NO. 24-1019

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.

In Petition for Writ of Mandamus to the United States Drug Enforcement Agency to Enforce Requirements of the Controlled Substances Act, 21 U.S.C. 801 et. seq.

MOTION FOR SUMMARY JUDGEMENT

Rev Bryan A. Krumm, CNP
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March 15, 2024

MOTION FOR SUMMARY JUDGEMENT

Petitioner has offered indisputable evidence that the Drug Enforcement Administration (DEA) has failed to comply with the clear statutory language of the Controlled Substances Act, 21 U.S.C. 811, by failing to remove Cannabis from Schedule 1 of the CSA and placing it in Schedule 3, as recommended by Health and Human Services. Petitioner has proven the need for this Court to intervene by issuing a Writ of Mandamus ordering the DEA to comply with the law and place Cannabis into Schedule 3 of the CSA, in order to protect the health, safety and welfare of American Citizens.

The CSA grants the Attorney General the authority to administer its provisions, 21 U.S.C. § 811. The Attorney General has delegated that authority to the DEA Administrator. See 28 C.F.R. § 0.100(b).

21 U.S. Code § 811(b) clearly states that

> "The Attorney General shall, before initiating proceedings under subsection (a) to control a drug or other substance or to remove a drug or other substance entirely from the schedules, and after gathering the necessary data, request from the Secretary a scientific and medical evaluation, and his recommendations, as to whether such drug or other substance should be so controlled or removed as a controlled substance. In making such evaluation and recommendations, the Secretary shall consider the factors listed in paragraphs (2), (3), (6), (7), and (8) of subsection (c) and any scientific or medical considerations involved in paragraphs (1), (4), and (5) of such

> subsection. The recommendations of the Secretary shall include recommendations with respect to the appropriate schedule, if any, under which such drug or other substance should be listed. The evaluation and the recommendations of the Secretary shall be made in writing and submitted to the Attorney General within a reasonable time. The recommendations of the Secretary to the Attorney General shall be binding on the Attorney General as to such scientific and medical matters, and if the Secretary recommends that a drug or other substance not be controlled, the Attorney General shall not control the drug or other substance. If the Attorney General determines that these facts and all other relevant data constitute substantial evidence of potential for abuse such as to warrant control or substantial evidence that the drug or other substance should be removed entirely from the schedules, he shall initiate proceedings for control or removal, as the case may be, under subsection (a)."

Once transmitted, the evaluation and recommendations of HHS are binding on the DEA Administrator with respect to scientific and medical matters, 21 U.S.C. 811(b). The Administrative Procedure Act, 5 U.S.C. 701 et seq. ("APA") requires agencies presented with such petitions to decide the petition "within a reasonable period of time." 5 U.S.C. 555(b). The DEA has now delayed complying with the recommendation of HHS for 6 months, jeopardizing the lives of countless Americans.

Furthermore, Cannabis has now been removed from the most restrictive status of the Single Convention Treaty. The DEA has previously noted that:

> "As the Controlled Substances Act recognizes, the United States is a party to the Single Convention on Narcotic Drugs, 21 U.S.C. 801 (7). Parties to the Single Convention are obligated to maintain various control provisions related to the drugs covered by the treaty. Many of the provisions of the

> CSA were enacted by Congress for the specific purpose of U.S. compliance with the treaty. Among these is a scheduling provision, 21 U.S.C. 811 (d)(1). Section 811 (d)(1) provides that where a drug is subject to control under the Single Convention, the DEA administrator (by delegation from the Attorney General) must "issue an order controlling such drug under the schedule he deems most appropriate to carry out such treaty obligations, 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)]……..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.

On December 2, 2020, the "United States" officially recognized the medical value of Cannabis by declaring that "the legitimate use of a Cannabis preparation has been established through scientific research and declared that Cannabis no longer meets the criterion for placement in Schedule IV of the Single Convention" (Commission on Narcotic Drugs Reconvened sixty-third session, Statements following the voting on the WHO scheduling recommendations on cannabis and cannabis-related substances, id at p12). On December 8, 2020 I filed a Rescheduling petition for Cannabis, because Cannabis had officially been recognized as having medical value by the United States, thus initiating a review by FDA. On August 29, 2023, in accordance with the findings of the FDA, the U.S. Department of Health and Human Services ("HHS") recommended to the

DEA that Cannabis be removed from Schedule 1 of the CSA and placed into schedule 3.

In accordance with the laws of the United States, DEA must remove Cannabis from Schedule 1 of the CSA if it has any accepted medical use in the United States, which it now has. FDA has concluded that Cannabis should be removed from schedule 1 of the CSA and placed into Schedule 3. HHS has forwarded that recommendation to DEA. DEA has failed to comply with the Law by continuing Schedule 1 placement of Cannabis in the CSA after the United States has officially recognized that Cannabis has medical use. "The recommendations of the Secretary to the Attorney General "shall" be binding on the Attorney General as to such scientific and medical matters", 21 U.S.C. 811(b). The CSA does not give the DEA administrator the authority to determine whether or not a drug should be used as medicine. DEA Docket No. 86-22, 57 Fed. Reg. 10,499, 10,506 (March 26, 1992) DEA is openly defying its legal obligation to follow the recommendation of HHS to move Cannabis to Schedule 3, with complete disregard for the health, safety and welfare of American Citizens.

REQUEST FOR RELIEF

Whereas: Writ of Mandamus is necessary in order to protect the health, safety and welfare of American Citizens who are currently being harmed by DEA's failure to fulfill its duties under the CSA, 21 U.S.C. 801 et seq., and

Whereas: Writ of Mandamus is appropriate because DEA is violating both United States and International Law by keeping Cannabis in the most restrictive schedule of the CSA, 21 U.S.C. 801 et seq., and

Whereas: A writ of mandamus is warranted where "(1) no other adequate means exist to attain the relief [the party] desires, (2) the party's right to issuance of the writ is clear and indisputable, and (3) the writ is appropriate under the circumstances." *Hollingsworth v. Perry, 558 U.S. 183, 190 (2010) (quoting Cheney v. United States Dist. Ct., 542 U.S. 367, 380–81 (2004)*) (internal quotation marks and alterations omitted).

Therefore, Petitioner respectfully requests that this Court issue a Writ of Mandamus to the DEA ordering the DEA to immediately remove Cannabis from Schedule 1 of the CSA and place it into Schedule 3. The indisputable evidence indicates that the Petitioner has proven his case against the DEA and this Court

must issue a Writ of Mandamus in order to protect the Health, Safety and Welfare of the American People. Because Petitioner has presented indisputable evidence proving that cannabis has "accepted medical use in the United States; and because FDA and HHS have recommended that Cannabis be placed in Schedule 3 of the CSA; and because DEA has waited 6 months without acting on the recommendation of FDA and HHS; and because DEA has history of unreasonable delays which have lasted many years before they have acted on previous rescheduling petitions, Cannabis must be immediately removed from Schedule 1 of the CSA and moved to Schedule 3.

Respectfully Submitted,

March 15, 2024

Rev. Bryan A. Krumm, CNP

CERTIFICATE OF SERVICE

I, Rev. Bryan A. Krumm, CNP, Petitioner

hereby certify that on March 15, 2024

I served a copy of the foregoing Motion for Summary Judgement to:

Anne Milgram, Director,

Drug Enforcement Administration,

8701 Morrissette Drive

Springfield, VA 22152

Mark B Stern, Appellate Litigation Counsel

and

Daniel J Aguilar, Trial Attorney

US Attorney's Office

601 D Street, NW

Washington, DC 20579

By certified mail

Bryan A Krumm CNP

Signature

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