



ROBERT HOBAN, MANAGING PARTNER
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March 21, 2018

Via CM/ECF

Molly C. Dwyer, Clerk of Court
U.S. Court of Appeals for the Ninth Circuit
95 75th Street
San Francisco, CA 94103

**RE: Case No. 17-70162; *Hemp Industries Ass'n et al. vs. U.S. Drug Enforcement Admin. et al.*
Judges Tallman, Hawkins and Murphy; Oral Argument – February 15, 2018**

Dear Ms. Dwyer,

Petitioners respectfully submit this citation of newly available supplemental authorities, pursuant to F.R.A.P. 28(j), made newly available during the pendency of below-referenced recent criminal proceedings.

Enclosed is correspondence, dated May 24, 2017 (during the pendency of this matter), from Respondents to the North Dakota Office of the Attorney General (“NDAG”), rendering DEA’s opinion – as the authority referred to by sister agencies – that cannabinoids, such as cannabidiol, are unequivocally illegal (the “Letter”).

Concerning the standing issue raised by Respondents, the Letter was issued to NDAG concerning product seizures and criminal indictments against individuals(s) in North Dakota, as supported by affidavits previously submitted by Petitioners. *See, e.g.* FER, 5-8. This is precisely the type of harm continuously experienced by Petitioners, and those similarly situated, since Respondents’ promulgation of the Final Rule.

Importantly, at a threshold level, the Letter fails to contemplate that cannabinoids may be lawfully sourced in many ways, as more fully set forth in Petitioners’ briefing and oral argument. These lawful sources of cannabinoids include those portions and varieties of the *Cannabis* plant made lawful by Congress, such as industrial hemp, and confirmed by the Amicus Brief submitted by members of Congress, which the Letter inherently contradicts.

Significantly, the Letter also expressly contradicts Respondents’ own briefing and oral argument, which indicated Respondents are not attempting to regulate cannabinoids and are not advising sister federal, state and local agencies concerning the same. The Letter – an advisement to NDAG – proves these representations to be untrue.

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Respondents also suggested at oral argument that the venue for this matter would be more appropriate before other courts where those sister agencies “misinterpret” federal law and Respondents’ Final Rule. However, as the Letter demonstrates, DEA has in the past and is actively advising sister agencies as to its interpretation of federal law and the Final Rule, and application thereof. Thus, for judicial efficiency purposes, the matter is ripe to be addressed by this Court instantly.

Accordingly, Petitioners respectfully request this Court order in favor of Petitioners. If further information is needed, please contact counsel for Petitioners. Thank you for your time and consideration.

Regards,

/s/ Robert T. Hoban, Esq.

Robert T. Hoban, Esq.

Attorney for Petitioners

cc:

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May 24, 2017

Charlene Rittenbach, F-ABC
Forensic Scientist
North Dakota Office of Attorney General
Crime Laboratory Division
2641 East Main Ave
Bismarck, North Dakota 58501

Dear Ms. Rittenbach:

This is in response to the email dated May 17, 2017, in which you request the control status of cannabidiol (2-[(1R,6R)-3-methyl-6-prop-1-en-2-ylcyclohex-2-en-1-yl]-5-pentylbenzene-1,3-diol; CBD) under the Controlled Substances Act (Title 21 of the United States Code (U.S.C.) Section 801 et seq.)(CSA).

The Drug Enforcement Administration (DEA) conducted a review of the CSA and its implementing regulations (Title 21 of the Code of Federal Regulations (CFR) Part 1300 et seq.). Based on this review, DEA determined that CBD is defined as marihuana under the CSA and a schedule I controlled substance. This control status applies to products that contain CBD.

Title 21 U.S.C. Section 802(16) defines in part "marihuana" as "all parts of the plant *Cannabis sativa* L., whether growing or not; the seeds thereof; the resin extracted from any part of such plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin." CBD is a naturally occurring constituent of marihuana as reported in the scientific literature (for example, M. A. ElSohly, D. Slade, *Life Sciences*, 78 (2005) 539 – 548). As such, CBD meets the legal definition of marihuana and is controlled in schedule I by 21 U.S.C. Section 812(c) Schedule I and Title 21 CFR Section 1308.11(d), which list marihuana in schedule I.

Based on the CSA definition of marihuana, products that are detected to contain CBD, or other cannabinoids such as tetrahydrocannabinols (THC), are controlled in schedule I.

Sincerely,

A handwritten signature in black ink that reads "Terrence L. Boos".

Terrence L. Boos, Ph.D., Chief
Drug & Chemical Evaluation Section
Diversion Control Division