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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,	:	
- against -	:	Case No.: 18 - 859
WILLIAM BARR, in his official capacity as United States Attorney General; UNITED STATES DEPARTMENT OF JUSTICE; UTTAM DHILLON, in his official capacity as the Acting Administrator of the Drug Enforcement Administration; UNITED STATES DRUG ENFORCEMENT ADMINISTRATION; and the UNITED STATES OF AMERICA,	:	
Defendants-Appellees.	:	

MEMORANDUM OF LAW IN REPLY AND IN FURTHER SUPPORT OF PLAINTIFFS' MOTION TO EXTEND THEIR TIME TO FILE A PETITION WITH THE DRUG ENFORCEMENT ADMINISTRATION

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PRELIMINARY STATEMENT

By this Motion, we requested an extension of time within which to file a petition with the Drug Enforcement Administration ("DEA") to afford Plaintiffs the opportunity to institute a lawsuit for a declaration that the DEA has the authority to de-schedule cannabis.[1] We demonstrated that the DEA's position is and has long been that cannabis cannot be de-scheduled and, at most, could merely be reclassified under Schedule II of the CSA. We also showed that the DEA's interpretation is based upon *dicta* referencing the Single Convention of 1961 in decisional law that emanates from cases in which the parties were litigating corollary issues. Lastly, we pointed out that it would be irresponsible for us, as counsel for Plaintiffs, to file a petition with the DEA without obtaining an advance ruling that the DEA has the authority to de-schedule cannabis. Because the DEA persists in its position that its authority is limited to reclassifying cannabis under Schedule II, the only outcome available to Plaintiffs before the DEA (other than rejection of their petition) would be one that would render cannabis unavailable, not only to Plaintiffs, but to patients around the country. That is because reclassification under Schedule II would immediately subject cannabis to the rigors of FDA approval and other bureaucratic hurdles. And while FDA review may well be welcomed in certain quarters, including by executives from the pharmaceutical industry whose multi-billion dollar conglomerates have the resources to navigate that FDA process, the substantial risk that Plaintiffs' medications would become unavailable to them would be too great to proceed with the petitioning process without an advance ruling that the DEA has authority under the Single Convention to de-schedule cannabis.

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[1]Hereinafter, we rely upon the same abbreviations and other capitalized terms defined in the papers filed in support of the Motion to Extend ("Moving Papers").

In their opposition, defendants do not dispute much of Plaintiffs' showing. *Specifically, defendants do not dispute that*:

- the DEA's position is that cannabis cannot be de-scheduled or even reclassified under a Schedule lower than Schedule II; and
- if reclassified under Schedule II, cannabis would become immediately unavailable to Plaintiffs and medical patients around the country.

Thus, defendants fail to dispute the prejudice that would befall Plaintiffs were the DEA to reclassify cannabis under Schedule II, which would be, according to the DEA, the only remedy available to Plaintiffs (besides an outright denial of their petition).

Equally as important, defendants do not deny that the extension requested by Plaintiffs would not cause defendants (or any other party) one scintilla of prejudice. The only party who would be inconvenienced by the request for relief by Plaintiffs is undersigned counsel and co-counsel, who have been litigating this case *pro bono* since its inception. The Motion to Extend and the additional litigation against the DEA, which would be a substantial undertaking, would be litigated at undersigned counsel's and co-counsel's cost. Nonetheless, we would rather assume that responsibility and cost than risk the above-referenced potentially catastrophic consequences to our clients and their health.

Defendants ignore all of the foregoing issues and suggest that Plaintiffs should simply have filed their de-scheduling petition without any advance assurances regarding the Single Convention, and instead attempt to convince the DEA to change its position through the petition process, which, to our knowledge, has never been done. Defendants, whose defense of the CSA has been particularly insensitive to medical marijuana patients, suggest Plaintiffs should roll the proverbial dice and disregard the substantial likelihood that they would lose access to the medication that is keeping

them alive.[2] Respectfully, we would sooner accept the Court's dismissal of this case and resign our clients to an existence that requires them to relinquish their other constitutional rights rather than risk substantial and potentially irreversible damage to their lives and health. There is no basis in the law to subject Plaintiffs to such risks, particularly under circumstances in which it is so clear that the extension requested would cause defendants no prejudice whatsoever.

Defendants also interpose a series of spurious arguments, including, *inter alia*, that: (i) Plaintiffs supposedly changed their legal position herein relative to their requests for relief; (ii) a declaratory judgment would be purportedly unripe and futile. As demonstrated below, defendants are wrong on all counts. The record irrefutably shows that Plaintiffs have not changed their legal positions, but rather have consistently sought an outcome that would prevent enforcement of the CSA as it pertains to cannabis. The Court has ruled that, if Plaintiffs seek to de-schedule cannabis, they must file a petition with the DEA. And that is exactly the path Plaintiffs are seeking to follow, subject to the procedure we urge by this motion.

Moreover, defendants' argument that the DEA can and would freely reconsider the scope of its authority under the Single Convention of 1961 is unsupported at best, and fanciful at worst. Nonetheless, as shown below, even assuming *arguendo* that defendants' argument were valid, Plaintiffs would still have no choice but to file two petitions with the DEA – the first, to revisit the

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[2]At inception of this litigation, we filed a motion for a temporary restraining order and preliminary injunction to temporarily suspend enforcement of the CSA as it pertains to Alexis (now 14 years old) to allow her to travel to Washington, DC so that she could testify before Congress on the issue of legalization. Alexis had been invited to testify by U.S. Representative Lou Correa. Defendants refused to grant Alexis even a two-day suspension, and instead claimed, without evidentiary support, that stipulating to the relief requested would supposedly cause the Federal Government substantial prejudice. When Alexis's class travels to Washington, DC in February 2020, Alexis won't be able to join them, because she cannot fly or travel onto federal land with her medical cannabis – another of the many instances in which Alexis's exercise of her constitutional right to maintain her health and life with the only medication that stops her violent seizures requires her to sacrifice her other constitutional rights.

issue of the DEA's authority under the Single Convention, and the second, to de-schedule cannabis. That process would still require an extension. Thus, even assuming *arguendo* that defendants were right, Plaintiffs are nonetheless entitled to relief under this Motion to Extend, although the extension would be substantially less -- three months to file the first petition (with respect to the scope of the DEA's authority). Plaintiffs would then return to this Court upon obtaining a decision from the DEA to either: (i) request additional time within which to file a second petition on the issue of de-scheduling in the event the DEA determines it has the authority to deschedule cannabis; or (ii) request the Court's review of Plaintiffs' constitutional claims on the merits in the event the DEA were to determine that it lacks the power to deschedule cannabis thereby rendering futile the availability of administrative review. Defendants' suggestion that we file both requests in a single petition without bifurcation would be grossly irresponsible, as it would, as previously emphasized, run the considerable risk that the DEA will rule: (i) consistent with its prior decisions, that its authority under the Single Convention is limited as shown above; and (ii) that cannabis is properly reclassified under Schedule II – an abject disaster for Plaintiffs and millions of other cannabis patients around the country.

For these and the reasons set forth below and in the Moving Papers, Plaintiffs are entitled to an extension of time within which to file their de-scheduling petition.

ARGUMENT

I

PLAINTIFFS HAVE NOT CHANGED THEIR LEGAL THEORY

Defendants argue that Plaintiffs have changed their legal theory herein from one seeking a declaratory judgment that the classification of cannabis under the CSA is unconstitutional into a

demand to de-schedule. Defendants profoundly misconstrue Plaintiffs' position and misrepresent the procedural history herein. While true that Plaintiffs demanded a declaration that the CSA is unconstitutional and an injunction against its further enforcement, the District Court and then this Court ruled that such claims, in fact, constitute a request to de-schedule, for which there is, according to both Courts, an administrative remedy (A-267; Dkt. No. 103-1 at 8, 11-17, 18). In addition, both Courts thereafter ruled that an *administrative* remedy exists under the CSA for all such claims, and that, as a consequence, Plaintiffs are required to exhaust that remedy by filing a petition with the DEA (A-267-70; Dkt. No. 103-1 at 11-17). This Court then diverged from the District Court by ruling that Plaintiffs had made a persuasive showing that, while they did not conclusively demonstrate an urgent need for immediate relief (Dkt. No. 103-1 at 24), the delays that pervade the DEA's administrative review process could render it a hollow remedy (*Id.* at 23-25). Accordingly, this Court afforded Plaintiffs the opportunity to file a petition with the DEA.[3] *Id.* at 25-26.

Now, make no mistake about it - we disagree with the Courts' rulings that Plaintiffs' constitutional claims require administrative exhaustion. We consistently argued, both below and before this Court, that the DEA lacks authority to declare the classification of cannabis unconstitutional or grant an injunction against enforcement of the CSA (A-96, ¶370; A-101, ¶400; Appellants' Br. at 4-5, Dkt. No. 37). Thus, Plaintiffs argued that to require them to exhaust administrative remedies would be inappropriate because the relief set forth in the Amended Complaint would be unattainable through the DEA. While defendants purport to dispute this, they

[3]Defendants' allegation that this Court granted Plaintiffs the right to prompt consideration of their future petition with the DEA out of an urgent concern that Plaintiffs may require immediate relief to address medical concerns is grossly inconsistent with the May 30th Decision, in which the Court ruled that Plaintiffs did not make such a showing (Dkt. No. 103-1 at 24).

do so only by completely disregarding the record herein. In particular, the Amended Complaint confirms that Plaintiffs have always sought a declaration that the classification of cannabis under the CSA is unconstitutional (Amended Complaint, ¶370, Moving Ex. 1). We further demanded judgment enjoining the federal government from enforcing the CSA as it pertains to cannabis (*Id.* ¶404). These claims for relief are repeated throughout the Amended Complaint. *See*, *id.* ¶¶420, 433, 448, 459, 470, and in the WHEREFORE clause (p. 97).

Furthermore, In support of this Motion to Extend, we also pointed out that, had the constitutional claims recited in the Amended Complaint been accepted and sustained by the District Court and/or this Court, and the injunction granted, cannabis would have been de-scheduled on a *de facto* basis, particularly insofar as unconstitutional acts of Congress are void *ab initio*, and Plaintiffs requested a permanent injunction to restrain enforcement of the CSA as it pertains to cannabis (Hiller Decl. in Support ¶29, 2nd Cir. Dkt. No. 129-2).

Defendants have no excuse for misrepresenting to this Court that Plaintiffs, by this action, seek rescheduling of cannabis, insofar as they made this error below and we corrected it then. Specifically, when defendants, in support of their motion to dismiss below, asserted that Plaintiffs were seeking rescheduling -- notwithstanding the allegations and demands for relief set forth in the Amended Complaint that incontrovertibly prove otherwise (A-96, ¶370; A-101, ¶400) -- we included the following language in our Memorandum of Opposition:

> Plaintiffs bring this action challenging the constitutionality of the CSA; *they are not asking for the Court to reschedule Cannabis or to compel the DEA to do so*.

See SDNY Dkt. Nos. 44-46, p. 106 (emphasis added). We cited this precise language in our papers submitted in support of the Motion to Extend (*see* Hiller Decl. in Sup. ¶29, 2nd Cir. Dkt. No. 129-2).

Thus, defendants have twice urged upon the Courts the false notion that Plaintiffs are now seeking relief never requested. In both instances, defendants persisted with their arguments, anointing themselves and not Plaintiffs as the parties that get to decide what Plaintiffs' claims are. Defendants are wrong. Only the plaintiffs are permitted to decide what their claims are. *See Rosenfeld v. Lenich*, 370 F.Supp.3d 335, 362 (E.D.N.Y. Mar. 1, 2019) (*quoting Poventud v. City of New York*, 750 F.3d 121, 154 (2d Cir. 2014)) ("Because Plaintiff is the 'master of the complaint,' her 'allegations, submissions, and underlying theories of liability and damages should be taken at face value'"); *Hochroth v. William Penn Life Insurance Co. of New York*, 2003 WL 22990105 at *1 (S.D.N.Y. Dec. 19, 2003) ("It is well established that the plaintiff is the 'master of his complaint' and may characterize his causes of action as he pleases") (internal citations omitted). Accordingly, defendants' assertion that Plaintiffs have suddenly changed the nature of their claims has no merit and must be rejected.

That having been made clear, both Courts disagreed with Plaintiffs and ruled that, to obtain the relief sought in the Amended Complaint, they are required to petition the DEA; we accepted and have endeavored to adjust to that ruling. In direct response to the Courts' ruling herein, Plaintiffs have re-targeted their efforts to seeking de-scheduling of cannabis -- the relief that the Courts herein ruled would be equivalent to the injunction against enforcement of the CSA as it pertains to cannabis. In view of these circumstances, it is simply wrong to suggest that Plaintiffs have changed their theories or claims. The Court ruled that the effort to de-schedule, in effect, is the same as Plaintiffs' claims. And the Courts issued their ruling in response to arguments made by defendants, who argued that Plaintiffs' constitutional claims constitute disguised de-scheduling or rescheduling claims (*see* Defendants' Memorandum of Law in Reply to Motion to Dismiss at 62, SDNY Dkt. No.

49; Defendants' Appellate Brief at 10, 16, 17, 2nd Cir. Dkt. No. 48); (A-360).

Given the foregoing, the notion that Plaintiffs changed their legal theories is utterly bogus. Plaintiffs merely adjusted to the Courts' rulings, which were issued in response to the arguments defendants themselves made.

Plaintiffs were prepared to file a petition with the DEA, as urged by defendants and ordered by the Court; however, as reflected in the moving papers, the DEA's stated position is that the Single Convention bars any agency, including the DEA, from de-scheduling cannabis (Hiller Decl. in Sup. ¶¶ 2, 33, 2nd Cir. Dkt. No. 129-2). According to the DEA, the only relief it can grant is to reclassify cannabis under Schedule II (*Id.* 2, 34). Defendants do not deny this fact; rather, they argue that the DEA should be afforded the opportunity to reconsider its position - an entirely new defense from defendants that they never previously interposed. Thus, it isn't that Plaintiffs have changed their position; it is defendants that have done so. And, as reflected below, defendants' new defense is baseless.

POINT II

THE DEA WILL NOT DE-SCHEDULE CANNABIS IN THE ABSENCE OF A DECLARATORY JUDGMENT ACTION CHALLENGING THE DEA'S CLAIM OF AUTHORITY UNDER THE SINGLE CONVENTION

Opposing counsel erroneously argues that in order to obtain clarification of the DEA's authority to deschedule cannabis under the Single Convention, Plaintiffs must file a petition with the DEA (Memorandum of Law in Opp. at 12, 2nd Cir. Dkt. No.132). Yet defendants fail to cite any legal authority for this proposition (*see id.).* Opposing counsel is under the misguided impression that a rescheduling and/or descheduling process -- a process designed to evaluate the medical efficacy and safety of drugs to be regulated -- is somehow the proper process by which to also

evaluate the scope of the DEA's authority pursuant to United States treaty obligations and principles of international law. We disagree.

In fact, a declaratory judgment action is necessary in a case such as this one, especially under circumstances in which, as here, the DEA and this Court plainly disagree as to the DEA's authority. Indeed, as we explained in our moving papers, the DEA has stated its position, on the basis of its interpretation of the D.C. Circuit Court decision titled *NORML v. DEA*, 559 F.2d 735) (D.C.Cir. 1977), that it must place cannabis under Schedule I or II so as to comply with United States obligations under the Single Convention (Hiller. Decl. in Sup. ¶¶33, 36, 2nd Cir. Dkt. No. 129-2). Yet, in its May 30th Decision, this Court interpreted *NORML* in a manner that directly contradicts the DEA's position - *i.e.*, that the DEA has authority to deschedule cannabis entirely, consistent with United States treaty obligations (May 30th Decision at 21, 2nd Cir. Dkt. No. 101). Such a conflict in an interpretation of law can only be properly resolved by a declaratory judgment action -- precisely the course of action we propose here.

Even assuming that opposing counsel were correct that the DEA should have the opportunity to address the issue of its authority pursuant to international treaty obligations in the first instance (and he is not), the DEA still would have to consider it through a petitioning process that is independent from, and resolved prior to, Plaintiffs' descheduling petition -- *i.e.*, as part of a bifurcated petitioning process. This would be necessary so as to avoid a situation in which the DEA is likely to: (i) adhere to its previously-stated position that its authority under the Single Convention is restricted as discussed above; and (ii) reclassify cannabis under Schedule II of the CSA, severely prejudicing Plaintiffs and millions of other cannabis patients around the country. Thus, regardless of whether this Court agrees that Plaintiffs should address their challenge to the DEA's supposed

lack of authority to deschedule cannabis through a declaratory judgment action or through a bifurcated petitioning process before the DEA, Plaintiffs are entitled to an extension of time within which to file their descheduling petition with the DEA -- either an 18-month extension of time within which to file a declaratory judgment action or a mere three-month extension of time within which to file the first part of the bifurcated petitioning process with the DEA.

POINT III

THE RISK OF RESCHEDULING IS TOO GREAT

Defendants suggest that Plaintiffs should have filed a de-scheduling petition with the DEA, notwithstanding the DEA's clear position that such a petition cannot, under any circumstances, be granted. However, as reflected in the Moving Papers, doing so would pose too great a risk to the Plaintiffs who rely on cannabis to sustain their health and lives. As explained in the Moving Papers, if cannabis were to be reclassified under Schedule II, Plaintiffs' access to their medications would be immediately restricted (Hiller Decl. in Sup. ¶35, 2nd Cir. Dkt. No. 129-2). Cannabis, as a Schedule II drug, would be subjected to multi-phase drug trials and FDA approval, effectively ending its availability to the three Plaintiffs (Alexis, Jagger and Jose) who need it to survive, and resigning them to the dangers of the black market (*Id.*).

Over the past several months, the nation has had a front-row seat to the potential dangers of subjecting medical cannabis patients to the risks of the black market. To date, 42 people have died as a result of using black-market products that were laced with vitamin E acetate - an additive that causes massive lung failure.[4] As attorneys for our clients, we will not, under any circumstances, take

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[4]Centers for Disease Control & Prevention, *Outbreak of Lung Injury Associated with the Use of E-Cigarette, or Vaping, Products*, https://www.cdc.gov/tobacco/basic_information/e-cigarettes/severe-lung-disease.html (last visited Dec. 12, 2019).

an action that we know would likely do our clients harm by subjecting them to the certain risk that their "best" outcome - reclassification under Schedule II -- would render their life-sustaining medication unavailable to them.

Currently, medical cannabis patients are able to obtain their medication in over 30 States pursuant to State-legal programs that continue to flourish under the auspices of the Funding Riders that Congress enacts on an annual basis (A-23, ¶13; A-77-79, ¶¶304-07). Although restricted in their ability to exercise their constitutional rights, including, *inter alia*, their right to engage in-person advocacy under the Free Speech Clause of the First Amendment and their right to travel, Plaintiffs are still better off living with such restrictions than subjecting themselves to life-threatening illness without the medical cannabis that keeps them alive.

In the final analysis, if the DEA were to reclassify cannabis under Schedule II, the only remedy "available" to Plaintiffs would be legislative; Congress would have to immediately pass a law that de-schedules cannabis or, in some way, allows patients to access their medication without it completing FDA trials and protocols. Insofar as advocates have been urging Congress to legalize cannabis for decades without success, it is morally irresponsible for defendants to suggest that Alexis, Jagger and Jose be resigned to betting their lives on elected representatives, who rarely agree on anything, much less an intractable issue that has been plaguing America for decades. Plaintiffs will not bet their lives on Congress anymore than they are going to place themselves in the hands of a DEA that, for more than 40 years, has consistently displayed hostility to legalization. The only rational course of action for Plaintiffs would be to file a declaratory judgment action against the DEA

and obtain a ruling on the issue of de-scheduling, even if that means risking dismissal of this action (should this Court disagree).[5]

Lastly but no less importantly on this point, Plaintiffs are represented by *pro bono* counsel. Plaintiffs' lawyers have absolutely nothing to gain by agreeing to take on yet another litigation or a second petition. Undersigned counsel recognizes, even if defendants do not, that Plaintiffs are far better served with dismissal of their claims herein than the reclassification of cannabis under Schedule II.

POINT IV

DEFENDANTS' ALLEGATION THAT PLAINTIFFS' PROPOSED DECLARATORY JUDGMENT ACTION CONSTITUTES A REQUEST FOR AN ADVANCE LEGAL OPINION IS UTTERLY FALSE

Defendants contend that Plaintiffs seek an advance legal opinion from the Court relative to the DEA's jurisdiction and authority under the Single Convention. Defendants are wrong.

As explained by the U.S. Supreme Court in *Maryland Casualty Co. v. Pacific Coal & Oil Co.*:

> The difference between an abstract question and a 'controversy' contemplated by the Declaratory Judgment Act is necessarily one of degree, and it would be difficult, if it would be possible, to fashion a precise test for determining in every case whether there is such a controversy. Basically, the question in each case is whether the facts alleged, under all the circumstances, show that there is a substantial controversy, between parties having adverse legal interests, of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

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[5]Nonetheless, as shown *infra*, to the extent that the Court were inclined to agree with defendants' arguments and require Plaintiffs to petition the DEA to challenge its determinations with respect to the scope of its authority under the CSA, Plaintiffs would nonetheless *still* require an extension (albeit a shorter one) so that Plaintiffs could file two petition, bifurcating the jurisdictional issue from the de-scheduling issue.

312 U.S. 270, 273 (1941).

Here, there is undoubtedly a case in controversy, insofar as Plaintiffs have been offered the opportunity to file a petition with the DEA that would, according to the Court, have the power to grant the same relief as was demanded in the Amended Complaint -- the de-scheduling of cannabis which the Court construed, in response to arguments made by defendants, would be equivalent to an injunction against the enforcement of the CSA as it pertains to cannabis as the DEA. Plaintiffs desire to file such a petition, especially in view of this Court's warning that the DEA would be required to act with all deliberate speed. That warning, made in recognition of the DEA's history of delaying consideration of rescheduling and de-scheduling petitions, is of significant value to Plaintiffs, as it could potentially require the DEA to decide their petition with considerable dispatch rather than after a nine-year time lapse -- the DEA's current average. However, Plaintiffs are also aware of the DEA's already-stated position that its power under the CSA is limited to mere reclassification of cannabis under Schedule II. There is thus a case in controversy between the parties. Plaintiffs were afforded the right to file a petition with the DEA while this Court retained jurisdiction to ensure that any administrative determination would be promptly issued; but it would be a petition that would request relief which the DEA has already indicated it cannot grant. Thus, Plaintiffs have been subjected to an actual injury in fact – specifically, that they cannot safely avail themselves of the opportunity to file a petition with the DEA (which is the subject of the May 30th Decision requiring the DEA's resolution of the petition with great dispatch -- something of real value to Plaintiffs) when they know that the only outcomes they could possibly obtain would be rejection or worse, reclassification under Schedule II. *See, e.g., Rowan Companies, Inc. v. Griffin,* 876 F.2d 26, 28 (5th Cir. 1989) (actual case in controversy exists based upon the presence of an injury caused

to plaintiff prior to inception of the declaratory judgment action).

If defendants wish to persist in their argument that Plaintiffs' Proposed Draft Complaint fails to state a claim raising a case in controversy, then they can make that argument to the District Court which has the jurisdiction, in the first instance, to render a determination on this issue of ripeness.[6]

Alternatively, even assuming that defendants' bald assertion that the DEA can and readily would reconsider its jurisdiction under the Single Convention along with a request for de-scheduling cannabis in the same petition, defendants wrongly assume that doing so would make any sense to Plaintiffs. Plaintiffs cannot risk the substantial likelihood that the DEA, in considering a consolidated petition that includes both issues (jurisdiction and de-scheduling), would adhere to its prior jurisdictional determination (*i.e.*, that the DEA cannot re-classify below Schedule II) and then reclassify under Schedule II. Plaintiffs could only be served if the two issues were bifurcated. Thus, even assuming *arguendo* that defendants' bald allegation were correct and that the DEA could and readily would revisit its prior rulings and now determine that it does, in fact, have the authority under the Single Convention to de-schedule, Plaintiffs would still require an extension, albeit a considerably shorter one, to file a petition on the jurisdictional issue first. And if the DEA were to revisit its prior determinations on that issue, Plaintiffs would proceed to file a second petition to de-schedule, safe in the knowledge that the DEA could not respond that its authority was limited to reclassification under Schedule II.

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[6]Indeed, if anything, it is defendants who are seeking an advisory opinion. Specifically, defendants are asking this Court to render an advisory opinion with respect to whether Plaintiffs' declaratory action, which hasn't even been filed, properly states a claim.

CONCLUSION

For these and the foregoing reasons, Plaintiffs respectfully request an order, granting them an extension of time within which to file the petition referenced in the May 30th Decision, along with any and all other and further relief this Court deems just and proper.

Dated: New York, New York
December 12, 2019

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