DRUG ENFORCEMENT ADMINISTRATION

Petition by Carl Olsen for the rescheduling of marijuana pursuant to 21 U.S.C. § 811 and 21 C.F.R. § 1308	)))))	**NOTICE AND DEADLINE TO CEASE AND DESIST ILLEGAL ENFORCEMENT OF FRAUDULANT MARIJUANA REGULATION**

August 5, 2008

Administrator,
Drug Enforcement Administration
Department of Justice
Washington, DC 20537

Re: Petition for Marijuana Rescheduling

Dear Sir/Madam:

You are hereby notified that the current scheduling of marijuana in Title 21 Code of Federal Regulations, Section 1308.11 Schedule I, is in violation of federal law, Title 21 United States Code, Section 903, and you must immediately cease and desist enforcement of the illegal regulation of marijuana until marijuana is correctly scheduled or removed from the schedules entirely.

Failure of the Drug Enforcement Administration to cease and desist enforcement of the illegal regulation of marijuana within 30 days will result in a federal civil injunction being filed against the Drug Enforcement

Administration in the United States District Court for the Southern District of Iowa.

MEMORANDUM OF LAW

It is established federal law that the states, and not the federal government, determine accepted medical practice. ***Gonzales v. Oregon***, 546 U.S. 243 (2006); 21 U.S.C. § 903. Twelve states have determined that marijuana has accepted medical use. Rescheduling of marijuana should have been automatically triggered in 1996 when California enacted the first state law accepting the medical use of marijuana.

In ***Grinspoon v. DEA***, 828 F.2d 881, 886 (1st Cir. 1987), the U.S. Court of Appeals told the DEA that a controlled substance cannot be scheduled in Schedule I if it has accepted medical use anywhere in the United States (". . . Congress did not intend 'accepted medical use in treatment in the United States' to require a finding of recognized medical use in every state . . ."), which proves the states, and not the federal government, determine accepted medical practice.

In ***Alliance for Cannabis Therapeutics v. DEA***, 930 F.2d 936, 939 (D.C. Cir. 1991), the U.S. Court of Appeals told the DEA that there is no federal definition of "accepted medical use" (". . . neither the statute nor its legislative history precisely defines the term 'currently accepted medical

use' . . ."), which proves the states, and not the federal government, determine accepted medical practice.

In ***United States v. Oakland Cannabis Buyers' Cooperative***, 532 U.S. 483, 492 (2001), the U.S. Supreme Court told the DEA it could not put marijuana in Schedule I if marijuana had any accepted medical use:

> Schedule I is the most restrictive schedule (footnote omitted). The Attorney General can include a drug in schedule I only if the drug "has no currently accepted medical use in treatment in the United States," "has a high potential for abuse," and has "a lack of accepted safety for use . . . under medical supervision." §§ 812(b)(1)(A)-(C). Under the statute, the Attorney General could not put marijuana into schedule I if marijuana had any accepted medical use.

In ***Gonzales v. Raich***, 545 U.S. 1, the U.S. Supreme Court noted that Congress put marijuana in Schedule I. But Schedule I is only the "initial" schedule for marijuana. Congress never said the initial schedules were permanent. 21 U.S.C. § 811(a) requires the DEA to "add to", "transfer between", or "remove" substances from the schedules as necessary. See 21 U.S.C. § 812(c) (". . . Initial schedules of controlled substances Schedules I, II, III, IV, and V shall, unless and until amended pursuant to section 811 of this title . . ."). Ms. Raich did not tell the DEA it could not put marijuana into schedule I, but the DEA should not have to be told that it must obey a federal law. The DEA should have rescheduled marijuana in 1996 and was legally obligated to do so at that time.

In ***Gonzales v. Oregon***, 546 U.S. 243 (2006), the U.S. Supreme Court told the DEA that a federal interpretive rule cannot conflict with an accepted state medical practice. The DEA cannot create an administrative rule that conflicts with 21 U.S.C. § 903, and it cannot maintain an existing regulation that conflicts with 21 U.S.C. § 903.

Marijuana, temporarily scheduled by Congress in 21 U.S.C. § 812, Schedule I(c)(10) in 1970, has been incorrectly classified in 21 C.F.R. § 1308.11(d)(22) since 1996 because it no longer fits the criteria for inclusion in Schedule I as set forth in 21 U.S.C. § 812(b)(1)(A)-(C):

> 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.

Because marijuana has been incorrectly scheduled since 1996, the DEA must immediately cease and desist the enforcement of the illegal regulation of marijuana until the federal scheduling has been corrected.

Respectfully yours,

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