

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF IOWA  
CENTRAL DIVISION**

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CARL OLSEN,	)	
Plaintiff,	)	
v.	)	No. 4:08-cv-00370
	)	
MICHAEL MUKASEY, et al.,	)	
Defendants.	)	

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**PLAINTIFF’S MOTION FOR LEAVE TO FILE  
REPLY TO DEFENDANTS’ SUPPLEMENTAL BRIEF  
IN SUPPORT OF THEIR MOTION TO DISMISS**

Plaintiff hereby filed his motion for leave to file a reply to Defendants’ supplemental brief in support of their motion to dismiss. The grounds for this motion are as follows:

1. In their supplemental brief, the Defendants incorrectly claim the Plaintiff has exhausted an administrative remedy.
2. The Plaintiff’s demand that marijuana be removed from Schedule I of the Controlled Substance Act is based on statutory language and does not require administrative action other than updating and publishing the list of controlled substances in 21 C.F.R. 1308.11 annually as required by Congress in 21 U.S.C. § 812(a).
3. On Monday, January 5, 2009, the Plaintiff received a letter dated December 19, 2008, from the U.S. Department of Justice, Drug Enforcement Administration (“DEA”) (Docket #22, Exhibit #1, Page #4), interpreting the finding

required by Congress for including a substance in Schedule I of the CSA (“accepted medical use in treatment in the United States”), 21 U.S.C. § 812(b)(1)(B), as follows:

Furthermore, the CSA plainly does not assign to the states the authority to make findings relevant to CSA scheduling decisions. Rather, the CSA expressly delegates the task of making such findings – including whether a substance has any accepted medical use – to the Attorney General.

4. The letter stated: “The Deputy Administrator finds, for the reasons stated herein, that the grounds upon which you rely are not sufficient to justify the initiation of proceedings for the removal of marijuana from schedule I of the CSA.” (Docket #22, Exhibit #1, Page #1). The denial of the petition was clearly based on an unlawful interpretation of the statute by the Deputy Administrator.

5. Plaintiff requests permission to file a short reply to explain why the letter did not change the circumstances in this case and why the letter did not mark the conclusion of any administrative procedure by the Defendants. A copy of the proposed reply is attached.

6. Pursuant to Local Rule 7(1), the parties have conferred and Defendants’ consent to this motion.

Dated: January 13, 2009.

/s/ Carl Olsen

Carl Olsen, Pro Se  
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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on January 13<sup>th</sup>, 2009 I filed the foregoing electronically through the CM/ECF system, which caused the following parties or counsel to be served by electronic means, as more fully reflected on the Notice of Electronic Filing:

CHRISTOPHER D. HAGEN, Assistant U.S. Attorney

TAMARA ULRICH, U.S. Department of Justice, Civil Division

*Filed Electronically*

/s/ Carl Olsen

CARL OLSEN