IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

CARL OLSEN, in propria persona, Plaintiff, v. MICHAEL MUKASEY, Attorney General of the United States, MICHELE LEONHART, Acting Administrator, United States Drug Enforcement Administration, and CONDOLEEZZA RICE, United States Secretary of State, all in their official capacities, Defendants.	*	No. 4-08-CV-370 **ORIGINAL COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

INTRODUCTION

Carl Olsen brings this action to secure injunctive and declaratory relief because the federal regulation, 21 C.F.R. § 1308.11(d)(22), scheduling marijuana in Schedule I of the Controlled Substances Act of 1970, Public Law 91-513, Oct. 27, 1970, 84 Stat. 1236 (**"CSA"** hereafter), is unlawful.

Marijuana no longer meets the statutory requirement for inclusion in Schedule I of the CSA, 21 U.S.C. § 812(b)(1)(B) ("The drug or other substance has no currently accepted medical use in treatment in the United States"). While it may be true that marijuana had no accepted medical use in treatment in 1970 when the CSA was adopted, it is no longer true.

Congress did not prohibit the states from accepting the medical use of marijuana. If Congress had intended to prevent the states from accepting the medical use of marijuana, it would have said so in the CSA or amended the CSA as it did in 1984, when Congress legislatively placed the drug methaqualone in Schedule I. *See* ***Grinspoon v. DEA***, 828 F.2d 881, 890 (1st Cir. 1987) ("The statutory findings required for agency scheduling decisions clearly state that the agency may not, in the absence of Congressional action, subject drugs with a currently accepted medical use in the United States to Schedule I controls.").

Congress explicitly gave the states the authority to determine standards for the accepted medical use of drugs when it adopted the CSA in 1970, 21 U.S.C. § 903. *See* ***Gonzales v. Oregon***, 546 U.S. 243, 274-275 (2006) ("the CSA's prescription requirement does not authorize the Attorney General to bar dispensing controlled substances for assisted suicide in the face of a state medical regime permitting such conduct."). Congress did not grant the Drug Enforcement Administration (**"DEA"** hereafter) the authority to prohibit the states from accepting the medical use of a drug or other substance.

"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 Matter of***

Marijuana Rescheduling, DEA Docket No. 86-22 (Sept. 6, 1988), at page 32.

> 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.

In the Matter of Marijuana Rescheduling, DEA Docket No. 86-22 (Sept. 6, 1988), at page 33.

By refusing to remove marijuana from Schedule I of the CSA, the DEA is actually trying to make the decision that Congress gave the states the right to make, rather than trying to ascertain the decision that the states have made. The DEA is telling the states what they should or should not accept and, in doing so, the Agency is acting beyond the authority granted in the CSA.

Marijuana was initially placed in Schedule I by Congress and the Attorney General was made responsible for keeping the schedules updated. The DEA was later delegated by the Attorney General to keep the list of substances in Schedule I updated and has the mandatory obligation to do so.

It is an indisputable fact that since 1996 twelve states in the United States have accepted the medical use of marijuana. It is also an indisputable fact that the DEA has failed for

twelve years to perform its mandatory obligation under the CSA to update the schedules.

IRREPARABLE INJURY

The sacrament of Mr. Olsen's church is marijuana. Courts have consistently held that the scheduling of marijuana as a Schedule I controlled substance in the CSA establishes the fact that the government has a compelling governmental interest which overrides Mr. Olsen's religious freedom and prohibits Mr. Olsen from participating in his religion. *See* ***Olsen v. Mukasey***, No. 07-3062 (8th Cir. Sept. 8, 2008), slip opinion, at page 2:

> Olsen filed this complaint in district court seeking a declaration that for his religious use, marijuana is not a controlled substance under the CSAs, and an order enjoining federal, state and local officials from enforcing the CSAs against him for the sacramental use of marijuana.

"Olsen's federal RFRA claim is barred by collateral estoppel." ***Id***. at 5. "Olsen's equal protection claim is barred by collateral estoppel." ***Id***. at 7.

Mr. Olsen's right to freedom of religion has been irreparably injured by the failure of the DEA to perform its statutory duty to keep the schedules of controlled substances updated as mandated by Congress. All courts that have reviewed the issue of Mr. Olsen's religious use of marijuana have refused to attempt to craft an exemption from total prohibition of

marijuana solely because of its classification as a Schedule I drug.

Mr. Olsen does not have an administrative remedy. Only the immediate halt of the illegal enforcement of the unlawful regulation of marijuana will remedy Mr. Olsen's injury. *See* ***Elrod v. Burns***, 427 U.S. 347, 373 (1976) ("The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.").

Strictly as a formality, Mr. Olsen has petitioned the DEA to perform its obligations under the CSA. Mr. Olsen has also notified the DEA that it must cease and desist enforcement of the unlawful regulation. Mr. Olsen now brings this action for declaratory and injunctive relief because there is no other remedy which will adequately address Mr. Olsen's injury. There are no questions of fact to be decided and the legal issues are crystal clear.

The DEA is illegally enforcing an unlawful regulation. Accordingly, Carl Olsen brings this action to enjoin the implementation of this unlawful regulation, as described below.

JURISDICTION

1. This Court has jurisdiction pursuant to 28 U.S.C. § 1331.

VENUE

2. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(e)(3).

PARTIES

3. Carl Olsen resides at 130 E. Aurora Ave., Des Moines, IA 50313-3654.

4. Defendant Michael Mukasey is the Attorney General of the United States. He is sued in his official capacity only, in which capacity he is responsible for the enforcement and administration of the CSA. Pursuant to 28 U.S.C. § 1391(e), he may be served by certified mail at the United States Department of Justice, 5111 Main Justice Building, 10th St. and Constitution Ave. N.W., Washington, D.C. 20530.

5. Defendant Michele Leonhart is the Acting Administrator of the United States Drug Enforcement Administration ("DEA"). She is sued in her official capacity only, in which capacity she is responsible for enforcing and administering the CSA. Pursuant to 28 U.S.C. § 1391(e), she may be served by certified mail at the DEA, 2401 Jefferson Davis Highway, Alexandria, VA 22310.

6. Defendant Condoleezza Rice is the Secretary of the United States Department of State. She is sued in her official capacity only, in which capacity she is responsible for enforcing and administering the United States' obligations under the Single Convention on Narcotic Drugs, signed at New York, New

York, on March 30, 1961 (as amended by the 1972 Protocol amending the Single Convention on Narcotic Drugs, 1961) and the Convention on Psychotropic Substances, signed at Vienna, Austria, on February 21, 1971. 21 U.S.C. § 802(31). Pursuant to 28 U.S.C. § 1391(e), she may be served by certified mail at the DEA, 2401 Jefferson Davis Highway, Alexandria, VA 22310.

FACTUAL ALLEGATIONS

A. Historical facts regarding marijuana's safety for use under medical supervision. 21 U.S.C. § 812(b)(1)(C).

7. In 1970, Congress expressed doubts about including marijuana in the CSA because of conflicting reports about marijuana's **"safety"**. House Report 91-1444, Sept. 10, 1970. See Exhibit #1.

8. In 1970, Congress created the Commission on Marihuana and Drug Abuse to resolve its doubts about marijuana's **"safety"**. Public Law 91-513 § 601, Oct. 27, 1970, 84 Stat. 1236, 1280. See Exhibit #2.

9. The 1972 Report of the Commission on Marihuana and Drug Abuse found that marijuana was not a sufficient threat to public health and **"safety"** to justify criminal penalties for personal use and casual distribution of small amounts for no remuneration or insignificant remuneration not involving profit. This Court must take judicial notice pursuant to Federal Rule of Evidence 201 that these findings of fact represent the official

findings of Congress made pursuant to the CSA itself, are made a part of the CSA itself, and express Congress' specific intent and findings of fact regarding marijuana's **"safety"** for use that were missing when Congress enacted the CSA in 1970 and expressed doubts about including marijuana in the CSA. Marihuana, A Signal of Misunderstanding, First Report of the National Commission on Marihuana and Drug Abuse, at pages 150-152. See Exhibit #3.

10. The 1973 Report of the Commission on Marihuana and Drug Abuse recommended that "the United States take the necessary steps to remove cannabis from the Single Convention on Narcotic Drugs (1961), since this drug does not pose the same social and public health problems associated with the opiates and coca leaf products." ***NORML v. DEA***, 559 F.2d 735, 751 n.70 (D.C. Cir. 1977) (citing Marihuana, Problem in Perspective, Second Report of the National Commission on Marihuana and Drug Abuse, at page 235). See Exhibit #4.

11. In 1988, after extensive hearings pursuant to the scheduling review process set up by Congress in the CSA, the Administrative Law Judge ("ALJ" hereafter) for the DEA found that: **"Marijuana, in its natural form, is one of the safest therapeutically active substances known to man."** In The Matter of Marijuana Rescheduling, DEA Docket No. 86-22, at pages 58-59. This Court must take judicial notice pursuant to Federal Rule of

Evidence 201 that the findings of fact of the ALJ represent the official findings of Congress made pursuant to the CSA itself, are made a part of the CSA itself, and express Congress' specific intent and findings of fact regarding marijuana's **"safety"** for use that were missing when Congress expressed doubts in 1970 about including marijuana in the CSA. In The Matter of Marijuana Rescheduling, DEA Docket No. 86-22, at pages 58-59. See Exhibit #5.

B. Current facts regarding marijuana's accepted medical use in treatment in the United States. 21 U.S.C. § 812(b)(1)(B)

12. Congress does not preempt state law without specifically saying so. In 1970, Congress expressed its specific intent not to preempt state law in the field of medicine. 21 U.S.C. § 903. *See* ***Gonzales v. Oregon***, 546 U.S. 243 (2006).

13. The specific intent of Congress not to occupy the field of medicine traditionally regulated by the states is clear from the language in the CSA establishing the requirement for including a substance in Schedule I of the CSA ("The drug or other substance has no currently accepted medical use in treatment in the United States"). 21 U.S.C. § 812(b)(1)(B).

14. Since 1996, twelve states in the United States have enacted laws accepting the medical use of marijuana. Alaska Statutes § 17.37.070(8) (2008); California Health & Safety Code

§ 11362.5 (2008); Colorado Constitution Article XVIII, Section 14(b) (2007); Hawaii Revised Statutes § 329-121(3)(paragraph 3) (2008); 22 Maine Revised Statutes § 2383-B(5) (2008); Montana Code Annotated, § 50-46-102(5) (2007); Nevada Revised Statutes Annotated § 453A.120 (2007); New Mexico Statutes Annotated § 26-2B-2 (2008); Oregon Revised Statutes § 475.302(8) (2007); Rhode Island General Laws § 21-28.6-3(4) (2008); 18 Vermont Statutes Annotated § 4472(10) (2007); Revised Code Washington (ARCW) § 69.51A.010(2) (2008).

C. DEA's statutory obligation to update the schedules. 21 U.S.C. § 811.

15. The DEA must apply the requirements established by 21 U.S.C. § 812 to the controlled substances listed in the schedules. 21 U.S.C. § 811(a).

16. The DEA must remove from a schedule any substance that no longer meets the requirements for inclusion in that schedule. 21 U.S.C. §811(a)(1)(B).

17. If an international treaty, specifically the 1961 Single Convention on Narcotic Drugs (**"SCND"** hereafter) requires a minimum scheduling level for a substance in the CSA and the DEA finds that substance belongs in a schedule of the CSA lower than the minimum required by the SCND, then DEA must take appropriate action to notify the Secretary of States that proceedings to remove the substance from the SCND or transfer

the substance to the appropriate schedule in the SCND must be initiated. In 1982, the U.S. Department of Justice and the U.S. Department of Health and Human Services, in response to NORML v. DEA, 559 F.2d 735 (D.C. Cir. 1977), wrote:

> It is prudent for DHHS to provide a complete scientific and medical evaluation on THC at this time, because even if the ultimate DHHS recommendation is found to be inconsistent with current treaty obligations, the United States could petition for international rescheduling. See NORML v. Ingersoll, supra, 497 F.2d at 658. Indeed, DHHS is now considering whether to request the Secretary of State to petition for international rescheduling of THC, pursuant to 21 U.S.C. § 811(d)(5). (footnote omitted)

See SCND, Article 3(1) ("Where a Party or the World Health Organization has information which in its opinion may require an amendment to any of the Schedules, it shall notify the Secretary-General and furnish him with the information in support of the notification."); SCND, Article 46 (any Party may denounce the Convention); SCND, Article 47(1) ("Any Party may propose an amendment to this Convention"). See Exhibit #6

18. In 1986, the DEA transferred synthetic delta-9-THC (the principle psychoactive substance in marijuana) in sesame oil and a soft gelatin capsule in products approved by the Food and Drug Administration (**"FDA"** hereafter) of the same formulation as Marinol® from Schedule I to Schedule II of the CSA. The DEA noted that the transfer to Schedule II of the CSA was allowed for delta-9-THC although it was in Schedule I of the

1971 Convention on Psychotropic Substances (**“CPS”** hereafter). See Exhibit #7.

19. In 1991, proceedings were initiated to lower the scheduling of delta-9-THC in the CPS (“Transfer of delta-9-THC and its stereochemical variants from Schedule I to Schedule II of the Convention on Psychotropic Substances, 1971”). See Exhibit #8.

20. In 1999, the DEA transferred synthetic delta-9-THC (the major psychoactive component in marijuana) in sesame oil and a soft gelatin capsule in products approved by the FDA of the same formulation as Marinol® from Schedule II to Schedule III of the CSA. The DEA noted that the transfer to Schedule III was now allowed because delta-9-THC had been transferred from Schedule I to Schedule II of the CPS. See Exhibit #9.

D. The manner in which DEA must update the schedules. 21 U.S.C. § 812(a).

21. In 1970, Congress created initial schedules of substances and mandated that they be updated and republished on a semiannual basis during the two-year period beginning one year after October 27, 1970, and updated and republished on an annual basis thereafter. 21 U.S.C. § 812(a).

22. In order for a substance to meet the requirements for inclusion in Schedule I, the substance must meet all three of the criteria listed for Schedule I. If a substance fails to

meet any of the three requirements for inclusion in Schedule I, it must be removed from Schedule I. 21 U.S.C. § 812(b)(1).

E. The Plaintiff has standing to bring this action.

23. "Olsen is a member and priest of the Ethiopian Zion Coptic Church." ***Olsen v. DEA***, 878 F.2d 1458, 1459 (D.C. Cir. 1989), ***cert. denied***, 495 U.S. 906 (1990).

24. "[T]he Ethiopian Zion Coptic Church represents a religion within the first amendment to the Constitution of the United States." ***Town v. State, ex rel. Reno***, 377 So. 2d 648, 649 (Fla. 1979), ***cert. denied***, 449 U.S. 803 (1980), ***reh. denied***, 449 U.S. 1004 (1980).

25. The "use of cannabis is an essential portion of the religious practice" of the Ethiopian Zion Coptic Church. ***Id.***, 377 So.2d at 649.

26. "[T]he Ethiopian Zion Coptic Church is not a new church or religion but the record reflects it is centuries old and has regularly used cannabis as its sacrament." ***Id.***, 377 So.2d at 649.

27. "Olsen is a member and priest of the Ethiopian Zion Coptic Church. Testimony at his trial revealed the bona fide nature of this religious organization and the sacramental use of marijuana within it." ***State of Iowa v. Carl Eric Olsen***, No. 171/69079 (Iowa Supreme Court, July 18, 1984), Slip Opinion at page 2. See Exhibit #10.

28. Olsen “is a priest of the Ethiopian Zion Coptic Church. This religion uses marijuana as an integral part of its religious doctrine.” ***Carl Eric Olsen v. State of Iowa***, Civ. No. 83-201-E, 1986 W.L. 4045 (S.D. Iowa), Not Reported in F.Supp. See Exhibit #11.

F. The Plaintiff’s religious freedom is being irreparably injured by the DEA’s unlawful scheduling of marijuana.

29. “Olsen and his fellows have been convicted several times in federal and state courts of various marijuana offenses” . . . “The federal convictions were based on the Controlled Substances Act, 21 U.S.C. §§ 801-904 (1982), which lists marijuana as a ‘Schedule I’ controlled substance with a ‘high potential for abuse.’” ***Olsen v. DEA***, 878 F.2d 1458, 1459 (D.C. Cir. 1989).

G. The DEA has been notified that it is violating federal law.

30. On May 13, 2008, the Plaintiff mailed a “Petition for Marijuana Rescheduling” to the DEA by certified mail, Return Receipt No. 7005 3110 0003 2963 1320. See Exhibit #12.

31. The DEA received the “Petition for Marijuana Rescheduling” on May 15, 2008. See Exhibit #13.

32. On May 27, 2008, the Plaintiff mailed a “Memorandum of Law in Support of Petition for Marijuana Rescheduling” to the DEA by certified mail, Return Receipt No. 7005 3110 0003 2963 1368. See Exhibit #14.

33. The DEA received the “Memorandum of Law in Support of Petition for Marijuana Rescheduling” on June 2, 2008. See Exhibit #15.

34. On July 3, 2008, the Plaintiff received a certified letter from the DEA dated June 25, 2008, notifying the Plaintiff that the DEA had accepted the Petition for Marijuana Rescheduling. See Exhibit #16.

35. On August 5, 2008, the Plaintiff mailed a “Notice and Deadline to Cease and Desist Enforcement of Fraudulent Marijuana Regulation” to the DEA by certified mail, Return Receipt No. 7006 2760 0004 2439 1694. See Exhibit #17.

36. The DEA received the “Notice and Deadline to Cease and Desist Enforcement of Fraudulent Marijuana Regulation” on August 11, 2008. See Exhibit #18.

H. The Plaintiff’s has notified Iowa’s Congressional delegation that the DEA is unlawfully maintaining marijuana in Schedule I of the CSA.

37. On July 2, 2008, the Plaintiff faxed letters to his U.S. Congressman and U.S. Senators complaining that the DEA had failed to respond to his “Petition for Marijuana Rescheduling” and that irreparable injury is occurring as the result of DEA’s failure to obey federal law. See Exhibit #19.

38. On July 4, 2008, the Plaintiff faxed letters to his U.S. Congressman and U.S. Senators notifying them that the DEA had responded to the Plaintiff’s “Petition for Marijuana

Rescheduling” but had not stopped the enforcement of its fraudulent marijuana regulation. See Exhibits #20.

39. On July 16, 2008, the Plaintiff received a letter from U.S. Senator Charles Grassley notifying the Plaintiff that he had contacted the DEA for more information on the status of the Plaintiff’s “Petition for Marijuana Rescheduling”. See Exhibit #21.

40. On September 3, 2008, the Plaintiff received a letter from U.S. Senator Tom Harkin notifying the Plaintiff that he had contacted the DEA for more information on the status of the Plaintiff’s “Petition for Marijuana Rescheduling”. See Exhibit #22.

41. No response was received U.S. Congressman Boswell.

I. Plaintiff’s prior inquiries to the government regarding the medical use and scheduling of marijuana.

42. On August 22, 1991, the Plaintiff received a letter from the U.S. Department of Health and Human Services stating that the Government will continue to supply marijuana cigarettes to patients in the compassionate IND program. This letter proves that marijuana is safe for use under medical supervision and that the Defendants know it. It would be negligent for the Defendants to supply people with marijuana if it was not safe for use under medical supervision. See Exhibit #23.

43. On August 17, 1992, the Plaintiff received a letter from the DEA explaining that coca leaves and opium plant material were placed in Schedule II of the CSA by Congress because they are the source of accepted and useful medications. This letter shows the Defendants are aware of the intent of Congress to make plants which are the source of accepted and useful medications available for the sole purpose of making them available for use as sources of accepted medicines by scheduling them in a schedule lower than Schedule I (although please note that no state has accepted the use of coca and opium plant materials for medical use in the way that marijuana plant material has been accepted for medical use in twelve states – marijuana plant material has greater accepted medical use than coca and opium plant materials). See Exhibit #24.

44. On October 23, 1992, the Plaintiff received a letter from the DEA explaining that no accepted or useful medications were currently being extracted from the marijuana plant at that time. This letter attempts to explain why the DEA did not consider the marijuana plant to be the source of any accepted or useful medications at that time. See Exhibit #25.

45. On May 16, 1994, the Plaintiff received a final order from the DEA on his petition to reschedule marijuana. In that final order, the DEA said it was bound by law to follow the mandates Congress set forth in 21 U.S.C. §§ 811-812 (Final

Order, at page 3). In that final order, the DEA said that marijuana must remain in Schedule I because it had no "currently accepted medical use" (Final Order, at pages 5, 6, and 8). See Exhibit #26.

J. Marijuana's accepted safety for use in public places.

46. On June 2, 1995, the Plaintiff received a letter from the Iowa Department of General Services in response to the Plaintiff's request for a permit to hold a rally at the State Capitol Building in support of medical marijuana, stating: "Capitol Police will be informed that two participants, George McMahon and Barbara Douglas are authorized to use marijuana by the federal government as well as the Iowa Board of Pharmacy Examiners." This document proves the Defendants know marijuana is safe for use under medical supervision without any severe restrictions. See Exhibit #27.

47. On August 16, 1996, the Plaintiff received a letter from the Iowa Department of General Services in response to the Plaintiff's request for a permit to hold a rally at the State Capitol Building in support of medical marijuana, stating: "Capitol Police has been informed that two participants, George McMahon and Barbara Douglas, have legal prescriptions for marijuana and are approved to use marijuana by the federal government as well as the Iowa Board of Pharmacy Examiners." This document proves the Defendants know marijuana is safe for

use under medical supervision without any severe restrictions. See Exhibit #28.

K. Over the past 5 years, the government has acknowledged that marijuana is now the source of useful medicines.

48. On October 7, 2003, the U.S. Department of Health and Human Services obtained a patent on naturally occurring cannabinoids contained in the marijuana plant, U.S. Patent No. 6,630,507 B1. This proves the Defendants know marijuana has at least as much accepted medical use as Schedule II coca leaves and Schedule II opium plant material. See Exhibit #29.

49. On September 24, 2007, the DEA proposed to amend the listing in Schedule III of "Approved Drug Products Containing Tetrahydrocannabinols" to include "natural dronabinol (derived from the cannabis plant)", Federal Register, Vol. 72, No. 184, Monday, September 24, 2007, pp. 54226-54230. This shows the DEA admits it was in error when it previously claimed that a synthetic drug is not the same as it naturally occurring twin. The DEA admits the scheduling of delta-9-THC is extremely unusual compared to anything else in the CSA. Footnote 7 on page 54228 states: "Generally, substances are listed in the CSA schedules based on their chemical classification, rather than any drug product formulation in which they might appear. Because of this, there have been no other situations in which a slight variation between the brand name drug formulation and the

generic drug formulation was consequential for scheduling purposes." Footnote 9 on page 54229 states: "When Congress enacted the CSA in 1970, it scheduled codeine and certain other opiates in three different schedules depending on their respective concentrations. See 21 U.S.C. 812(c), schedule II(a)(1), schedule III(d), and schedule V. However, this differential scheduling for opiates does not specify drug product formulation in a manner that would result in a generic version of an opiate drug product being scheduled separately from the innovator drug." See Exhibit #30.

L. Letter from U.S. Senator Hughes (Retired).

50. Finally, on July 17, 1995, the Plaintiff received a letter from one of the two U.S. Senators who served on the Commission on Marihuana established by the CSA, Iowa Governor Harold E. Hughes (U.S. Senate Retired), stating: "I do support the medical use of marijuana and sincerely hope some relief can be gained from federal restrictions." See Exhibit #31.

COUNT 1

51. Plaintiff reasserts and realleges the allegations contained in paragraphs 1 through 50 of this complaint as though contained herein.

52. The DEA is without authority to maintain a substance in a schedule when the substance does not meet the statutory requirements for inclusion in that schedule.

53. The DEA is not authorized to regulate marijuana in Schedule I of the CSA and the regulation of marijuana in Schedule I is not in accordance with law because: (1) twelve states have accepted the medical use of marijuana; (2) Congress gave the states the authority to make that decision; and (3) marijuana no longer meets the requirements for inclusion in Schedule I of the CSA.

COUNT II

54. Plaintiff reasserts and realleges the allegations contained in paragraphs 1 through 51 of this complaint as though contained herein.

55. The Defendants are without authority to allow a substance to remain in a schedule of an international treaty when the substance does not meet the requirements for inclusion in that schedule.

56. The Defendants must comply with the requirements of international treaties and notify the necessary officials whenever they have new information, including, but not limited to: (1) twelve states in the United States have accepted the medical use of marijuana; (2) Congress gave those states the authority to make that decision; and (3) marijuana no longer meets the requirements for inclusion in Schedule I of the CSA.

57. The Defendants must initiate proceedings to determine the proper schedule for marijuana in the CSA, if any. If

marijuana is found to belong in a schedule lower that the schedule required by international treaties, then the Defendants must initiate proceedings to amend the international treaties.

REQUEST FOR RELIEF

WHEREFORE, based on the foregoing, the Plaintiff requests judgment against the Defendants:

A. Declaring invalid and unlawful the DEA regulation codified at 21 C.F.R. § 1308.11(d)(22);

B. Enjoining the Defendants from enforcing or taking any other action pursuant to the invalid and unlawful regulation;

C. Ordering the DEA to issue a new regulation placing marijuana in the appropriate schedule or removing marijuana entirely from the schedules after appropriate administrative procedures which comply with the CSA;

D. Ordering the Defendants to initiate proceedings under any international treaties, if necessary; and

E. Ordering such other and further relief as this Court deems just and proper.

Respectfully submitted this 15th day of September, 2008.

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IN PROPRIA PERSONA