NO. 22-1326

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

REV. BRYAN A. KRUMM, CNP,

Petitioner,

v.

U.S. DRUG ENFORCEMENT ADMINISTRATION
ANNE MILGRAM, DIRECTOR

Respondent.

MOTION FOR SUMMARY JUDGEMENT AND BRIEF IN SUPPORT OF MOTION FOR SUMMARY JUDGEMENT

Rev Bryan A. Krumm, CNP
Petitioner Pro Se
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FEBRUARY 6, 2023

Comes now the Petitioner, Rev Bryan A Krumm, CNP, who moves for summary judgement on all claims in his Petition for Writ of Mandamus pursuant to Fed. R. Civ. P. 56.

1. Petitioner respectfully requests that this Court order the DEA to immediately remove Cannabis from Schedule 1 of the CSA and place it into Schedule 2 in order to protect the health and welfare of the citizens of the United States, now that the United States has officially recognized the medical use of Cannabis under International Law; and

2. Furthermore, the DEA must be ordered to initiate a full review of Cannabis to determine where Cannabis may be appropriately placed within the CSA, or if it should be exempted from control under the CSA and regulated by the States like tobacco and alcohol. Due to the futility of the current administrative process, which relies solely on the decisions of federal policy makers who have demonstrated gross incompetence and/or malfeasance in the case of Cannabis scheduling; and because these hearings have been held behind closed doors, without oversight and without allowing for expert testimony that should be required for medical policy decision making; this must be a public review allowing testimony of medical providers with expertise in the use of Medical Cannabis.

BRIEF IN SUPPORT OF MOTION FOR SUMMARY JUDGEMENT

CLAIMS UPON WHICH JUDGEMENT IS SOUGHT

A. Petitioner is entitled to Summary Judgement on Claim 1: Removal of Cannabis from Schedule 1 of the Controlled Substances Act (CSA).

The facts of the case prove that Cannabis does not meet the legal definition of a Schedule 1 drug because Cannabis has "accepted medical use in the United States". Petitioner argues that Cannabis now has "accepted medical use" not only "in the United States", but "by the United States", in accordance with International Law ((Commission on Narcotic Drugs Reconvened sixty-third session Vienna, 2–4 December 2020. Statements following the voting on the WHO scheduling recommendations on cannabis and cannabis-related substances, https://www.unodc.org/documents/commissions/CND/CND_Sessions/CND_63Reconvened/ECN72020_CRP24_V2007524.pdf) p12). Therefore Cannabis must be immediately removed from Schedule 1 of the CSA and placed into Schedule 2.

On December 2, 2020 the United States voted, along with the majority of other Countries in the United Nations, to accept the medical use of Cannabis, and remove it from the most restrictive category of the Single Convention Treaty,

(Commission on Narcotic Drugs Reconvened sixty-third session Vienna, 2–4 December 2020, https:// www.unodc.org/documents/commissions/CND/ CND_Sessions/ CND_63Reconvened/statements/02Dec_partI/USA.pdf). In voting to support this measure, the United States noted that in recent years, well controlled clinical trials have identified legitimate medical use of cannabis preparations, stating that "the legitimate use of a Cannabis preparation has been established through scientific research, and Cannabis no longer meets the criterion for placement in Schedule IV of the Single Convention". Therefore, now that the United States has officially accepted the medical use of Cannabis, under both International Law and the Laws of the United States, Cannabis can no longer legally remain in Schedule 1 of the CSA. Cannabis must immediately be moved to Schedule 2 of the CSA until a full review of its safety and efficacy can be conducted to determine which Schedule of the CSA Cannabis may legally be placed, or if it should be exempted from control under the CSA entirely.

DEA has acknowledged that it need not consider either the safety, efficacy or abuse potential of Cannabis in maintaining its placement in Schedule 1 of the CSA. DEA claims they need not defer to States recognition that Cannabis has medical value. They have determined that they need not defer to the expert opinions of the National Academy of Sciences or the National Institutes of Health. When DEA has been forced to request FDA review of Medical Cannabis, they have set

unreasonable, arbitrary and capricious standards of review in order to tamper with FDA testimony to ensure DEA's predetermined outcome. They have prohibited any testimony from experts in the field of Medical Cannabis. DEA has refused to hear from the thousands of Medical Providers who use Cannabis to help save the lives of their patients. They have refused to hear the testimony of any of the millions of Americans who use Cannabis to help alleviate their suffering. They refuse to acknowledge that Cannabis has "accepted medical use in the United States" and as a means of ensuring this goal they actively engage in witness tampering to prevent any "legal" evidence to support medical use of Cannabis. The DEA simply ignores the "facts" while manipulating the "law" in order to maintain the total prohibition of Cannabis.

DEA has been able to maintain Schedule 1 status of Cannabis without regard to the findings required by [21 U.S.C. 811 (a) or 812 (b)] and without regard to the procedures prescribed by [21 U.S.C 811 (a) and (b)] because they claim Cannabis has no "accepted medical use in the United States". The only determinative factor regarding "accepted medical use" in previous cases has been FDA approval of Medical Cannabis. FDA has now admitted that due to the restrictions put in place by the DEA, FDA is unable to determine if Cannabis has "accepted medical use". Thus, since the only determinative issue in evaluating the present scheduling petition is whether marijuana has a currently accepted medical use in treatment in

the United States. DEA need not consider the findings of sections 811(a) or 812(b) that have no bearing on that final determination, and DEA likewise need not follow the procedures prescribed by sections 811(a) and (b) with respect to such irrelevant findings" Federal Register/Vol. 81, No. 156/ Friday, August 12, 2016, Page 53767-53768. Therefore, FDA approval is not required to determine if Cannabis has "accepted medical use in the United States because the "United States" has officially recognized that Cannabis has accepted medical use under International Law. DEA has long argued that the only condition needed to maintain Cannabis in schedule 1 of the CSA is the lack of "accepted medical use". Cannabis now has accepted medical use by the United States in accordance with International Law and Cannabis must now be removed from schedule 1 of the CSA (Commission on Narcotic Drugs Reconvened sixty-third session Vienna, 2–4 December 2020. Statements following the voting on the WHO scheduling recommendations on cannabis and cannabis-related substances, p12).

B. **Petitioner is entitled to Summary Judgement on Claim 2: Public hearings are required to determine appropriate placement of cannabis within the CSA or to determine if it should be exempted from control under the CSA like tobacco and alcohol.**

DEA has acknowledged that it need not consider either the safety, efficacy or abuse potential of Cannabis in maintaining its placement in Schedule 1 of the CSA. DEA claims they need not defer to States recognition that Cannabis has medical value. They claim that they need not defer to the expert opinions of the National Academy of Sciences or the National Institutes of Health. When DEA has been forced to request FDA review of Medical Cannabis, they have set unreasonable, arbitrary and capricious standards of review in order to tamper with FDA testimony to ensure DEA's predetermined outcome. They have prohibited any testimony from experts in the field of Medical Cannabis. DEA has refused to hear from the thousands of Medical Providers who use Cannabis to help save the lives of their patients. They have refused to hear the testimony of any of the millions of Americans who use Cannabis to help alleviate their suffering.

In his May 20, 2015 letter to Karen DeSalvo (Acting Assistant Secretary for Health), Stephen Ostroff (Acting Commissioner of Food and Drugs) discusses 5 distinct areas of the federal regulatory system that have blocked efficient and scientifically rigorous research with marijuana and its constituents.

1. DEA has refused registration of additional cultivators of Cannabis for research.

2. PHS review is required for Cannabis research but not for other Schedule 1 substances.

3. DEA review of all research with Schedule 1 substances and registration requirements restrict research.

4. Certain Cannabis constituents have never been properly evaluated by HHS to determine if they should remain in Schedule 1.

5. DOJ/DEA and HHS need to reassess the legal and regulatory framework as applied to 1) assessment of abuse liability and 2) the assessment of currently accepted medical use for drugs that have not been approved by the FDA.

(FDA RECOMMENDATIONS ON THE SCHEDULING OF MARIJUANA UNDER THE CONTROLLED SUBSTANCES ACT (MAY 20,2015) (Exhibit 1)

Karen DeSalvo further substantiated the futility of the administrative process in her June 3, 2015 letter to Chuck Rosenberg, when she stated "Concerns have been raised about whether the existing federal regulatory system is flexible enough to respond to increased interest in research into the potential therapeutic uses of marijuana and marijuana derived drugs." (Federal Register/Vol. 81, No. 156/ Friday, August 12, 2016/Proposed Rules, 53768)

DEA has refused to acknowledge that Cannabis has "accepted medical use in the United States" and as a means of ensuring this goal they have actively engaged

in witness tampering to prevent any "legal" evidence to support medical use of Cannabis. The DEA has simply ignored "facts" while manipulating the "law" in order to maintain the total prohibition of Cannabis. Therefore, DEA must be ordered to initiate a comprehensive public review of Cannabis to determine appropriate placement of cannabis within the CSA or to determine if it should be exempted from control under the CSA like tobacco and alcohol.

CONCLUSION

Because the DEA has never had "facts" on their side, they have instead argued "legal" issues based on 2 main assumptions:

1. Because Cannabis is in the most restrictive status of the Single Convention Treaty it must remain in the most restrictive status of the US Controlled Substances Act. However, Cannabis has now been removed from the most restrictive status of the Single Convention Treaty and the United States formally acknowledged that Cannabis has "accepted medical use".

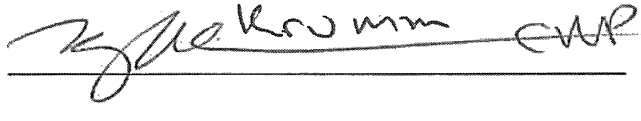
2. Because the FDA has not been able to review phase 3 clinical trials in order to determine if Cannabis has "accepted medical use in the United States" Cannabis remain in Schedule 1 until such research has been conducted. Cannabis now has been accepted as having medical use by the United States in accordance with International Law.

The indisputable evidence indicates that the Petitioner has proven his case against the DEA and is entitled to summary judgment. Because Petitioner has presented indisputable evidence proving that cannabis has "accepted medical use in the United States, and because Cannabis can not remain in schedule 1 of the CSA if it has "accepted medical use in the United States", Cannabis must be immediately removed fro Schedule 1 of the CSA.

Because Petitioner has presented indisputable evidence showing DEA has acted in bad faith in administering the Controlled Substances Act by requiring unreasonable, arbitrary and capricious standards of review by FDA, DEA must be ordered to initiate an unbiased public review of the Medical Use of Cannabis to determine where it is most appropriately placed our if should be exempted from control under the CSA like tobacco and alcohol.

Respectfully Submitted,

February 6, 2023



Rev. Bryan A. Krumm, CNP

CERTIFICATE OF SERVICE

I, Rev. Bryan A. Krumm, CNP,

petitioner

hereby certify that on February 6, 2023

I served a copy of the foregoing Motion for Summary Judgment and Brief in Support of Motion for Summary Judgement

to: Anne Milgram, Director DEA

at Drug Enforcement Administration,

8701 Morrissette Drive, Springfield, VA 22152

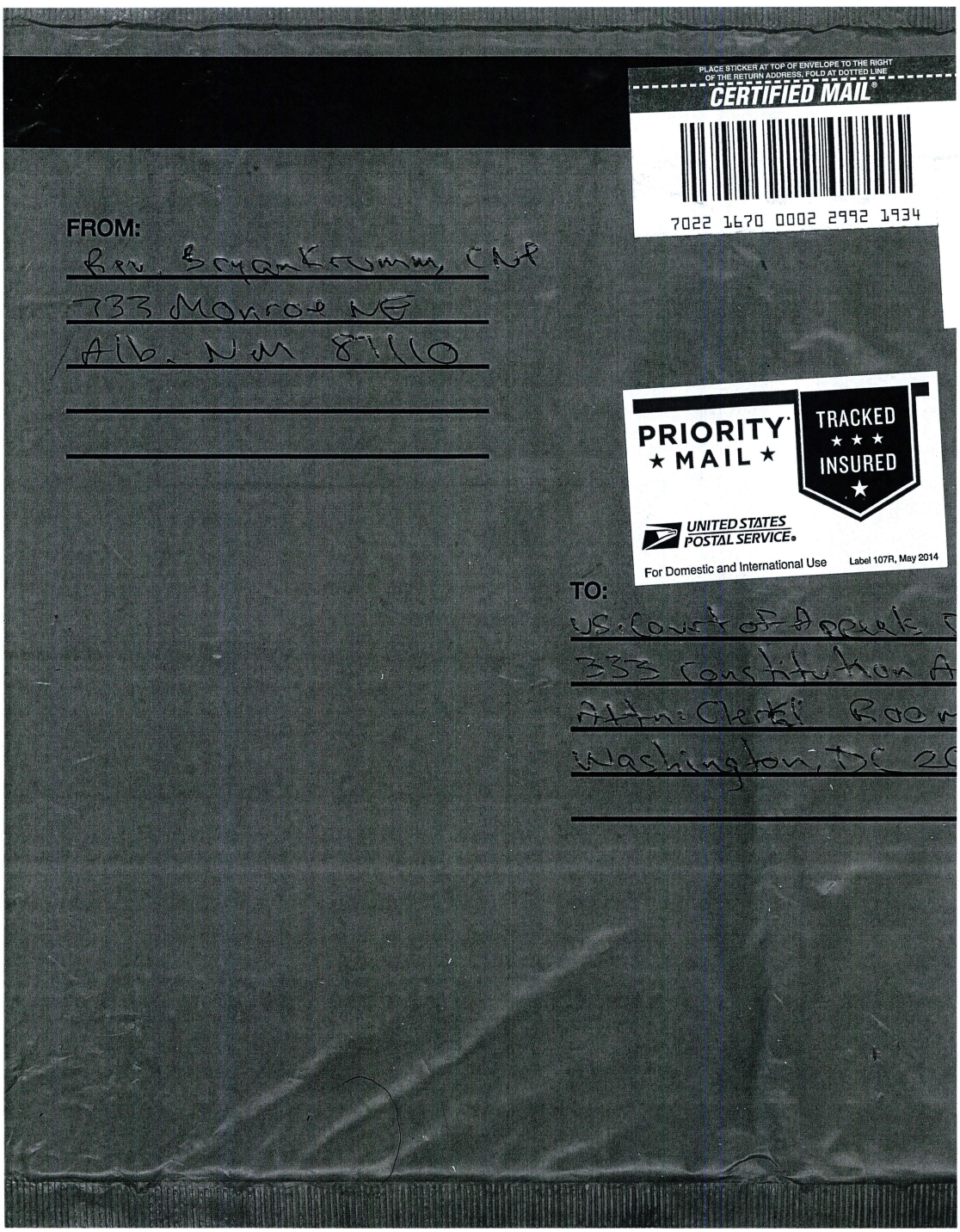
By certified mail

Bryan A Krumm CNP

Signature

2/6/23

Date


PLACE STICKER AT TOP OF ENVELOPE TO THE RIGHT OF THE RETURN ADDRESS. FOLD AT DOTTED LINE
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Rev. Bryan Kemmy, Chf
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