected in the Decision herein, this Court ruled that the constitutional claims cannot proceed herein because the effect of the relief Plaintiffs seek – de-scheduling of cannabis – *can* be obtained through a petition to the DEA. *See* Decision, dated May 30, 2019 at 18-19 (Second Circuit Dkt. No. 101) ("It cannot be seriously argued that this remedy [de-scheduling] is not available through the administrative process") (emphasis added). However, the DEA has already issued a determination that "[i]t has been established in prior marijuana rescheduling proceedings that placement of marijuana in either schedule I or schedule II of the CSA is 'necessary as well as sufficient to satisfy our international obligations' under the Single Convention." CFR Chapter II and Part 1301, Fed. Register, Vol. 156, 53688, Aug. 12, 2016, (*quoting NORML v. DEA*, 559 F.2d 735, 751 (D.C. Cir. 1977)). The DEA further ruled that "[a]s the United States Court of Appeals for the DC Circuit has stated, 'several requirements imposed by the Single Convention would not be met if cannabis and cannabis resin were placed in CSA schedule III, IV, or V. Therefore, in accordance with [the CSA],

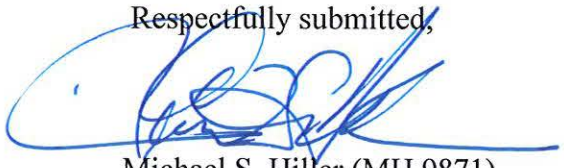
[1]We rely upon the same abbreviations and other capitalized terms defined in our correspondence to the Court dated September 12, 2019.

DEA must place marijuana in either schedule I or schedule II.'" *Id.* at 53688-89. These rulings by the DEA irrefutably confirm a conflict. The DEA's rulings stand for the proposition that there is no power to de-schedule cannabis or re-classify under Schedules III, IV or V, and this Court ruled (in the Decision) that the DEA ***does*** have that power. Ordinarily, we would seek direct relief from this Court for a rehearing based upon new information. However, this Court also included within its Decision a separate finding that, in effect, the DEA was wrong, and that the DEA ***does*** have the power to re-schedule to a classification below Schedule II or to de-schedule cannabis altogether (Decision at 21) ("foreign treaty commitments have ***not*** divested the Attorney General of the power to re- or de-schedule marijuana") (*citing NORML v. DEA*, 559 F.2d 735) (emphasis added). Thus, assuming this Court's Decision is correct, the DEA ***does*** have the power to de-schedule. Until we obtain such a ruling, however, the DEA is likely to reject out of hand any petition to de-schedule cannabis. Thus, the New Action is necessary.

Second, Defendants' argument that we have not shown that an extension to December 31, 2020 would be enough time within which to decide the New Action is unsustainable. The instant Action was fully decided in less than eight months. There is no reason that the narrow issue of law to be posed in the New Action -- whether the DEA has the power to de-schedule cannabis consistent with foreign treaty obligations -- cannot be decided within the timeframe we have proposed, while still affording Plaintiffs the opportunity to file the Petition with the DEA thereafter (as long as we have prevailed). If additional time is required, extensions could always be requested. And, as long as we continue to act with great dispatch, we trust that the Court would grant such extensions.

For these and the reasons set forth in our correspondence dated September 10, 2019, we respectfully urge the Court to save *pro bono* counsel the time and expense of preparing and filing the motion for an extension, and simply endorse this correspondence, granting Plaintiffs' request.

Respectfully submitted,



Michael S. Hiller (MH 9871)

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