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CLERK

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF SOUTH DAKOTA

WESTERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ALEXANDER "ALEX" WHITE PLUME, PERCY WHITE PLUME, and their agents, servants, assigns, attorneys, and all others acting in concert with them,

Defendants.

CIV 02-5071

GOVERNMENT'S MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR TEMPORARY RESTRAINING ORDER AND MOTION FOR PRELIMINARY INJUNCTION

Comes now the United States of America, by and through its attorneys, and provides the Court with this Memorandum of Law in Support of the United States' Motion for Temporary Restraining Order and Motion For Preliminary Injunction pursuant to 21 U.S.C. § 882(a) and Federal Rule of Civil Procedure 65(a) & (b).

PRELIMINARY STATEMENT

Marijuana is a Schedule I controlled substance. 21 U.S.C. § 812 Schedule I (c)(10). Congress determined that it is unlawful for any person to manufacture, distribute, or possess marijuana, to possess the substance with the intent to manufacture or distribute it, or to conspire to accomplish any of these objectives, except as otherwise authorized by the Controlled Substances Act ("the Act"). 21 U.S.C. §§ 841(a)(1), 844, 846. Congress has further determined that it is unlawful

to open or maintain any place for the purpose of manufacturing or distributing marijuana. 21 U.S.C. § 856(a)(1). Congress defines "manufacture" as "the production, preparation, propagation, compounding, or processing of a drug or other substance[.]" 21 U.S.C. § 802(15). Congress defines "production" as including "the manufacture, planting, cultivation, growing, or harvesting of a controlled substance." 21 U.S.C. § 802(22). The provisions of the Act are general federal laws concerning the manufacture, possession and distribution of controlled substances which apply on the Pine Ridge Indian Reservation with the same force as the laws apply elsewhere. United States v. Blue, 772 F.2d 383, 385 (8th Cir. 1983).

Defendants are not complying with these provisions of federal law. Since May 2000, and continuing to the present, defendants Alexander "Alex" White Plume and Percy White Plume have been cultivating marijuana, possessing marijuana with the intent to cultivate and distribute the controlled substance, maintaining a place for the cultivation and distribution of marijuana, and conspiring to accomplish these objectives in open defiance of federal law. In light of this recurring pattern of unlawful behavior, a very strong likelihood exists that such unlawful behavior will continue into the future.

Defendants announced publicly their recent harvest of a 3.5-acre crop of cultivated marijuana and their intention to distribute the cultivated marijuana by sale to Madison Hemp & Flax Company of Lexington, Kentucky, on or before Wednesday, August 14, 2002. Affidavit of J.C. Salley, ¶ 28, Ex. 24. Defendants further invited the public to attend a symbolic harvest of a small cultivated marijuana plot and a harvest celebration, also scheduled for August 14, 2002. Id., Ex. 24.

These planned activities of the defendants, if carried out, will directly contravene the proscriptions of the Act. Accordingly, pursuant to 21 U.S.C. § 882(a), the United States moves for

a Temporary Restraining Order and for a Preliminary Injunction to enjoin defendants from committing these violations of the Act and any future violations of the Act.

STATUTORY AND REGULATORY BACKGROUND

Congress passed the Controlled Substances Act as part of the Comprehensive Drug Abuse Prevention and Control Act of 1970, Pub. L. No. 91-513, 84 Stat. 1236. Congress found that "[t]he illegal importation, manufacture, distribution, and possession and improper use of controlled substances have a substantial and detrimental effect on the health and general welfare of the American people." 21 U.S.C. § 801(2). In particular, Congress made the following express findings:

> (3) A major portion of the traffic in controlled substances flows through interstate and foreign commerce. Incidents of the traffic which are not an integral part of the interstate or foreign flow, such as manufacture, local distribution, and possession, nonetheless have a substantial and direct effect upon interstate commerce because--
>
> > (A) after manufacture, many controlled substances are transported in interstate commerce,
> >
> > (B) controlled substances distributed locally usually have been transported in interstate commerce immediately before their distribution, and
> >
> > (C) controlled substances possessed commonly flow through interstate commerce immediately prior to such possession.
>
> (4) Local distribution and possession of controlled substances contribute to swelling the interstate traffic in such substances.
>
> (5) Controlled substances manufactured and distributed intrastate cannot be differentiated from controlled substances manufactured and distributed interstate. Thus, it is not feasible to distinguish, in terms of controls, between controlled substances manufactured and distributed interstate and controlled substances manufactured and distributed intrastate.

(6) Federal control of the intrastate incidents of the traffic in controlled substances is essential to the effective control of the interstate incidents of such traffic.

Id. §801(3)-(6).

Congress established a comprehensive regulatory scheme in which controlled substances are placed in one of five "Schedules" depending on the drugs' potential for abuse, the extent to which they may lead to psychological or physical dependence, and whether they have a currently accepted use in medical treatment in the United States. Id. § 812(b). Congress listed marijuana as a Schedule I controlled substance because the drug has a high potential for abuse, the drug has no currently accepted use in medical treatment in the United States, and there is a lack of accepted safety for use of the drug under medical supervision. 21 U.S.C. § 812(b)(1) & Schedule I (c)(10). Given these characteristics, Congress has mandated that marijuana, a substance listed in Schedule I, is subject to the most stringent regulation. No physician may dispense marijuana to any patient outside of a strictly controlled research project registered with the Drug Enforcement Administration (DEA), and approved by the Secretary of Health and Human Services, acting through the Food and Drug Administration. Id. § 823(f).

Any person who proposes to manufacture or distribute a controlled substance such as marijuana must comply with mandatory registration procedures and requirements administered by the DEA and obtain the agency's approval. See 21 U.S.C. §§ 822, 823, 824, 877 & 21 C.F.R. Part 1301; 63 Fed. Reg. 260-01 (Jan. 5, 1998). The defendants, however, have not complied with the registration requirements. Affidavit of J.C. Salley ¶¶ 15, 17-18.

Congress deems it unlawful to manufacture, possess, or distribute marijuana and to knowingly maintain any place for the purpose of manufacturing, distributing, or using marijuana,

unless express statutory exceptions are met. 21 U.S.C. §§ 841(a)(1), 844, 856(a)(1). Congress deems it unlawful to conspire to violate the Act. Id. § 846. Congress authorizes suits for civil injunctive relief to enjoin violations of the Act. Id. § 882(a).

STATEMENT OF FACTS

On May 11, 1998, the Oglala Sioux Tribal Council voted to meet with the United States Attorney for the District of South Dakota in regard to a proposed tribal ordinance to grow "hemp." Affidavit of J.C. Salley ¶ 3, Ex. 1. On May 18, 1998, the Oglala Sioux Tribal Council sent a letter to the United States Attorney for the District of South Dakota notifying the United States Attorney of the proposed ordinance. Id. On June 23, 1998, following consultation with DEA's Chief Counsel, then United States Attorney Karen E. Schreier advised the President of the Oglala Sioux Tribe by letter of the necessity to obtain DEA registration to grow "hemp." Id. ¶ 4, Ex. 2. The United States Attorney informed the Tribal President in the letter that "[a]ny individual cultivating marihuana or hemp in South Dakota without a valid DEA registration will be subject to criminal prosecution pursuant to 21 U.S.C. § 841(a)." Id. On August 7, 1998, the Oglala Sioux Tribal Council passed an ordinance permitting land use associations to grow "industrial hemp," described as Cannabis Sativa with THC content of 1% or less. Id. ¶ 5, Ex. 3.

In May 2000, Alex White Plume and his family planted marijuana on tribal lands near the White Plume family residences north of Manderson, South Dakota, on the Pine Ridge Indian Reservation. Id. ¶ 6. The field was located on land owned by White Plume and his family, and is legally described as: parcel 6647, located within Range 44 West, Township 38 North, Section 12. The Oglala Sioux Tribe Realty Office lists the owners of the property as: Alex White Plume,

Alexander (Ghost) Bad Bear, Alex Bad Bear, Barbara Bad Bear, Leon A. Ladeaux and Steven L. LaDeaux. Id. ¶ 9.

On July 18, 2000, Bureau of Indian Affairs Criminal Investigator Colin Clark acquired approximately 107 grams of marijuana from Alex White Plume. Id. ¶ 7. This marijuana was taken from plants in White Plume's outdoor grow. Id. The sample was sent on July 20, 2000, to the University of Mississippi Drugs of Abuse Research Program for analysis and was determined to be marijuana. Id., Exs. 4 & 5. During the acquisition of this evidence, Clark took several photographs of White Plume in his marijuana grow. Id., Exs. 6 & 7. As he acquired the marijuana sample from Alex White Plume, Clark discussed the grow with White Plume. White Plume gave Clark a tour of the field where the marijuana was growing and acknowledged that the grow and the field were his. Id.

On July 24, 2000, Sandy Sauser, Secretary of the Slim Butte Land Use Association, wrote a memorandum to the Oglala Tribe Land Committee describing the state of the crops and their location. Id. ¶ 10, Ex. 8.

On August 21, 2000, federal search warrants were obtained for two separate marijuana fields on the Pine Ridge Indian Reservation. One, identified as the "church grow," was located a few miles west of the community of Pine Ridge, and the other was located on White Plume's property as previously described above. Id. ¶ 11. On August 24, 2000, federal officers executed both search warrants. Pursuant to the execution of the search warrants, approximately 2,435 marijuana plants were seized from the marijuana grow west of Pine Ridge, and at least 3,720 marijuana plants were seized from the marijuana grow on White Plume's land. Samples of marijuana from each grow were

submitted to the DEA North Central Laboratory. A forensic chemist determined that the samples were marijuana. Id. ¶ 12, Exs. 9 & 10.

On August 24, 2000, during the execution of the search warrant and the eradication of the marijuana on White Plume's land, both Alex White Plume and his younger brother, Percy White Plume, arrived at the location. Id. ¶ 13. A Deputy United States Marshal initially stopped Alex White Plume. White Plume then spoke with officials of the FBI and DEA. Id. Percy White Plume ran a law enforcement roadblock to get to the marijuana grow, but he was stopped and detained by agents before he actually got into the field. Id. Both Alex White Plume and Percy White Plume were informed of the existence of the search warrant. Id. Officers later served a copy of the search warrant on Alex White Plume at his residence. Id. On October 5, 2000, law enforcement officers destroyed the remaining "bulk" marijuana in accordance with a court Order issued by the United States District Court. Id. ¶ 14, Ex. 11.

On February 16, 2001, employees of the Des Moines, Iowa, DEA office were contacted by attorney Charlie Laman, who stated he represented several Indian tribes, including the Oglala Sioux Tribe. Id. ¶ 15. As part of his legal representation, Laman inquired about obtaining DEA registrations to grow industrial hemp. On February 20, 2001, an application was sent to Laman. As of August 8, 2002, records of the Des Moines, Iowa, DEA office indicated that the application has not been returned to DEA. Id.

In April 2001, Alex White Plume attended a Tribal Council meeting in Manderson, South Dakota. Id. ¶ 16, Ex. 11. During the Tribal Council meeting, Alex White Plume told the Tribal Council that he would grow hemp again that year and he requested protection for his hemp from the

tribal police. Id. White Plume further stated that if the tribal officers would not protect his hemp from the federal government, he and his sons would protect it "the Indian way." Id.

On May 18, 2001, federal law enforcement agents attempted to locate Alex White Plume to talk with him about the 2001 marijuana grow he and his family had planted. Id. ¶17. They did not locate Alex White Plume, but did meet with Percy White Plume. Id. Percy White Plume stated that Alex White Plume was not growing marijuana in 2001 because Alex White Plume stood the possibility of being arrested if he grew again. Id. Percy White Plume further stated he was the one growing marijuana in 2001 instead of Alex White Plume. Id. Percy White Plume inquired about the requirements for obtaining a permit to grow marijuana/hemp. Id. The federal agents told Percy White Plume that there were extensive security requirements and an application/registration process with DEA to become a Schedule I manufacturer, and that the appropriate forms would be sent to him. Id. The agents advised Percy White Plume that growing marijuana under the guise of industrial hemp was illegal and if he grew marijuana he could be prosecuted. Id.

On May 29, 2001, a DEA-225, Application for Registration, was sent to Percy White Plume at his Manderson address. Id. ¶18. As of August 8, 2002, records at the Des Moines, Iowa, DEA office indicated that the application has not been returned to DEA. Id.

On July 27, 2001, Alex White Plume, Percy White Plume, and their attorney, Bruce Ellison, met with representatives of the United States Attorney's Office and the DEA. Id. ¶19. During this meeting, Alex White Plume signed a consent form authorizing DEA to search, seize and destroy any marijuana on White Plume's property. Id., Ex. 12. As part of this agreement, the United States granted Alex White Plume limited use immunity on the condition that Alex White Plume not plant

or cultivate marijuana in the future without the authority of an Order issued by the United States District Court. Id., Ex. 13.

On July 30, 2001, federal law enforcement agents eradicated approximately 3,400 cultivated marijuana plants from the White Plume grow. Id. ¶ 20, Exs. 14, 15, 16, & 17. This grow was adjacent to Percy White Plume's residence. Id. The residence is located northwest of Manderson, South Dakota, and is legally described as: parcel 6645, located within Range 44 West, Township 38 North, Sections 11 and 12. Id. The Oglala Sioux Tribe Realty Office lists the owners of the property as: Percy White Plume, Jr., Alta Lou White Plume, Alexander White Plume (deceased), Wyoma Ureta Smith, Roger Bissonette, Alexander White Plume, Carlene Crazy Thunder, Alex White Plume, Rita Sue White Plume, Sonja Ramona White Plume, Sonya Ramona White Plume, Mildred E. Weasel Alkire and Carla Denise Crazy Thunder. Id.

Samples from the 2001 marijuana grow were forwarded to the DEA Laboratory in Chicago, Illinois. Id. ¶21. The samples were tested and found to be marijuana. Id., Exs. 18 & 19.

Also on July 30, 2001, federal agents eradicated an additional 2,600 volunteer marijuana plants at the site of the previous 2000 Alex White Plume marijuana grow. Id. ¶ 22. Alex White Plume told an FBI Special Agent on July 30, 2001, that he planted the hemp field to support his family and that the 1868 Fort Laramie Treaty allowed him to do so. White Plume further stated it would have cost him $875.00 to obtain a federal permit to grow marijuana and he did not have that kind of money. Id. ¶ 23. Also on July 30, 2001, the FBI Agent observed Alex White Plume being interviewed on Rapid City, South Dakota, KOTA-TV News, concerning the federal government's seizure of his marijuana crop. Id. ¶ 24. White Plume stated during the interview that he could plant, and that he would plant, again the following year. Id. White Plume stated that it was his property

that was destroyed, and he intended to sue the federal government for $1,000.00 for each plant destroyed. Id.

On April 15, 2002, the White Plume family planted marijuana near or in the same area as the 2000 grow. Id. ¶ 25. The White Plume family held a ceremony and invited others to attend and assist in the planting. Id. This event was openly reported in the Rapid City Journal and by at least one local television station. Id., Ex. 20.

On July 8, 2002, federal agents traveled to the same location where Alex White Plume had planted marijuana in 2000. Id. ¶ 26. Upon arriving at the field, the agents observed a "sacred staff" in the field along with several small plots of marijuana. Id. Two of the marijuana plots had garden hoses running to them. Id., Exs. 21, 22 & 23. These garden hoses were part of a water system that utilized a gas powered water pump. Id. There was a hose running from the nearby creek to the water pump. A second hose ran from the water pump to white PVC pipe, which was finally connected to the garden hoses that ran to the marijuana plots. Id. The agents collected plant samples from the marijuana grow and later sent those samples to the DEA Laboratory in Chicago, Illinois. Id. ¶ 27. Analysis revealed the samples were marijuana. Id.

On August 3, 2002, an article appeared in the Rapid City Journal, which quoted Alex White Plume as saying that the 2002 crop had been harvested the previous Monday, July 29, 2002. Id. ¶ 28, Ex. 24. The article also quoted White Plume as claiming that he had a buyer for the crop, Madison Hemp & Flax Company of Lexington, Kentucky, whom he expected would come to South Dakota on August 14, 2002, to pick up the crop. Id. On August 2, 2002, an FBI Agent observed the field, but it did not appear that the crop had been harvested. Id. ¶ 29.

ARGUMENT

THE UNITED STATES IS ENTITLED TO A TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION TO ENJOIN DEFENDANTS' ONGOING VIOLATIONS OF FEDERAL LAW.

Ordinarily, a district court which sits in equity to determine whether injunctive relief is appropriate applies the four factors from Dataphase Sys., Inc. v. C.L. Sys., Inc., 640 F.2d 109, 112 (8th Cir. 1981) (en banc): (1) the threat of irreparable harm to the moving party; (2) the balance between this harm and the injury caused by granting the injunction; (3) the probability that the moving party will succeed on the merits; and (4) the public interest.

A different standard applies in this case, however, where Congress has expressly provided for injunctive relief to prevent violations of the Controlled Substances Act. See 21 U.S.C. § 882(a). The United States, as plaintiff, is not required to demonstrate irreparable harm to secure an injunction. See Burlington Northern Railroad Co. v. Bair, 957 F.2d 599, 601-602 (8th Cir. 1992). This is because "it is not the role of the courts to balance the equities between the parties. The controlling issue is whether Congress has already balanced the equities and has determined that, as a matter of public policy, an injunction should issue where the defendant is engaged in, or is about to engage in, any activity which the statute prohibits. . . . The proper role of the courts is simply to determine whether a violation of the statute has or is about to occur." Id.

The Supreme Court reiterated this well-established rule in United States v. Oakland Cannabis Buyer's Coop., 532 U.S. 483, 497, 121 S. Ct. 1711, 1721 (2001). The Supreme Court observed that a district court sitting in equity may not ignore a judgment of Congress as deliberately expressed in legislation, and the district court may not override a congressional policy choice, articulated in

statute, as to what behavior should be prohibited. Id. In considering a district court's grant of injunctive relief under the Controlled Substances Act, the Supreme Court stated:

> "Once Congress, exercising its delegated powers, has decided the order of priorities in a given area, it is . . . for the courts to enforce them when enforcement is sought." . . . Courts of equity cannot, in their discretion, reject the balance that Congress has struck in a statute. . . . Their choice (unless there is statutory language to the contrary) is simply whether a particular means of enforcing the statute should be chosen over another permissible means; their choice is not whether enforcement is preferable to no enforcement at all. [footnote omitted]. Consequently, WHEN a court of equity exercises its discretion, it may not consider the advantages and disadvantages of nonenforcement of the statute, but only the advantages and disadvantages of "employing the extraordinary remedy of injunction," . . . over the other available methods of enforcement. . . . To the extent the district court considers the public interest and the conveniences of the parties, the court is limited to evaluating how such interest and conveniences are affected by the selection of an injunction over other enforcement mechanisms.

Id. at 497-98, 121 S. Ct. at 1721-22 (emphasis in original).

Because the United States establishes that Congress struck the balance against the manufacture, possession, and distribution of marijuana, this Court may not reject Congress' policy choice. Rather, this Court must consider only whether the injunctive relief requested by the United States is the preferable method of enforcement under the circumstances. Id., 532 U.S. at 497, 121 S. Ct. at 1721. Civil injunctive relief provides a distinct advantage in this case because it permits the Court to enforce federal law and to curtail blatant violation of federal law without subjecting individual defendants to criminal prosecution–the only other enforcement alternative that is available.

As noted, Congress bans the manufacture, possession, and distribution of marijuana in the United States except for tightly controlled exceptions administered by the DEA. "For marijuana . . . there is but one express exception, and it is available only for Government-approved research

projects, § 823(f)." Oakland Cannabis Buyer's Coop., 532 U.S. at 490, 121 S. Ct. at 1717. Even medical necessity is not a defense to the illegal manufacture and distribution of marijuana because Congress did not include such an express exception in the Act. Id. at 494, 121 S. Ct. at 1719.

Similarly, the Act does not include an express exception allowing the cultivation of industrial hemp within the United States. To the contrary, Congress has utilized "absolute language" in § 841(a)(1) to ban completely the manufacture, possession and distribution of marijuana in this country, no matter which form of Cannabis is at issue–sativa, indica or ruderalis. See Oakland Cannabis Buyer's Coop., 532 U.S. at 490, 121 S. Ct. at 1717; United States v. Gavic, 520 F.2d 1346, 1352 (8th Cir. 1975); United States v. Walton, 514 F.2d 201, 203-04 (D.C.Cir. 1975); United States v. Honneus, 508 F.2d 566, 574-76 (1st Cir. 1974); United States v. Proyect, 989 F.2d 84, 87-88 (2nd Cir. 1993); United States v. Moore, 446 F.2d 448, 450 (3rd Cir. 1971); United States v. Sifuentes, 504 F.2d 845, 849 (4th Cir. 1974); United States v. Gaines, 489 F.2d 690, 691 (5th Cir. 1974); United States v. Kelly, 527 F.2d 961, 963 (9th Cir. 1976); United States v. Spann, 515 F.2d 579, 581-82 (10th Cir. 1975).

Congress defines the term "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 such plant, its seeds or resin. Such term does not include the mature stalks of such plant, fiber produced from such stalks, oil or cake made from the seeds of such plant, any other compound, manufacture, salt, derivative, mixture, or preparation of such mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of such plant which is incapable of germination.

21 U.S.C. § 802(16). See Limbach v. Hooven & Allison Co., 466 U.S. 353, 355, 104 S. Ct. 1837 (1984) (noting that hemp fibers may not be grown in the United States but can be imported); New Hampshire Hemp Council, Inc. v. Marshall, 203 F.3d 1, 7 n.6 (1st Cir. 2000).

The broad federal ban on the manufacture and distribution of marijuana embraces the production of Cannabis sativa plants regardless of their intended use. New Hampshire Hemp Council, Inc., 203 F.3d at 6-7. While defendants may assert that they are engaged, not in the production of marijuana, but in the production of industrial hemp which contains low levels of tetrahydrocannabinol (THC), Congress has not drawn any distinction in the Act between psycho-active and non-psycho-active Cannabis sativa plants. See New Hampshire Hemp Council, Inc., 203 F.3d at 6; Spann, 515 F.2d at 583-84; Proyect, 989 F.2d at 88. Moreover, young Cannabis sativa plants with varying psychoactive properties are visually indistinguishable, and consequently, "problems of detection and enforcement easily justify a ban broader than the psychoactive variety of the plant." See New Hampshire Hemp Council, Inc., 203 F.3d at 6.

The federal laws preventing the possession, manufacture and distribution of marijuana apply on the Pine Ridge Indian Reservation. In United States v. Blue, 722 F.2d 383, 386 (8th Cir. 1983), the Eighth Circuit held that, "[i]n limiting tribal punishment powers to relatively mild penalties, Congress must have assumed that Indians on reservations would generally be subject, as all other citizens are, to federal criminal sanctions which apply to all persons[,]" including the ban on the possession, manufacture and distribution of controlled substances found in 21 U.S.C. § 841(a)(1). See also United States v. Wadena, 152 F.3d 831, 839-47 (8th Cir. 1998) (rejecting numerous challenges to convictions obtained under federal criminal statutes of general applicability); Stone v. United States, 506 F.2d 561 (8th Cir. 1974) (holding 18 U.S.C. § 1152 with its exceptions does not

extend or restrict application of general federal criminal statutes to Indian reservations; § 1152 applies only to federal enclave laws and does not encompass federal laws making action criminal wherever committed).

Because Congress clearly has struck the balance against the possession, manufacture and distribution of marijuana, including industrial hemp, in the United States, civil injunctive relief is appropriate and necessary to prevent violations of federal law.

If the requested injunctive relief is not granted and the defendants are permitted to go forward on or before Wednesday, August 14, 2002, with their plans to distribute marijuana that has been illegally manufactured on the Pine Ridge Indian Reservation to Madison Hemp & Flax Company of Lexington, Kentucky, or to any other person or entity, the defendants will expressly violate the balance of equities Congress has already performed as a matter of public policy in adopting the Act. See Bair, 957 F.2d at 601-02. The planned harvesting and distribution of illegally grown marijuana will occur in clear and open violation of the federal drug statutes enacted by Congress. A failure to prevent such a blatant violation of law will allow private individuals to seek personal financial gain at the expense of established public policy, will encourage others to violate the law in similar fashion, and will promote disrespect for federal law enforcement.

The probability is quite high that the United States, as the moving party, will succeed on the merits at the trial of this matter. The public interests in controlling the proliferation of controlled substances and in enforcing public policy as established by Congress in federal statute warrants the grant of the requested injunctive relief. This Court should grant injunctive relief where the United States has shown reasonable cause for the Court to believe that a violation of the Controlled Substances Act has or is about to occur. See Bair, 957 F.2d at 603.

In addition to the Temporary Restraining Order requested, the United States seeks a Preliminary Injunction to enjoin the defendants and all actors working in concert or participation with them from possessing, manufacturing or distributing marijuana, possessing marijuana with the intent to manufacture or distribute, maintaining a place for the manufacture or distribution of marijuana, or conspiring to manufacture, distribute, or possess with intent to manufacture or distribute marijuana in the future.

For all of the reasons stated, the United States respectfully requests that the Court grant the Motion for Temporary Restraining Order, set a date for hearing on the Motion for Preliminary Injunction, and following hearing, grant the Motion for Preliminary Injunction.

Dated this 9 day of August, 2002.

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