UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
NORTHWESTERN DIVISION

David Monson	)	
-and-	)	
Wayne Hauge,	)	**Civil Action**
Plaintiffs,	)	**Complaint for Declaratory Judgment**
v.	)	
Drug Enforcement Administration	)	
-and-	)	
United States Department of Justice,	)	
Defendants.	)	

COMPLAINT

COME NOW the Plaintiffs, David Monson and Wayne Hauge, and as a basis for their Complaint allege as follows:

I. PRELIMINARY STATEMENT

1. This action arises from the imminent plans of the Plaintiffs, two North Dakota farmers, to cultivate industrial hemp at their farms in North Dakota pursuant to licenses authorizing such cultivation, issued by the state Agriculture Commissioner, under North Dakota state law, N.D. Cent. Code § 4-41-02. Industrial hemp is defined to be those varieties of cannabis that have no drug value, cultivated exclusively for fiber and seed.

2. Although useless as drug marijuana, industrial hemp plants are distinct varieties of the same species—Cannabis sativa L.—as marijuana plants. Defendant Drug Enforcement Administration ("DEA") has informed the Plaintiffs that DEA considers industrial hemp plants to be "Marihuana," a controlled substance under Schedule I of the federal Controlled Substances Act, 21 U.S.C. §§ 801 *et seq*., (the "CSA"), the possession or production of which is subject to severe criminal penalties under that law.

3. Therefore, Plaintiffs face the imminent dilemma of refraining from the cultivation of industrial hemp for which they have been duly licensed by the State of North Dakota and which represents a potentially significant business opportunity, or risking serious criminal penalties for violation of the federal CSA.

4. The express language of the CSA has, since 1937, specifically provided that hemp fiber, sterilized seed and seed oil are *exempt* from the definition of "Marihuana" and are thus *not* controlled substances under that law. By virtue of this exclusion, it is currently lawful under federal law—and has been for almost 70 years—to import into the U.S., sell within the U.S., and make and sell products made from, the excluded parts of the Cannabis plant—*i.e*., hemp fiber, stalk, seed and oil.

5. This statutory exclusion has allowed U.S. individuals and businesses to legally purchase, use and trade in sterilized hempseeds, hempseed oil, hempseed cake, hemp fiber and products made therefrom. As set forth in more detail below, hemp products are sold throughout the U.S., Canada, the European Union, Russia, Eastern Europe, Australia and Asia.

6. Plaintiffs desire to cultivate industrial hemp, pursuant to state law, solely in order to sell the exempt parts of the plant—fiber, seed and oil—which would otherwise

be imported from other countries. No part of the plant would leave Plaintiff Monson's farm other than these exempt parts of the plant. No part of the plant would leave Plaintiff Hague's farm other than the exempt parts of the plant and viable industrial hemp seed intended for planting and offered for sale, under state regulation, only to other state-licensed, state-regulated farmers of industrial hemp.

7. Plaintiffs seek a declaration that the CSA does not apply to the industrial hemp plants they seek to cultivate pursuant to state law because, as set forth in more detail below, (i) Congress did not intend to preclude a state regulated regime in which only the non-regulated parts of the plant would enter commerce of any kind, in which the non-regulated parts of the plant are produced exclusively from non-drug industrial hemp varieties of cannabis whose flowers have absolutely no drug value; (ii) Congress did not intend to ban cultivation of industrial hemp where there is no risk of diversion into the market for drug marijuana; and (iii) interpreting the statute as reaching state-regulated intrastate industrial hemp cultivation where the regulated parts of the plant do not enter interstate commerce would result in an unconstitutional exercise of congressional power beyond that authorized by the Commerce Clause of the U.S. Constitution.

II. JURISDICTION AND VENUE

8. By this action, in a case of actual controversy, Plaintiffs seek a declaratory judgment concerning the application of federal law, the Controlled Substances Act, and an injunction against enforcement of the CSA against them on constitutional and other grounds. This action arises under the Constitution and laws of the United States. This court has jurisdiction over this case pursuant to 28 U.S.C. §§ 1331 and 2201.

9. Venue in this District is proper under 28 U.S.C. § 1391(e)(3).

III. PARTIES

10. Plaintiff David Monson is a citizen of the United States and a resident of North Dakota with his principal residence in Osnabrock, North Dakota. He owns a farm near Osnabrock, in Cavalier County, North Dakota, in the northeast corner of the state, a property on which he has farmed for thirty-two years, continuously, with his family. Rep. Monson is a member of the House of Representatives of the North Dakota Legislative Assembly and currently serves as Assistant Majority (Republican) Leader of the House. He served as Superintendent of the Edinburg School, North Dakota, until January 2007, at which time he became the Secondary Principal at the Edinburg School.

11. Plaintiff Wayne Hauge is a citizen of the United States and a resident of North Dakota with his principal residence in Ray, North Dakota, where he operates a farm. He and his family have been engaged in farming since his great-grandfather homesteaded over 100 years ago. He also plants, produces and sells certified malting barley seed and, this year, Eclipse black bean seed.

12. Defendant Drug Enforcement Administration ("DEA") is the agency designated by the Attorney General of the United States to interpret, implement, enforce, and carry out the Attorney General's responsibilities with respect to, the federal Controlled Substances Act, 21 U.S.C. §§ 801 *et seq*. ("CSA").

13. Defendant United States Department of Justice is the agency of the United States, which enforces the CSA.

IV. FACTUAL ALLEGATIONS

A. Nature of and Commercial Market for Industrial Hemp.

14. Industrial hemp is a commonly used term for non-psychoactive, non-drug varieties of the species Cannabis sativa L. that are cultivated for industrial rather than drug purposes. Industrial hemp plants grown in Canada and Europe are bred to contain less than 0.3% and 0.2% by weight of tetrahydrocannabinol ("THC"), the psychoactive element, in the upper portion of the flowering plant, respectively, versus drug marijuana varieties which typically contain 3 to 15% THC in their flowers.

15. Due to minimal THC content, leaves and flowers from industrial hemp have no potential for drug use. Article 28 of the UN Single Convention Treaty on Narcotic Drugs, 1961, signed by the USA in 1968, explicitly states that: "This Convention shall not apply to the cultivation of the cannabis plant exclusively for industrial purposes (fiber and seed) or horticultural purposes."

16. Hemp can be grown as a fiber and/or seed crop. The statutory exclusion of hemp stalk, fiber, sterilized seed, and seed oil from the scope of the CSA has enabled U.S. individuals and businesses to legally import, purchase, use, and trade in sterilized hemp seeds, oil, stalk and fiber, and products made from those exempt parts of the plant. Hemp food, oil and fiber products are available throughout the U.S., Canada, the European Union, Australia, Eastern Europe, Russia and Asia. Industrial hemp is currently cultivated by farmers in more than 30 countries including Canada, England, France, Germany, Hungary, Russia and China.

17. Companies currently selling hemp fiber, seed and oil products in the U.S. generally either import hemp fiber, seed and oil from Canada, Asia or Europe, for use in manufacturing these products in the U.S., or import already finished products from Canada or Europe.

18. Hemp farming has been legal in Canada for approximately ten years. In 2006, more than 48,000 acres of hemp were planted in Canada, most of it in Manitoba and Saskatchewan, provinces that border North Dakota. According to the Canadian Hemp Trade Alliance, an association of businesses, farmers and researchers, farmers in Canada are averaging $250 CDN per acre in profit.

19. According to a study by the U.S. Dept. of Agriculture, "Hemp seeds can be used as a food ingredient or crushed for oil and meal. The seed contains 20 percent high-quality digestible protein, which can be consumed by humans . . . The oil can be used both for human consumption and industrial applications." U.S. Dept. of Agriculture, "Industrial Hemp in the United States: Status and Market Potential" p. 15 (Jan. 2000)("USDA Study"). Hemp seed and oil, along with flax seed, are one of the few significant alternative sources of the omega-3 essential fatty acid ("EFA") found in certain types of fish. The U.S. Food and Drug Administration has cited supportive research showing that consumption of omega-3 may help reduce the risk of coronary heart disease. At the same time, FDA has warned consumers, especially pregnant and nursing women and children, to limit their intake of fish and fish oil supplements due to mercury and other environmental contaminants. Consumption of hemp seed products and supplements has thus increased substantially over the past ten years as consumers seek alternative sources to fish for omega-3.

20. The U.S. market for industrial hemp stalk and fiber, while less developed than that in Europe and China, is still very substantial and would provide U.S. industrial hemp farmers significant business opportunities that are currently enjoyed by Canadian, Asian and European farmers. The use of industrial hemp fiber in the automotive industry as an alternative to fiberglass is well established. There are an estimated 3 million vehicles in North America today that contain interior panels molded from hemp fiber bio-composite material. Johnson Controls, FlexForm, and Composites America are three U.S. companies that use hemp fiber in this way.

21. Worldwide, as fiber raw material markets weather price-hikes and shortages, there is increasing demand for, and interest in developing additional uses for, industrial hemp. A fast growing, high-yielding and mechanically strong plant, industrial hemp is also finding a niche in the plastics and composite, automotive, furniture, building, paper and textile industries.

22. In the largest hemp producing country, China, which grows 2 million acres, hemp hurds are processed into lightweight boards and hemp fibers, already used in the paper and automotive industry, and are finding new uses as reinforcement in plastics for window frames and interior and exterior floor coverings (which will be used on a large scale at the Olympic Games 2008 in Beijing according to news reports). In Europe, Swedish companies IKEA, Volvo and Saab have shown interest in hemp fibers and hurds for vehicle interiors and furniture. In Italy, Germany and the Netherlands, considerable investments are being made to reintroduce hemp fibers to the textile industry to compete with cotton textiles in feel and price. Canadian, German and Japanese businesses are

investigating reinforcing Polylactide (PLA) with hemp fibers to widen the field of applications for the plastic elements.

B. Legal Status of Industrial Hemp.

23. Under the CSA, illegal marijuana does *not* include hemp fiber, seed or oil. The definition of "Marihuana" specifically *excludes* "the mature stalks of such [cannabis] 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…." 21 U.S.C. § 802(16).

24. The express language of the CSA provides that hemp stalk, fiber, oil and sterilized seed are *not* controlled as marijuana. In fact, the express exclusion of hemp stalk, fiber, oil and sterilized seed was adopted by Congress 70 years ago in order to make clear that its intention was only to regulate drug-cannabis and that it did not intend to interfere with the legitimate hemp industry.

25. The CSA's predecessor statute with respect to regulation of marijuana was the Marihuana Tax Act of 1937, which set forth a definition of marijuana that the CSA adopted without change. The Marihuana Tax Act specifically differentiated between drug marijuana and industrial hemp through a system under which drug marijuana varieties of cannabis were taxed at a level so high as to effectively prohibit their production, while non-drug industrial hemp cultivation was assessed a minimal tax in order to permit and encourage its production. During World War II, the U.S. War Department maintained a hemp cultivation and processing program called "Hemp for Victory." As a result of the differential tax regime and congressional intent to ban only drug marijuana and not industrial hemp, industrial hemp farming continued well into the

1950's in the U.S., before competition from synthetic fibers and other factors destroyed the industry.

26. Recently, the U.S. Court of Appeals for the Ninth Circuit invalidated U.S. Drug Enforcement Administration regulations, which would have banned the manufacture and sale of edible products, made from imported hemp seed and oil. *Hemp Industries Ass'n v. Drug Enforcement Administration*, 357 F.2d 1012 (9th Cir. 2004). As in the case of poppy seeds commonly consumed on bagels and expressly exempted from the CSA, that come from a non-drug variety of, but the same species as, the opium poppy, the Court affirmed that non-psychoactive hemp seed products do *not* contain any controlled substance as defined by the CSA and that DEA's rule "improperly renders naturally-occurring non-psychoactive hemp illegal for the first time." 357 F.2d at 1017. "The non-psychoactive hemp in Appellants' [edible and personal care] products is derived from the 'mature stalks' or is 'oil and cake made from the seeds' of the Cannabis plant, and therefore fits within the plainly stated exception to the CSA definition of marijuana. … Congress knew what it was doing and its intent to exclude non-psychoactive hemp from regulation is entirely clear." *Id*. at 1018.

27. Thus, it is clear that hemp stalk, fiber, non-viable seed and oil, and products of any and all kinds made from those plant parts, have always been, and remain, entirely lawful under the CSA.

28. At the same time, the industrial hemp plant itself is of the same species—Cannabis sativa L.—as that defined as "Marihuana" under federal law, the CSA.

29. The U.S. manufacturers of products using the exempt parts of the plant are currently supplied by Canadian and European farmers. Allowing U.S. farmers to supply this market would, of course, significantly benefit U.S. agriculture as well as U.S. manufacturers of hemp products.

C. North Dakota Law and Regulations.

30. In 1997, North Dakota enacted House Bill 1305, commissioning a study by the North Dakota State University ("NDSU") Institute for Natural Resources and Economic Development. That study was completed and published in 1998 (Agricultural Economics Report No. 402 (July 23, 1998)("North Dakota Hemp Study"). The North Dakota Hemp Study found that industrial hemp was grown in southeastern North Dakota during the 1940's, and concluded that industrial hemp is a viable alternative rotation crop and that cultivation of industrial hemp would create significant economic and business opportunities for the state's farmers. (North Dakota Hemp Study at 19).

31. In 2005, the state of North Dakota enacted a law permitting a person within the State to plant, grow, harvest, possess, process, sell and buy industrial hemp upon meeting certain requirements and obtaining a license from the Agriculture Commissioner. N.D. Cent. Code. § 4-41-01 (2006). The law defines "industrial hemp" to mean Cannabis sativa L. "having no more than three tenths of one percent tetrahydrocannabinol." *Id*.

32. The state law requires that, in order to obtain a license, a person must submit to the Agriculture Commissioner an application on a form prescribed by the Commissioner, including the legal description of the land area to be used to produce

industrial hemp, and must undergo a criminal background check. *Id*. at § 4-41-02(1). Each license is valid for a period of one year. *Id*.

33. Each licensee is required to file with the Agriculture Commissioner documentation indicating that the seeds planted were certified to produce plants with no more than three tenths of one percent of THC in the dried flowering tops, and must notify the Commissioner of the sale or distribution of any industrial hemp fiber and seed grown by the licensee and the names of the persons to whom the hemp was sold or distributed. *Id*. § 4-41-02(2). The Agriculture Commissioner is required to adopt rules for the testing of industrial hemp plants during growth and for supervision of the crop during its growth and harvest. *Id*. § 4-41-02(3).

34. In December 2006, the Agriculture Commissioner issued regulations to implement the statute. (N.D. Administrative Code Article 7-14.) The Commissioner sought and received comments from DEA in developing the regulations. The regulations require that the applicant list all individuals who will be involved in any manner in handling or producing the industrial hemp; and that the applicant must provide GIS field location information along with an official aerial USDA farm service agency map. N.D. Admin. Code § 7-14-02-02(1)(d) & (e).

35. N.D. Admin. Code. § 7-14-02-04(1) requires that all industrial hemp seed be covered during transport to avoid the inadvertent dissemination of industrial hemp; that all volunteer plants not located in a licensed field be destroyed before reaching the seed producing stage; and that all nonexempt plant material be exported or sold to a DEA registered processor. The state regulations thus ensure that there will not be diversion of any parts of the industrial hemp plant other than those exempt from federal law.

36. In addition, the state regulation provides that "[a]ll licenses granted by the commissioner must be submitted to the United States Drug Enforcement Administration each year for approval" (N.D. Admin. Code § 7-14-02-04(2)) and that "a license issued by the commissioner shall not be effective until the licensee receives a registration from the United States Drug Enforcement Administration to import, produce or process industrial hemp." N.D. Admin. Code § 7-14-02-04(3).

37. On December 26, 2006, Agricultural Commissioner Roger Johnson wrote to DEA requesting the agency waive individual DEA registration for North Dakota-licensed industrial hemp farmers and allow the state of North Dakota to regulate industrial hemp farming within its borders. On February 1, 2007, Joseph T. Rannazzisi, Deputy Assistant Administrator of DEA, Office of Diversion Control, wrote back to the Commissioner Johnson rejecting these requests stating that, "To waive the requirement of registration for manufacturers of marijuana—which is the most widely abused controlled substance in the United States and, as a schedule I controlled substance, is subject to the strictest CSA controls—is untenable." Mr. Rannazzisi further stated, however, "We greatly appreciate that you are continuing to seek DEA's input in addressing these important matters."

D. Plaintiffs' Proposed Cultivation of Industrial Hemp Pursuant to State License.

38. In January 2007, Rep. Monson applied to Commissioner Johnson for a license to cultivate industrial hemp. On February 6, 2007, Commissioner Johnson issued Rep. Monson a license, effective for one year, to cultivate up to 10 acres of industrial hemp on his farm.

39. On January 15, 2007, Mr. Hauge applied to Commissioner Johnson for a license. On February 6, 2007, Commissioner Johnson granted Mr. Hauge a license, effective for one year, to cultivate up to 100 acres of industrial hemp on his farm.

40. Rep. Monson owns a farm near Osnabrock, in Cavalier County, North Dakota, in the northeast corner of the state, a property on which he has farmed for thirty-two years, continuously, with his family.

41. Pursuant to the license issued by Commissioner Johnson, Rep. Monson plans to cultivate 10 acres of industrial hemp on a field, the exact location of which was provided in the license application. Rep. Monson plans to plant 300 pounds of viable hemp seeds in order to produce approximately 2,420,000 industrial hemp plants in the field.

42. Pursuant to the license issued by Commissioner Johnson, Mr. Hauge plans to cultivate 100 acres of industrial hemp on a field, the exact location of which was provided in the license application. Mr. Hauge plans initially to cultivate industrial hemp in order to supply other North Dakota farmers with a domestic source of seed.

43. Under state law, Mr. Hauge will be able to sell his seed only to other state-licensed North Dakota industrial hemp farmers. As noted in paragraph 35, state regulations require that all seed be secured during transport. On information and belief, Commissioner Johnson intends to issue additional regulations providing for cleaning, bagging, tagging and inventory of certified viable seed, and testing of such seed, prior to such seed leaving the farm of a licensee.

44. The initial seed stock to be used by both Plaintiff farmers will come from one or more of four possible sources. First, Plaintiff Monson has applied to DEA for a

registration (license) to import viable seed from Canada. If that registration is granted, Plaintiff Monson will be able to obtain seed from Canada.

45. Second, Plaintiffs may obtain viable seed from Paul Mahlberg, a semi-retired professor in Indiana who has a collection of viable hemp seed in cold storage from his research.

46. Third, North Dakota law authorizes North Dakota State University ("NDSU"), at its main research center, to conduct baseline research regarding industrial hemp, including the collection of feral hemp steed stock and development of appropriate adapted strains of industrial hemp containing less than three tenths of one percent THC in the dried flowering tops. N.D. Century Code § 4-05.1-05. This law also mandates that Commissioner Johnson monitor the collection of feral hemp seed stock and certify appropriate stocks for licensed commercial cultivation. If and to the extent that NDSU has available hemp seed stock and Commissioner Johnson has certified appropriate stocks for commercial cultivation, Plaintiffs would make use of such seed stock.

47. Fourth, in the event that Plaintiff farmers are unable to obtain sufficient seed stock from any of these sources, they would collect feral hemp seed within North Dakota, from areas proximate to their farms; cause it to be tested by a DEA certified laboratory to ensure it meets the requirements of North Dakota law that the seeds would produce plants having no more than three tenths of one percent THC in the dried flowering tops (ND Cent Code §4-41-02(2)); and use only seed meeting that requirement to plant the first crop.

48. After harvesting the industrial hemp plants, each Plaintiff farmer plans to remove the seeds on the premises of his farm.

49. Plaintiff Monson will use a commercial grade oil press on his own premises to press seed into oil, and ship the oil directly to customers.

50. In addition, Plaintiff Monson may sterilize a portion of the harvested and removed seed using an infrared sterilization process (heat), and ship the sterilized seed to commercial seed pressers located in North Dakota and in neighboring states.

51. Plaintiff Hauge plans to clean the removed viable seed on the premises of his farm, using a portable cleaner, and transport the viable seed, after testing by Commissioner Johnson and using secure transport methods approved by Commissioner Johnson, to other farmers in North Dakota who have been licensed to cultivate industrial hemp.

E. DEA License Requirement and Amendment of State Law.

52. Under the CSA, DEA has the authority to issue registrations—in effect, federal licenses—for the manufacture and importation of controlled substances. 21 U.S.C. §§ 822-823. As noted, the regulations issued by Commissioner Johnson required that a state-issued license would not be effective unless and until the state licensee obtained a registration from DEA.

53. On February 12, 2007, both Plaintiff farmers applied to DEA for federal registrations to cultivate industrial hemp. Their applications to DEA for such registrations included the facts set forth in paragraphs 38-47 above.

54. On February 12, 2007, Rep. Monson filed a separate application with DEA for a registration to import viable hemp seed from Canada for the purpose of cultivating industrial hemp on his farm in North Dakota.

55. All of the applications for registration were personally delivered by Commissioner Johnson at a meeting with DEA officials in the Washington, D.C., area on February 12, 2007.

56. Rep. Monson indicated in his application for a registration to manufacture that in order to utilize his state-issued license, he would need to complete planting by approximately the end of May 2007, and in order to obtain the seed stock and prepare for planting he would need to have the DEA issue the registrations no later than April 1, 2007.

57. On March 5, 2007, Commissioner Johnson wrote a letter to DEA Deputy Assistant Administrator Rannazzisi requesting, among other things, that DEA issue by April 1, 2007, a final decision on the applications, for the same reasons set forth in Rep. Monson's application.

58. On March 27, 2007, DEA Deputy Assistant Administrator Rannazzisi wrote a letter to Commissioner Johnson indicating, "it would be unrealistic (and unprecedented) to expect DEA to make a final decision on any application to manufacture any controlled substance within the timeframe you suggest—approximately seven weeks."

59. DEA's March 27, 2007, letter indicated that it would require considerably more time to consider the federal registration applications, in particular, in order to "conduct an on-site investigation of the premises to … ensure that there are adequate safeguards against diversion." DEA's letter further revealed that DEA did not intend to account for the non-drug nature of industrial hemp cultivation, and suggested that there would be need for severe security measures given that "the substance at issue is

marijuana—the most widely abused controlled substance in the United States," and that the two farmers are seeking "to grow marijuana on a larger scale than any DEA registrant has ever been authorized to undertake."

60. On June 1, 2007, DEA published in the Federal Register the required notification, to other applicants and registrants, that Plaintiffs had filed their applications. (DEA, Manufacturer of Controlled Substances Notice of Application, 72 *Fed. Reg*. 30632 (June 1, 2007)). That this simple first step in processing the application took DEA almost four months after Plaintiffs submitted their applications for registration to DEA, despite Plaintiffs' request to expedite the processing of their applications in order to prepare for Spring 2007 planting, is indicative of DEA's unwillingness to process such registration applications in any reasonable period of time.

61. By way of further example, in 1998—approximately nine years ago—North Dakota State University applied to DEA for a registration to plant a test plot of industrial hemp for research purposes, which the University was directed to do by a state law enacted that year. N.D. Cent. Code § 4-05.1-05. On information, the University has never received from DEA, to this day, any decision on its application.

62. On information and belief, DEA would in fact not act on the two Plaintiff farmers' applications, ever. Even in the highly unlikely event that DEA ever made a decision on those applications, the decision would be a foregone conclusion: DEA has clearly indicated that it would treat Plaintiffs' non-drug state-licensed and regulated industrial hemp cultivation as the manufacture of a substance controlled under Schedule I of the CSA and would never authorize such production.

63. After DEA's March 27, 2007, letter was brought to the attention of the North Dakota Legislative Assembly, the Legislative Assembly amended the state law, on April 27, 2007, to provide that, "A license required by this section is not conditioned on or subject to review of or approval by the United States Drug Enforcement Agency." N.D. Cent. Code § 4-41-02 as amended by House Bill 1020, to repeal Commissioner Johnson' regulations (N.D. Admin. Code § 7-14-02-04(2) & (3)) which had required that a license (registration) be issued by DEA.

64. Thus the state licenses issued to the Plaintiff farmers by Commissioner Johnson are legally effective now, under state law, and do not require, as a condition for such effectiveness, the issuance of any registration by DEA.

COUNT I: DECLARATORY JUDGMENT

65. The allegations of paragraphs 1 through 64 are re-alleged and incorporated by reference as if fully set forth herein.

66. Based on DEA's statement in its March 27, 2007, letter to Commissioner Johnson that Plaintiff farmers are seeking "to grow marijuana," the Plaintiffs face the risk of immediate criminal prosecution under the CSA, by Defendants DEA and USDOJ, if they proceed to cultivate industrial hemp under the licenses issued by Commissioner Johnson pursuant to North Dakota state law.

67. The Plaintiff farmers will obtain viable seed from the sources described in paragraphs 44-47 above, each of which sources is (i) pursuant to DEA import license (registration to import from Canada); or (ii) is not a source implicating interstate commerce; or (iii) is not a source of seed for plants that can in any way enter the stream of commerce for drug marijuana.

68. Further, following harvest, no controlled substance of any kind will leave the farm of Plaintiff Monson: the only products that will leave his farm are sterilized seed and oil, both of which are specifically exempted from the definition of "Marihuana" under the CSA, as discussed above.

69. The viable seed that will leave Plaintiff Hauge's farm will not enter interstate commerce (because it can be sold only to other state-licensed North Dakota industrial hemp farmers) and will in any event have no use in or conceivable effect on either intrastate or interstate commerce in drug marijuana.

70. The CSA does not prohibit the Plaintiffs' planned cultivation of industrial hemp on their farms in North Dakota because Congress's own findings in the CSA, read together with the legislative history of the Act, suggest that Congress did not intend to preclude a state regulated regime in which only the non-regulated parts of the plant would enter commerce at all and there is absolutely no risk of diversion of drug marijuana by reason of the cultivation of the hemp plants themselves, which are useless as drug marijuana and the mere cultivation of which cannot in any way affect commerce, whether intrastate or interstate, in drug marijuana.

71. The CSA does not prohibit the Plaintiffs' planned cultivation of industrial hemp on their farms in North Dakota because Congress could not, in the absence of any risk of diversion, logically have intended to allow someone in Canada to grow Cannabis and export the non-regulated parts of the plant into North Dakota but *not* allow someone in North Dakota to grow a form of Cannabis useless as drug marijuana and sell or distribute the same non-regulated parts of the plant in the same state, North Dakota. And since Congress would not have logically intended to prohibit such sale or distribution, it

could not logically have intended to prohibit intrastate commerce in viable hemp planting seed useless for the cultivation of drug marijuana and useful only for cultivation of industrial hemp for processing the non-regulated parts of the plant for commercial use.

72. The CSA cannot be interpreted to prohibit the Plaintiffs' planned cultivation of industrial hemp on their farms in North Dakota because regulation of such cultivation, in the absence of any affect on commerce of any kind in the commodities which Congress has chosen to regulate under the CSA, would exceed congressional power under the Commerce Clause of the U.S. Constitution. Although Congress could regulate interstate commerce, and thus intrastate cultivation and production, of industrial hemp fiber and seed products, Congress has chosen not to do so. By applying the CSA to the Plaintiffs' proposed cultivation of industrial hemp, DEA would be extending its authority under the CSA into areas of interstate commerce Congress has expressly chosen not to regulate under the CSA. In-state industrial hemp plants themselves are in no way fungible with drug marijuana, whether moving in intrastate or interstate commerce, as no part of the industrial hemp plant has utility as a drug. The regulated parts of industrial hemp plants could not possibly be diverted into and "swell" or increase the supply of drug marijuana. Therefore, there is no potential for any effect on interstate commerce in drug marijuana. Intrastate cultivation of industrial hemp thus has no connection or effect whatsoever on the interstate commerce in drug marijuana that Congress has determined to regulate.

73. There is a substantial controversy between DEA and the Plaintiff farmers of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

74. Inasmuch as they face imminent criminal prosecution if they proceed to cultivate industrial hemp in accordance with their state-issued licenses, Plaintiffs have no adequate remedy at law with respect to the enforcement of the CSA.

WHEREFORE, Plaintiffs pray for:

(1) Issuance of an order and judgment declaring that Plaintiffs' cultivation of industrial hemp pursuant to and in accordance with the licenses issued to Plaintiffs by the North Dakota Agriculture Commissioner does not and will not violate the federal Controlled Substances Act;

(2) Costs and attorneys fees as authorized by law; and

(3) Such other and further relief as the Court deems just and equitable.

Dated this 18th day of June, 2007.

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