

# APPENDIX

24-1720-pr  
*Henderson v. Bondi*

**UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT**

**SUMMARY ORDER**

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT'S LOCAL RULE 32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION "SUMMARY ORDER"). A PARTY CITING A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 10<sup>th</sup> day of April, two thousand twenty-five.

PRESENT:

PIERRE N. LEVAL,  
JOSEPH F. BIANCO,  
WILLIAM J. NARDINI,  
*Circuit Judges.*

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MICHAEL JOSHUA HENDERSON,

*Plaintiff-Appellant,*

v.

24-1720-pr

PAM BONDI, UNITED STATES ATTORNEY GENERAL, DEREK S. MALTZ, ACTING ADMINISTRATOR OF THE DRUG ENFORCEMENT ADMINISTRATION, DR. SARA BRENNER, ACTING COMMISSIONER OF THE FOOD AND DRUG ADMINISTRATION, DANIEL F. MARTUSCELLO, III, COMMISSIONER OF THE DEPARTMENT OF CORRECTIONS AND COMMUNITY SUPERVISION, ANN MARIE SULLIVAN, COMMISSIONER OF THE OFFICE OF MENTAL HEALTH, DANIELLE DILL, EXECUTIVE DIRECTOR OF CENTRAL NEW YORK PSYCHIATRIC CENTER,

*Defendants-Appellees.\**

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FOR PLAINTIFF-APPELLANT:

Michael Joshua Henderson, *pro se*,  
Ossining, New York.

FOR DEFENDANTS-APPELLEES:

No appearance.

Appeal from a judgment of the United States District Court for the Northern District of New York (Mae A. D'Agostino, *Judge*).

**UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that the judgment of the district court, entered on June 4, 2024, is **AFFIRMED**.

Plaintiff-Appellant Michael Joshua Henderson, proceeding *pro se*, brought constitutional claims under 42 U.S.C. § 1983 and *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971) against various state and federal officials. He alleged constitutional violations related to his desire to receive medical marijuana while in the custody of New York State Department of Corrections and Community Supervision ("DOCCS") and challenged the classification of marijuana as a Schedule I drug under the Controlled Substances Act ("CSA"). Shortly after filing his complaint, Henderson moved to proceed *in forma pauperis* ("IFP"), which the district court granted.

The district court *sua sponte* dismissed Henderson's third amended complaint, without prejudice, for failure to state a claim under 28 U.S.C. § 1915(e)(2)(B) and 28 U.S.C. § 1915A(b). *See generally Henderson v. Garland*, No. 24-cv-0228 (MAD) (ML), 2024 WL 3224750 (N.D.N.Y. June 4, 2024). Henderson timely appealed. We assume the parties' familiarity with the underlying

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\* Pursuant to Federal Rule of Appellate Procedure 43(c)(2), the Clerk of Court is respectfully directed to amend the caption as reflected above.

facts, procedural history, and issues on appeal, to which we refer only as necessary to explain our decision to affirm.

We “review *de novo* a district court’s dismissal of complaints under 28 U.S.C. §§ 1915A and 1915(e)(2)(B).” *McEachin v. McGuinnis*, 357 F.3d 197, 200 (2d Cir. 2004). Under Section 1915(e)(2)(B)(ii), an IFP action must be dismissed if the district court determines that it “fails to state a claim on which relief may be granted.” 28 U.S.C. § 1915(e)(2)(B)(ii). Because Henderson “has been *pro se* throughout [these proceedings], his pleadings and other filings are interpreted to raise the strongest claims they suggest.” *Sharikov v. Philips Med. Sys. MR, Inc.*, 103 F.4th 159, 166 (2d Cir. 2024).

As a threshold matter, we agree with the district court that Henderson lacked standing to challenge marijuana’s scheduling under the CSA. In order to have standing, “it must be likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision.” *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 561 (1992) (internal quotation marks and citation omitted). Here, as the district court correctly pointed out, Henderson’s “pleading lacks allegations which plausibly suggest that if the Controlled Substances Act did not exist, DOCCS would allow him to possess and use marijuana.” *Henderson*, 2024 WL 3224750, at \*3. Thus, even assuming *arguendo* that Henderson was able to successfully raise a constitutional challenge to the classification of marijuana as a Schedule I drug under the CSA, “there is no basis for us to conclude that [Henderson] would more likely than not be in any different position than [he is] now.” *Coal. of Watershed Towns v. EPA*, 552 F.3d 216, 218 (2d Cir. 2008).

Moreover, we agree with the district court that Henderson failed to state a claim with respect to his remaining federal causes of action. Henderson did not state a claim under Section 1983 or *Bivens* for violations of the Eighth Amendment, Equal Protection Clause, or Due



Process Clause. “In order to establish an Eighth Amendment claim arising out of inadequate medical care, a prisoner must prove deliberate indifference to his serious medical needs.” *Chance v. Armstrong*, 143 F.3d 698, 702 (2d Cir. 1998) (alterations adopted) (internal quotation marks and citation omitted). Henderson did not sufficiently allege that any “prison official knew of and disregarded [his] serious medical needs.” *Id.* at 703. In addition, Henderson’s “mere disagreement over the proper treatment does not create a constitutional claim.” *Id.* As to his Equal Protection Clause claim, Henderson argues that New York parolees, but not prisoners, were permitted to become certified patients and receive medical marijuana prescriptions under the New York Compassionate Care Act. However, “prisoners either in the aggregate or specified by offense are not a suspect class,” and Henderson has failed to allege that the government lacks a rational basis for this distinction. *Lee v. Governor of State of N.Y.*, 87 F.3d 55, 60 (2d Cir. 1996). Finally, Henderson fails to state a Due Process claim. Although Henderson has a “protected liberty interest in refusing unwanted medical treatment,” *Cruzan by Cruzan v. Dir., Mo. Dep’t of Health*, 497 U.S. 261, 278 (1990), he does not, as noted *supra*, have a constitutional right to the particular medical treatment he desires—namely, to use marijuana while incarcerated.

Finally, the district court did not abuse its discretion by declining to exercise supplemental jurisdiction over Henderson’s state law claims. *Klein & Co. Futures, Inc. v. Bd. of Trade of City of New York*, 464 F.3d 255, 262 (2d Cir. 2006) (“It is well settled that where, as here, the federal claims are eliminated in the early stages of litigation, courts should generally decline to exercise pendent jurisdiction over remaining state law claims.”).

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We have considered Henderson's remaining arguments and conclude they are without merit. Accordingly, we **AFFIRM** the judgment of the district court.

FOR THE COURT:

Catherine O'Hagan Wolfe, Clerk of Court

A circular official seal of the United States Court of Appeals for the Second Circuit is stamped over the signature. The seal contains the text "UNITED STATES", "SECOND CIRCUIT", and "COURT OF APPEALS".

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

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MICHAEL JOSHUA HENDERSON,

Plaintiff,

v.

9:24-CV-0228  
(MAD/ML)

MERRICK B. GARLAND, et al.,

Defendants.

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APPEARANCES:

MICHAEL JOSHUA HENDERSON  
Plaintiff, pro se  
06-A-5461  
Green Haven Correctional Facility  
P.O. Box 4000  
Stormville, NY 12582

MAE A. D'AGOSTINO  
United States District Judge

**DECISION and ORDER**

**I. INTRODUCTION**

Plaintiff Michael Joshua Henderson commenced this action by filing a pro se civil rights complaint pursuant to 42 U.S.C. § 1983 ("Section 1983"), together with an application to proceed in forma pauperis ("IFP"). Dkt. No. 1 ("Compl."); Dkt. No. 4 ("IFP Application").

Thereafter, plaintiff filed, among other things, an amended complaint and a motion to amend the amended complaint, together with a proposed second amended complaint. Dkt. No. 8 ("Am. Compl."); Dkt. No. 12 ("Motion to Amend"); Dkt. No. 12-1 ("Prop. SAC").

By Decision and Order entered on April 10, 2024, the Court granted plaintiff's IFP Application and Motion to Amend, accepted the proposed second amended complaint as the operative pleading, and following review of the second amended complaint in accordance with 28 U.S.C. § 1915(e)(2)(B) and 28 U.S.C. § 1915A(b), dismissed plaintiff's claims related to the Controlled Substances Act pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure for lack of subject matter jurisdiction, dismissed each of plaintiff's remaining Section 1983 claims without prejudice for failure to state a claim upon which relief may be granted, and declined to exercise jurisdiction over his state law claims. Dkt. No. 13 ("April 2024 Order"). In light of plaintiff's pro se status, he was afforded an opportunity to submit an amended complaint. *Id.* at 15-19.

Presently before the Court are the following: (1) plaintiff's third amended complaint, Dkt. No. 16 ("TAC"); and (2) plaintiff's letter request for partial reconsideration of the April 2024 Order, Dkt. No. 17 ("Motion for Reconsideration").

## **II. MOTION FOR RECONSIDERATION**

A court may justifiably reconsider its previous ruling if: (1) there is an intervening change in the controlling law; (2) new evidence not previously available comes to light; or (3) it becomes necessary to remedy a clear error of law or to prevent manifest injustice.

*Delaney v. Selsky*, 899 F. Supp. 923, 925 (N.D.N.Y. 1995) (McAvoy, C.J.) (citing *Doe v. New*

*York City Dep't of Soc. Servs.*, 709 F.2d 782, 789 (2d Cir. 1983)). The standard for granting a motion for reconsideration is strict. *Shrader v. CSX Transportation, Inc.*, 70 F.3d 255, 257 (2d Cir. 1995). A motion for reconsideration "should not be granted where the moving party seeks solely to relitigate an issue already decided." *Id.* Thus, a motion for reconsideration is not to be used for "presenting the case under new theories, securing a rehearing on the merits, or otherwise taking a 'second bite at the apple.'" *Sequa Corp. v. GBJ Corp.*, 156 F.3d 136, 144 (2d Cir. 1998).

Plaintiff does not suggest that there has been an intervening change in the controlling law, nor has he presented new evidence which was not previously available. Therefore, the only basis for reconsideration is to remedy a clear error of law or to prevent manifest injustice.

According to plaintiff, the Court erred in its dismissal of his claims related to the Controlled Substances Act for two reasons. First, plaintiff believes the statute allows for private causes of action. Second, plaintiff "mistakenly and inadvertently excluded" allegations related to his intent to use marijuana, which, if included in the pleading, would have been sufficient to state a cognizable claim. See Motion for Reconsideration.<sup>1</sup>

A motion for reconsideration is not the proper vehicle for rewriting a pleading. Moreover, it is entirely inappropriate to ask this Court to revisit its prior ruling based on factual allegations that were not before it.

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<sup>1</sup> Plaintiff also states that he has included these allegations in his third amended complaint. See Dkt. No. 17.

In other words, even affording plaintiff's motion due consideration in light of his status as a pro se litigant, the Court finds that plaintiff presents no basis for reconsideration of the April 2024 Order. Based upon a review of the relevant law and its application to the facts of this case, the Court concludes that its previous decision was legally correct and did not work a manifest injustice.

Accordingly, plaintiff's motion for partial reconsideration of the April 2024 Order is denied in its entirety.

### **III. SUFFICIENCY OF THE THIRD AMENDED COMPLAINT**

#### **A. The Second Amended Complaint and April 2024 Order**

In his second amended complaint, plaintiff asserted claims against the following individuals based on restrictions imposed by the federal government and the New York State Department of Corrections and Community Supervision ("DOCCS") relative to medical marijuana: (1) DOCCS Commissioner Martuscello; (2) Office of Mental Health ("OMH") Commissioner Sullivan; (3) Central New York Psychiatric Center ("CNYPC") Executive Director Dill; (4) United States Attorney General Merrick Garland; (5) United States Drug Enforcement Administrator Anne Milgram; and (6) United States Food and Drug Administration Commissioner Robert Calif. *See generally* Dkt. No. 14.

The second amended complaint was construed to assert the following Section 1983 claims against the named defendants: (1) First Amendment free speech, free exercise, and retaliation claims; (2) Eighth Amendment medical indifference and failure-to-protect claims;

(3) Fourteenth Amendment due process claims; (4) Fourteenth Amendment equal protection claims; and (5) related state law claims. See April 2024 Order at 8-9.

After reviewing the second complaint pursuant to 28 U.S.C. § 1915(e)(2)(B) and 28 U.S.C. § 1915A(b), the Court dismissed plaintiff's claims related to the Controlled Substances Act pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure for lack of subject matter jurisdiction, dismissed each of his remaining Section 1983 claims without prejudice pursuant to 28 U.S.C. § 1915(e)(2)(B) and 28 U.S.C. § 1915A(b) for failure to state a claim upon which relief may be granted, and declined to exercise jurisdiction over his state law claims. See April 2024 Order at 9-19.

**B. Review of the Third Amended Complaint**

Because plaintiff is proceeding in forma pauperis and is an inmate suing one or more government employees, his third amended complaint must be reviewed in accordance with 28 U.S.C. § 1915(e)(2)(B) and 28 U.S.C. § 1915A(b). The legal standard governing the review of a pleading pursuant to 28 U.S.C. § 1915(e)(2)(B) and 28 U.S.C. § 1915A(b) was discussed at length in the April 2024 Order and it will not be restated in this Decision and Order. See April 2024 Order at 5-7.

As with the second amended complaint, plaintiff's third amended complaint asserts claims based on his inability to access medical marijuana. See *generally*, TAC. Plaintiff's third amended complaint is materially similar to his second amended complaint, except that the pleading names one additional person as a defendant – Department of Health and Human Services Director Xavier Becerra – and includes additional facts related to this official,

plaintiff's past marijuana use, and his intent to use it in the future if allowed, to treat his "conditions." *Id.* While none of plaintiff's new allegations are material to the Court's analysis below, the following relevant facts are set forth as alleged in the third amended complaint.

Marijuana is "readily available throughout DOCCS, the State of New York, and the United States." TAC at 17. On June 25, 2011, plaintiff "tested positive for marijuana" and was sentenced to 30 days of keeplock confinement. *Id.* "Plaintiff intends to use marijuana to treat his conditions, but fears prosecution" from defendants Garland, Milgram, Califf, and Becerra, and further punishment from defendant Martuscello and other DOCCS officials. *Id.*

Plaintiff believes that the restrictions imposed on his ability to access and use marijuana violate his "personal autonomy rights" and "right to control his own body . . . to treat his bodily and mental conditions." TAC at 17. Plaintiff also believes he is a member of an identifiable class for purposes of class action litigation. *Id.*

The Court liberally construes the allegations in the third amended complaint to reassert each of the Section 1983 claims raised in the second complaint, along with additional Fourth and Fourteenth Amendment claims for interference with "personal autonomy" and "bodily privacy[.]"

Plaintiff seeks money damages and declaratory and injunctive relief. TAC at 15-16. For a more complete statement of plaintiff's claims, reference is made to the third amended complaint.



## **C. Analysis**

### **1. Class Action Allegations**

To the extent the third amended complaint includes class action allegations, the Court has yet to receive a proper motion seeking certification of a proposed class of plaintiffs. Furthermore, it is well settled that a class action cannot be maintained by a pro se litigant because non-attorneys may not represent anyone other than themselves. *See, e.g., Miller v. Zerillo*, No. 07-CV-1719, 2007 WL 4898361, at \*1 (E.D.N.Y. Nov. 2, 2007) (citing cases and recommending denial of class certification without prejudice until an attorney makes an appearance); *see also Iannaccone v. Law*, 142 F.3d 553, 558 (2d Cir. 1998); 28 U.S.C. § 1654.

Accordingly, this action shall be considered only as an action brought by plaintiff in his individual capacity.

### **2. Reasserted Section 1983 Claims**

As noted, the third amended complaint is materially similar to the second amended complaint, with limited exception. Accordingly, insofar as the third amended complaint reasserts the same Section 1983 claims that were asserted in the second amended complaint, including against a proposed new defendant, those claims are once again dismissed for the reasons set forth in the April 2024 Order. The Court will add only a few minor points in light of plaintiff's letter request for reconsideration of the Court's dismissal of his claims related to the Controlled Substances Act, and his new allegations regarding access to marijuana and fear of prosecution.

First, insofar as the third amended complaint clarifies plaintiff's position that the Controlled Substances Act infringes on one or more of his constitutional rights and includes new allegations of his intent to use marijuana, the pleading lacks allegations which plausibly suggest that if the Controlled Substances Act did not exist, DOCCS would allow him to possess and use marijuana. Thus, the Court has no basis to plausibly infer, for standing purposes, that a casual connection exists between the Controlled Substances Act and plaintiff's inability to access and use marijuana such that he has a personal stake in challenging the constitutionality of this statute. See, e.g., *Sprint Commc'ns Co. v. APCC Servs., Inc.*, 554 U.S. 269, 273-74 (2008) (noting that Article III standing requires showing "(1) an injury in fact (i.e., a concrete and particularized invasion of a legally protected interest); (2) causation (i.e., a fairly traceable connection between the alleged injury in fact and the alleged conduct of the defendant); and (3) redressability (i.e., it is likely and not merely speculative that the plaintiff's injury will be remedied by the relief plaintiff seeks in bringing suit)" (alterations and internal quotation marks omitted)); *Coal. of Watershed Towns v. U.S. EPA*, 552 F.3d 216, 218 (2d Cir. 2008) (per curiam) (explaining that plaintiffs lacked standing because there was "no basis for [the court] to conclude that [plaintiffs] would more likely than not be in any different position than they are now" if they received a favorable ruling). In addition, the Court is once again unable to plausibly infer from the allegations in plaintiff's pleading that he has a credible fear of prosecution under the Controlled Substances Act if he is found to be in possession of marijuana while in DOCCS' custody, particularly in

light of his allegation that he previously tested positive for marijuana and received, as his only punishment, 30 days of keeplock confinement. See TAC at 17.

Finally, even if the Court were to assume that plaintiff has standing to challenge the constitutionality of the Controlled Substances Act as applied to him, which it does not, as noted in the April 2024 Order, plaintiff does not have a constitutional right to use marijuana in a prison setting, and any restrictions on such use, through enforcement on the Controlled Substances Act or otherwise, are rationally related to legitimate penological interests in security, safety, and maintaining order. See April 2024 Order at 11-14; see also *Florence v. Board of Chosen Freeholders of County of Burlington*, 566 U.S. 318, 332 (2012) (explicitly recognizing that "the use of drugs can embolden inmates in aggression toward officers or each other; and, even apart from their use, the trade in these substances can lead to violent confrontations").

For all of these reasons, plaintiff's Section 1983 claims challenging the constitutionality of the Controlled Substances Act are dismissed. See also *Silva v. Sreedharan*, No. 22-CV-05086, 2022 WL 993645, at \*6 (W.D. Wash. Mar. 15, 2022) ("Plaintiff also sues Merrick Garland on the grounds the 'Controlled Substances Act' is unconstitutional as applied to Plaintiff's request to use marijuana for religious purposes. The allegation is baseless. First the Controlled Substances Act is a statute that the attorney general has obligations to enforce, not a policy or law the attorney general created and can apply or retract at will. Second, Plaintiff is not being prosecuted for violation or attempted violation of the Controlled Substances Act. The Act is thus not being applied to him as he alleges. Third, there is no

basis to conclude the Washington Prison System would provide Plaintiff with marijuana even if the Controlled Substances Act did not exist."), *report and recommendation adopted by* 2022 WL 990553 (W.D. Wash. Mar. 31, 2022), *appeal dismissed*, No. 22-35295, 2022 WL 10447956 (9th Cir. Sept. 17, 2022).

### 3. Newly Asserted Section 1983 Claims

Insofar as the third amended complaint asserts new Section 1983 claims based on allegations that restrictions on plaintiff's access to marijuana violate his privacy and personal autonomy rights, the Court can only plausibly infer from the allegations in the third amended complaint that the restrictions on plaintiff's access to marijuana (and ability to use it) are based on DOCCS regulations prohibiting such access and use. Indeed, by plaintiff's own allegations, he was punished, not criminally charged, as a result of testing positive for marijuana in 2011, while in DOCCS' custody.

Once again, plaintiff does not have a constitutional right to use marijuana, and, in the prison context, there can be no doubt that prohibiting inmates from possessing (and using) marijuana is rationally related to legitimate penological interests in security, safety, and maintaining order. See April 2024 Order at 11-12, 14; *Florence*, 566 U.S. at 332. Thus, whatever limited right plaintiff may possess in bodily autonomy cannot form a basis for invalidating DOCCS regulations that prohibit him from possessing and using marijuana.

Accordingly, plaintiff's newly asserted Fourth and Fourteenth Amendment claims are dismissed pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii) and 28 U.S.C. § 1915A(b)(1) for failure to state a claim upon which relief may be granted.

**IV. CONCLUSION**

**WHEREFORE**, it is hereby

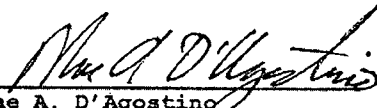
**ORDERED** that plaintiff's motion for partial reconsideration of the April 2024 Order (Dkt. No. 17) is **DENIED** as set forth above; and it is further

**ORDERED** that this action alleging federal claims under Section 1983 is **DISMISSED** without prejudice pursuant to 28 U.S.C. § 1915(e)(2)(B) and 28 U.S.C. § 1915A(b) for failure to state a claim upon which relief may be granted. The Clerk is directed to terminate the defendants and close this case; and it is further

**ORDERED** that the Clerk serve a copy of this Decision and Order on plaintiff.

**IT IS SO ORDERED.**

Dated: June 4, 2024  
Albany, NY

  
Mae A. D'Agostino  
U.S. District Judge

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK**

**JUDGMENT IN A CIVIL CASE**

Michael Joshua Henderson,  
Plaintiff(s)

vs.

CASE NUMBER: 9:24-cv-228 (MAD/ML)

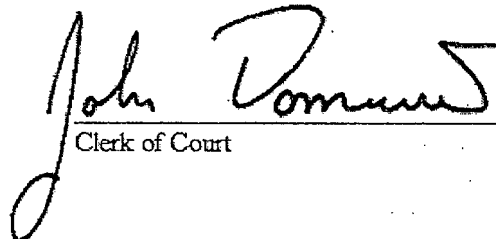
Merrick B. Garland,  
Anne Milgram,  
Dr. Robert Califf,  
Daniel F. Martuscello, III,  
Ann Marie T. Sullivan,  
Danielle Dill,  
Defendant(s)

**Decision by Court.** This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED that this action is dismissed without prejudice pursuant to 28 U.S.C. § 1915(e)(2)(B) and 28 U.S.C. § 1915A(b) for failure to state a claim upon which relief may be granted as directed by the June 4, 2024 Decision and Order of District Judge Mae A. D'Agostino.

All of the above pursuant to the order of the Honorable **Mae A. D'Agostino**, dated this 4<sup>th</sup> day of June, 2024.

DATED: June 4, 2024

  
Clerk of Court

s/Matthew Bartholomew  
Matthew Bartholomew  
Deputy Clerk

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

MICHAEL JOSHUA HENDERSON,

Plaintiff,

v.

COMPLAINT

Case No. \_\_\_\_\_

Jury Demand

☒ Yes

☐ No

MERRICK B. GARLAND, Attorney General of the United States; ANNE MILGRAM, Administrator of the Drug Enforcement Administration; DR. ROBERT CALIFF, Commissioner of the Food and Drug Administration; DANIEL F. MARTUSCELLO III, Commissioner of the Department of Corrections and Community Supervision; ANN MARIE T. SULLIVAN, Commissioner of the Office of Mental Health; and DANIELLE DILL, Executive Director of the Central New York Psychiatric Center.

Defendants.

NOTICE

The public can access electronic court files. For privacy and security reasons, papers filed with the court should therefore **not** contain: an individual's social security number, taxpayer identification number, or birth date; the name of a person known to be a minor; or financial account number. A filing may include only: the last four digits of a social security number or taxpayer-identification number; the year of an individual's birth; a minor's initials; and the last four digits of a financial account number. See Fed. R. Civ. P. 5.2.

I. LEGAL BASIS FOR COMPLAINT

This is a civil action seeking relief and/or damages to defend and protect the rights guaranteed by the Constitution and laws of the United States. Indicate below the federal basis for your claims.

☒ 42 U.S.C. § 1983 (state, county, or municipal defendants)  
☒ Bivens v. Six Unknown Federal Narcotics Agents, 403 U.S. 388 (1971) (federal defendants)  
☐ Other (please specify) \_\_\_\_\_

II. PLAINTIFF(S) INFORMATION

Name: Michael Joshua Henderson  
Prisoner ID #: 06A5461

Place of Detention: Green Haven Correctional Facility  
Address: 594 Rte. 216, P.O. Box 4000  
Stormville, N.Y. 12582-0010

Indicate your confinement status when the alleged wrongdoing occurred:

- ☐ Pretrial detainee
- ☐ Civilly committed detainee
- ☒ Convicted and sentenced state prisoner
- ☐ Convicted and sentenced federal prisoner
- ☐ Immigration

Provide any other names by which you are or have been known and any other identification numbers associated with prior periods of incarceration:

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If there are additional plaintiffs, each person must provide all of the information requested in this section and must sign the complaint; additional sheets of paper may be used and attached to this complaint.

### III. DEFENDANT(S) INFORMATION

- Defendant No. 1: Merrick B. Garland  
Attorney General of the United States  
Department of Justice, 950 Pennsylvania Ave. N.W.,  
Washington, DC 20530-0001
- Defendant No. 2: Anne Milgram  
Administrator of the Drug Enforcement Administration  
8701 Morrisette Dr.  
Springfield, VA 22152-1080
- Defendant No. 3: Dr. Robert Califf  
Commissioner of the Food and Drug Administration  
10903 New Hampshire Ave.  
Silver Spring, MD 20993
- Defendant No. 4: Daniel F. Martuscello III  
Commissioner of the Department of Corrections and  
Community Supervision  
1220 Washington Avenue, Building 2  
Albany, N.Y. 12226
- Defendant No. 5: Ann Marie T. Sullivan  
Commissioner of the Office of Mental Health  
44 holland Avenue  
Albany, N.Y. 12229
- Defendant No. 6: Danielle Dill  
Executive Director of Central New York Psychiatric  
Center  
Old River Rd.  
Marcy, N.Y. 13403



If there are additional defendants, the information requested in this section must be provided for each person; additional sheets of paper may be used and attached to this complaint.

#### IV. STATEMENT OF FACTS

State briefly and concisely the facts supporting your claims. Describe the events in the order they happened. Your statement of facts should include the following:

The date(s) on which the events occurred  
Where these events took place (identify the facility and, if relevant, the specific location in the facility)  
How each defendant was involved in the conduct you are complaining about

If you were physically injured by the alleged misconduct, describe the nature of your injuries and the medical evaluation and treatment you were provided. You need not cite to case law or statutes or provide legal argument in the Statement of Facts. Use additional sheets or paper if necessary.

Plaintiff, who is incarcerated at Green Haven Correctional Facility, in the Department of Corrections and Community Supervision (DOCCS), suffers from "chronic" "back pain" due to an injury he received as a child which resulted in a crushed vertebra, or "Degenerative Lower Lumbar Disc Disease L5-S1"; "Mild Degenerative Lower Lumbar Spondylosis"; and "Mild Anterior Wedge Deformity T12 [crushed] vertebra which by appearance from old trauma.". See Exhibit 1, Medical Records. Plaintiff also suffers from chronic depression, or "Persistent Depressive Disorder" and "Cannabis Use Disorder, Moderate.". See Exhibit 2, Mental Health Records. Plaintiff has anxiety and trouble sleeping, due to his conditions. Plaintiff has tried to treat his back pain, with pain medications, injections and physical therapy. He has tried to treat his chronic depression and anxiety, with medications as well. However, Plaintiff has found that none of them work, or he has experienced side effects from the pain medications and mental health medications. Prior to Plaintiff's incarceration, he has used marijuana, by smoking it and taking it in edible form, to treat his chronic back pain and depression, which he has found helps significantly with his conditions, with no side effects. Plaintiff has found that smoking marijuana is more of a mental high, whereas taking it in edible form is more of a body high.

New York State enacted the Compassionate Care Act (CCA) in the year 2014, under Public Health Law § 3360, which allows a person, like Plaintiff, with a "[s]erious condition", "pain that degrades health and functional capability...", "substance use disorder", "chronic pain", "or as added by the commissioner", to become a certified patient for the use of medical marijuana, and to use medical marijuana to treat his medical and mental health conditions. See Exhibit 3, Public Health Law § 3360. Plaintiff would like to become a certified patient under the Compassionate Care Act of New York State, Public Health Law § 3360, so he can use medical marijuana to treat his medical and mental health conditions. However, Defendants Daniel F. Martuscello III, Commissioner of the Department of Corrections and Community Supervision (DOCCS), Ann Marie T. Sullivan, Commissioner of the Office of Mental Health (OMH) and Danielle Dill, Executive Director of the Central New York Psychiatric

Center (CNYPC), who knew, or reasonable should have known of the CCA and its enactment in the year 2014, have refused to permit Plaintiff to become a certified patient for the use of medical marijuana, and to use medical marijuana to treat his medical and mental health conditions. Defendants have refused to develop and promulgate rules, directives and policies and procedures, that comply with the CCA. Defendant Martuscello III, Commissioner of DOCCS, has enacted directives and policies and procedures, that comply with the CCA, but its only for parolees (See Exhibit 4, Medical Marijuana Use by Parolees), and not incarcerated individuals, which Plaintiff alleges violates equal protection. Whether a person is incarcerated or on parole, they are still under the care, custody and control of DOCCS until their sentence is complete. DOCCS cannot draw a line between parolees and Plaintiff, or other similarly situated parties not before the Court. Defendant's inactions deny not only Plaintiff's rights, but other parties rights, who are similarly situated, but who are not before the Court, under the CCA and the United States Constitution. Defendant's inactions are life threatening to other parties, similarly situated, who are not before the Court, where, for example: if a person who has a life threatening condition under the CCA, finds the only thing keeping his or her condition at bay, is the use of marijuana, but becomes incarcerated in DOCCS or CNYPC, or other psychiatric centers, he or she can no longer use the one thing keeping their condition at bay: marijuana. Defendant's inactions are negligent, has caused Plaintiff past and present pain and suffering, intentional infliction of mental emotional distress, mental, emotional damages, is a deliberate indifference to his medical needs, is denying him the right to chose his own path of medical treatment, violates equal protections, is cruel and unusual punishment and a failure to protect. Plaintiff filed a grievance at Clinton Correctional Facility and fully exhausted his administrative remedies.

Under Federal law and the Controlled Substances Act (CSA), 21 U.S.C. § 812(c), marijuana is a Schedule I controlled substance, and has been that way since October 27, 1970, since the Nixon era, the War on Drugs and Just say No movement. The findings required for a schedule I are as follows: "(1) Schedule I-- (A) The drug or other substance has a high potential for abuse. (B) The drug or other substance has no currently accepted medical use in treatment in the United States. (C) There is a lack of accepted safety for use of the drug or other substance under medical supervision." See 21 U.S.C. § 812(b)(1)(A)(B)(C). However, as we all know, or reasonably should know, in this current time, marijuana does have "currently accepted medical use in treatment in the United States", and "accepted safety for use of the drug or other substance under medical supervision.". In fact, nearly every State, excluding Wyoming, in the United States, the District of Columbia and our Territories, have enacted legislation permitting the use of marijuana for medical and recreational purposes, and those States or Territories who haven't enacted legislation permitting the use of medical marijuana or use of marijuana, has this past year in 2023 and this year 2024, passed, or proposed legislation legalizing the use of marijuana for medical or recreational purposes. The States, the District of Columbia, and Territories, of the United States, who have enacted or proposed legislation legalizing marijuana for medical and recreational purposes, are as follows:

Alabama: "AL ST § 20-2A-2, Medical Use of Cannabis";

Alaska: "AK ST § 17.37.010, Medical Uses of Marijuana";

Arizona: "AZ ST § 36-2801, Arizona Medical Marijuana Act";

Arkansas: "AR CONST Amend. 98, Arkansas Medical Marijuana Amendment of 2016";

California: "CA HLTH & S § 11362.5, Cannabis Medical Use Compassionate Use Act of 1996, CA HLTH & S § 11362.7, Medical Marijuana Program";

Colorado: "CON CONST Art. 18, § 14, Medical Use of Marijuana for Persons Suffering from Debilitating Medical Conditions";

Connecticut: "CT ST § 21a-408, Palliative Use of Marijuana";

Delaware: "DE ST TI 16 § 4902A, The Delaware Medical Marijuana Act";

D.C.: "DC CODE § 7-1671.01, Use of Marijuana for Medical Treatment";

Florida: "FL ST § 381.986, Medical Use of Marijuana";

Georgia: "GA ST § 43-34-120, Use of Marijuana for Treatment of Cancer and Glaucoma";

Hawaii: "HI ST § 329-121, Medical Use of Cannabis";

Idaho: "I.C. § 73-116, Common Law defense of necessity, Proposed or Enacted Legislation: 2023 Idaho House Bill No. 370, Idaho Medical Cannabis Act, introduced March 24, 2023";

Illinois: "IL ST CH 410 § 130, Compassionate Use of Medical Cannabis Program Act";

Indiana: Proposed or Enacted Legislation: "2023 Indiana House Bill No. 1263, Medical Marijuana, introduced January 11, 2023";

Iowa: IA ADC 641-154.1 (124E), Medical Cannabidiol Program, Proposed or Enacted Legislation: 2023 Iowa House File No. 442, A bill for an act relating to marijuana, including the manufacture, delivery, and possession of marijuana, the licensure of retail marijuana, and medical cannabis, providing fees, including penalties, and including effective date provisions";

Kansas: Proposed or Enacted Legislation: 2023 Kansas Senate Bill No. 135, Creating the medical cannabis regulation act to regulate the cultivation, processing, distribution, sale and use of medical cannabis, introduced February 1, 2023";

Kentucky: Proposed or Enacted Legislation: 2024 Kentucky House Bill No. 90, An Act relating to the regulation of cannabis and making appropriations therefor";

Louisiana: "LAR. S. 40:1046, Therapeutic Use of Marijuana";

Maine: "ME ST T. 22 § 2383-B, Authorized possession by individuals, Proposed or Enacted Legislation: 2023 Maine Senate Paper No. 714, An Act to

remove All Marijuana-related Provisions from the Maine Criminal Code and Expunge All Convictions Involving Marijuana; (LD1789), introduced April 25, 2023, Maine Senate Paper No. 734, 2023 ME S.P. 734 (NS), An Act to Create the Maine Medical Cannabis Advisory Commission and Medical Cannabis Alternative Health Board; (LD1819)";

Maryland: "MD CRIM LAW § 5-601, Possession or administering controlled dangerous substance common law defense-medical necessity";

Massachusetts: "MA ST 941, Medical Use of Marijuana";

Michigan:: "MI ST 333.26423, Michigan Medical Marijuana Act";

Minnesota: "MN ST § 152., Drugs; Controlled Substances Therapeutic Research Act; Medical Cannabis";

Mississippi: "MS CONST § 288.1, Medical Marijuana, Proposed or Enacted Legislation: "MS ST § 41-29-139, Prohibited acts and penalties; indictments for trafficking; Mississippi Medical Cannabis Act non-applicable, MS ST § 41-29-136, CBD solution; Harper Grace's Law, '...Affirmative and complete defense' for possession of marijuana";

Missouri: "MO CONST Art. 14, § 1, Right to access medical marijuana";

Montana: "MT ST 50-46-201, Use of Marijuana for Debilitating Medical Conditions", Proposed or Enacted Legislation: "MT ST 16-12-501, Medical Marijuana";

Nebraska: "Affirmative defense to possession of Marijuana, prescribed medical marijuana, NE ST § 28-467, Prosecution for unlawful possession of marijuana; defense, restrictions on certain actions, NE ST § 28-464, Medical Cannabidiol Pilot Study; University of Nebraska and Nebraska Medicine; authority to produce or possess cannabidiol; patient; eligibility, Proposed or Enacted Legislation: 2023 NE L.B. 22 (NS), decriminalize use and possession of marijuana, introduced January 5, 2023, 2023 NE L.B. 634 (NS), Adopt the Cannabis Control Act and the Cannabis Conviction Clean Slate Act";

Nevada: "NV ST T. 40 Chapter 453A., Medical Use of Marijuana, Proposed or Enacted Legislation: 2023 NV A.J.R. 8 (NS), TITLE: Urges the Congress of the United States to deschedule marijuana as a schedule I controlled substance. (BDR R-615)";

New Hampshire: "NH ST § 126-X, Use of Cannabis for Therapeutic Purposes";

New Jersey: "NJ ST 24:61-1m, Short title; Jake Honig Compassionate Use Medical Cannabis Act";

New Mexico: "NM ST § 26-2B-1, Lynn and Erin Compassionate Use Act";

New York: "NY PUB HEALTH § 3360, Compassionate Care Act, Medical Use of Marijuana";

North Carolina: Proposed or Enacted Legislation: "2023 NC S.B. 346 (NS),

Marijuana Justice and reinvestment Act. 'An Act to Legalize and regulate the sale, possession, and use of cannabis in North Carolina'';

North Dakota: "ND ST 19-24.1-01, Medical Marijuana";

Ohio: "OH ST § 3796.01, Medical Marijuana";

Oklahoma: "OK ST T. 63 § 427.2, Medical Marijuana and Patient Protection Act";

Oregon: "OR ADC 333-008-0010, Medical Marijuana, Proposed or Enacted Legislation: 2023 OR H.B. 3567 (NS), Relating to marijuana for medical use; prescribing an effective date";

Pennsylvania: "PA ST 35 P.S. § 10231.102, Medical Marijuana Act";

Rhode Island: "RI ST § 21-28.6-1, The Edward O. Hawkins and Thomas C. Slater Medical Marijuana Act";

South Carolina: "SC ST § 44-53-650, Director to obtain and distribute Marijuana";

South Dakota: "SD CONST Art. 30, Marijuana and Hemp, Proposed or Enacted Legislation: 2024 SD H.B. 1024 (NS), An Act to require that an application for medical marijuana registry identification card include a notice and acknowledgment of federal law regarding firearms and the lawful use of a controlled substance, SD ST § 34-20G-1, Medical Cannabis";

Tennessee: "Admissibility of Evidence, TN ST § 24-7-103, Personal statement regarding use of marijuana made to medical personnel, Proposed or Enacted Legislation: 2023 TN S.B. 1829 (NS), TITLE: Health Care - As introduced, enacts the 'Medical Autonomy Related to Cannabis Act', 2023 TN S.B. 168 (NS), TITLE: Controlled Substances - As introduced, enacts the 'Free All Cannabis for Tennesseans Act'; establishes a regulatory structure for the cultivation, processing, and retail sale of marijuana and marijuana products in this state to be administered by the department of agriculture";

Texas: "TX HEALTH & S § 481.111, Exemptions", Proposed or Enacted Legislation: 2023 TX H.B. 3620 (NS), TITLE: Relating to repealing certain offenses and removing certain regulations relating to marijuana, cannabis, cannabinoids, and paraphernalia, 2023 TX H.B. 1341 (NS), TITLE: Relating to repealing certain offenses and removing certain regulations relating to the cultivation, manufacture, delivery and possession of marihuana and cannabis";

Utah: "UT ST § 4-41a, Cannabis Production Establishments and Pharmacies";

Vermont: "VT ST T. 7 § 831, Cannabis";

Virginia: "VA ST § 18.2-251.1, Possession or distribution of marijuana for medical purposes permitted", Proposed or Enacted Legislation: 2024 VA S.B. 448 (NS), TITLE: Cannabis control; retail market; penalties";

Washington: "WA ST 69.51A.005, Medical Cannabis";

West Virginia: Proposed or Enacted Legislation: 2024 WV H.B. 4747 (NS), TITLE: removing marijuana as a tested substance from screening requirements", "2024 WV H.B. 4873 (NS), TITLE: Relating to legalizing cannabis production, sales and adult consumption";

Wisconsin: Proposed or Enacted Legislation: "2023 WI S.B. 486 (NS), TITLE: legalizing the possession of marijuana; medical marijuana; regulating the production, processing, and sale of marijuana; expunging or redesignating past convictions for marijuana-related crimes; equity grants; making an appropriation; and providing a penalty, introduced October 9, 2023", "2023 WI A.B. 506 (NS), TITLE: legalizing to possession of marijuana; medical marijuana; regulating to production, processing, and sale of marijuana; expunging or redesignating past convictions for marijuana-related crimes; equity grants; making an appropriation; and providing penalty";

Wyoming: No legal marijuana;

Tribal: "FL ST § 385.212, Powers and duties of the Department of Health; Office of Medical Marijuana Use";

Guam: "GU ST T. 10, The Joaquin (KC) Concepcion II Compassionate Use Act of 2013";

Puerto Rico: Proposed or Enacted Legislation: "2021 Puerto Rico Laws Act 15 (H.B. 152) 'Act to Provide for the Safety, Development, and Research of Cannabis for Innovation and the Applicable Rules and Limitations' (MEDICAL CANNABIS ACT)";

Virgin Islands: "VI ST T. 19 § 774a, Medicinal Cannabis"; and

Northern Mariana Islands: "FL ST 385.212, Powers and duties of the Department of Health; Office of Medical Marijuana Use".

United States Congress has even been attempting to pass legislation to legalize marijuana for medical and recreational purposes:

January 19, 2021: "2021 CONG US HR 365, To provide for the rescheduling of marijuana into schedule III of the Controlled Substances Act", January 27, 2023: "2021 CONG US HR 610." Id.;

January 17, 2021: "2021 CONG US HR 394, To prohibit the Secretary of Veterans Affairs from denying a veteran benefits administered by the Secretary by reason of the veteran participating in a State-approved marijuana program, and for other purposes", January 21, 2021: "2021 CONG US HR 430". Id.;

February 4, 2021: "2021 CONG US S 253, To expand research on the cannabidiol and marihuana, and for other purposes", March 25, 2022: "2021 CONG US S 253", July 21, 2022: "2021 CONG US HR 8454", July 26, 2022: "2021 CONG US HR 8454", July 27, 2022: "2021 CONG US HR 8454", and November 16, 2022: "2021 CONG HR 8454". Id.;

March 8, 2021: "2021 CONG US HR 1614, To amend the Immigration and Nationality Act to provide that marijuana use, possession, and distribution may not be considered for determinations of whether a person is a person of good

moral character, and for other purposes.";

March 11, 2021: "2021 CONG US HRES 226, recognizing that the United States has a moral obligation to meet its foundational promise of guaranteed justice for all.";

March 18, 2021: "2021 CONG US HR 2068, To create a safe harbor for insurers engaging in the business of insurance in connection with a cannabis-related legitimate business, and for other purposes", March 18, 2021: "2021 CONG US S 862", April 27, 2023: "2023 CONG US HR 2984", April 27, 2023: "2023 CONG US S 1359";

March 18, 2021: "2021 CONG US HR 1996, To create protections for financial institutions that provide financial services to cannabis-related legitimate businesses and service providers for such businesses, and for other purposes", March 23, 2021: "2021 CONG US S 910", April 19, 2021: "2021 CONG US HR 1996", April 20, 2021: "2021 CONG US HR 1996", April 26, 2023: "2023 CONG US S 1323", April 26, 2023: "2023 CONG US HR 2891", September 20, 2023: "2023 CONG US S 2860", September 28, 2023: "2023 CONG US S 2860";

April 15, 2021: "2021 CONG US HR 2588, To allow veterans to use, possess, or transport medical marijuana and to discuss the use of medical marijuana with a physician of the Department of Veterans Affairs as authorized by a State or Indian Tribe, and for other purposes.", April 15, 2021: "2021 CONG US S 1183"; April 18, 2023: "2023 CONG US HR 2682"; April 19, 2023: "2023 CONG US S 1204". Id.;

April 19, 2021: "2021 US HR 2652, To ensure that certain entrepreneurial development services of the Small Business Administration are made available to cannabis-related legitimate businesses and service providers, and for other purposes.";

April 19, 2021: "2021 CONG HR 2649, To decriminalize cannabis to establish an Equitable Licensing.";

April 20, 2021: "2021 CONG US HR 2712, To ensure that certain loan programs of the Small Business Administration are made available to cannabis-related legitimate businesses and service providers, and for other purposes.", November 17, 2022: "2021 CONG US S 5131.";

April 22, 2021: "2021 CONG US HR 2830, To protect the Second Amendment rights of adults whose use of marijuana is permitted by State or Tribal law.", April 20, 2023: "2023 CONG US HR 2772". Id.;

April 27, 2021: "2021 CONG US S 1380, To require automatic sealing of certain records, and for other purposes."; April 28, 2021: "2021 CONG US HR 2864"; April 27, 2023: "2023 CONG US HR 2930";

April 29, 2021: "2021 CONG US S 1456, To direct the Secretary of Health and Human Services to enter into a 10-year arrangement with the National Academy of Sciences to conduct and update biennially a study on the effects of State legalized marijuana programs, and for other purposes."; May 7, 2021: "2021 CONG US HR 3043". Id.

May 11, 2021: "2021 CONG US HR 3105, To limit the application of Federal laws to the distribution and consumption of marihuana, and other purposes.";

May 13, 2021: "2021 CONG US HR 3212, To provide that an individual who uses marijuana in compliance with State law may not be denied occupancy of federally assisted housing, and for other purposes.";

May 28, 2021: "2021 CONG US HR 3617, To decriminalize and deschedule cannabis, to provide for reinvestment in certain persons adversely impacted by the War on Drugs, to provide for expungement of certain cannabis offenses, and for other purposes."; March 24, 2022: "2021 CONG US HR 3617"; April 1, 2022: "2021 CONG US HR 3617"; April 4, 2022: "2021 CONG US HR 3617"; April 5, 2022: "2021 CONG US HR 3617"; July 21, 2022: "2021 CONG US S 4591"; and September 20, 2023: "2023 CONG US HR 5601". Id.;

May 28, 2021: "2021 CONG US HR 3601, To authorize physicians and other health care providers of the Department of Veterans Affairs to provide information regarding State-approved marijuana programs to veterans, and for other purposes.";

June 10, 2021: "2021 CONG US S 2016, To authorize elements of the Department of Transportation, and for other purposes."; December 17, 2021: "2021 CONG US S 2016";

July 19, 2021: "2021 CONG US HR 4536, To prohibit assistance provided under the program of block grants to States for temporary assistance for ready families from being accessed through the use of an electronic benefit transfer card at any store that offers marijuana for sale.";

October 21, 2021: "2021 CONG US HR 5657, To amend the Controlled Substances Act to make marijuana accessible for use by qualified marijuana researchers for medical purposes, and for other purposes."; April 4, 2022: "2021 CONG US HR 5657"; April 5, 2022: "2021 CONG US HR 5657"; and October 25, 2023: "2023 CONG US HR 6028". Id.;

November 15, 2021: "2021 CONG US HR 5977, To amend the Controlled Substances Act regarding marijuana, and for other purposes."; and October 25, 2023: "2023 CONG US HR 6028". Id.;

December 2, 2021: "2021 CONG US HR 6129, To authorize the Attorney General to make grants to States and units of local government to reduce the financial and administrative burden of expunging convictions for cannabis offenses, and for other purposes."; April 18, 2023: "2023 CONG US HR 2677". Id.;

March 8, 2022: "2021 CONG US HR 6991, To establish the policy of the Department of Veterans Affairs on medicinal cannabis, and for other purposes.";

April 7, 2022: "2021 CONG US HR 7446, To amend the Uniform Code of Military Justice to modify the treatment of certain controlled substance violations, and for other purposes.";

April 14, 2022: "2021 CONG US HR 7513, To establish a Commission on the Federal Regulation of Cannabis to Study a prompt and plausible pathway to the



Federal regulation of cannabis, and for other purposes."; December 1, 2022: "2021 CONG US S 5166"; April 13, 2023: "2023 CONG US HR 2598"; and July 27, 2023: "2023 CONG US S 2650". Id.;

June 23, 2022: "2021 CONG US HR 8200, To amend any applicable Federal law to permit access to community development, small business, minority development, and any other public or private financial capitol sources for investment in and financing of cannabis-related legitimate businesses, and to amend the Securities Exchange Act of 1934 to create a safe harbor for national securities exchanges to list the securities of issuers that are cannabis-related legitimate businesses.";

June 23, 2022: "2021 CONG US HR 8197, To authorize Department of Veterans Affairs health care providers to provide recommendations and opinions to veterans regarding participation in State marijuana programs."; and March 30, 2023: "2023 CONG US HR 2431". Id.;

July 26, 2022: "2021 CONG US S 4622, To establish protections for radio and television stations that provide advertising services to cannabis-related legitimate businesses and service providers for such businesses, and for other purposes.";

July 27, 2022: "2021 CONG US HR 8540, To amend the Public Health Service Act to provide for the designation of institutions of higher education as Centers of Excellence in Cannabis Research, and for other purposes.";

July 28, 2022: "2021 CONG US HR 8557, To amend Federal law to create and expungement mechanism and a process to petition for expungement for low-level violations of the Controlled Substances Act as it relates to marijuana, to Study the impact of expungement issued, and for other purposes.";

September 14, 2022: "2021 CONG US HR 8825, To provide authority for small cultivators of marijuana and small manufacturers of marijuana products to ship marijuana and marijuana products using the mail, and for other purposes.";

November 17, 2022: "2021 CONG US S 5123, To amend the Controlled Substances Act to modify the registration requirements relating to research, and for other purposes.";

December 22, 2022: "2021 CONG US HR 9679, To increase the number of manufacturers registered under the Controlled Substances Act to manufacture cannabis for legitimate research purposes, to authorize health care providers of the Department of Veterans to provide recommendations to veterans regarding participation in federally approved cannabis clinical trials, and for other purposes.";

December 30, 2022: "2021 CONG US HR 9702, To amend the Internal Revenue Code of 1986 to allow deductions and credits relating to expenditures in connection with marijuana sales conducted in compliance with State law."; and April 17, 2023: "2023 CONG US HR 2643". Id.;

January 13, 2023: "2023 CONG US HR 363, To amend title 18, United States Code, with respect to the sale, purchase, shipment, receipt, or possession of a firearm or ammunition by a user of medical marijuana, and for other purposes.";

February 9, 2023: "2023 CONG US S 326, To direct the Secretary of Veterans Affairs to carry out a study and clinical trials on the effects of cannabis on certain health outcomes of veterans with chronic pain and post-traumatic stress disorder, and for other purposes."; February 14, 2023: "2023 CONG US HR 1003"; and March 23, 2023: "2023 CONG US S 326". Id.;

June 5, 2023: "2023 CONG US HR 3829, To streamline the process for institutions of higher education to research marijuana.";

June 15, 2023: "2023 CONG US HRES 519, Recognizing that the United States has a moral obligation to meet its foundational promise of guaranteed justice for all. (2)(A)(iii).";

July 27, 2023: "2023 CONG US HR 5040, To amend the Intelligence Reform and Terrorism Prevention Act of 2004 to limit the consideration of marijuana use when making a security clearance or employment suitability determination, and for other purposes.";

September 1, 2023: "2023 CONG US HR 5323, To amend title 23, United States Code, to establish a natural requirement against the use of marijuana for recreational purposes.";

September 21, 2023: "2023 CONG US S 2909, To provide for congressional review of rules rescheduling marijuana.";

December 7, 2023: "2023 CONG US HR 6673, To amend the Controlled Substances Act to provide for a new rule regarding the application of the Act to marijuana, and for other purposes."; and

January 11, 2024: "2023 CONG HRES 960, Urging action to increase equity within cannabis policy and the legal cannabis marketplace.".

Marijuana now has "currently accepted medical use in treatment in the United States", "accepted safety for use of the drug or other substance under medical supervision" and recreational purposes. To say marijuana has no "currently accepted medical use in treatment in the United States", no "accepted safety for use of the drug or other substance under medical supervision", or no recreational purposes, is overly broad, and violates, not only Plaintiff's rights, but other similarly situated parties not before the Court. The Controlled Substances Act, Schedule I, is also unconstitutional as applied to marijuana. The Defendants Merrick B. Garland, Attorney General of the United States; Anne Milgram, Administrator of the Drug Enforcement Administration; and Dr. Robert Califf, Commissioner of the Food and Drug Administration, who are mentioned within the Controlled Substances Act, knew or reasonable should have known, for the past 15 years or less, that marijuana has accepted medical use in treatment and safety for use of the drug or other substance under medical supervision and recreational purposes, but have refused to decriminalize and deschedule marijuana from a schedule I to a schedule VI or V. Defendants's refusal to decriminalize and deschedule marijuana, has caused Plaintiff, and other similarly situated parties not before the Court, years of past pain and suffering, present pain and suffering, and will cause future pain and suffering. Defendants refusal to decriminalize and deschedule marijuana is negligence, is and intentional infliction of mental emotional distress, has caused mental, emotional damages, is a deliberate indifference to

Plaintiff's medical needs, is denying him the right to chose his own path of medical treatment, violates equal protection, is cruel and unusual punishment and a failure to protect.

Another reason marijuana needs to be legalized for both medical and recreational purposes, throughout our Country, Territories and prison systems, is to help combat against other dangerous, life-threatening drugs, that people use because they can't use marijuana.

#### V. STATEMENT OF CLAIM(S)

State briefly and concisely the constitutional and/or statutory basis for each claim you seek to assert and identify the defendant(s) against whom each claim is asserted. Commonly asserted claims include: excessive force; failure to protect; deliberate indifference to medical needs; unconstitutional conditions of confinement; denial of due process in a disciplinary or other proceeding; denial of equal protection; retaliation for the exercise of a First Amendment right; and interference with exercise of religion. Legal argument and case citations are not required. Use additional sheets of paper if necessary.

##### FIRST CLAIM

The Defendants's Garland's, Milgram's and Califf's, classification of marijuana as a schedule I controlled substance that "...has no accepted medical use in treatment in the United States", "...a lack of accepted safety for use of the drug or other substance under medical supervision", or no recreational purposes, is: (1) so overbroad as to sweep within its prohibitions constitutionally protected conduct, chills protected conduct; and (2) is unconstitutional as applied to marijuana, and violates Plaintiff's rights, and other similarly situated parties's rights, not before the Court, under the First Amendment of the United States; and Defendants's Martuscello III's, Sullivan's and Dill's refusal to develop and promulgate rules, directives and policies and procedures, that comply with the CCA of New York allowing the use of medical marijuana, and for the use of marijuana for recreational purposes, violates Plaintiff's rights, and other similarly situated parties's rights, not before the Court, under the First Amendment of the United States Constitution.

##### SECOND CLAIM

The Defendants's Garland's, Milgram's and Califf's, classification of marijuana as a schedule I controlled substance that "...has no accepted medical use in treatment in the United States", "...a lack of accepted safety for use of the drug or other substance under medical supervision", or no recreational purposes, is: (1) so overbroad as to sweep within its prohibitions constitutionally protected conduct, chills protected conduct; and (2) is unconstitutional as applied to marijuana, and violates Plaintiff's rights, and other similarly situated parties's rights, not before the Court, to remain free of cruel and unusual punishment, a deliberate indifference to his or their medical needs, is a denial of the right to chose his and their own path of medical treatment, and is a failure to protect, under the Eighth Amendment of the United States Constitution. Defendants's Martuscello III's, Sullivan's and Dill's, refusal to develop and promulgate rules, directives and policies and procedures, that comply with the CCA of New York, allowing the use of medical

marijuana, and for the use of marijuana for recreational purposes, violates Plaintiff's rights, and other similarly situated parties's rights, not before the Court, to remain free of cruel and unusual punishment, a deliberate indifference to his or their medical needs, is a denial the right to chose his or their own path of medical treatment and a failure to protect, in violation of the Eighth Amendment of the United States Constitution.

### THIRD CLAIM

Defendants's Garland's, Milgram's and Califf's, classification of marijuana as a schedule I controlled substance that "...has no accepted medical use in treatment in the United States", "...a lack of accepted safety for use of the drug or other substance under medical supervision", or no recreational purposes, is: (1) so overbroad as to sweep within its prohibitions constitutionally protected conduct, chills protected conduct; and (2) is unconstitutional as applied to marijuana, and violates Plaintiff's rights, and other similarly situated parties's rights, not before the Court, under the Due Process, Substantive Due Process and Equal Protection Clauses of the Fifth and Fourteenth Amendments of the United States; and Defendants's Martuscello III's, Sullivan's and Dill's, refusal to develop and promulgate rules, directives and policies and procedures, that comply with the CCA of New York, allowing the use of medical marijuana, and for the use of marijuana for recreational purposes, violates Plaintiff's rights, and other similarly situated parties's rights, not before the Court, under the Due Process, Substantive Due Process and Equal Protection Clauses of the Fifth and Fourteenth Amendments of the United States Constitution.

### FOURTH CLAIM

Defendants's Garland's, Milgram's, Califf's, Martuscello III's, Sullivan's and Dill's, actions or inactions, violate Plaintiff's rights, and other similarly situated parties's rights, not before the Court, under the New York State Compassionate Care Act, Public Health Law § 3360.

### FIFTH CLAIM

Defendants's Garland's, Milgram's, Califf's, Martuscello III's, Sullivan's and Dill's actions or inactions are causing Plaintiff, and other similarly situated parties, not before the Court, mental, emotional damages.

### SIXTH CLAIM

Defendants's Garland's, Milgram's, Califf's, Martuscello III's, Sullivan's and Dill's, actions or inactions are an intentional infliction of mental, emotional distress, upon Plaintiff and other similarly situated parties, not before the Court.

### SEVENTH CLAIM

The Defendants's Garland's, Milgram's, Califf's, Martuscello III's, Sullivan's and Dill's, actions or inactions are negligent, or grossly negligent, and violates the rights of Plaintiff and other similarly situated parties not before the Court.

VI. RELIEF REQUESTED

State briefly what relief you are seeking in this case.

WHEREFORE, Plaintiff respectfully request that this Court grants:

A. Declaratory relief;

B. A preliminary and permanent injunction enjoining the Defendants Garland, Milgram and Califf, from classifying marijuana as a schedule I controlled substance, and to compel them to decriminalize and deschedule marijuana for medical and recreational purposes, allowing Plaintiff and other similarly situated parties not before the Court, to use marijuana for medical and recreational purposes; and a preliminary and permanent injunction enjoining Defendants Martuscello III, Sullivan and Dill, from denying Plaintiff and other similarly situated parties not before the Court, marijuana for medical and recreational purposes, and to compel them to develop and promulgate rules, directives and policies and procedures, that comply with the New York State CCA, allowing for the use of marijuana for medical and recreational purposes;

C. A temporary restraining order enjoining Defendants, Garland, Milgram and Califf, during the pendency of this action, from classifying marijuana as a schedule I controlled substance, and to compel them to decriminalize and deschedule marijuana for medical and recreational purposes; and a temporary restraining order enjoining Defendants Martuscello III, Sullivan and Dill, during the pendency of this action, from denying Plaintiff and other similarly situated parties not before the Court, marijuana for medical and recreational purposes, and to compel them develop and promulgate rules, directives and policies and procedures, that comply with the New York State CCA, allowing for the use of marijuana for medical and recreational purposes;

D. An award of compensatory damages in the amount of \$50,000,000.00 dollars, for past, present and/or future pain and suffering, and mental, emotional damages;

E. An award of punitive damages in the amount of \$50,000,000.00 dollars, for past, present and/or future pain and suffering, and mental, emotional damages;

F. An award of the costs and fees associated with this action; and

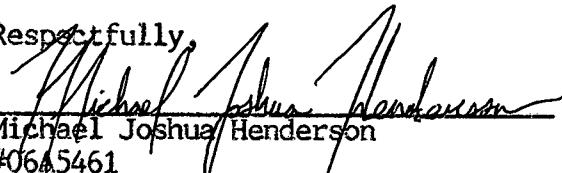
G. An award of attorney fees;

H. Any other further relief as the Court deems just and proper.

I declare under the penalty of perjury pursuant to 28 U.S.C. § 1746, and the laws of the United States, the foregoing is true and correct.

Date: February 9, 2024  
Stormville, New York

Respectfully,

  
Michael Joshua Henderson  
#06A5461

Green Haven Correctional Facility  
594 Rte. 216, P.O. Box 4000  
Stormville, N.Y. 12582-0010

EXHIBIT 1

Name <b>Henderson</b>	DIN <b>06A5461</b>	Date of Birth	Facility Name <b>040</b>
Subjective: <b>STW SC</b> <b>Ilm 40 backpain requesting</b> <b>PRJ. Ilm already scheduled for</b> <b>Objective: PRI NAD</b>		Last Name <b>Henderson</b> DIN <b>06A5461</b> Location Date <b>5/4/18</b> Time <b>0800</b> Provider Orders:	
Assessment:			
Plan:			
Signature/Provider # <b>[Signature]</b> <b>UB7</b>		RN Transcribing Order/Provider #/Date/Time <b>5/4/18</b>	
Subjective: <b>40 mid back pain 20 years</b> <b>H/O MVA 5 yrs inj 18 yrs ago</b> <b>Ab6 to hunch, exercise lift weights</b> <b>Objective: 158/102</b> <b>BP 138/92, healthy, muscular</b> <b>Back - No numb, no spasms, no hernia</b> <b>Assessment: Can sit, stand, walk, on/off side 18</b> <b>independently</b>		Last Name <b>Henderson</b> DIN <b>06A5461</b> Location Date <b>5/29/18</b> Time <b>9:40A</b> Provider Orders: <b>(1) No surgery, B11</b> <b>#60 R5 A</b> <b>(2) AOT CP</b>	
Plan: <b>See Gray 3/30/18, see Cole 10/6/17</b> <b>Charlotte Moore Back pain 2° compression Fr</b> <b>Disused, limited T6 to T12</b>		Signature/Provider # <b>[Signature]</b> <b>UB7</b> RN Transcribing Order/Provider #/Date/Time	
Subjective: <b>The following KOP r</b>		Location were <b>adit name</b> <b>Henderson</b>	
Objective: <b># 138642</b>		DIN <b>06A5461</b> Location <b>R-1-19</b> Date <b>5/30/18</b> Time <b>8P</b> Provider Orders:	
Assessment:			
Plan:			
Assessment: <input type="checkbox"/> Questions regarding medication answered <input checked="" type="checkbox"/> Inmate had no questions			
Signature/Provider # <b>[Signature]</b> <b>AD 433</b>		RN Transcribing Order/Provider #/Date/Time	

Continue entry into next box if necessary.

**EXHIBIT 2**



1. File the original in the patient's case record.
2. Forward the copies to the HIM Dept (dept) or CBO clinical staff for their review.

Date of Birth: [REDACTED]

Unit/Ward#: 718

[illegible]

5/15/18  
6/4/18

**Yellow Copy – Primary Therapist**

EXHIBIT 3

## WESTLAW



## § 3360. Definitions

NY PUB HEALTH § 3360 McKinney's Consolidated Laws of New York Annotated Public Health Law Effective: September 24, 2018 (Approx. 3 pages)

McKinney's Consolidated Laws of New York Annotated  
**Public Health Law** (Refs & Annos)  
 Chapter 45. Of the Consolidated Laws (Refs & Annos)  
 Article 33. Controlled Substances (Refs & Annos)  
 Title V-a. Medical Use of Marihuana



## Proposed Legislation

Effective: September 24, 2018

McKinney's **Public Health Law** § 3360

## § 3360. Definitions

Currentness

&lt;[Expires and deemed repealed July 5, 2021, pursuant to L.2014, c. 90, § 12.]&gt;

As used in this title, the following terms shall have the following meanings, unless the context clearly requires otherwise:

1. "Certified medical use" means the acquisition, possession, use, or, transportation of medical marihuana by a certified patient, or the acquisition, possession, delivery, transportation or administration of medical marihuana by a designated caregiver, for use as part of the treatment of the patient's serious condition, as authorized in a certification under this title including enabling the patient to tolerate treatment for the serious condition. A certified medical use does not include smoking.
2. "Caring for" means treating a patient, in the course of which the practitioner has completed a full assessment of the patient's medical history and current medical condition.
3. "Certified patient" means a patient who is a resident of New York state or receiving care and treatment in New York state as determined by the commissioner in regulation, and is certified under section thirty-three hundred sixty-one of this title.
4. "Certification" means a certification, made under section thirty-three hundred sixty-one of this title.
5. "Designated caregiver" means the individual designated by a certified patient in a registry application. A certified patient may designate up to two designated caregivers.
6. "Public place" means a public place as defined in regulation by the commissioner.
7. (a) "Serious condition" means:
  - (i) having one of the following severe debilitating or life-threatening conditions: cancer, positive status for human immunodeficiency virus or acquired immune deficiency syndrome, amyotrophic lateral sclerosis, Parkinson's disease, multiple sclerosis, damage to the nervous tissue of the spinal cord with objective neurological indication of intractable spasticity, epilepsy, inflammatory bowel disease, neuropathies, Huntington's disease, post-traumatic stress disorder, pain that degrades health and functional capability where the use of medical marihuana is an alternative to opioid use, substance use disorder, or as added by the commissioner; and
  - (ii) any of the following conditions where it is clinically associated with, or a complication of, a condition under this paragraph or its treatment: cachexia or wasting syndrome; severe or chronic pain; severe nausea; seizures; severe or persistent muscle spasms; or such conditions as are added by the commissioner.
- (b) No later than eighteen months from the effective date of this section, the commissioner shall determine whether to add the following serious conditions: Alzheimer's, muscular dystrophy, dystonia, post-traumatic stress disorder and rheumatoid arthritis.

8. "Medical marihuana" means marihuana as defined in subdivision twenty-one of section thirty-three hundred two of this article, intended for a certified medical use, as determined by the commissioner in his or her sole discretion. Any form of medical marihuana not approved by the commissioner is expressly prohibited.

9. "Registered organization" means a registered organization under sections thirty-three hundred sixty-four and thirty-three hundred sixty-five of this title.

10. "Registry application" means an application properly completed and filed with the department by a certified patient under section thirty-three hundred sixty-three of this title.

11. "Registry identification card" means a document that identifies a certified patient or designated caregiver, as provided under section thirty-three hundred sixty-three of this title.

12. "Practitioner" means a practitioner who (i) is a physician licensed by New York state and practicing within the state, (ii) who by training or experience is qualified to treat a serious condition as defined in subdivision seven of this section; and (iii) has completed a two to four hour course as determined by the commissioner in regulation and registered with the department; provided however, a registration shall not be denied without cause. Such course may count toward board certification requirements. The commissioner shall consider the inclusion of nurse practitioners under this title based upon considerations including access and availability. After such consideration the commissioner is authorized to deem nurse practitioners as practitioners under this title.

13. "Terminally ill" means an individual has a medical prognosis that the individual's life expectancy is approximately one year or less if the illness runs its normal course.

14. "Labor peace agreement" means an agreement between an entity and a labor organization that, at a minimum, protects the state's proprietary interests by prohibiting labor organizations and members from engaging in picketing, work stoppages, boycotts, and any other economic interference with the registered organization's business.

15. "Individual dose" means a single measure of raw medical marihuana or non-infused concentrates to be determined and clearly identified by a patient's practitioner for the patient's specific certified condition. For ingestible or sub-lingual medical marihuana products, no individual dose may contain more than ten milligrams of tetrahydrocannabinol.

16. "Form of medical marihuana" means characteristics of the medical marihuana recommended or limited for a particular certified patient, including the method of consumption and any particular strain, variety, and quantity or percentage of marihuana or particular active ingredient.

17. "Applicant" means a for-profit entity or not-for-profit corporation and includes: board members, officers, managers, owners, partners, principal stakeholders and members who submit an application to become a registered organization.

18. "Special certification" means a special certification made under subdivision nine of section thirty-three hundred sixty-one of this title.

#### **Credits**

(Added L.2014, c. 90, § 1, eff. July 5, 2014. Amended L.2015, c. 416, § 2, eff. Nov. 11, 2015; L.2015, c. 417, § 1, eff. Nov. 11, 2015; L.2017, c. 403, § 1, eff. Nov. 11, 2017; L.2018, c. 273, § 1, eff. Sept. 24, 2018.)

#### **Editors' Notes**

#### **HISTORICAL AND STATUTORY NOTES**

##### **L.2018, c. 273 legislation**

Subd. 7, par. (a), subpar. (i). L.2018, c. 273, § 1, inserted "pain that degrades health and functional capability where the use of medical marihuana is an alternative to opioid use, substance use disorder,".

L.2018, c. 273, § 2, provides:

"§ 2. This act shall take effect immediately; provided, however, that the amendments to section 3360 of the public health law, made by section one of this act, shall not affect the repeal of such section and shall be deemed repealed therewith."

##### **L.2017, c. 403 legislation**

Subd. 7, par. (a), subpar. (i). L.2017, c. 403, § 1, inserted "post-traumatic stress disorder," following "Huntington's disease,".

L.2017, c. 403, § 2, provides:

"§ 2. This act shall take effect immediately; provided that the amendments to title 5-A of article 33 of the **public health law** made by section one of this act shall not affect the repeal of such title and shall be deemed repealed therewith."

#### L.2015, c. 417 legislation

Subd. 18. L.2015, c. 417, § 1, substituted "subdivision nine" for "subdivision six".

#### L.2015, c. 416 legislation

Subd. 18. L.2015, c. 416, § 2, added subd. 18.

L.2015, c. 416, §§ 1, 7, provide:

"Section 1. Legislative findings and intent. The Legislature hereby finds and declares it necessary to establish an emergency program to provide appropriate medical marihuana for certain patients whose serious condition is progressive and degenerative or for whom delay in the patient's certified medical use of marihuana poses a serious risk to the patient's life or health, and that emergency action is needed before the full medical marihuana program established under title V-A of article 33 of the **public health law** is implemented, to protect the life and health of these patients."

"§ 7. This act shall take effect immediately, provided however, that the amendments to title 5-A of article 33 of the **public health law** made by sections two through six of this act shall not affect the expiration and repeal of such title and shall expire and be deemed repealed therewith."

#### L.2014, c. 90 legislation

L.2014, c. 90, § 12, provides:

"§ 12. This act shall take effect immediately and shall expire and be deemed repealed seven years after such date [July 5, 2021]; provided that the amendments to section 171-a of the tax law made by section seven of this act shall take effect on the same date and in the same manner as section 54 of part A of chapter 59 of the laws of 2014 takes effect [Jan. 1, 2015]; and provided, further, that the amendments to subdivision 5 of section 410.91 of the criminal procedure law made by section eleven of this act shall not affect the expiration and repeal of such section and shall expire and be deemed repealed therewith."

#### Former Sections

Former § 3360, relating to the definition of terms, was added by L.1953, c. 879, § 1, amended by L.1956, c. 839, § 25; L.1961, c. 232, § 1, and repealed by L.1968, c. 373, § 1.



#### McKinney's Public Health Law § 3360, NY PUB HEALTH § 3360

Current through L.2019, chapter 758 and L.2020, chapters 1 to 56, 58 to 167. Some statute sections may be more current, see credits for details.

End of  
Document

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EXHIBIT 4

 <b>NEW YORK STATE</b> <b>Corrections and Community Supervision</b>  <b>DIRECTIVE</b>	<b>TITLE</b> <b>Medical Marijuana Use by Parolees</b>		<b>NO.</b> 9435
			<b>DATE</b> 11/15/2019
<b>SUPERSEDES</b>	<b>DISTRIBUTION</b> A B	<b>PAGES</b> PAGE 1 OF 3	<b>DATE LAST REVISED</b>
<b>REFERENCES</b> (Include but are not limited to) Compassionate Care Act (CCA) Public Health Law, Section 3369-a; Directives #8341, #9432		<b>APPROVING AUTHORITY</b> 	

- I. **PURPOSE:** To instruct Community Supervision staff on the use of medical marijuana by parolees pursuant to the New York State Compassionate Care Act (CCA).
- II. **POLICY:** It is the policy of the Department of Corrections and Community Supervision (DOCCS) to consider allowing parolees to utilize medical marijuana when medically necessary, while taking steps to promote public safety. The Department may allow such use when it occurs in complete and full compliance with the provisions of the CCA, when the parolee complies with providing the information required as described in this directive, and after DOCCS has reviewed the parolee's substance abuse history and its criminogenic bearing for the individual parolee.
- III. **DEFINITIONS**
  - A. Compassionate Care Act: In New York State, Legislation was enacted in 2014 to provide a comprehensive, safe, and effective medical marijuana program to meet the needs of New Yorkers.  
[https://www.health.ny.gov/regulations/medical\\_marijuana/faq.htm](https://www.health.ny.gov/regulations/medical_marijuana/faq.htm)
  - B. Practitioner: Any person designated by the CCA as authorized to prescribe medical marijuana. This may include a physician, nurse practitioner, and a physician's assistant under the supervision of a physician who is authorized to prescribe medical marijuana.
  - C. Dispensary: Any facility registered with NYS and authorized to dispense medical marijuana.
  - D. Caregiver: Any person authorized to obtain/transport medical marijuana for a registered medical marijuana recipient, who is incapable of obtaining/transporting for themselves (e.g., elderly, incapacitated, minors, etc.).
  - E. Eligible Conditions: Any conditions set forth in the CCA for which medical marijuana is an acceptable course of treatment.
  - F. Medical Marijuana/Approved Forms of Use: Medical marijuana dispensed at a New York State authorized dispensary in any of the following authorized forms: capsule, sublingual drops, vape pens, tablets, oral spray, and tincture.

**NOTE:** Marijuana cigarettes are not among the approved methods of ingestion of medical marijuana.

#### IV. PROCEDURE

- A. Responsibilities of Bureau Chiefs, Senior Parole Officers, and Parole Officers: Parolees shall be eligible for consideration for the use of medical marijuana, provided it is done in complete compliance and within the parameters of the CCA, and after a review of the parolee's substance abuse history and the criminogenic bearing for the individual parolee.
1. Parolees seeking to obtain medical marijuana must complete and sign Form #DOH-2557, "Authorization for Release of Health Information Form," and provide a copy to the treatment provider and the assigned Parole Officer (PO). Form #DOH-2557 is to be filed in Section 1-A of the parolee's Community Supervision case file. The PO will contact the treatment provider to ensure that the parolee has made a full and complete disclosure regarding their medical history, including substance abuse history, to the treatment provider.
  2. If the practitioner determines the parolee has an eligible condition and certifies the parolee to receive medical marijuana, the parolee will register with the NYS Department of Health (DOH) in order to receive a registration card. The Parolee is responsible for providing a copy of the registration card to the PO before the parolee may obtain the prescribed medical marijuana. A copy of the card will be retained in Section 1-A of the parolee's Community Supervision case file.
  3. Expired registration cards render the authorization invalid and it is the responsibility of the parolee to maintain an updated registration and provide a copy of the same to the PO.
  4. The parolee will fully disclose the course of treatment to the PO, to include: the diagnosis under which he or she is receiving medical marijuana; the dosage of medical marijuana prescribed; anticipated length of treatment; any physical limitations that may impact supervision and/or employability; the dispensary to be used and the approved form of medical marijuana dispensed at that location.
  5. Parolees may be authorized caregivers as described in the CCA, provided a true and accurate assessment takes place to determine that no other viable alternatives exist. If they are authorized to be caregivers, they are subject to the parameters of the CCA. They will be required to provide proof that they are authorized, via a copy of their designated caregiver registry identification card, and they must provide information regarding the specific dispensary from which they are authorized to pick up medical marijuana, form of use, and dosage of medical marijuana they are authorized to pick up. A positive drug test for any controlled substance, including marijuana, will invalidate their authorization to act as a designated caregiver.
- B. Parole Officer Responsibility
1. The Parole Officer will gather all required documentation as noted above. All required information will be accurately documented in the Case Management System (CMS). The PO will review the case and will conduct a case conference with their Senior Parole Officer (SPO). The reasons for the recommendation, whether for or against authorization, should be documented in CMS.



2. The PO will explain to the parolee that the Bureau Chief has the discretion to approve or disapprove the parolee's use of medical marijuana. The PO will advise the parolee that they cannot fill their initial prescription until they receive authorization from DOCCS. The PO is to advise the parolee of their right to appeal the decision via the Parolee Grievance Program.

C. Senior Parole Officer Responsibility

1. The SPO will review requests for medical marijuana, when presented by the PO, to ensure all relevant information is provided.
2. The SPO will review the PO's recommendation for authorization and submit it to the Bureau Chief, along with their recommendation. The SPO's recommendation should include, but not be limited to, an assessment of the parolee's substance abuse history and the criminogenic bearing on the individual, as well as the facts used to make their determination.

- D. Bureau Chief Responsibility: The Bureau Chief will review all requests made by parolees for medical marijuana use. Decisions will be annotated in CMS.

V. **CMS REQUIREMENTS AND TESTING**

- A. Staff will utilize the program field of CMS (F-13) to annotate all the details relative to the parolee's use of medical marijuana.
- B. This will include: name, address, and telephone number for the treatment provider; diagnosis; name, address, and telephone number of the dispensary; dosage; and method of ingestion. Information regarding the registration card number and expiration date will also be noted.
- C. Case Conference for any case where medical marijuana is authorized should include a review of that field to ensure all information is accurate.
- D. Pursuant to this Directive, parolees approved to use medical marijuana will not be tested solely for marijuana usage.

VI. **REVOCATION OF RELEASE AND RETURN TO DOCCS CUSTODY**

- A. The Department's approval for a parolee's use of medical marijuana while under supervision in the community shall be deemed rescinded in response to a revocation of release and return to state custody.
- B. Upon re-release to community supervision, it is the responsibility of the parolee to seek approval for the use of medical marijuana from the Bureau Chief.

Michael Joshua Henderson  
#06A5461  
Green Haven Correctional Facility  
594 Rte. 216, P.O. Box 4000  
Stormville, N.Y. 12582-0010

Clerk of the Court  
United States District Court  
Northern District of New York  
100 South Clinton Street, P.O. Box 7367  
Syracuse, N.Y. 13261-7367

March 8, 2024

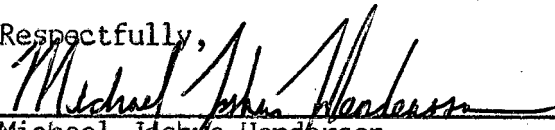
Re: Henderson v. Garland, et al.  
24-CV-228 (MAD/ML)

Dear Clerk of the Court:

Enclosed for filing is an Amended Complaint. Pages 1-11 of the complaint are the same, pages 12-16 were amended to add a few more facts and clarify the causes of action. In filing the amended complaint, Exhibits 1-4 are not attached because I no longer have copies of them. Is it possible for the Clerk of this Court to attach Exhibits 1-4 of the original complaint, to this amended complaint?

cc: File

Respectfully,

  
Michael Joshua Henderson

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

MICHAEL JOSHUA HENDERSON,

Plaintiff,

v.

MERRICK B. GARLAND, Attorney General of  
the United States; ANNE MILGRAM,  
Administrator of the Drug Enforcement  
Administration; DR. ROBERT CALIFF,  
Commissioner of the Food and Drug  
Administration; DANIEL F. MARTUSCELLO III,  
Commissioner of the Department of  
Corrections and Community Supervision; ANN  
MARIE T. SULLIVAN, Commissioner of the  
Office of Mental Health; and DANIELLE  
DILL, Executive Director of the Central  
New York Psychiatric Center.

Defendants.

AMENDED  
COMPLAINT

Case No. 24-CV-228  
(MAD/ML)

Jury Demand

☒ Yes

☐ No

NOTICE

The public can access electronic court files. For privacy and security reasons, papers filed with the court should therefore **not** contain: an individual's social security number, taxpayer identification number, or birth date; the name of a person known to be a minor; or financial account number. A filing may include only: the last four digits of a social security number or taxpayer-identification number; the year of an individual's birth; a minor's initials; and the last four digits of a financial account number. See Fed. R. Civ. P. 5.2.

I. LEGAL BASIS FOR COMPLAINT

This is a civil action seeking relief and/or damages to defend and protect the rights guaranteed by the Constitution and laws of the United States. Indicate below the federal basis for your claims.

- ☒ 42 U.S.C. § 1983 (state, county, or municipal defendants)  
☒ Bivens v. Six Unknown Federal Narcotics Agents, 403 U.S.  
388 (1971)(federal defendants)  
☐ Other (please specify) \_\_\_\_\_

II. PLAINTIFF(S) INFORMATION

Name: Michael Joshua Henderson  
Prisoner ID #: 06A5461

Place of Detention: Green Haven Correctional Facility  
Address: 594 Rte. 216, P.O. Box 4000  
Stormville, N.Y. 12582-0010

Indicate your confinement status when the alleged wrongdoing occurred:

- ☐ Pretrial detainee
- ☐ Civilly committed detainee
- ☒ Convicted and sentenced state prisoner
- ☐ Convicted and sentenced federal prisoner
- ☐ Immigration

Provide any other names by which you are or have been known and any other identification numbers associated with prior periods of incarceration:

---

If there are additional plaintiffs, each person must provide all of the information requested in this section and must sign the complaint; additional sheets of paper may be used and attached to this complaint.

### III. DEFENDANT(S) INFORMATION

- Defendant No. 1: Merrick B. Garland  
Attorney General of the United States  
Department of Justice, 950 Pennsylvania Ave. N.W.,  
Washington, DC 20530-0001
- Defendant No. 2: Anne Milgram  
Administrator of the Drug Enforcement Administration  
8701 Morrisette Dr.  
Springfield, VA 22152-1080
- Defendant No. 3: Dr. Robert Califf  
Commissioner of the Food and Drug Administration  
10903 New Hampshire Ave.  
Silver Spring, MD 20993
- Defendant No. 4: Daniel F. Martuscello III  
Commissioner of the Department of Corrections and  
Community Supervision  
1220 Washington Avenue, Building 2  
Albany, N.Y. 12226
- Defendant No. 5: Ann Marie T. Sullivan  
Commissioner of the Office of Mental Health  
44 holland Avenue  
Albany, N.Y. 12229
- Defendant No. 6: Danielle Dill  
Executive Director of Central New York Psychiatric  
Center  
Old River Rd.  
Marcy, N.Y. 13403

If there are additional defendants, the information requested in this section must be provided for each person; additional sheets of paper may be used and attached to this complaint.

#### IV. STATEMENT OF FACTS

State briefly and concisely the facts supporting your claims. Describe the events in the order they happened. Your statement of facts should include the following:

The date(s) on which the events occurred  
Where these events took place (identify the facility and, if relevant, the specific location in the facility)  
How each defendant was involved in the conduct you are complaining about

If you were physically injured by the alleged misconduct, describe the nature of your injuries and the medical evaluation and treatment you were provided. You need not cite to case law or statutes or provide legal argument in the Statement of Facts. Use additional sheets of paper if necessary.

Plaintiff, who is incarcerated at Green Haven Correctional Facility, in the Department of Corrections and Community Supervision (DOCCS), suffers from "chronic" "back pain" due to an injury he received as a child which resulted in a crushed vertebra, or "Degenerative Lower Lumbar Disc Disease L5-S1"; "Mild Degenerative Lower Lumbar Spondylosis"; and "Mild Anterior Wedge Deformity T12 [crushed] vertebra which by appearance from old trauma.". See Exhibit 1, Medical Records. Plaintiff also suffers from chronic depression, or "Persistent Depressive Disorder" and "Cannabis Use Disorder, Moderate.". See Exhibit 2, Mental Health Records. Plaintiff has anxiety and trouble sleeping, due to his conditions. Plaintiff has tried to treat his back pain, with pain medications, injections and physical therapy. He has tried to treat his chronic depression and anxiety, with medications as well. However, Plaintiff has found that none of them work, or he has experienced side effects from the pain medications and mental health medications. Prior to Plaintiff's incarceration, he has used marijuana, by smoking it and taking it in edible form, to treat his chronic back pain and depression, which he has found helps significantly with his conditions, with no side effects. Plaintiff has found that smoking marijuana is more of a mental high, whereas taking it in edible form is more of a body high.

New York State enacted the Compassionate Care Act (CCA) in the year 2014, under Public Health Law § 3360, which allows a person, like Plaintiff, with a "[s]erious condition", "pain that degrades health and functional capability...", "substance use disorder", "chronic pain", "or as added by the commissioner", to become a certified patient for the use of medical marijuana, and to use medical marijuana to treat his medical and mental health conditions. See Exhibit 3, Public Health Law § 3360. Plaintiff would like to become a certified patient under the Compassionate Care Act of New York State, Public Health Law § 3360, so he can use medical marijuana to treat his medical and mental health conditions. However, Defendants Daniel F. Martuscello III, Commissioner of the Department of Corrections and Community Supervision (DOCCS), Ann Marie T. Sullivan, Commissioner of the Office of Mental Health (OMH) and Danielle Dill, Executive Director of the Central New York Psychiatric

Center (CNYPC), who knew, or reasonable should have known of the CCA and its enactment in the year 2014, have refused to permit Plaintiff to become a certified patient for the use of medical marijuana, and to use medical marijuana to treat his medical and mental health conditions. Defendants have refused to develop and promulgate rules, directives and policies and procedures, that comply with the CCA. Defendant Martuscello III, Commissioner of DOCCS, has enacted directives and policies and procedures, that comply with the CCA, but its only for parolees (See Exhibit 4, Medical Marijuana Use by Parolees), and not incarcerated individuals, which Plaintiff alleges violates equal protection. Whether a person is incarcerated or on parole, they are still under the care, custody and control of DOCCS until their sentence is complete. DOCCS cannot draw a line between parolees and Plaintiff, or other similarly situated parties not before the Court. Defendant's inactions deny not only Plaintiff's rights, but other parties rights, who are similarly situated, but who are not before the Court, under the CCA and the United States Constitution. Defendant's inactions are life threatening to other parties, similarly situated, who are not before the Court, where, for example: if a person who has a life threatening condition under the CCA, finds the only thing keeping his or her condition at bay, is the use of marijuana, but becomes incarcerated in DOCCS or CNYPC, or other psychiatric centers, he or she can no longer use the one thing keeping their condition at bay: marijuana. Defendant's inactions are negligent, has caused Plaintiff past and present pain and suffering, intentional infliction of mental emotional distress, mental, emotional damages, is a deliberate indifference to his medical needs, is denying him the right to chose his own path of medical treatment, violates equal protections, is cruel and unusual punishment and a failure to protect. Plaintiff filed a grievance at Clinton Correctional Facility and fully exhausted his administrative remedies.

Under Federal law and the Controlled Substances Act (CSA), 21 U.S.C. § 812(c), marijuana is a Schedule I controlled substance, and has been that way since October 27, 1970, since the Nixon era, the War on Drugs and Just say No movement. The findings required for a schedule I are as follows: "(1) Schedule I-- (A) The drug or other substance has a high potential for abuse. (B) The drug or other substance has no currently accepted medical use in treatment in the United States. (C) There is a lack of accepted safety for use of the drug or other substance under medical supervision.". See 21 U.S.C. § 812(b)(1)(A)(B)(C). However, as we all know, or reasonably should know, in this current time, marijuana does have "currently accepted medical use in treatment in the United States", and "accepted safety for use of the drug or other substance under medical supervision.". In fact, nearly every State, excluding Wyoming, in the United States, the District of Columbia and our Territories, have enacted legislation permitting the use of marijuana for medical and recreational purposes, and those States or Territories who haven't enacted legislation permitting the use of medical marijuana or use of marijuana, has this past year in 2023 and this year 2024, passed, or proposed legislation legalizing the use of marijuana for medical or recreational purposes. The States, the District of Columbia, and Territories, of the United States, who have enacted or proposed legislation legalizing marijuana for medical and recreational purposes, are as follows:

Alabama: "AL ST § 20-2A-2, Medical Use of Cannabis";

Alaska: "AK ST § 17.37.010, Medical Uses of Marijuana";

Arizona: "AZ ST § 36-2801, Arizona Medical Marijuana Act";

Arkansas: "AR CONST Amend. 98, Arkansas Medical Marijuana Amendment of 2016";

California: "CA HLTH & S § 11362.5, Cannabis Medical Use Compassionate Use Act of 1996, CA HLTH & S § 11362.7, Medical Marijuana Program";

Colorado: "CON CONST Art. 18, § 14, Medical Use of Marijuana for Persons Suffering from Debilitating Medical Conditions";

Connecticut: "CT ST § 21a-408, Palliative Use of Marijuana";

Delaware: "DE ST TI 16 § 4902A, The Delaware Medical Marijuana Act";

D.C.: "DC CODE § 7-1671.01, Use of Marijuana for Medical Treatment";

Florida: "FL ST § 381.936, Medical Use of Marijuana";

Georgia: "GA ST § 43-34-120, Use of Marijuana for Treatment of Cancer and Glaucoma";

Hawaii: "HI ST § 329-121, Medical Use of Cannabis";

Idaho: "I.C. § 73-116, Common Law defense of necessity, Proposed or Enacted Legislation: 2023 Idaho House Bill No. 370, Idaho Medical Cannabis Act, introduced March 24, 2023";

Illinois: "IL ST CH 410 § 130, Compassionate Use of Medical Cannabis Program Act";

Indiana: Proposed or Enacted Legislation: "2023 Indiana House Bill No. 1263, Medical Marijuana, introduced January 11, 2023";

Iowa: IA ADC 641-154.1 (124E), Medical Cannabidiol Program, Proposed or Enacted Legislation: 2023 Iowa House File No. 442, A bill for an act relating to marijuana, including the manufacture, delivery, and possession of marijuana, the licensure of retail marijuana, and medical cannabis, providing fees, including penalties, and including effective date provisions";

Kansas: Proposed or Enacted Legislation: 2023 Kansas Senate Bill No. 135, Creating the medical cannabis regulation act to regulate the cultivation, processing, distribution, sale and use of medical cannabis, introduced February 1, 2023";

Kentucky: Proposed or Enacted Legislation: 2024 Kentucky House Bill No. 90, An Act relating to the regulation of cannabis and making appropriations therefor";

Louisiana: "LAR. S. 40:1046, Therapeutic Use of Marijuana";

Maine: "ME ST T. 22 § 2383-B, Authorized possession by individuals, Proposed or Enacted Legislation: 2023 Maine Senate Paper No. 714, An Act to

remove All Marijuana-related Provisions from the Maine Criminal Code and Expunge All Convictions Involving Marijuana; (LD1789), introduced April 25, 2023, Maine Senate Paper No. 734, 2023 ME S.P. 734 (NS), An Act to Create the Maine Medical Cannabis Advisory Commission and Medical Cannabis Alternative Health Board; (LD1819)";

Maryland: "MD CRIM LAW § 5-601, Possession or administering controlled dangerous substance common law defense-medical necessity";

Massachusetts: "MA ST 941, Medical Use of Marijuana";

Michigan:: "MI ST 333.26423, Michigan Medical Marijuana Act";

Minnesota: "MN ST § 152., Drugs; Controlled Substances Therapeutic Research Act; Medical Cannabis";

Mississippi: "MS CONST § 288.1, Medical Marijuana, Proposed or Enacted Legislation: "MS ST § 41-29-139, Prohibited acts and penalties; indictments for trafficking; Mississippi Medical Cannabis Act non-applicable, MS ST § 41-29-136, CBD solution; Harper Grace's Law, '...Affirmative and complete defense' for possession of marijuana";

Missouri: "MO CONST Art. 14, § 1, Right to access medical marijuana";

Montana: "MT ST 50-46-201, Use of Marijuana for Debilitating Medical Conditions", Proposed or Enacted Legislation: "MT ST 16-12-501, Medical Marijuana";

Nebraska: "Affirmative defense to possession of Marijuana, prescribed medical marijuana, NE ST § 28-467, Prosecution for unlawful possession of marijuana; defense, restrictions on certain actions, NE ST § 28-464, Medical Cannabidiol Pilot Study; University of Nebraska and Nebraska Medicine; authority to produce or possess cannabidiol; patient; eligibility, Proposed or Enacted Legislation: 2023 NE L.B. 22 (NS), decriminalize use and possession of marijuana, introduced January 5, 2023, 2023 NE L.B. 634 (NS), Adopt the Cannabis Control Act and the Cannabis Conviction Clean Slate Act";

Nevada: "NV ST T. 40 Chapter 453A., Medical Use of Marijuana, Proposed or Enacted Legislation: 2023 NV A.J.R. 8 (NS), TITLE: Urges the Congress of the United States to deschedule marijuana as a schedule I controlled substance. (BDR R-615)";

New Hampshire: "NH ST § 126-X, Use of Cannabis for Therapeutic Purposes";

New Jersey: "NJ ST 24:61-1m, Short title; Jake Honig Compassionate Use Medical Cannabis Act";

New Mexico: "NM ST § 26-2B-1, Lynn and Erin Compassionate Use Act";

New York: "NY PUB HEALTH § 3360, Compassionate Care Act, Medical Use of Marijuana";

North Carolina: Proposed or Enacted Legislation: "2023 NC S.B. 346 (NS),



Marijuana Justice and reinvestment Act. 'An Act to Legalize and regulate the sale, possession, and use of cannabis in North Carolina';

North Dakota: "ND ST 19-24.1-01, Medical Marijuana";

Ohio: "OH ST § 3796.01, Medical Marijuana";

Oklahoma: "OK ST T. 63 § 427.2, Medical Marijuana and Patient Protection Act";

Oregon: "OR ADC 333-008-0010, Medical Marijuana, Proposed or Enacted Legislation: 2023 OR H.B. 3567 (NS), Relating to marijuana for medical use; prescribing an effective date";

Pennsylvania: "PA ST 35 P.S. § 10231.102, Medical Marijuana Act";

Rhode Island: "RI ST § 21-28.6-1, The Edward O. Hawkins and Thomas C. Slater Medical Marijuana Act";

South Carolina: "SC ST § 44-53-650, Director to obtain and distribute Marijuana";

South Dakota: "SD CONST Art. 30, Marijuana and Hemp, Proposed or Enacted Legislation: 2024 SD H.B. 1024 (NS), An Act to require that an application for medical marijuana registry identification card include a notice and acknowledgment of federal law regarding firearms and the lawful use of a controlled substance, SD ST § 34-20G-1, Medical Cannabis";

Tennessee: "Admissibility of Evidence, TN ST § 24-7-103, Personal statement regarding use of marijuana made to medical personnel, Proposed or Enacted Legislation: 2023 TN S.B. 1829 (NS), TITLE: Health Care - As introduced, enacts the 'Medical Autonomy Related to Cannabis Act', 2023 TN S.B. 168 (NS), TITLE: Controlled Substances - As introduced, enacts the 'Free All Cannabis for Tennesseans Act'; establishes a regulatory structure for the cultivation, processing, and retail sale of marijuana and marijuana products in this state to be administered by the department of agriculture";

Texas: "TX HEALTH & S § 481.111, Exemptions", Proposed or Enacted Legislation: 2023 TX H.B. 3620 (NS), TITLE: Relating to repealing certain offenses and removing certain regulations relating to marijuana, cannabis, cannabinoids, and paraphernalia, 2023 TX H.B. 1341 (NS), TITLE: Relating to repealing certain offenses and removing certain regulations relating to the cultivation, manufacture, delivery and possession of marihuana and cannabis";

Utah: "UT ST § 4-41a, Cannabis Production Establishments and Pharmacies";

Vermont: "VT ST T. 7 § 831, Cannabis";

Virginia: "VA ST § 18.2-251.1, Possession or distribution of marijuana for medical purposes permitted", Proposed or Enacted Legislation: 2024 VA S.B. 448 (NS), TITLE: Cannabis control; retail market; penalties";

Washington: "WA ST 69.51A.005, Medical Cannabis";

West Virginia: Proposed or Enacted Legislation: 2024 WV H.B. 4747 (NS), TITLE: removing marijuana as a tested substance from screening requirements"; "2024 WV H.B. 4873 (NS), TITLE: Relating to legalizing cannabis production, sales and adult consumption";

Wisconsin: Proposed or Enacted Legislation: "2023 WI S.B. 486 (NS), TITLE: legalizing the possession of marijuana; medical marijuana; regulating the production, processing, and sale of marijuana; expunging or redesignating past convictions for marijuana-related crimes; equity grants; making an appropriation; and providing a penalty, introduced October 9, 2023", "2023 WI A.B. 506 (NS), TITLE: legalizing to possession of marijuana; medical marijuana; regulating to production, processing, and sale of marijuana; expunging or redesignating past convictions for marijuana-related crimes; equity grants; making an appropriation; and providing penalty";

Wyoming: No legal marijuana;

Tribal: "FL ST § 385.212, Powers and duties of the Department of Health; Office of Medical Marijuana Use";

Guam: "GU SI T. 10, The Joaquin (KC) Concepcion II Compassionate Use Act of 2013";

Puerto Rico: Proposed or Enacted Legislation: "2021 Puerto Rico Laws Act 15 (H.B. 152) 'Act to Provide for the Safety, Development, and Research of Cannabis for Innovation and the Applicable Rules and Limitations' (MEDICAL CANNABIS ACT)";

Virgin Islands: "VI SI T. 19 § 774a, Medicinal Cannabis"; and

Northern Mariana Islands: "FL ST 385.212, Powers and duties of the Department of Health; Office of Medical Marijuana Use".

United States Congress has even been attempting to pass legislation to legalize marijuana for medical and recreational purposes:

January 19, 2021: "2021 CONG US HR 365, To provide for the rescheduling of marijuana into schedule III of the Controlled Substances Act", January 27, 2023: "2021 CONG US HR 610." Id.;

January 17, 2021: "2021 CONG US HR 394, To prohibit the Secretary of Veterans Affairs from denying a veteran benefits administered by the Secretary by reason of the veteran participating in a State-approved marijuana program, and for other purposes", January 21, 2021: "2021 CONG US HR 430". Id.;

February 4, 2021: "2021 CONG US S 253, To expand research on the cannabidiol and marihuana, and for other purposes", March 25, 2022: "2021 CONG US S 253", July 21, 2022: "2021 CONG US HR 8454", July 26, 2022: "2021 CONG US HR 8454", July 27, 2022: "2021 CONG US HR 8454", and November 16, 2022: "2021 CONG HR 8454". Id.;

March 8, 2021: "2021 CONG US HR 1614, To amend the Immigration and Nationality Act to provide that marijuana use, possession, and distribution may not be considered for determinations of whether a person is a person of good

moral character, and for other purposes.";

March 11, 2021: "2021 CONG US HRES 226, recognizing that the United States has a moral obligation to meet its foundational promise of guaranteed justice for all.";

March 18, 2021: "2021 CONG US HR 2068, To create a safe harbor for insurers engaging in the business of insurance in connection with a cannabis-related legitimate business, and for other purposes", March 18, 2021: "2021 CONG US S 862", April 27, 2023: "2023 CONG US HR 2984", April 27, 2023: "2023 CONG US S 1359";

March 18, 2021: "2021 CONG US HR 1996, To create protections for financial institutions that provide financial services to cannabis-related legitimate businesses and service providers for such businesses, and for other purposes", March 23, 2021: "2021 CONG US S 910", April 19, 2021: "2021 CONG US HR 1996", April 20, 2021: "2021 CONG US HR 1996", April 26, 2023: "2023 CONG US S 1323", April 26, 2023: "2023 CONG US HR 2891", September 20, 2023: "2023 CONG US S 2860", September 28, 2023: "2023 CONG US S 2860";

April 15, 2021: "2021 CONG US HR 2588, To allow veterans to use, possess, or transport medical marijuana and to discuss the use of medical marijuana with a physician of the Department of Veterans Affairs as authorized by a State or Indian Tribe, and for other purposes.", April 15, 2021: "2021 CONG US S 1183"; April 18, 2023: "2023 CONG US HR 2682"; April 19, 2023: "2023 CONG US S 1204". Id.;

April 19, 2021: "2021 US HR 2652, To ensure that certain entrepreneurial development services of the Small Business Administration are made available to cannabis-related legitimate businesses and service providers, and for other purposes.";

April 19, 2021: "2021 CONG HR 2649, To decriminalize cannabis to establish an Equitable Licensing.";

April 20, 2021: "2021 CONG US HR 2712, To ensure that certain loan programs of the Small Business Administration are made available to cannabis-related legitimate businesses and service providers, and for other purposes.", November 17, 2022: "2021 CONG US S 5131.";

April 22, 2021: "2021 CONG US HR 2830, To protect the Second Amendment rights of adults whose use of marijuana is permitted by State or Tribal law.", April 20, 2023: "2023 CONG US HR 2772". Id.;

April 27, 2021: "2021 CONG US S 1380, To require automatic sealing of certain records, and for other purposes."; April 28, 2021: "2021 CONG US HR 2864"; April 27, 2023: "2023 CONG US HR 2930";

April 29, 2021: "2021 CONG US S 1456, To direct the Secretary of Health and Human Services to enter into a 10-year arrangement with the National Academy of Sciences to conduct and update biennially a study on the effects of State legalized marijuana programs, and for other purposes."; May 7, 2021: "2021 CONG US HR 3043". Id.

May 11, 2021: "2021 CONG US HR 3105, To limit the application of Federal laws to the distribution and consumption of marihuana, and other purposes.";

May 13, 2021: "2021 CONG US HR 3212, To provide that an individual who uses marijuana in compliance with State law may not be denied occupancy of federally assisted housing, and for other purposes.";

May 28, 2021: "2021 CONG US HR 3617, To decriminalize and deschedule cannabis, to provide for reinvestment in certain persons adversely impacted by the War on Drugs, to provide for expungement of certain cannabis offenses, and for other purposes."; March 24, 2022: "2021 CONG US HR 3617"; April 1, 2022: "2021 CONG US HR 3617"; April 4, 2022: "2021 CONG US HR 3617"; April 5, 2022: "2021 CONG US HR 3617"; July 21, 2022: "2021 CONG US S 4591"; and September 20, 2023: "2023 CONG US HR 5601". Id.;

May 28, 2021: "2021 CONG US HR 3601, To authorize physicians and other health care providers of the Department of Veterans Affairs to provide information regarding State-approved marijuana programs to veterans, and for other purposes.";

June 10, 2021: "2021 CONG US S 2016, To authorize elements of the Department of Transportation, and for other purposes."; December 17, 2021: "2021 CONG US S 2016";

July 19, 2021: "2021 CONG US HR 4536, To prohibit assistance provided under the program of block grants to States for temporary assistance for ready families from being accessed through the use of an electronic benefit transfer card at any store that offers marijuana for sale.";

October 21, 2021: "2021 CONG US HR 5657, To amend the Controlled Substances Act to make marijuana accessible for use by qualified marijuana researchers for medical purposes, and for other purposes."; April 4, 2022: "2021 CONG US HR 5657"; April 5, 2022: "2021 CONG US HR 5657"; and October 25, 2023: "2023 CONG US HR 6028". Id.;

November 15, 2021: "2021 CONG US HR 5977, To amend the Controlled Substances Act regarding marijuana, and for other purposes."; and October 25, 2023: "2023 CONG US HR 6028". Id.;

December 2, 2021: "2021 CONG US HR 6129, To authorize the Attorney General to make grants to States and units of local government to reduce the financial and administrative burden of expunging convictions for cannabis offenses, and for other purposes."; April 18, 2023: "2023 CONG US HR 2677". Id.;

March 8, 2022: "2021 CONG US HR 6991, To establish the policy of the Department of Veterans Affairs on medicinal cannabis, and for other purposes.";

April 7, 2022: "2021 CONG US HR 7446, To amend the Uniform Code of Military Justice to modify the treatment of certain controlled substance violations, and for other purposes.";

April 14, 2022: "2021 CONG US HR 7513, To establish a Commission on the Federal Regulation of Cannabis to Study a prompt and plausible pathway to the

Federal regulation of cannabis, and for other purposes."; December 1, 2022: "2021 CONG US S 5166"; April 13, 2023: "2023 CONG US HR 2598"; and July 27, 2023: "2023 CONG US S 2650". Id.;

June 23, 2022: "2021 CONG US HR 8200, To amend any applicable Federal law to permit access to community development, small business, minority development, and any other public or private financial capital sources for investment in and financing of cannabis-related legitimate businesses, and to amend the Securities Exchange Act of 1934 to create a safe harbor for national securities exchanges to list the securities of issuers that are cannabis-related legitimate businesses.";

June 23, 2022: "2021 CONG US HR 8197, To authorize Department of Veterans Affairs health care providers to provide recommendations and opinions to veterans regarding participation in State marijuana programs."; and March 30, 2023: "2023 CONG US HR 2431". Id.;

July 26, 2022: "2021 CONG US S 4622, To establish protections for radio and television stations that provide advertising services to cannabis-related legitimate businesses and service providers for such businesses, and for other purposes.";

July 27, 2022: "2021 CONG US HR 8540, To amend the Public Health Service Act to provide for the designation of institutions of higher education as Centers of Excellence in Cannabis Research, and for other purposes.";

July 28, 2022: "2021 CONG US HR 8557, To amend Federal law to create and expungement mechanism and a process to petition for expungement for low-level violations of the Controlled Substances Act as it relates to marijuana, to Study the impact of expungement issued, and for other purposes.";

September 14, 2022: "2021 CONG US HR 8825, To provide authority for small cultivators of marijuana and small manufacturers of marijuana products to ship marijuana and marijuana products using the mail, and for other purposes.";

November 17, 2022: "2021 CONG US S 5123, To amend the Controlled Substances Act to modify the registration requirements relating to research, and for other purposes.";

December 22, 2022: "2021 CONG US HR 9679, To increase the number of manufacturers registered under the Controlled Substances Act to manufacture cannabis for legitimate research purposes, to authorize health care providers of the Department of Veterans to provide recommendations to veterans regarding participation in federally approved cannabis clinical trials, and for other purposes.";

December 30, 2022: "2021 CONG US HR 9702, To amend the Internal Revenue Code of 1986 to allow deductions and credits relating to expenditures in connection with marijuana sales conducted in compliance with State law."; and April 17, 2023: "2023 CONG US HR 2643". Id.;

January 13, 2023: "2023 CONG US HR 363, To amend title 18, United States Code, with respect to the sale, purchase, shipment, receipt, or possession of a firearm or ammunition by a user of medical marijuana, and for other purposes.";

February 9, 2023: "2023 CONG US S 326, To direct the Secretary of Veterans Affairs to carry out a study and clinical trials on the effects of cannabis on certain health outcomes of veterans with chronic pain and post-traumatic stress disorder, and for other purposes."; February 14, 2023: "2023 CONG US HR 1003"; and March 23, 2023: "2023 CONG US S 326." Id.;

June 5, 2023: "2023 CONG US HR 3829, To streamline the process for institutions of higher education to research marijuana.";

June 15, 2023: "2023 CONG US HRES 519, Recognizing that the United States has a moral obligation to meet its foundational promise of guaranteed justice for all. (2)(A)(iii).";

July 27, 2023: "2023 CONG US HR 5040, To amend the Intelligence Reform and Terrorism Prevention Act of 2004 to limit the consideration or marijuana use when making a security clearance or employment suitability determination, and for other purposes.";

September 1, 2023: "2023 CONG US HR 5323, To amend title 23, United States Code, to establish a natural requirement against the use of marijuana for recreational purposes.";

September 21, 2023: "2023 CONG US S 2909, To provide for congressional review of rules rescheduling marijuana.";

December 7, 2023: "2023 CONG US HR 6673, To amend the Controlled Substances Act to provide for a new rule regarding the application of the Act to marijuana, and for other purposes."; and

January 11, 2024: "2023 CONG HRES 960, Urging action to increase equity within cannabis policy and the legal cannabis marketplace.".

Marijuana now has "currently accepted medical use in treatment in the United States", "accepted safety for use of the drug or other substance under medical supervision" and recreational purposes. To say marijuana has no "currently accepted medical use in treatment in the United States", no "accepted safety for use of the drug or other substance under medical supervision", or no recreation purposes, is overly broad, vague, and violates Plaintiff's rights, and the rights of other similarly situated parties not before the Court. The Controlled Substances Act, Schedule I, is unconstitutional as applied to marijuana, Plaintiff and other similarly situated parties not before the Court. The classification of Marijuana into a Schedule I, is life threatening to Plaintiff, and other similarly situated parties not before the Court. For example, if a person has a life threatening condition, that only marijuana can keep at bay, that person cannot use the one drug keeping them alive: marijuana. Another example might include a person who has seizures all day, has tried every Food, Drug Administration (FDA), approved drug, and found that none of them work, but marijuana, that person will suffer from seizures all day because that person cannot use the one thing keeping their seizures at bay: marijuana. Another example might include a person who has a condition that causes loss of appetite, but marijuana helps that person to eat, that person will lose weight because he or she can't use the one drug helping them eat: marijuana. Plaintiff is suffering from chronic back pain and depression, and he can't use marijuana, the one thing that helps relieve the

pain he feels and helps break him out of depression, with no side effects. Marijuana can also help combat against the use of other potentially dangerous drugs. For example, Defendant Martuscello III has put out memos warning against the use of "synthetic marijuana", which has caused hospitalizations and even death. The Defendants Merrick B. Garland, Attorney General of the United States, Anne Milgram, Administrator of the Drug Enforcement Administration, and Dr. Robert Califf, Commissioner of the Food, Drug Administration, who are mentioned and/or designated within the Controlled Substances Act, have known, or reasonably should have known, that over the past fifteen (15) years or less, that every State in the United States, excluding Wyoming, the District of Columbia, Tribal, Guam, Puerto Rico, Virgin Islands and Northern Mariana Islands, have all enacted laws allowing the use of Marijuana for medical treatment and recreational purposes, but have refused to decriminalize and deschedule or remove Marijuana from a Schedule I. Defendants classification of marijuana into a Schedule I, has caused Plaintiff past and present pain and suffering and will continue to cause Plaintiff suffering, as well as other similarly situated parties not before the Court. The classification of Marijuana into a Schedule I, by Defendants, is negligent or grossly negligent, an intentional infliction of mental, emotional distress upon Plaintiff and other similarly situated parties not before the Court, has caused Plaintiff and other similarly situated parties not before the Court, mental, emotional damages, is a deliberate indifference to Plaintiff's and other similarly situated parties's not before the Court, medical needs, denies Plaintiff and other similarly situated parties not before the Court, the right to chose his or their own path of medical treatment, is cruel and unusual punishment, violates substantive rights, violated due process rights, violates equal protection rights, and is a failure to protect.

#### V. STATEMENT OF CLAIM(S)

State briefly and concisely the constitutional and/or statutory basis for each claim you seek to assert and identify the defendant(s) against whom each claim is asserted. Commonly asserted claims include: excessive force; failure to protect; deliberate indifference to medical needs; unconstitutional conditions of confinement; denial of due process in a disciplinary or other proceeding; denial of equal protection; retaliation for exercise of a First Amendment right; and interference with exercise of religion. Legal argument and case citations are not required. Use additional sheets of paper is necessary.

#### FIRST CLAIM

The Defendants's Garland's, Milgram's and Califf's, classification of marijuana as a schedule I controlled substance that "...has no accepted medical use in treatment in the United States", "...a lack of accepted safety for use of the drug or other substance under medical supervision", or no recreational purposes, is: (1) so overbroad and vague as to sweep within its prohibitions constitutionally protected conduct, chills protected conduct; and (2) is unconstitutional as applied to Marijuana, Plaintiff and other similarly situated parties not before the Court, and violates Plaintiff's rights, and other similarly situated parties's rights not before the Court, under the First Amendment of the United States Constitution; and Defendants's Martuscello III's, Sullivan's and Dill's refusal to develop and promulgate rules, directives and policies and procedures, that comply with the CCA of New York

allowing the use of Marijuana for medical and recreational purposes, violates Plaintiff's rights, and other similarly situated parties's rights not before the Court, under the First Amendment of the United States Constitution.

#### SECOND CLAIM

The Defendants's Garland's, Milgram's and Califf's, classification of marijuana as a Schedule I controlled substance that "...has no accepted medical use in treatment in the United States", "...a lack of accepted safety for use of the drug or other substance under medical supervision", or no recreational purposes, is unconstitutional as applied to Marijuana, Plaintiff and other similarly situated parties not before the Court, and violates Plaintiff's rights, and other similarly situated parties's rights not before the Court, to remain free of cruel and unusual punishment, a deliberate indifference to his or their medical needs, is a denial of the right to chose his or their own path of medical treatment, and is a failure to protect, under the Eighth Amendment of the United States Constitution; and Defendants's Martuscello III's, Sullivan's and Dill's, refusal to develop and promulgate rules, directives and policies and procedures, that comply with the CCA of New York, allowing the use of marijuana for medical and recreational purposes, violates Plaintiff's rights, and other similarly situated parties's rights not before the Court, to remain free of cruel and unusual punishment, a deliberate indifference to his or their medical needs, is a denial of the right to chose his or their own path of medical treatment, and is a failure to protect, in violation of the Eighth Amendment of the United States.

#### THIRD CLAIM

Defendants's Garland's, Milgram's and Caliif's, classification of marijuana into a Schedule I controlled substance that "...has no accepted medical use in treatment in the United States", "...a lack of accepted safety for use of the drug or other substance under medical supervision", or no recreational purposes, is (1) so overbroad and vague as to sweep within its prohibitions constitutionally protected conduct, chills protected conduct; and (2) is unconstitutional as applied to Marijuana, Plaintiff and other similarly situated parties not before the Court, and violates Plaintiff's rights, and other similarly situated parties's rights not before the Court, under the Substantive Due Process, the Due Process and Equal Protection Clauses of the Fifth and Fourteenth Amendments of the United States Constitution.

#### FOURTH CLAIM

Defendants's Garland's, Milgram's, Califf's, Martuscello III's, Sullivan's and Dill's, actions or inactions, violate Plaintiff's rights, and other similarly situted parties's rights not before the Court, under the New York State Compassionate Care Act, Public Health Law § 3360.

#### FIFTH CLAIM

Defendants's Garland's, Milgram's, Califf's, Martuscello III's, Sullivan's and Dill's, actions or inactions are causing Plaintiff and other similarly situated parties not before the Court, mental, emotional damages.

#### SIXTH CLAIM



Defendants's Garland's, Milgram's, Califf's, Martuscello III's, Sullivan's and Dill's, actions or inactions, are an intentional infliction of mental, emotional distress, upon Plaintiff and other similarly situated parties not before the Court.

#### SEVENTH CLAIM

Defendants's Garland's, Milgram's, Califf's, Martuscello III's, Sullivan's and Dill's, actions or inactions, are negligent, or grossly negligent, and violates the rights of Plaintiff and other similarly situated parties not before the Court.

#### VI. RELIEF REQUESTED

State briefly what relief you are seeking in this case.

WHEREFORE, Plaintiff respectfully requests that this Court grants:

A. Declaratory relief;

B. A preliminary and permanent injunction enjoining the Defendants Garland, Milgram and Califf, from classifying marijuana as a schedule I controlled substance, and to compel them to decriminalize and deschedule marijuana for medical and recreational purposes, allowing Plaintiff and other similarly situated parties not before the Court, to use marijuana for medical and recreational purposes; and a preliminary and permanent injunction enjoining Defendants Martuscello III, Sullivan and Dill, from denying Plaintiff and other similarly situated parties not before the Court, marijuana for medical and recreational purposes, and to compel them to develop and promulgate rules, directives and policies and procedures, that comply with the New York State CCA, allowing for the use of marijuana for medical and recreational purposes;

C. a temporary restraining order enjoining Defendants Garland, Milgram and Califf, during the pendency of this action, from classifying marijuana as a schedule I controlled substance, and compel them to decriminalize and deschedule marijuana for medical and recreational purposes, allowing Plaintiff and other similarly situated parties not before the Court, to use marijuana for medical and recreational purposes; and a temporary restraining order enjoining Defendants Martuscello III, Sullivan and Dill, during the pendency of this action, from denying Plaintiff and other similarly situated parties not before the Court, the use of marijuana for medical and recreational purposes, and to compel them to develop and promulgate rules, directives and policies and procedures, that comply with the New York State CCA, allowing for the use of marijuana for medical and recreational purposes;

D. An award of compensatory damages in the amount of \$50,000,000.00 dollars, for past, present and/or future pain and suffering, and mental, emotional damages;

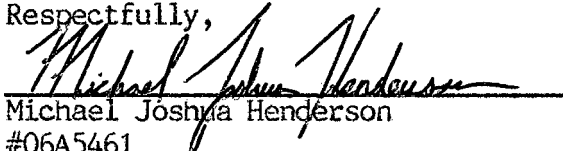
E. An award of punitive damages in the amount of \$50,000,000.00 dollars, for past, present and/or future pain and suffering, and mental, emotional damages;

- F. An award of the costs and fees associated with this action;
- G. An award of attorney fees; and
- H. Any other further relief as this Court may deem just and proper.

I declare under the penalty of perjury, pursuant to 28 U.S.C. § 1746, and the laws of the United States, the foregoing is true and correct.

Date: March 8, 2024  
Stormville, New York

Respectfully,

  
Michael Joshua Henderson  
#06A5461  
Green Haven Correctional Facility  
594 Rte. 216, P.O. Box 4000  
Stormville, N.Y. 12582-0010

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

MICHAEL JOSHUA HENDERSON,

Plaintiff,

v.

GARLAND et. al.,

Defendants.

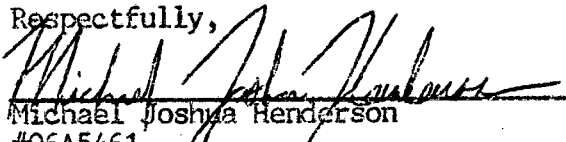
NOTICE OF MOTION TO  
AMEND COMPLAINT

24-CV-228 (MAD/ML)

PLEASE TAKE NOTICE, that upon the annexed affidavit of Plaintiff, Michael Joshua Henderson, duly sworn to on the 21st day of March, 2024, a motion will be made in this Court located at: United States District Court, Northern District of New York, 100 South Clinton Street, P.O. Box 7367, Syracuse, N.Y. 13261-7367, to be heard on the \_\_\_\_ day of \_\_\_\_\_, 2024, at \_\_\_\_ o'clock in the forenoon of that day or as soon thereafter as the Plaintiff can be heard for an Order granting a motion to amend the complaint, and for such other further relief as this Court may deem just and proper.

PLEASE TAKE FURTHER NOTICE, that answering affidavits, if any, are required to be served upon Plaintiff no later than fourteen (14) days prior to the return date of this motion.

Respectfully,

  
Michael Joshua Henderson  
#06A5461  
Green Haven Correctional Facility  
594 Rte. 216, P.O. Box 4000  
Stormville, N.Y. 12582-0010

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

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MICHAEL JOSHUA HENDERSON,

Plaintiff,

v.

GARLAND, et. al.,

Defendants.

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AFFIDAVIT IN SUPPORT  
OF MOTION TO AMEND

24-CV-228 (MAD/ML)

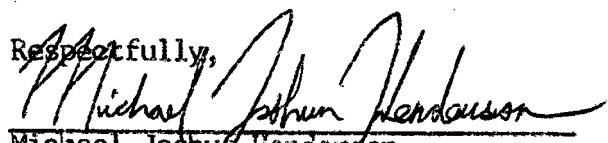
Michael Joshua Henderson, the Plaintiff, declares under the penalty of perjury, pursuant to 28 U.S.C. § 1746, and the laws of the United States, the following is true and correct:

1. I am the Plaintiff in the above-referenced matter.
2. I make this affidavit in support of the instant motion to amend the complaint.
3. Attached as Exhibit 1, is the Third Amended Complaint. See Exhibit 1., Third Amended Complaint.
4. The complaint was amended for a third time, specifically page 13, Statement of Facts, to include more allegations against the Defendants, and other words may have been added or changed, from page 13 through 16.

WHEREFORE, Plaintiff respectfully requests that this Court grants the instant motion to amend the complaint, Exhibit 1, and for such other further relief as this Court may deem just and proper.

Executed: March 21, 2024

Respectfully,

  
\_\_\_\_\_  
Michael Joshua Henderson  
#06A5461

Green Haven Correctional Facility  
594 Rte. 216, P.O. Box 4000  
Stormville, N.Y. 12582-0010

EXHIBIT 1

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

MICHAEL JOSHUA HENDERSON,

Plaintiff,

v.

THIRD AMENDED  
COMPLAINT

Case No. 24-CV-228

(MAD/ML)

Jury Demand

☒ Yes

☐ No

MERRICK B. GARLAND, Attorney General of the United States; ANNE MILGRAM, Administrator of the Drug Enforcement Administration; DR. ROBERT CALIFF, Commissioner of the Food and Drug Administration; DANIEL F. MARTUSCELLO III, Commissioner of the Department of Corrections and Community Supervision; ANN MARIE T. SULLIVAN, Commissioner of the Office of Mental Health; and DANIELLE DILL, Executive Director of the Central New York Psychiatric Center.

Defendants.

NOTICE

The public can access electronic court files. For privacy and security reasons, papers filed with the court should therefore **not** contain: an individual's social security number, taxpayer identification number, or birth date; the name of a person known to be a minor; or financial account number. A filing may include only: the last four digits of a social security number or taxpayer-identification number; the year of an individual's birth; a minor's initials; and the last four digits of a financial account number. See Fed. R. Civ. P. 5.2.

I. LEGAL BASIS FOR COMPLAINT

This is a civil action seeking relief and/or damages to defend and protect the rights guaranteed by the Constitution and laws of the United States. Indicate below the federal basis for your claims.

- ☒ 42 U.S.C. § 1983 (state, county, or municipal defendants)  
☒ Bivens v. Six Unknown Federal Narcotics Agents, 403 U.S. 388 (1971)(federal defendants)  
☐ Other (please specify) \_\_\_\_\_

II. PLAINTIFF(S) INFORMATION

Name: Michael Joshua Henderson  
Prisoner ID #: 06A5461

Place of Detention: Green Haven Correctional Facility  
Address: 594 Rte. 216, P.O. Box 4000  
Stormville, N.Y. 12582-0010

Indicate your confinement status when the alleged wrongdoing occurred:

- ☐ Pretrial detainee
- ☐ Civilly committed detainee
- ☒ Convicted and sentenced state prisoner
- ☐ Convicted and sentenced federal prisoner
- ☐ Immigration

Provide any other names by which you are or have been known and any other identification numbers associated with prior periods of incarceration:

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If there are additional plaintiffs, each person must provide all of the information requested in this section and must sign the complaint; additional sheets of paper may be used and attached to this complaint.

### III. DEFENDANT(S) INFORMATION

Defendant No. 1: Merrick B. Garland

Attorney General of the United States  
Department of Justice, 950 Pennsylvania Ave. N.W.,  
Washington, DC 20530-0001

Defendant No. 2: Anne Milgram

Administrator of the Drug Enforcement Administration  
8701 Morrisette Dr.  
Springfield, VA 22152-1080

Defendant No. 3: Dr. Robert Califf

Commissioner of the Food and Drug Administration  
10903 New Hampshire Ave.  
Silver Spring, MD 20993

Defendant No. 4: Daniel F. Martuscello III

Commissioner of the Department of Corrections and  
Community Supervision  
1220 Washington Avenue, Building 2  
Albany, N.Y. 12226

Defendant No. 5: Ann Marie T. Sullivan

Commissioner of the Office of Mental Health  
44 holland Avenue  
Albany, N.Y. 12229

Defendant No. 6: Danielle Dill

Executive Director of Central New York Psychiatric  
Center  
Old River Rd.  
Marcy, N.Y. 13403

If there are additional defendants, the information requested in this section must be provided for each person; additional sheets of paper may be used and attached to this complaint.

#### IV. STATEMENT OF FACTS

State briefly and concisely the facts supporting your claims. Describe the events in the order they happened. Your statement of facts should include the following:

The date(s) on which the events occurred  
Where these events took place (identify the facility and, if relevant, the specific location in the facility)  
How each defendant was involved in the conduct you are complaining about

If you were physically injured by the alleged misconduct, describe the nature of your injuries and the medical evaluation and treatment you were provided. You need not cite to case law or statutes or provide legal argument in the Statement of Facts. Use additional sheets or paper if necessary.

Plaintiff, who is incarcerated at Green Haven Correctional Facility, in the Department of Corrections and Community Supervision (DOCCS), suffers from "chronic" "back pain" due to an injury he received as a child which resulted in a crushed vertebra, or "Degenerative Lower Lumbar Disc Disease L5-S1"; "Mild Degenerative Lower Lumbar Spondylosis"; and "Mild Anterior Wedge Deformity T12 [crushed] vertebra which by appearance from old trauma.". See Exhibit 1, Medical Records. Plaintiff also suffers from chronic depression, or "Persistent Depressive Disorder" and "Cannabis Use Disorder, Moderate.". See Exhibit 2, Mental Health Records. Plaintiff has anxiety and trouble sleeping, due to his conditions. Plaintiff has tried to treat his back pain, with pain medications, injections and physical therapy. He has tried to treat his chronic depression and anxiety, with medications as well. However, Plaintiff has found that none of them work, or he has experienced side effects from the pain medications and mental health medications. Prior to Plaintiff's incarceration, he has used marijuana, by smoking it and taking it in edible form, to treat his chronic back pain and depression, which he has found helps significantly with his conditions, with no side effects. Plaintiff has found that smoking marijuana is more of a mental high, whereas taking it in edible form is more of a body high.

New York State enacted the Compassionate Care Act (CCA) in the year 2014, under Public Health Law § 3360, which allows a person, like Plaintiff, with a "[s]erious condition", "pain that degrades health and functional capability...", "substance use disorder", "chronic pain", "or as added by the commissioner", to become a certified patient for the use of medical marijuana, and to use medical marijuana to treat his medical and mental health conditions. See Exhibit 3, Public Health Law § 3360. Plaintiff would like to become a certified patient under the Compassionate Care Act of New York State, Public Health Law § 3360, so he can use medical marijuana to treat his medical and mental health conditions. However, Defendants Daniel F. Martuscello III, Commissioner of the Department of Corrections and Community Supervision (DOCCS), Ann Marie T. Sullivan, Commissioner of the Office of Mental Health (OMH) and Danielle Dill, Executive Director of the Central New York Psychiatric



Center (CNYPC), who knew, or reasonable should have known of the CCA and its enactment in the year 2014, have refused to permit Plaintiff to become a certified patient for the use of medical marijuana, and to use medical marijuana to treat his medical and mental health conditions. Defendants have refused to develop and promulgate rules, directives and policies and procedures, that comply with the CCA. Defendant Martuscello III, Commissioner of DOCCS, has enacted directives and policies and procedures, that comply with the CCA, but its only for parolees (See Exhibit 4, Medical Marijuana Use by Parolees), and not incarcerated individuals, which Plaintiff alleges violates equal protection. Whether a person is incarcerated or on parole, they are still under the care, custody and control of DOCCS until their sentence is complete. DOCCS cannot draw a line between parolees and Plaintiff, or other similarly situated parties not before the Court. Defendant's inactions deny not only Plaintiff's rights, but other parties rights, who are similarly situated, but who are not before the Court, under the CCA and the United States Constitution. Defendant's inactions are life threatening to other parties, similarly situated, who are not before the Court, where, for example: if a person who has a life threatening condition under the CCA, finds the only thing keeping his or her condition at bay, is the use of marijuana, but becomes incarcerated in DOCCS or CNYPC, or other psychiatric centers, he or she can no longer use the one thing keeping their condition at bay: marijuana. Defendant's inactions are negligent, has caused Plaintiff past and present pain and suffering, intentional infliction of mental emotional distress, mental, emotional damages, is a deliberate indifference to his medical needs, is denying him the right to chose his own path of medical treatment, violates equal protections, is cruel and unusual punishment and a failure to protect. Plaintiff filed a grievance at Clinton Correctional Facility and fully exhausted his administrative remedies.

Under Federal law and the Controlled Substances Act (CSA), 21 U.S.C. § 812(c), marijuana is a Schedule I controlled substance, and has been that way since October 27, 1970, since the Nixon era, the War on Drugs and Just say No movement. The findings required for a schedule I are as follows: "(1) Schedule I-- (A) The drug or other substance has a high potential for abuse. (B) The drug or other substance has no currently accepted medical use in treatment in the United States. (C) There is a lack of accepted safety for use of the drug or other substance under medical supervision." See 21 U.S.C. § 812(b)(1)(A)(B)(C). However, as we all know, or reasonably should know, in this current time, marijuana does have "currently accepted medical use in treatment in the United States", and "accepted safety for use of the drug or other substance under medical supervision." In fact, nearly every State, excluding Wyoming, in the United States, the District of Columbia and our Territories, have enacted legislation permitting the use of marijuana for medical and recreational purposes, and those States or Territories who haven't enacted legislation permitting the use of medical marijuana or use of marijuana, has this past year in 2023 and this year 2024, passed, or proposed legislation legalizing the use of marijuana for medical or recreational purposes. The States, the District of Columbia, and Territories, of the United States, who have enacted or proposed legislation legalizing marijuana for medical and recreational purposes, are as follows:

Alabama: "AL ST § 20-2A-2, Medical Use of Cannabis";

Alaska: "AK ST § 17.37.010, Medical Uses of Marijuana";

Arizona: "AZ ST § 35-2801, Arizona Medical Marijuana Act";

Arkansas: "AR CONST Amend. 98, Arkansas Medical Marijuana Amendment of 2016";

California: "CA HLTH & S § 11362.5, Cannabis Medical Use Compassionate Use Act of 1996, CA HLTH & S § 11362.7, Medical Marijuana Program";

Colorado: "CON CONST Art. 18, § 14, Medical Use of Marijuana for Persons Suffering from Debilitating Medical Conditions";

Connecticut: "CT ST § 21a-408, Palliative Use of Marijuana";

Delaware: "DE ST TI 15 § 4902A, The Delaware Medical Marijuana Act";

D.C.: "DC CODE § 7-1671.01, Use of Marijuana for Medical Treatment";

Florida: "FL ST § 381.986, Medical Use of Marijuana";

Georgia: "GA ST § 43-34-120, Use of Marijuana for Treatment of Cancer and Glaucoma";

Hawaii: "HI ST § 329-121, Medical Use of Cannabis";

Idaho: "I.C. § 73-116, Common Law defense of necessity, Proposed or Enacted Legislation: 2023 Idaho House Bill No. 370, Idaho Medical Cannabis Act, introduced March 24, 2023";

Illinois: "IL ST CH 410 § 130, Compassionate Use of Medical Cannabis Program Act";

Indiana: Proposed or Enacted Legislation: "2023 Indiana House Bill No. 1263, Medical Marijuana, introduced January 11, 2023";

Iowa: IA ADC 641-154.1 (124E), Medical Cannabidiol Program, Proposed or Enacted Legislation: 2023 Iowa House File No. 442, A bill for an act relating to marijuana, including the manufacture, delivery, and possession of marijuana, the licensure of retail marijuana, and medical cannabis, providing fees, including penalties, and including effective date provisions";

Kansas: Proposed or Enacted Legislation: 2023 Kansas Senate Bill No. 135, Creating the medical cannabis regulation act to regulate the cultivation, processing, distribution, sale and use of medical cannabis, introduced February 1, 2023";

Kentucky: Proposed or Enacted Legislation: 2024 Kentucky House Bill No. 90, An Act relating to the regulation of cannabis and making appropriations therefor";

Louisiana: "LAR. S. 40:1046, Therapeutic Use of Marijuana";

Maine: "ME ST T. 22 § 2383-B, Authorized possession by individuals, Proposed or Enacted Legislation: 2023 Maine Senate Paper No. 714, An Act to

remove All Marijuana-related Provisions from the Maine Criminal Code and Expunge All Convictions Involving Marijuana; (LD1789), introduced April 25, 2023, Maine Senate Paper No. 734, 2023 ME S.P. 734 (NS), An Act to Create the Maine Medical Cannabis Advisory Commission and Medical Cannabis Alternative Health Board; (LD1319)";

Maryland: "MD CRIM LAW § 5-601, Possession or administering controlled dangerous substance common law defense-medical necessity";

Massachusetts: "MA ST 941, Medical Use of Marijuana";

Michigan: "MI ST 333.26423, Michigan Medical Marijuana Act";

Minnesota: "MN ST § 152., Drugs; Controlled Substances Therapeutic Research Act; Medical Cannabis";

Mississippi: "MS CONST § 288.1, Medical Marijuana, Proposed or Enacted Legislation: "MS ST § 41-29-139, Prohibited acts and penalties; indictments for trafficking; Mississippi Medical Cannabis Act non-applicable, MS ST § 41-29-136, CBD solution; Harper Grace's Law, '...Affirmative and complete defense' for possession of marijuana";

Missouri: "MO CONST Art. 14, § 1, Right to access medical marijuana";

Montana: "MT ST 50-46-201, Use of Marijuana for Debilitating Medical Conditions", Proposed or Enacted Legislation: "MT ST 16-12-501, Medical Marijuana";

Nebraska: "Affirmative defense to possession of Marijuana, prescribed medical marijuana, NE ST § 28-467, Prosecution for unlawful possession of marijuana; defense, restrictions on certain actions, NE ST § 28-464, Medical Cannabidiol Pilot Study; University of Nebraska and Nebraska Medicine; authority to produce or possess cannabidiol; patient; eligibility, Proposed or Enacted Legislation: 2023 NE L.B. 22 (NS), decriminalize use and possession of marijuana, introduced January 5, 2023, 2023 NE L.B. 634 (NS), Adopt the Cannabis Control Act and the Cannabis Conviction Clean Slate Act";

Nevada: "NV ST T. 40 Chapter 453A., Medical Use of Marijuana, Proposed or Enacted Legislation: 2023 NV A.J.R. 8 (NS), TITLE: Urges the Congress of the United States to deschedule marijuana as a schedule I controlled substance. (BDR R-615)";

New Hampshire: "NH ST § 125-X, Use of Cannabis for Therapeutic Purposes";

New Jersey: "NJ ST 24:61-1m, Short title; Jake Honig Compassionate Use Medical Cannabis Act";

New Mexico: "NM ST § 26-2B-1, Lynn and Erin Compassionate Use Act";

New York: "NY PUB HEALTH § 3360, Compassionate Care Act, Medical Use of Marijuana";

North Carolina: Proposed or Enacted Legislation: "2023 NC S.B. 346 (NS),

Marijuana Justice and reinvestment Act. 'An Act to Legalize and regulate the sale, possession, and use of cannabis in North Carolina";

North Dakota: "ND ST 19-24.1-01, Medical Marijuana";

Ohio: "OH ST § 3796.01, Medical Marijuana";

Oklahoma: "OK ST T. 63 § 427.2, Medical Marijuana and Patient Protection Act";

Oregon: "OR ADC 333-008-0010, Medical Marijuana, Proposed or Enacted Legislation: 2023 OR H.B. 3567 (NS), Relating to marijuana for medical use; prescribing an effective date";

Pennsylvania: "PA ST 35 P.S. § 10231.102, Medical Marijuana Act";

Rhode Island: "RI ST § 21-28.6-1, The Edward O. Hawkins and Thomas G. Slater Medical Marijuana Act";

South Carolina: "SC ST § 44-53-650, Director to obtain and distribute Marijuana";

South Dakota: "SD CONST Art. 30, Marijuana and Hemp, Proposed or Enacted Legislation: 2024 SD H.B. 1024 (NS), An Act to require that an application for medical marijuana registry identification card include a notice and acknowledgment of federal law regarding firearms and the lawful use of a controlled substance, SD ST § 34-203-1, Medical Cannabis";

Tennessee: "Admissibility of Evidence, TN ST § 24-7-103, Personal statement regarding use of marijuana made to medical personnel, Proposed or Enacted Legislation: 2023 TN S.B. 1829 (NS), TITLE: Health Care - As introduced, enacts the 'Medical Autonomy Related to Cannabis Act', 2023 TN S.B. 168 (NS), TITLE: Controlled Substances - As introduced, enacts the 'Free All Cannabis for Tennesseans Act'; establishes a regulatory structure for the cultivation, processing, and retail sale of marijuana and marijuana products in this state to be administered by the department of agriculture";

Texas: "TX HEALTH & S § 481.111, Exemptions", Proposed or Enacted Legislation: 2023 TX H.B. 3620 (NS), TITLE: Relating to repealing certain offenses and removing certain regulations relating to marijuana, cannabis, cannabinoids, and paraphernalia, 2023 TX H.B. 1341 (NS), TITLE: Relating to repealing certain offenses and removing certain regulations relating to the cultivation, manufacture, delivery and possession of marihuana and cannabis";

Utah: "UT ST § 4-41a, Cannabis Production Establishments and Pharmacies";

Vermont: "VT ST T. 7 § 831, Cannabis";

Virginia: "VA ST § 18.2-251.1, Possession or distribution of marijuana for medical purposes permitted", Proposed or Enacted Legislation: 2024 VA S.B. 448 (NS), TITLE: Cannabis control; retail market; penalties";

Washington: "WA ST 69.51A.005, Medical Cannabis";

West Virginia: Proposed or Enacted Legislation: 2024 WV H.B. 4747 (NS), TITLE: removing marijuana as a tested substance from screening requirements"; "2024 WV H.B. 4873 (NS), TITLE: Relating to legalizing cannabis production, sales and adult consumption";

Wisconsin: Proposed or Enacted Legislation: "2023 WI S.B. 486 (NS), TITLE: legalizing the possession of marijuana; medical marijuana; regulating the production, processing, and sale of marijuana; expunging or redesignating past convictions for marijuana-related crimes; equity grants; making an appropriation; and providing a penalty, introduced October 9, 2023", "2023 WI A.B. 506 (NS), TITLE: legalizing to possession of marijuana; medical marijuana; regulating to production, processing, and sale of marijuana; expunging or redesignating past convictions for marijuana-related crimes; equity grants; making an appropriation; and providing penalty";

Wyoming: No legal marijuana;

Federal: "FL ST § 385.212, Powers and duties of the Department of Health; Office of Medical Marijuana Use";

Guam: "GU ST T. 10, The Joaquin (KC) Concepcion II Compassionate Use Act of 2013";

Puerto Rico: Proposed or Enacted Legislation: "2021 Puerto Rico Laws Act 15 (H.B. 152) 'Act to Provide for the Safety, Development, and Research of Cannabis for Innovation and the Applicable Rules and Limitations' (MEDICAL CANNABIS ACT)";

Virgin Islands: "VI ST T. 19 § 774a, Medicinal Cannabis"; and

Northern Mariana Islands: "FL ST 385.212, Powers and duties of the Department of Health; Office of Medical Marijuana Use".

United States Congress has even been attempting to pass legislation to legalize marijuana for medical and recreational purposes:

January 19, 2021: "2021 CONG US HR 365, To provide for the rescheduling of marijuana into schedule III of the Controlled Substances Act", January 27, 2023: "2021 CONG US HR 610." Id.;

January 17, 2021: "2021 CONG US HR 394, To prohibit the Secretary of Veterans Affairs from denying a veteran benefits administered by the Secretary by reason of the veteran participating in a State-approved marijuana program, and for other purposes", January 21, 2021: "2021 CONG US HR 430". Id.;

February 4, 2021: "2021 CONG US S 253, To expand research on the cannabidiol and marijuana, and for other purposes", March 25, 2022: "2021 CONG US S 253", July 21, 2022: "2021 CONG US HR 8454", July 26, 2022: "2021 CONG US HR 8454", July 27, 2022: "2021 CONG US HR 8454", and November 16, 2022: "2021 CONG HR 8454". Id.;

March 8, 2021: "2021 CONG US HR 1614, To amend the Immigration and Nationality Act to provide that marijuana use, possession, and distribution may not be considered for determinations of whether a person is a person of good

moral character, and for other purposes.";

March 11, 2021: "2021 CONG US HRES 226, recognizing that the United States has a moral obligation to meet its foundational promise of guaranteed justice for all.";

March 18, 2021: "2021 CONG US HR 2068, To create a safe harbor for insurers engaging in the business of insurance in connection with a cannabis-related legitimate business, and for other purposes", March 18, 2021: "2021 CONG US S 862", April 27, 2023: "2023 CONG US HR 2984", April 27, 2023: "2023 CONG US S 1359";

March 18, 2021: "2021 CONG US HR 1996, To create protections for financial institutions that provide financial services to cannabis-related legitimate businesses and service providers for such businesses, and for other purposes", March 23, 2021: "2021 CONG US S 910", April 19, 2021: "2021 CONG US HR 1996", April 20, 2021: "2021 CONG US HR 1996", April 26, 2023: "2023 CONG US S 1323", April 26, 2023: "2023 CONG US HR 2891", September 20, 2023: "2023 CONG US S 2860", September 28, 2023: "2023 CONG US S 2860";

April 15, 2021: "2021 CONG US HR 2588, To allow veterans to use, possess, or transport medical marijuana and to discuss the use of medical marijuana with a physician of the Department of Veterans Affairs as authorized by a State or Indian Tribe, and for other purposes.", April 15, 2021: "2021 CONG US S 1183"; April 18, 2023: "2023 CONG US HR 2682"; April 19, 2023: "2023 CONG US S 1204". Id.;

April 19, 2021: "2021 US HR 2652, To ensure that certain entrepreneurial development services of the Small Business Administration are made available to cannabis-related legitimate businesses and service providers, and for other purposes.";

April 19, 2021: "2021 CONG HR 2649, To decriminalize cannabis to establish an Equitable Licensing.";

April 20, 2021: "2021 CONG US HR 2712, To ensure that certain loan programs of the Small Business Administration are made available to cannabis-related legitimate businesses and service providers, and for other purposes.", November 17, 2022: "2021 CONG US S 5131.";

April 22, 2021: "2021 CONG US HR 2630, To protect the Second Amendment rights of adults whose use of marijuana is permitted by State or Tribal Law.", April 20, 2023: "2023 CONG US HR 2772". Id.;

April 27, 2021: "2021 CONG US S 1380, To require automatic sealing of certain records, and for other purposes.", April 28, 2021: "2021 CONG US HR 2864"; April 27, 2023: "2023 CONG US HR 2930";

April 29, 2021: "2021 CONG US S 1456, To direct the Secretary of Health and Human Services to enter into a 10-year arrangement with the National Academy of Sciences to conduct and update biennially a study on the effects of State legalized marijuana programs, and for other purposes."; May 7, 2021: "2021 CONG US HR 3043". Id.

May 11, 2021: "2021 CONG US HR 3105, To limit the application of Federal laws to the distribution and consumption of marihuana, and other purposes.";

May 13, 2021: "2021 CONG US HR 3212, To provide that an individual who uses marijuana in compliance with State law may not be denied occupancy of federally assisted housing, and for other purposes.";

May 28, 2021: "2021 CONG US HR 3617, To decriminalize and deschedule cannabis, to provide for reinvestment in certain persons adversely impacted by the War on Drugs, to provide for expungement of certain cannabis offenses, and for other purposes."; March 24, 2022: "2021 CONG US HR 3617"; April 1, 2022: "2021 CONG US HR 3617"; April 4, 2022: "2021 CONG US HR 3617"; April 5, 2022: "2021 CONG US HR 3617"; July 21, 2022: "2021 CONG US S 4591"; and September 20, 2023: "2023 CONG US HR 5601". Id.;

May 28, 2021: "2021 CONG US HR 3601, To authorize physicians and other health care providers of the Department of Veterans Affairs to provide information regarding State-approved marijuana programs to veterans, and for other purposes.";

June 10, 2021: "2021 CONG US S 2016, To authorize elements of the Department of Transportation, and for other purposes."; December 17, 2021: "2021 CONG US S 2016";

July 19, 2021: "2021 CONG US HR 4536, To prohibit assistance provided under the program of block grants to States for temporary assistance for ready families from being accessed through the use of an electronic benefit transfer card at any store that offers marijuana for sale.";

October 21, 2021: "2021 CONG US HR 5657, To amend the Controlled Substances Act to make marijuana accessible for use by qualified marijuana researchers for medical purposes, and for other purposes."; April 4, 2022: "2021 CONG US HR 5657"; April 5, 2022: "2021 CONG US HR 5657"; and October 25, 2023: "2023 CONG US HR 6028". Id.;

November 15, 2021: "2021 CONG US HR 5977, To amend the Controlled Substances Act regarding marijuana, and for other purposes."; and October 25, 2023: "2023 CONG US HR 6028". Id.;

December 2, 2021: "2021 CONG US HR 6129, To authorize the Attorney General to make grants to States and units of local government to reduce the financial and administrative burden of expunging convictions for cannabis offenses, and for other purposes."; April 18, 2023: "2023 CONG US HR 2677". Id.;

March 8, 2022: "2021 CONG US HR 6991, To establish the policy of the Department of Veterans Affairs on medicinal cannabis, and for other purposes.";

April 7, 2022: "2021 CONG US HR 7446, To amend the Uniform Code of Military Justice to modify the treatment of certain controlled substance violations, and for other purposes.";

April 14, 2022: "2021 CONG US HR 7513, To establish a Commission on the Federal Regulation of Cannabis to Study a prompt and plausible pathway to the

Federal regulation of cannabis, and for other purposes."; December 1, 2022: "2021 CONG US S 5166"; April 13, 2023: "2023 CONG US HR 2598"; and July 27, 2023: "2023 CONG US S 2650". Id.;

June 23, 2022: "2021 CONG US HR 8200, To amend any applicable Federal law to permit access to community development, small business, minority development, and any other public or private financial capital sources for investment in and financing of cannabis-related legitimate businesses, and to amend the Securities Exchange Act of 1934 to create a safe harbor for national securities exchanges to list the securities of issuers that are cannabis-related legitimate businesses.";

June 23, 2022: "2021 CONG US HR 8197, To authorize Department of Veterans Affairs health care providers to provide recommendations and opinions to veterans regarding participation in State marijuana programs."; and March 30, 2023: "2023 CONG US HR 2431". Id.;

July 26, 2022: "2021 CONG US S 4622, To establish protections for radio and television stations that provide advertising services to cannabis-related legitimate businesses and service providers for such businesses, and for other purposes.";

July 27, 2022: "2021 CONG US HR 8540, To amend the Public Health Service Act to provide for the designation of institutions of higher education as Centers of Excellence in Cannabis Research, and for other purposes.";

July 28, 2022: "2021 CONG US HR 8557, To amend Federal law to create and expungement mechanism and a process to petition for expungement for low-level violations of the Controlled Substances Act as it relates to marijuana, to Study the impact of expungement issued, and for other purposes.";

September 14, 2022: "2021 CONG US HR 8825, To provide authority for small cultivators of marijuana and small manufacturers of marijuana products to ship marijuana and marijuana products using the mail, and for other purposes.";

November 17, 2022: "2021 CONG US S 5123, To amend the Controlled Substances Act to modify the registration requirements relating to research, and for other purposes.";

December 22, 2022: "2021 CONG US HR 9679, To increase the number of manufacturers registered under the Controlled Substances Act to manufacture cannabis for legitimate research purposes, to authorize health care providers of the Department of Veterans to provide recommendations to veterans regarding participation in federally approved cannabis clinical trials, and for other purposes.";

December 30, 2022: "2021 CONG US HR 9702, To amend the Internal Revenue Code of 1986 to allow deductions and credits relating to expenditures in connection with marijuana sales conducted in compliance with State law."; and April 17, 2023: "2023 CONG US HR 2643". Id.;

January 13, 2023: "2023 CONG US HR 363, To amend title 18, United States Code, with respect to the sale, purchase, shipment, receipt, or possession of a firearm or ammunition by a user of medical marijuana, and for other purposes.";



February 9, 2023: "2023 CONG US S 326, To direct the Secretary of Veterans Affairs to carry out a study and clinical trials on the effects of cannabis on certain health outcomes of veterans with chronic pain and post-traumatic stress disorder, and for other purposes."; February 14, 2023: "2023 CONG US HR 1003"; and March 23, 2023: "2023 CONG US S 326." Id.;

June 5, 2023: "2023 CONG US HR 3829, To streamline the process for institutions of higher education to research marijuana.";

June 15, 2023: "2023 CONG US HRES 519, Recognizing that the United States has a moral obligation to meet its foundational promise of guaranteed justice for all. (2)(A)(iii).";

July 27, 2023: "2023 CONG US HR 5040, To amend the Intelligence Reform and Terrorism Prevention Act of 2004 to limit the consideration of marijuana use when making a security clearance or employment suitability determination, and for other purposes.";

September 1, 2023: "2023 CONG US HR 5323, To amend title 23, United States Code, to establish a natural requirement against the use of marijuana for recreational purposes.";

September 21, 2023: "2023 CONG US S 2909, To provide for congressional review of rules rescheduling marijuana.";

December 7, 2023: "2023 CONG US HR 6673, To amend the Controlled Substances Act to provide for a new rule regarding the application of the Act to marijuana, and for other purposes."; and

January 11, 2024: "2023 CONG HRES 960, Urging action to increase equity within cannabis policy and the legal cannabis marketplace.".

Marijuana now has "currently accepted medical use in treatment in the United States", "accepted safety for use of the drug or other substance under medical supervision" and recreational purposes. To say marijuana has no "currently accepted medical use in treatment in the United States", no "accepted safety for use of the drug or other substance under medical supervision", or no recreation purposes, is overly broad, vague, and violates Plaintiff's rights, and the rights of other similarly situated parties not before the Court. The Controlled Substances Act, Schedule I, is unconstitutional as applied to marijuana, Plaintiff and other similarly situated parties not before the Court. The classification of Marijuana into a Schedule I, is life threatening to Plaintiff, and other similarly situated parties not before the Court. For example, if a person has a life threatening condition, that only marijuana can keep at bay, that person cannot use the one drug keeping them alive: marijuana. Another example might include a person who has seizures all day, has tried every Food, Drug Administration (FDA), approved drug, and found that none of them work, but marijuana, that person will suffer from seizures all day because that person cannot use the one thing keeping their seizures at bay: marijuana. Another example might include a person who has a condition that causes loss of appetite, but marijuana helps that person to eat, that person will lose weight because he or she can't use the one drug helping them eat: marijuana. Plaintiff is suffering from chronic back pain and depression, and he can't use marijuana, the one thing that helps relieve the

pain he feels and helps break him out of depression, with no side effects. Marijuana can also help combat against the use of other potentially dangerous drugs. For example, Defendant Martuscello III has put out memos warning against the use of synthetic marijuana, which he alleges has caused hospitalizations and even death. The Defendants Merrick B. Garland, Attorney General of the United States, Anne Milgram, Administrator of the Drug Enforcement Administration, and Dr. Robert Califf, Commissioner of the Food, Drug Administration, who are mentioned and/or designated within the Controlled Substances Act, with the authority to, own their own, schedule, re- or deschedule any drug or other substances, have known, or reasonably should have known, that for the past fifteen (15) years or less, that every State in the United States, excluding Wyoming, the District of Columbia, Tribal, Guam, Puerto Rico, Virgin Islands and Northern Mariana Islands, have all enacted laws allowing the use of marijuana for medical treatment and recreational purposes, but have refused to decriminalize and deschedule or remove marijuana from a schedule I. Meanwhile, Defendants classify Fentanyl as a schedule II, a lower level schedule than marijuana, and it's responsible for thousands of deaths each year, and Defendants who have the authority to schedule re- or deschedule any drug, own their own, have refused to re-schedule that drug too. Even if Defendants, on their own, descheduled a drug like marijuana, their process takes years of delay. Defendants are biased towards the descheduling of marijuana for medical and recreational purposes. Defendants scheduling of marijuana into a schedule I, is life-or-death threatening to Plaintiff's health, and other similarly situated parties' health not before the Court. Defendants classification of marijuana into a schedule I has caused Plaintiff past and present pain and suffering, and will continue to cause him pain and suffering, as well as other similarly situated parties not before the Court. The Defendants' classification of marijuana into a schedule I, is negligent, or grossly negligent, is an intentional infliction of mental, emotional distress, upon Plaintiff and other similarly situated parties not before the Court, has caused Plaintiff and other similarly situated parties not before the Court, mental, emotional damages, is a deliberate indifference to Plaintiff's and other similarly situated parties' not before the Court, medical needs, denies Plaintiff and other similarly situated parties not before the Court, the right to choose his or their own path of medical treatment, is cruel and unusual punishment, violates substantive due process rights, violates due process rights, violates equal protection rights, and is a failure to protect.

#### V. STATEMENT OF CLAIM(S)

State briefly and concisely the constitutional and/or statutory basis for each claim you seek to assert and identify the defendant(s) against whom each claim is asserted. Commonly asserted claims include: excessive force; failure to protect; deliberate indifference to medical needs; unconstitutional conditions of confinement; denial of due process in a disciplinary or other proceeding; denial of equal protection; retaliation for exercise of a First Amendment right; and interference with exercise of religion. Legal argument and case citations are not required. Use additional sheets of paper if necessary.

#### FIRST CLAIM

The Defendants' Garland's, Milgram's and Califf's, classification of marijuana as a schedule I controlled substance that "...has no accepted medical use in treatment in the United States", "...a lack of accepted safety for use of the drug or other substance under medical supervision", or no recreational

purposes, is: (1) so overbroad and vague as to sweep within its prohibitions constitutionally protected conduct, chills protected conduct; and (2) is unconstitutional as applied to marijuana, Plaintiff and other similarly situated parties not before the Court, and violates Plaintiff's rights, and other similarly situated parties's rights not before the Court, under the First Amendment of the United States Constitution; and Defendants's Martuscello III's, Sullivan's and Dill's refusal to develop and promulgate rules, directives and policies and procedures, that comply with the CCA of New York allowing the use of marijuana for medical and recreational purposes, violates Plaintiff's rights, and other similarly situated parties's rights not before the Court, under the First Amendment of the United States Constitution.

#### SECOND CLAIM

The Defendants's Garland's, Milgram's and Califf's, classification of marijuana as a schedule I controlled substance that "...has no accepted medical use in treatment in the United States", "...a lack of accepted safety for use of the drug or other substance under medical supervision", or no recreational purposes, is unconstitutional as applied to marijuana, Plaintiff and other similarly situated parties not before the Court, and violates Plaintiff's rights, and other similarly situated parties's rights not before the Court, to remain free of cruel and unusual punishment, a deliberate indifference to his or their medical needs, is a denial of the right to chose his or their own path of medical treatment, and is a failure to protect, under the Eighth Amendment of the United States Constitution; and Defendants's Martuscello III's, Sullivan's and Dill's, refusal to develop and promulgate rules, directives and policies and procedures, that comply with the CCA of New York, allowing the use of marijuana for medical and recreational purposes, violates Plaintiff's rights, and other similarly situated parties's rights not before the Court, to remain free of cruel and unusual punishment, a deliberate indifference to his or their medical needs, is a denial of the right to chose his or their own path of medical treatment, and is a failure to protect, in violation of the Eighth Amendment of the United States Constitution.

#### THIRD CLAIM

Defendants's Garland's, Milgram's and Califf's, classification of marijuana into a schedule I controlled substance that "...has no accepted medical use in treatment in the United States", "...a lack of accepted safety for use of the drug or other substance under medical supervision", or no recreational purposes, is: (1) so overbroad and vague as to sweep within its prohibitions constitutionally protected conduct, chills protected conduct; and (2) is unconstitutional as applied to marijuana, Plaintiff and other similarly situated parties not before the Court, and violates Plaintiff's rights, and other similarly situated parties's rights not before the Court, under the Substantive Due Process, the Due Process and Equal Protection Clauses of the Fifth and Fourteenth Amendments of the United States Constitution.

#### FOURTH CLAIM

Defendants's Garland's, Milgram's, Califf's, Martuscello III's, Sullivan's and Dill's, actions or inactions, violate Plaintiff's rights, and other similarly situated parties's rights not before the Court, under the New York Compassionate Case Act, Public Health Law § 3360.

#### FIFTH CLAIM

Defendants's Garland's, Milgram's, Califf's, Martuscello III's, Sullivan's and Dill's, actions or inactions are causing Plaintiff and other similarly situated parties not before the Court, mental, emotional damages.

#### SIXTH CLAIM

Defendants's Garland's, Milgram's, Califf's, Martuscello III's Sullivan's and Dill's, actions or inactions, are an intentional infliction of mental, emotional distress, upon Plaintiff and other similarly situated parties not before the Court.

#### SEVENTH CLAIM

Defendants's Garland's, Milgram's, Califf's, Martuscello III's, Sullivan's and Dill's, actions or inactions, are negligent, or grossly negligent, and violates the rights of Plaintiff and other similarly situated parties not before the Court.

#### VI. RELIEF REQUESTED

State briefly what relief you are seeking in this case.

WHEREFORE, Plaintiff respectfully requests that this Court grants:

A. Declaratory relief;

B. A preliminary and permanent injunction enjoining the Defendants Garland, Milgram and Califf, from classifying marijuana as a schedule I controlled substance, and to compel them to decriminalize and deschedule marijuana for medical and recreational purposes, allowing Plaintiff and other similarly situated parties not before the Court, to use marijuana for medical and recreational purposes; and a preliminary and permanent injunction enjoining Defendants Martuscello III, Sullivan and Dill, from denying Plaintiff and other similarly situated parties not before the Court, marijuana for medical and recreational purposes, and to compel them to develop and promulgate rules, directives and policies and procedures, that comply with the New York State CCA, allowing for the use of marijuana for medical and recreational purposes;

C. A temporary restraining order enjoining Defendants Garland, Milgram and Califf, during the pendency of this action, from classifying marijuana as a schedule I controlled substance, and compel them to decriminalize and deschedule marijuana for medical and recreational purposes, allowing Plaintiff and other similarly situated parties not before the Court, to use marijuana for medical and recreational purposes; and a temporary restraining order enjoining Defendants Martuscello III, Sullivan and Dill, during the pendency of this action, from denying Plaintiff and other similarly situated parties not before the Court, the use of marijuana for medical and recreational purposes, and to compel them to develop and promulgate rules, directives and policies and procedures, that comply with the New York State CCA, allowing for the use of marijuana for medical and recreational purposes;

D. An award of compensatory damages in the amount of \$50,000,000.00 dollars, for past, present and/or future pain and suffering, and mental, emotional damages;

E. An award of punitive damages in the amount of \$50,000,000.00 dollars, for past, present and/or future pain and suffering, and mental, emotional damages;

F. An award of the costs and fees associated with this action;

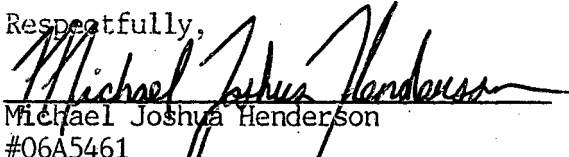
G. An award of attorney fees; and

H. Any other further relief as this Court may deem just and proper.

I declare under the penalty of perjury, pursuant to 28 U.S.C. § 1746, and the laws of the United States, the foregoing is true and correct.

Executed: March 21, 2024  
Stormville, New York

Respectfully,

  
Michael Joshua Henderson  
#06A5461  
Green Haven Correctional Facility  
594 Rte. 216, P.O. Box 4000  
Stormville, N.Y. 12582-0010

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

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MICHAEL JOSHUA HENDERSON,

Plaintiff,

v.

9:24-CV-0228  
(MAD/ML)

MERRICK B. GARLAND, et al.,

Defendants.

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APPEARANCES:

MICHAEL JOSHUA HENDERSON  
Plaintiff, Pro Se  
06-A-5461  
Green Haven Correctional Facility  
P.O. Box 4000  
Stormville, NY 12582

MAE A. D'AGOSTINO  
United States District Judge

**DECISION AND ORDER**

**I. INTRODUCTION**

The Clerk has sent to the Court for review an amended complaint submitted by pro se plaintiff Michael Joshua Henderson asserting claims pursuant to 42 U.S.C. § 1983 ("Section 1983"), together with a motion for injunctive relief, an application to proceed in forma pauperis, four requests related to these submissions, a motion to amend the amended complaint and a proposed second amended complaint. Dkt. No. 1 ("Compl."); Dkt. No. 2 ("Motion for Injunctive Relief"); Dkt. No. 4 ("IFP Application"); Dkt. No. 6 ("Letter Request

Related to the IFP Application"); Dkt. No. 9 ("Letter Request Related to Pleading Exhibits"); Dkt. No. 10 ("Motion for a Three-Judge Panel Review"); Dkt. No. 11 ("Withdrawal Letter"); Dkt. No. 12 ("Motion to Amend"); Dkt. No. 12-1 ("SAC").<sup>1</sup> Plaintiff, who is incarcerated at Green Haven Correctional Facility, has not paid the filing fee for this action.

## II. IFP APPLICATION

"28 U.S.C. § 1915 permits an indigent litigant to commence an action in a federal court without prepayment of the filing fee that would ordinarily be charged." *Cash v. Bernstein*, No. 09-CV-1922, 2010 WL 5185047, at \*1 (S.D.N.Y. Oct. 26, 2010).<sup>2</sup> "Although an indigent, incarcerated individual need not prepay the filing fee at the time of filing, he must subsequently pay the fee, to the extent he is able to do so, through periodic withdrawals from his inmate accounts." *Id.* (citing 28 U.S.C. § 1915(b) and *Harris v. City of New York*, 607 F.3d 18, 21 (2d Cir. 2010)).

Upon review, the Court finds that plaintiff has submitted a completed and signed IFP Application (Dkt. No. 4) which is properly certified and demonstrates economic need. See 28 U.S.C. § 1915(a)(2). Plaintiff has also filed the inmate authorization form required in this District. Dkt. No. 5. Accordingly, plaintiff's IFP Application is granted, and his Letter Request

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<sup>1</sup> By Order entered on February 20, 2024, this action was administratively closed based on plaintiff's failure to comply with the filing fee requirement. Dkt. No. 3. Thereafter, plaintiff filed the IFP Application and inmate authorization form required in this District, and the Clerk was directed to reopen this action and restore it to the Court's active docket. See Dkt. Nos. 4, 5, 7.

<sup>2</sup> Section 1915(g) prohibits a prisoner from proceeding in forma pauperis where, absent a showing of "imminent danger of serious physical injury," a prisoner has filed three or more actions or appeals that were subsequently dismissed as frivolous, malicious, or failing to state a claim upon which relief may be granted. 28 U.S.C. § 1915(g). Based upon the Court's review of plaintiff's litigation history on the Federal Judiciary's Public Access to Court Electronic Records ("PACER") Service, it does not appear that plaintiff has accumulated three strikes for purposes of 28 U.S.C. § 1915(g).

Related to the IFP Application is denied as unnecessary.<sup>3</sup>

### III. MOTION TO AMEND

#### A. Relevant Legal Standard

Rule 15(a) of the Federal Rules of Civil Procedure allows a party to amend its pleading "once as a matter of course within: (A) 21 days after serving it, or (B) if the pleading is one to which a responsive pleading is required, 21 days after service of a responsive pleading or 21 days after service of a motion under Rule 12(b), (e), or (f), whichever is earlier." Fed. R. Civ. P. 15(a)(1). "In all other cases, a party may amend its pleading only with the opposing party's written consent or the court's leave[, and] [t]he court should freely give leave when justice so requires." Fed. R. Civ. P. 15(a).

The Second Circuit has stated that "[t]his permissive standard is consistent with our strong preference for resolving disputes on the merits." *Williams v. Citigroup Inc.*, 659 F.3d 208, 212-13 (2d Cir. 2011) (citation omitted). Leave to amend should be given "absent evidence of undue delay, bad faith or dilatory motive on the part of the movant, undue prejudice to the opposing party, or futility." *Monahan v. N.Y.C. Dep't of Corr.*, 214 F.3d 275, 283 (2d Cir. 2000); *see also Couloute v. Ryncarz*, No. 11-CV-5986, 2012 WL 541089, at \*3 (S.D.N.Y. Feb. 17, 2012) (quoting *Monahan*, 214 F.3d at 283).

The decision to grant or deny a motion to amend is committed to the sound discretion of the trial court and the court's decision is not subject to review on appeal except for abuse of discretion. *Nettis v. Levitt*, 241 F.3d 186, 192 (2d Cir. 2001).

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<sup>3</sup> Plaintiff's letter sought an order directing officials at his facility to certify his IFP Application. Dkt. No. 6.



## **B. Analysis**

As noted in plaintiff's Motion to Amend, the proposed second amended complaint is virtually identical to the amended complaint, except that the proposed second amended includes a few new allegations in further support of plaintiff's claims. *Compare* Am. Compl. with SAC. Although the new allegations in the proposed second amended complaint do not alter, in any respect, the nature of plaintiff's claims, or the theory of wrongdoing, and the proposed second amended complaint does not include any new claims based on any new allegations, for the sake of expediency, plaintiff's motion is granted, and his proposed second amended complaint is accepted as the operative pleading in this case. The Clerk is directed to update the docket accordingly.

## **IV. REMAINING REQUESTS**

Plaintiff's three remaining requests relate to the pleadings in the case. See Dkt. Nos. 9, 10, 11. The first request asks that the Court consider the exhibits attached to the original complaint as part of its review of the amended complaint. See Dkt. No. 9. That request is granted.

Plaintiff also requested that the Court order this case to be reviewed by a three-judge panel. Dkt. No. 10. However, he thereafter moved to withdraw this request without prejudice. Dkt. No. 11. Accordingly, plaintiff's motion for an order to have this case heard by a three-judge panel is deemed withdrawn, and his letter request is granted in this regard. The Court will add only that no basis exists for empaneling a three-judge panel in a civil rights action such as plaintiff's. See 28 U.S.C. § 2284(a) (limiting the imposition of a three-judge panel to situations "required by Act of Congress, or when an action is filed challenging the

constitutionality of the apportionment of congressional districts or the apportionment of any statewide legislative body"); *Blaurock v. Kansas*, No. 12-3066, 2012 WL 6681876, at \*1 (D. Kan. Dec. 21, 2012) (rejecting plaintiff's request for a three-judge panel to review the allegations in his 42 U.S.C. § 1983 complaint and explaining that three-judge panels only are convened under 28 U.S.C. § 2284, when specifically authorized by an Act of Congress, or when a party challenges the constitutionality of the apportionment of congressional districts or statewide legislative bodies).

## V. SUFFICIENCY OF THE SECOND AMENDED COMPLAINT

### A. Governing Legal Standard

Section 1915(e) directs that, when a plaintiff seeks to proceed in forma pauperis, "(2) . . . the court shall dismiss the case at any time if the court determines that – . . . (B) the action . . . (i) is frivolous or malicious; (ii) fails to state a claim on which relief may be granted; or (iii) seeks monetary relief against a defendant who is immune from such relief." 28 U.S.C. § 1915(e)(2)(B).<sup>4</sup> Thus, even if a plaintiff meets the financial criteria to commence an action in forma pauperis, it is the court's responsibility to determine whether the plaintiff may properly maintain the complaint that he filed in this District before the court may permit the plaintiff to proceed with this action in forma pauperis. *See id.*

Likewise, under 28 U.S.C. § 1915A, a court must review any "complaint in a civil action in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity" and must "identify cognizable claims or dismiss the complaint, or any portion of the complaint, if the complaint . . . is frivolous, malicious, or fails to state a claim

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<sup>4</sup> To determine whether an action is frivolous, a court must look to see whether the complaint "lacks an arguable basis either in law or in fact." *Neitzke v. Williams*, 490 U.S. 319, 325 (1989).

upon which relief may be granted; or . . . seeks monetary relief from a defendant who is immune from such relief." 28 U.S.C. § 1915A; see also *Carr v. Dvorin*, 171 F.3d 115, 116 (2d Cir. 1999) (per curiam) (Section 1915A applies to all actions brought by prisoners against government officials even when plaintiff paid the filing fee); *Abbas v. Dixon*, 480 F.3d 636, 639 (2d Cir. 2007) (stating that both sections 1915 and 1915A are available to evaluate prisoner pro se complaints).

In reviewing a pro se complaint, the court has a duty to show liberality toward pro se litigants, see *Nance v. Kelly*, 912 F.2d 605, 606 (2d Cir. 1990) (per curiam), and should exercise "extreme caution . . . in ordering sua sponte dismissal of a pro se complaint before the adverse party has been served and both parties (but particularly the plaintiff) have had an opportunity to respond." *Anderson v. Coughlin*, 700 F.2d 37, 41 (2d Cir. 1983) (internal citations omitted). Therefore, a court should not dismiss a complaint if the plaintiff has stated "enough facts to state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Twombly*, 550 U.S. at 556). Although the Court should construe the factual allegations in the light most favorable to the plaintiff, "the tenet that a court must accept as true all of the allegations contained in a complaint is inapplicable to legal conclusions." *Id.* "Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." *Id.* (citing *Twombly*, 550 U.S. at 555). "[W]here the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the complaint has alleged—but it has not 'show[n]'—that the pleader is entitled to relief." *Id.* at 679 (quoting

Fed. R. Civ. P. 8(a)(2)). Rule 8 "demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation." *Iqbal*, 556 U.S. at 678 (citing *Twombly*, 550 U.S. at 555). Thus, a pleading that only "tenders naked assertions devoid of further factual enhancement" will not suffice. *Id.* (internal quotation marks and alterations omitted).

**B. Summary of the Second Amended Complaint**

Plaintiff asserts allegations of wrongdoing arising out of restrictions imposed by the federal government and the New York State Department of Corrections and Community Supervision ("DOCCS") relative to medical marijuana. *See generally* SAC. The following facts are set forth as alleged by plaintiff in his second amended complaint.<sup>5</sup>

Plaintiff "suffers from 'chronic back pain' due to an injury he received as a child[,] which resulted in a crushed vertebra" and other ailments. SAC at 3. Plaintiff "also suffers from chronic depression" and "Cannabis Use Disorder, Moderate." *Id.* "Plaintiff has anxiety and trouble sleeping[ ] due to his conditions." *Id.* Plaintiff "has tried to treat" his conditions with medications and physical therapy, but the medications prescribed to him do not "work" and have caused him to experience side effects. *Id.* Prior to plaintiff's incarceration, he "used marijuana . . . to treat his chronic back pain and depression, which he has found helps significantly with his conditions, with no side effects." *Id.*

In 2014, New York "enacted the Compassionate Care Act (CCA) . . . under Public Health Law § 3360," which allows certain classes of individuals to obtain prescriptions for, and use, medical marijuana. SAC at 3. Plaintiff "would like to become a certified patient under the Compassionate Care Act . . . so he can use medical marijuana to treat his medical

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<sup>5</sup> As noted above, the Court has also considered the exhibits attached to the original complaint as part of its sufficiency review herein.

and mental health conditions." *Id.* However, defendants DOCCS Commissioner Martuscello, Office of Mental Health ("OMH") Commissioner Sullivan, and Central New York Psychiatric Center ("CNYPC") Executive Director Dill "have refused to permit plaintiff to become a certified patient for the use of medical marijuana[.]" *Id.* These officials have also "refused to develop and promulgate[.]" for incarcerated individuals, "rules, directives and policies and procedures[ ] that comply with the CCA[.]" but have "enacted directives and policies and procedures[ ] that comply with the CCA . . . for parolees[.]" *Id.* at 4.

"Under Federal law and the Controlled Substances Act (CSA), 21 U.S.C. § 812(c), marijuana is a Schedule I controlled substance[.]" SAC at 4. However, "nearly every state," including New York, has "enacted legislation permitting the use of medical marijuana[.]" *Id.*

Plaintiff believes that the Controlled Substances Act "is unconstitutional as applied to marijuana, plaintiff and other similarly situated parties not before the Court." SAC at 12. Plaintiff further believes that the refusal to grant him access to marijuana "for medical and recreational purposes" violates his rights, and the rights of similarly situated individuals. *Id.* at 14.

In addition to the aforementioned officials, plaintiff names the following individuals as defendants: (1) United States Attorney General Merrick Garland; (2) United States Drug Enforcement Administrator Anne Milgram; and (3) United States Food and Drug Administration Commissioner Robert Califf. SAC at 1-2.

Liberal construed, the complaint asserts the following claims against the named defendants: (1) First Amendment free speech, free exercise, and retaliation claims; (2) Eighth Amendment medical indifference and failure-to-protect claims; (3) Fourteenth Amendment due process claims; (4) Fourteenth Amendment equal protection claims; and (4) related state

law claims.

Plaintiff seeks money damages and injunctive relief. SAC at 16-17. For a complete statement of plaintiff's claims, reference is made to the second amended complaint.

### **C. Analysis**

Plaintiff asserts claims pursuant to Section 1983, which establishes a cause of action for "'the deprivation of any rights, privileges, or immunities secured by the Constitution and laws' of the United States." *German v. Fed. Home Loan Mortg. Corp.*, 885 F. Supp. 537, 573 (S.D.N.Y. 1995) (citing *Wilder v. Virginia Hosp. Ass'n*, 496 U.S. 498, 508 (1990) (quoting 42 U.S.C. § 1983)) (footnote omitted). "Section 1983 itself creates no substantive rights, [but] . . . only a procedure for redress for the deprivation of rights established elsewhere." *Sykes v. James*, 13 F.3d 515, 519 (2d Cir. 1993) (citation omitted).

#### **1. Subject Matter Jurisdiction**

A court's jurisdiction to hear challenges to the constitutionality of a statute is limited to an actual case or controversy. See U.S. Const., art. III, § 2; *Golden v. Zwickler*, 394 U.S. 103, 110 (1968) ("No federal court, whether this court or a district court, has 'jurisdiction to pronounce any statute, either of a state or of the United States, void, because irreconcilable with the Constitution except as it is called upon to adjudge the legal rights of litigants in actual controversies.' *Liverpool, N. Y. & P. S. S. Co. v. Commissioners*, 113 U.S. 33, 39, 5 S.Ct. 352, 28 L.Ed. 899 (1885)."). "The doctrine of standing gives meaning to these constitutional limits, . . . by requiring a plaintiff to allege[ ] such a personal stake in the outcome of the controversy as to warrant his invocation of federal-court jurisdiction and to justify exercise of the court's remedial powers on his behalf[.]" *Knife Rts., Inc. v. Vance*, 802 F.3d 377, 383 (2d Cir. 2015) (internal quotation marks and citations omitted). "To establish Article III standing,

then, a plaintiff must show '(1) an injury in fact, (2) a sufficient causal connection between the injury and the conduct complained of, and (3) a likel[ihood] that the injury will be redressed by a favorable decision.'" *Id.* (quoting *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 157 (2014)).

As an initial matter, insofar as plaintiff seeks to challenge the constitutionality of the Controlled Substances Act, there are two legal hurdles to his claims that he cannot overcome. First, the Controlled Substances Act is a criminal statute, and no private right of action exists for a plaintiff to bring a civil suit for violations of the CSA. See, e.g., *Welch v. Atmore Cmty. Hosp.*, 704 Fed. App'x 813, 816 (11th Cir. 2017) ("[N]o part of the [Controlled Substances] Act provides a private remedy or contains a 'specific statutory grant' of jurisdiction for private litigants, such as Welch, to bring civil claims."); *Durr v. Strickland*, 602 F.3d 788, 789 (6th Cir. 2010) (affirming the district court's conclusion that the plaintiff was not entitled to declaratory relief under the Controlled Substances Act because it provides no private right of action); see also *Zink v. Lombardi*, 783 F.3d 1089, 1113 (8th Cir. 2015) ("[The plaintiffs] acknowledge, however, that there is no private right of action under federal law to enforce these alleged violations [of the Controlled Substances Act]."); *Ruggles v. Ige*, 16-CV-0304, 2017 WL 427498, at \*4 (D. Haw. Jan. 31, 2017) (dismissing Section 1983 claims based on alleged violations of the Controlled Substances Act and collecting similar cases).

Second, insofar as the second amended complaint alleges that the Controlled Substances Act infringes on one or more of plaintiff's constitutional rights, the pleading fails to allege, for standing purposes, any facts which plausibly suggest that plaintiff has suffered or is immediately likely to suffer an injury in fact as a result of enforcement of the statute. See

*Knife Rights, Inc.*, 802 F.3d at 383 (discussing the requirements for Article III standing, and noting that "in the context of pre-enforcement challenges to criminal statutes, imminent injury can be established by plausible allegations that a plaintiff inten[ds] to engage in a course of conduct arguably affected with a constitutional interest, but proscribed by ... statute, and there exists a credible threat of prosecution thereunder" (internal quotation marks and citation omitted)); *Adam v. Barr*, No. 18-CV-2106, 2019 WL 1426991, at \*2-3 (S.D.N.Y. Mar. 29, 2019) (dismissing civil rights complaint brought by pro se plaintiff alleging that enforcement of the CSA violates his rights under the Religious Freedom Restoration Act, the Free Exercise Clause of the First Amendment, and the Equal Protection Clause of the Fifth and Fourteenth Amendments, finding that the plaintiff did not have standing to bring a pre-enforcement challenge for declaratory and injunctive relief because the pleading failed to credibly allege that the plaintiff had a concrete intent to violate the law or a credible fear of prosecution for doing so), *aff'd*, 792 F. App'x 20 (2d Cir. 2019). Indeed, as was the case with the plaintiff in *Adam v. Barr*, this Court has no basis to plausibly infer from the allegations in the second amended complaint that plaintiff is able to obtain marijuana, intends to use it in a way that would trigger punishment under the CSA, and has a legitimate fear of prosecution by one or more of the named defendants for such conduct. See 2019 WL 1426991, at \*2-3.

Accordingly, insofar as the second amended complaint raises any claims related to the Controlled Substances Act, those claims are dismissed pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure for lack of subject matter jurisdiction.

## **2. Remaining Section 1983 Claims**

Insofar as the second amended complaint asserts Section 1983 claims against defendants Martuscello, Sullivan, and Dill based on these officials "refus[ing] to permit plaintiff



to become a certified patient for the use of medical marijuana" and/or "refus[ing] to develop and promulgate[.]" for incarcerated individuals, "rules, directives and policies and procedures[ ] that comply with the CCA[.]" plaintiff does not, as a threshold matter, have a fundamental right to use marijuana. See, e.g., *Elansari v. Ragazzo*, No. 21-1192, 2021 WL 2069957 (3d Cir. May 24, 2021) ("[T]he ability to access medical marijuana is not a right secured by the Constitution or the laws of the United States."); *Raich v. Gonzales*, 500 F.3d 850, 866 (9th Cir. 2007) (no fundamental right to use marijuana prescribed by a physician to alleviate pain). Furthermore, as an incarcerated individual, plaintiff does not have a constitutional right to the medication of his choosing, and the second amended complaint is devoid of allegations which plausibly suggest that he has been denied medical treatment for his identified conditions by any DOCCS medical professionals. See *Harris v. Lake County Jail*, No. 11-CV-6209, 2012 WL 1355732, \*4-5\* (N.D. Cal. Apr. 18, 2012) (plaintiff failed to state a deliberate indifference claim based on the denial of medical marijuana because there is no constitutional right to demand jail officials provide plaintiff with medicine of his choosing, including medical marijuana); *Barber v. Med. Dep't*, No. 20-CV-693, 2020 WL 6134188, at \*2 (M.D. Fla. Oct. 19, 2020) ("Barber . . . fails to plausibly allege Miller's decision to deny him medical marijuana was a substantial departure from accepted medical standards. . . . While Plaintiff alleges Defendant Miller failed to give him his preferred course of action, he does not state Miller outright denied him treatment for his glaucoma. Nor does Barber allege that any medical provider has ever prescribed him marijuana to treat his glaucoma. And the Florida Constitution does not require Defendant Miller to treat Barber's glaucoma with marijuana. Because Plaintiff has no constitutional right to demand the medicine of his choosing, his

Fourteenth Amendment claim must fail." ).<sup>6</sup> In addition, incarcerated individuals are not members of a protected class for purposes of an equal protection claim, and plaintiff, as an incarcerated individual, is not similarly situated to parolees. See, e.g., *Chaney v. Koupash*, No. 04-CV-0126 (LEK/DRH), 2008 WL 5423419, at \*20 (N.D.N.Y. Dec. 30, 2008) ("In order to establish an equal protection violation, the plaintiffs must show that they were treated differently than other people in similar circumstances and must establish that such unequal treatment was the result of intentional and purposeful discrimination."); *Smith v. Wildermuth*, No. 9:11-CV-0241 (TJM/TWD), 2015 WL 403108, at \*11 (N.D.N.Y. Jan. 29, 2015) ("Prisoners do not comprise a suspect or quasi-suspect class for Equal Protection purposes." (collecting cases)); *Asusta v. Daniels*, No. 22-CV-1947, 2023 WL 1110660, at \*2 (D. Nev. Jan. 30, 2023) ("In the interest of judicial efficiency, I note that Asusta, as a prisoner, is not similarly situated to individuals who are on parole. The allegation that prisoners and parolees are treated differently does not support a colorable equal protection claim because prisoners and parolees are not similarly situated.").

Simply put, the second amended complaint fails to adequately allege that denying plaintiff access to medical marijuana violates any of his constitutional rights. The Court would add only that more than thirty-five years ago, the Supreme Court expressly held that "when a prison regulation impinges on inmates' constitutional rights, the regulation is valid if it is reasonably related to legitimate penological interests." *Turner v. Safley*, 482 U.S. 78, 89 (1987). The *Turner* Court further identified the following four factors that should be considered in evaluating the reasonableness of a challenged prison regulation: "(i) whether

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<sup>6</sup> The second amended complaint is also devoid of allegations which plausibly suggest that plaintiff has ever been prescribed medical marijuana by a physician.

there is a valid, rational connection between the prison regulation and the legitimate governmental interest put forward to justify it; (ii) whether there are alternative means of exercising the right in question that remain open to prison inmates; (iii) whether accommodation of the asserted constitutional right will have an unreasonable impact upon guards and other inmates, and upon the allocation of prison resources generally; and (iv) whether there are reasonable alternatives available to the prison authorities." *Covino v. Patrissi*, 967 F.2d 73, 78-79 (2d Cir. 1992) (citing *Turner*, 482 U.S. at 89-90). Moreover, "[t]he burden is upon the prisoner to show that a challenged prison regulation is unreasonable." *Id.*

Setting aside plaintiff's failure to adequately plead that he has a constitutional right to use marijuana for any reason, the Court has little trouble concluding that prohibiting inmates from possessing marijuana is rationally related to legitimate penological interests in security, safety, and maintaining order. See, e.g., *Silva v. Bacon*, No. 19-CV-619, 2020 WL 4754950, at \*10 (W.D. Wash. May 12, 2020) ("The Court has no difficulty concluding, based on the record before it, that Defendants have a legitimate penological interest in preventing the introduction of marijuana into KCCF whether it be in plant form or in the form of THC pills, Plaintiff's suggested alternative. Allowing mind-altering substances to potentially circulate in the facility would unquestionably create safety and security issues."), *report and recommendation adopted as modified* by 2020 WL 4747875 (W.D. Wash. Aug. 17, 2020), *aff'd*, No. 21-35937, 2022 WL 2340801 (9th Cir. June 29, 2022); *Harris v. Lake County*, No. 15-CV-3117, 2016 WL 107488, \*4 (N.D. Cal. Jan. 11, 2016) (dismissing First Amendment Free Exercise Clause claim for failure to state a claim as "it is beyond question that correctional institutions have a legitimate penological interest in regulating marijuana as a

controlled substance, an illicit drug, and/or as contraband in their facilities").

Accordingly, plaintiff's Section 1983 claims based on the refusal to allow him to access and use marijuana are dismissed pursuant to 28 U.S.C. § 1915(e)(2)(B) and 28 U.S.C. § 1915A(b) for failure to state a claim upon which relief may be granted.

### 3. State Law Claims

Where a district court has dismissed all claims over which it has original jurisdiction, it may decline to exercise supplemental jurisdiction over any remaining state law claims. See 28 U.S.C. § 1367(c)(3). Although "[t]he decision is a discretionary one, . . . [t]he Second Circuit has instructed [that] 'if [all] federal claims are dismissed before trial . . . the state claims should be dismissed as well.'" *Allen v. Cnty. of Cayuga*, No. 9:17-CV-0018 (MAD/TWD), 2018 WL 11469532, at \*14 (N.D.N.Y. June 25, 2018) (quoting *Castellano v. Bd. of Tr.*, 937 F.2d 752, 758 (2d Cir. 1991)), *report and recommendation adopted*, 2018 WL 11469516 (N.D.N.Y. Aug. 13, 2018).

In light of the dismissal of the federal claims asserted in the second amended complaint, the Court declines to exercise supplemental jurisdiction over any intended state law claims and therefore dismisses those claims without prejudice to refile in the appropriate state court.

### D. Nature of the Dismissal

The Second Circuit has held that a district court "should not dismiss [a pro se plaintiff's complaint] without granting leave to amend at least once when a liberal reading of the complaint gives any indication that a valid claim might be stated." *Gomez v. USAA Fed. Sav. Bank*, 171 F.3d 794, 795 (2d Cir. 1999) (internal quotation omitted). Although the second

amended complaint does not necessarily indicate that plaintiff might be able to state a valid claim, the Court will nonetheless give him an opportunity to present a proposed amended complaint.

Any amended complaint submitted by plaintiff in response to this Decision and Order must set forth a short and plain statement of the facts he relies on in support of his claim that specific individuals named as defendants in that pleading engaged in acts of misconduct or wrongdoing which violated his constitutional rights. Plaintiff's amended complaint, which shall supersede and replace in its entirety the original complaint, must be a complete pleading which sets forth all of the claims that plaintiff wants this Court to consider as a basis for awarding relief herein.

Plaintiff is advised that his failure to file an amended complaint **within thirty (30) days** of the filing date of this Decision and Order will result in dismissal of this action without prejudice without further Order of the Court.

#### **VI. MOTION FOR INJUNCTIVE RELIEF**

In light of the dismissal of the second amended complaint, and all claims asserted therein, plaintiff's Motion for Injunctive Relief is denied.

#### **VII. CONCLUSION**

**WHEREFORE**, it is hereby

**ORDERED** that plaintiff's IFP Application (Dkt. No. 4) is **GRANTED**.<sup>7</sup> The Clerk shall provide the superintendent of the facility, designated by plaintiff as his current location, with a

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<sup>7</sup> Plaintiff should note that although his IFP Application has been granted, he will still be required to pay fees that he may incur in this action, including copying and/or witness fees.

copy of plaintiff's authorization form (Dkt. No. 5), and notify the official that this action has been filed and that plaintiff is required to pay the entire statutory filing fee of \$350.00 pursuant to 28 U.S.C. § 1915; and it is further

**ORDERED** that the Clerk shall provide a copy of plaintiff's authorization form (Dkt. No. 5) to the Financial Deputy of the Clerk's Office; and it is further

**ORDERED** that plaintiff's Letter Request Related to the IFP Application (Dkt. No. 6) is **DENIED** as unnecessary; and it is further

**ORDERED** that plaintiff's Motion to Amend (Dkt. No. 12) is **GRANTED** as set forth above and the second amended complaint (Dkt. No. 12-1) is accepted as the operative pleading. The Clerk is directed to docket the proposed second amended complaint (Dkt. No. 12-1) as the second amended complaint; and it is further

**ORDERED** that plaintiff's Letter Request Related to Pleading Exhibits (Dkt. No. 9) is **GRANTED** as set forth above; and it is further

**ORDERED** that plaintiff's Withdrawal Letter (Dkt. No. 11) is **GRANTED** and his Motion for a Three-Judge Panel Review (Dkt. No. 10) is **DENIED** as set forth above; and it is further

**ORDERED** that plaintiff's Section 1983 claims related to the Controlled Substances Act are dismissed pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure for lack of subject matter jurisdiction; and it is further

**ORDERED** that all remaining Section 1983 claims in the second amended complaint are **DISMISSED without prejudice** pursuant to 28 U.S.C. § 1915(e)(2)(B) and 28 U.S.C. § 1915A(b) for failure to state a claim upon which relief may be granted; and it is further

**ORDERED** that the Court declines to exercise supplemental jurisdiction over plaintiff's

state law claims, which are **DISMISSED without prejudice** to refiling in the appropriate state court; and it is further

**ORDERED** that plaintiff's Motion for Injunctive Relief (Dkt. No. 2) is **DENIED** as set forth above; and it is further

**ORDERED** that if plaintiff wishes to proceed with this action he must file an amended complaint as set forth above **within thirty (30) days** of the filing date of this Decision and Order; and it is further

**ORDERED** that upon the filing of an amended complaint as directed above, the Clerk shall return the file to this Court for further review; and it is further

**ORDERED** that in the event plaintiff fails to file a signed amended complaint **within thirty (30) days** of the filing date of this Decision and Order, the Clerk shall enter judgment dismissing this action without prejudice pursuant to 28 U.S.C. § 1915(e)(2)(B) and 28 U.S.C. § 1915A(b) due to plaintiff's failure to state a claim upon which relief can be granted and to comply with the terms of this Decision and Order, without further order of this Court; and it is further

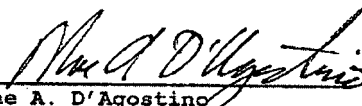
**ORDERED** that all pleadings, motions and other documents relating to this action be filed with the Clerk of the United States District Court, Northern District of New York, 7th Floor, Federal Building, 100 S. Clinton St., Syracuse, New York 13261-7367. Plaintiff must comply with any requests by the Clerk's Office for any documents that are necessary to maintain this action. All parties must comply with Local Rule 7.1 of the Northern District of New York in filing motions. All motions will be decided on submitted papers without oral argument unless otherwise ordered by the Court. **Plaintiff is also required to promptly**

notify, in writing, the Clerk's Office and all parties or their counsel of any change in plaintiff's address; his failure to do so may result in the dismissal of this action; and it is further

ORDERED that the Clerk shall serve a copy of this Decision and Order on plaintiff.

IT IS SO ORDERED.

Dated: April 10, 2024  
Albany, NY

  
Mae A. D'Agostino  
U.S. District Judge



Michael Joshua Henderson  
#06A5461  
594 Rte. 216, P.O. Box 4000  
Stormville, N.Y. 12582-0010

Clerk of the Court  
United States District Court  
Northern District of New York  
100 S. Clinton Street, P.O. Box 7367  
Syracuse, N.Y. 13261

April 18, 2024

Re: Henderson v. Garland et al.  
24-CV-228 (MAD/ML)

Dear Clerk of the Court:

Enclosed for filing is a Third Amended Complaint. The complaint was amended to include another defendant Xavier Becerra, of the Department of Health and Human Services, to add facts and another claim. The additional Defendant's name was written in the heading and statement of facts, and included all on page 17 of the amended complaint.


I would also like this Court to consider this letter as a letter motion to renew, reargue or for reconsideration, under the Federal Rules and Civil Procedures, Rules 59 and or 60, or other rule, of the claims related to the Controlled Substances Act. This Court dismissed the claims related to the Controlled Substances Act for two reasons: (1) it is not the subject of a private action; and (2) Plaintiff did not allege that marijuana is readily available, that he intends to use it and fears prosecution.

However, the Controlled Substances Act is subjected to civil action: for example Washington v. Barr, 925 F.3d 109 (2019), Nation v. Trump, 818 Fed.Appx. 678 (2020), Olsen v. Holder, 610 F.Supp.2d 985 (2009), and compare them with U.S. v. Kiffer, 477 F.2d 349 (1973) and United States v. Amalfi, 47 F.4th 114 (2022). These cases speak about the difference between bringing a civil action against the Controlled Substances Act (CSA), and a criminal proceeding under the CSA, requiring civil actions to exhaust their administrative remedies, but not criminal defendants. Plaintiff alleges exceptions to having to exhaust his administrative remedies: Defendants bias, and substantial delay of years the administrative process takes, that the administrative process is inadequate, and that because Plaintiff intends to use marijuana to treat his conditions, if he did so could be subjected to prosecution and therefore does not have to exhaust. Secondly, Plaintiff has now included facts that marijuana is available, he intends to use it, but fears prosecution in his complaint, along with other allegations, that he mistakenly and inadvertently excluded. Plaintiff has other civils suits that were or are in summary judgment phase, and due to being overwhelmed, overlooked the facts he now seeks to included.

I declare under the penalty of perjury, pursuant to 28 U.S.C. § 1746, and the laws of the United States the foregoing is true and correct.

Executed: April 18, 2024

Respectfully,

  
Michael Joshua Henderson

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

MICHAEL JOSHUA HENDERSON,

Plaintiff,

v.

THIRD AMENDED  
COMPLAINT

Case No. 24-CV-228

(MAD/ML)

Jury Demand

☒ Yes

☐ No

MERRICK B. GARLAND, Attorney General of the United States; ANNE MILGRAM, Administrator of the Drug Enforcement Administration; DR. ROBERT CALIFF, Commissioner of the Food and Drug Administration; DANIEL F. MARTUSCELLO III, Commissioner of the Department of Corrections and Community Supervision; ANN MARIE T. SULLIVAN, Commissioner of the Office of Mental Health; and DANIELLE DILL, Executive Director of the Central New York Psychiatric Center; and XAVIER BÉCERRA, Director of Department of Health and Human Services, Defendants.

NOTICE

The public can access electronic court files. For privacy and security reasons, papers filed with the court should therefore not contain: an individual's social security number; taxpayer identification number, or birth date; the name of a person known to be a minor; or financial account number. A filing may include only: the last four digits of a social security number or taxpayer-identification number; the year of an individual's birth; a minor's initials; and the last four digits of a financial account number. See Fed. R. Civ. P. 5.2.

I. LEGAL BASIS FOR COMPLAINT

This is a civil action seeking relief and/or damages to defend and protect the rights guaranteed by the Constitution and laws of the United States. Indicate below the federal basis for your claims.

- ☒ 42 U.S.C. § 1983 (state, county, or municipal defendants)  
☒ Bivens v. Six Unknown Federal Narcotics Agents, 403 U.S. 388 (1971) (federal defendants)  
☐ Other (please specify) \_\_\_\_\_

II. PLAINTIFF(S) INFORMATION

Name: Michael Joshua Henderson  
Prisoner ID #: 06A5461

Place of Detention: Green Haven Correctional Facility  
Address: 594 Rte. 216, P.O. Box 4000  
Stormville, N.Y. 12582-0010

Indicate your confinement status when the alleged wrongdoing occurred:

- ☐ Pretrial detainee
- ☐ Civilly committed detainee
- ☒ Convicted and sentenced state prisoner
- ☐ Convicted and sentenced federal prisoner
- ☐ Immigration

Provide any other names by which you are or have been known and any other identification numbers associated with prior periods of incarceration:

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If there are additional plaintiffs, each person must provide all of the information requested in this section and must sign the complaint; additional sheets of paper may be used and attached to this complaint.

### III. DEFENDANT(S) INFORMATION

Defendant No. 1: Merrick B. Garland  
Attorney General of the United States  
Department of Justice, 950 Pennsylvania Ave. N.W.,  
Washington, DC 20530-0001

Defendant No. 2: Anne Milgram  
Administrator of the Drug Enforcement Administration  
8701 Morrisette Dr.  
Springfield, VA 22152-1080

Defendant No. 3: Dr. Robert Califf  
Commissioner of the Food and Drug Administration  
10903 New Hampshire Ave.  
Silver Spring, MD 20993

Defendant No. 4: Daniel F. Martuscello III  
Commissioner of the Department of Corrections and  
Community Supervision  
1220 Washington Avenue, Building 2  
Albany, N.Y. 12226

Defendant No. 5: Ann Marie T. Sullivan  
Commissioner of the Office of Mental Health  
44 holland Avenue  
Albany, N.Y. 12229

Defendant No. 6: Danielle Dill  
Executive Director of Central New York Psychiatric  
Center  
Old River Rd.  
Marcy, N.Y. 13403

*See page 17, for additional Defendant.*

If there are additional defendants, the information requested in this section must be provided for each person; additional sheets of paper may be used and attached to this complaint.

#### IV. STATEMENT OF FACTS

State briefly and concisely the facts supporting your claims. Describe the events in the order they happened. Your statement of facts should include the following:

The date(s) on which the events occurred  
Where these events took place (identify the facility and, if relevant, the specific location in the facility)  
How each defendant was involved in the conduct you are complaining about

If you were physically injured by the alleged misconduct, describe the nature of your injuries and the medical evaluation and treatment you were provided. You need not cite to case law or statutes or provide legal argument in the Statement of Facts. Use additional sheets or paper if necessary.

Plaintiff, who is incarcerated at Green Haven Correctional Facility, in the Department of Corrections and Community Supervision (DOCCS), suffers from "chronic" "back pain" due to an injury he received as a child which resulted in a crushed vertebra, or "Degenerative Lower Lumbar Disc Disease L5-S1"; "Mild Degenerative Lower Lumbar Spondylosis"; and "Mild Anterior Wedge Deformity T12 [crushed] vertebra which by appearance from old trauma.". See Exhibit 1, Medical Records. Plaintiff also suffers from chronic depression, or "Persistent Depressive Disorder" and "Cannabis Use Disorder, Moderate.". See Exhibit 2, Mental Health Records. Plaintiff has anxiety and trouble sleeping, due to his conditions. Plaintiff has tried to treat his back pain, with pain medications, injections and physical therapy. He has tried to treat his chronic depression and anxiety, with medications as well. However, Plaintiff has found that none of them work, or he has experienced side effects from the pain medications and mental health medications. Prior to Plaintiff's incarceration, he has used marijuana, by smoking it and taking it in edible form, to treat his chronic back pain and depression, which he has found helps significantly with his conditions, with no side effects. Plaintiff has found that smoking marijuana is more of a mental high, whereas taking it in edible form is more of a body high.

New York State enacted the Compassionate Care Act (CCA) in the year 2014, under Public Health Law § 3360, which allows a person, like Plaintiff, with a "[s]erious condition", "pain that degrades health and functional capability...", "substance use disorder", "chronic pain", "or as added by the commissioner", to become a certified patient for the use of medical marijuana, and to use medical marijuana to treat his medical and mental health conditions. See Exhibit 3, Public Health Law § 3360. Plaintiff would like to become a certified patient under the Compassionate Care Act of New York State, Public Health Law § 3360, so he can use medical marijuana to treat his medical and mental health conditions. However, Defendants Daniel F. Martuscello III, Commissioner of the Department of Corrections and Community Supervision (DOCCS), Ann Marie T. Sullivan, Commissioner of the Office of Mental Health (OMH) and Danielle Dill, Executive Director of the Central New York Psychiatric

Center (CNYPC), who knew, or reasonable should have known of the CCA and its enactment in the year 2014, have refused to permit Plaintiff to become a certified patient for the use of medical marijuana, and to use medical marijuana to treat his medical and mental health conditions. Defendants have refused to develop and promulgate rules, directives and policies and procedures, that comply with the CCA. Defendant Martuscello III, Commissioner of DOCCS, has enacted directives and policies and procedures, that comply with the CCA, but its only for parolees (See Exhibit 4, Medical Marijuana Use by Parolees), and not incarcerated individuals, which Plaintiff alleges violates equal protection. Whether a person is incarcerated or on parole, they are still under the care, custody and control of DOCCS until their sentence is complete. DOCCS cannot draw a line between parolees and Plaintiff, or other similarly situated parties not before the Court. Defendant's inactions deny not only Plaintiff's rights, but other parties rights, who are similarly situated, but who are not before the Court, under the CCA and the United States Constitution. Defendant's inactions are life threatening to other parties, similarly situated, who are not before the Court, where, for example: if a person who has a life threatening condition under the CCA, finds the only thing keeping his or her condition at bay, is the use of marijuana, but becomes incarcerated in DOCCS or CNYPC, or other psychiatric centers, he or she can no longer use the one thing keeping their condition at bay: marijuana. Defendant's inactions are negligent, has caused Plaintiff past and present pain and suffering, intentional infliction of mental emotional distress, mental, emotional damages, is a deliberate indifference to his medical needs, is denying him the right to chose his own path of medical treatment, violates equal protections, is cruel and unusual punishment and a failure to protect. Plaintiff filed a grievance at Clinton Correctional Facility and fully exhausted his administrative remedies.

Under Federal law and the Controlled Substances Act (CSA), 21 U.S.C. § 812(c), marijuana is a Schedule I controlled substance, and has been that way since October 27, 1970, since the Nixon era, the War on Drugs and Just say No movement. The findings required for a schedule I are as follows: "(1) Schedule I-- (A) The drug or other substance has a high potential for abuse. (B) The drug or other substance has no currently accepted medical use in treatment in the United States. (C) There is a lack of accepted safety for use of the drug or other substance under medical supervision.". See 21 U.S.C. § 812(b)(1)(A)(B)(C). However, as we all know, or reasonably should know, in this current time, marijuana does have "currently accepted medical use in treatment in the United States", and "accepted safety for use of the drug or other substance under medical supervision.". In fact, nearly every State, excluding Wyoming, in the United States, the District of Columbia and our Territories, have enacted legislation permitting the use of marijuana for medical and recreational purposes, and those States or Territories who haven't enacted legislation permitting the use of medical marijuana or use of marijuana, has this past year in 2023 and this year 2024, passed, or proposed legislation legalizing the use of marijuana for medical or recreational purposes. The States, the District of Columbia, and Territories, of the United States, who have enacted or proposed legislation legalizing marijuana for medical and recreational purposes, are as follows:

Alabama: "AL ST § 20-2A-2, Medical Use of Cannabis";

Alaska: "AK ST § 17.37.010, Medical Uses of Marijuana";

Arizona: "AZ ST § 35-2801, Arizona Medical Marijuana Act";

Arkansas: "AR CONST Amend. 98, Arkansas Medical Marijuana Amendment of 2016";

California: "CA HLTH & S § 11362.5, Cannabis Medical Use Compassionate Use Act of 1996, CA HLTH & S § 11362.7, Medical Marijuana Program";

Colorado: "CON CONST Art. 18, § 14, Medical Use of Marijuana for Persons Suffering from Debilitating Medical Conditions";

Connecticut: "CT ST § 21a-408, Palliative Use of Marijuana";

Delaware: "DE ST TI 16 § 4902A, The Delaware Medical Marijuana Act";

D.C.: "DC CODE § 7-1671.01, Use of Marijuana for Medical Treatment";

Florida: "FL ST § 381.986, Medical Use of Marijuana";

Georgia: "GA ST § 43-34-120, Use of Marijuana for Treatment of Cancer and Glaucoma";

Hawaii: "HI ST § 329-121, Medical Use of Cannabis";

Idaho: "I.C. § 73-116, Common Law defense of necessity, Proposed or Enacted Legislation: 2023 Idaho House Bill No. 370, Idaho Medical Cannabis Act, introduced March 24, 2023";

Illinois: "IL ST CH 410 § 130, Compassionate Use of Medical Cannabis Program Act";

Indiana: Proposed or Enacted Legislation: "2023 Indiana House Bill No. 1263, Medical Marijuana, introduced January 11, 2023";

Iowa: LA ADC 641-154.1 (124E), Medical Cannabidiol Program, Proposed or Enacted Legislation: 2023 Iowa House File No. 442, A bill for an act relating to marijuana, including the manufacture, delivery, and possession of marijuana, the licensure of retail marijuana, and medical cannabis, providing fees, including penalties, and including effective date provisions";

Kansas: Proposed or Enacted Legislation: 2023 Kansas Senate Bill No. 135, Creating the medical cannabis regulation act to regulate the cultivation, processing, distribution, sale and use of medical cannabis, introduced February 1, 2023";

Kentucky: Proposed or Enacted Legislation: 2024 Kentucky House Bill No. 90, An Act relating to the regulation of cannabis and making appropriations therefor";

Louisiana: "LAR. S. 40:1046, Therapeutic Use of Marijuana";

Maine: "ME ST T. 22 § 2383-B, Authorized possession by individuals, Proposed or Enacted Legislation: 2023 Maine Senate Paper No. 714, An Act to

remove All Marijuana-related Provisions from the Maine Criminal Code and Expunge All Convictions Involving Marijuana; (LD1789), introduced April 25, 2023, Maine Senate Paper No. 734, 2023 ME S.P. 734 (NS), An Act to Create the Maine Medical Cannabis Advisory Commission and Medical Cannabis Alternative Health Board; (LD1819)";

Maryland: "MD CRIM LAW § 5-601, Possession or administering controlled dangerous substance common law defense-medical necessity";

Massachusetts: "MA ST 941, Medical Use of Marijuana";

Michigan: "MI ST 333.26423, Michigan Medical Marijuana Act";

Minnesota: "MN ST § 152., Drugs; Controlled Substances Therapeutic Research Act; Medical Cannabis";

Mississippi: "MS CONST § 288.1, Medical Marijuana, Proposed or Enacted Legislation: "MS ST § 41-29-139, Prohibited acts and penalties; indictments for trafficking; Mississippi Medical Cannabis Act non-applicable, MS ST § 41-29-136, CBD solution; Harper Grace's Law, '...Affirmative and complete defense' for possession of marijuana";

Missouri: "MO CONST Art. 14, § 1, Right to access medical marijuana";

Montana: "MT ST 50-46-201, Use of Marijuana for Debilitating Medical Conditions", Proposed or Enacted Legislation: "MT ST 16-12-501, Medical Marijuana";

Nebraska: "Affirmative defense to possession of Marijuana, prescribed medical marijuana, NE ST § 28-467, Prosecution for unlawful possession of marijuana; defense, restrictions on certain actions, NE ST § 28-464, Medical Cannabidiol Pilot Study; University of Nebraska and Nebraska Medicine; authority to produce or possess cannabidiol; patient; eligibility, Proposed or Enacted Legislation: 2023 NE L.B. 22 (NS), decriminalize use and possession of marijuana, introduced January 5, 2023, 2023 NE L.B. 634 (NS), Adopt the Cannabis Control Act and the Cannabis Conviction Clean Slate Act";

Nevada: "NV ST T. 40 Chapter 453A., Medical Use of Marijuana, Proposed or Enacted Legislation: 2023 NV A.J.R. 8 (NS), TITLE: Urges the Congress of the United States to deschedule marijuana as a schedule I controlled substance. (BDR R-615)";

New Hampshire: "NH ST § 126-X, Use of Cannabis for Therapeutic Purposes";

New Jersey: "NJ ST 24:61-1m, Short title: Jake Honig Compassionate Use Medical Cannabis Act";

New Mexico: "NM ST § 26-2B-1, Lynn and Erin Compassionate Use Act";

New York: "NY PUB HEALTH § 3360, Compassionate Care Act, Medical Use of Marijuana";

North Carolina: Proposed or Enacted Legislation: "2023 NC S.B. 346 (NS),

Marijuana Justice and reinvestment Act. 'An Act to Legalize and regulate the sale, possession, and use of cannabis in North Carolina'';

North Dakota: "ND ST 19-24.1-01, Medical Marijuana";

Ohio: "OH ST § 3796.01, Medical Marijuana";

Oklahoma: "OK ST T. 63 § 427.2, Medical Marijuana and Patient Protection Act";

Oregon: "OR ADC 333-008-0010, Medical Marijuana, Proposed or Enacted Legislation: 2023 OR H.B. 3567 (NS), Relating to marijuana for medical use; prescribing an effective date";

Pennsylvania: "PA ST 35 P.S. § 10231.102, Medical Marijuana Act";

Rhode Island: "RI ST § 21-28.6-1, The Edward O. Hawkins and Thomas G. Slater Medical Marijuana Act";

South Carolina: "SC ST § 44-53-650, Director to obtain and distribute Marijuana";

South Dakota: "SD CONST Art. 30, Marijuana and Hemp, Proposed or Enacted Legislation: 2024 SD H.B. 1024 (NS), An Act to require that an application for medical marijuana registry identification card include a notice and acknowledgment of federal law regarding firearms and the lawful use of a controlled substance, SD ST § 34-20G-1, Medical Cannabis";

Tennessee: "Admissibility of Evidence, TN ST § 24-7-103, Personal statement regarding use of marijuana made to medical personnel, Proposed or Enacted Legislation: 2023 TN S.B. 1829 (NS), TITLE: Health Care - As introduced, enacts the 'Medical Autonomy Related to Cannabis Act', 2023 TN S.B. 168 (NS), TITLE: Controlled Substances - As introduced, enacts the 'Free All Cannabis for Tennesseans Act'; establishes a regulatory structure for the cultivation, processing, and retail sale of marijuana and marijuana products in this state to be administered by the department of agriculture";

Texas: "TX HEALTH & S § 481.111, Exemptions", Proposed or Enacted Legislation: 2023 TX H.B. 3620 (NS), TITLE: Relating to repealing certain offenses and removing certain regulations relating to marijuana, cannabis, cannabinoids, and paraphernalia, 2023 TX H.B. 1341 (NS), TITLE: Relating to repealing certain offenses and removing certain regulations relating to the cultivation, manufacture, delivery and possession of marihuana and cannabis";

Utah: "UT ST § 4-41a, Cannabis Production Establishments and Pharmacies";

Vermont: "VT ST T. 7 § 831, Cannabis";

Virginia: "VA ST § 18.2-251.1, Possession or distribution of marijuana for medical purposes permitted", Proposed or Enacted Legislation: 2024 VA S.B. 448 (NS), TITLE: Cannabis control; retail market; penalties";

Washington: "WA ST 69.51A.005, Medical Cannabis";



West Virginia: Proposed or Enacted Legislation: 2024 WV H.B. 4747 (NS), TITLE: removing marijuana as a tested substance from screening requirements"; "2024 WV H.B. 4873 (NS), TITLE: Relating to legalizing cannabis production, sales and adult consumption";

Wisconsin: Proposed or Enacted Legislation: "2023 WI S.B. 486 (NS), TITLE: legalizing the possession of marijuana; medical marijuana; regulating the production, processing, and sale of marijuana; expunging or redesignating past convictions for marijuana-related crimes; equity grants; making an appropriation; and providing a penalty, introduced October 9, 2023", "2023 WI A.B. 506 (NS), TITLE: legalizing to possession of marijuana; medical marijuana; regulating to production, processing, and sale of marijuana; expunging or redesignating past convictions for marijuana-related crimes; equity grants; making an appropriation; and providing penalty";

Wyoming: No legal marijuana;

Tribal: "FL ST § 385.212, Powers and duties of the Department of Health; Office of Medical Marijuana Use";

Guam: "GU ST T. 10, The Joaquin (KC) Concepcion II Compassionate Use Act of 2013";

Puerto Rico: Proposed or Enacted Legislation: "2021 Puerto Rico Laws Act 15 (H.B. 152) 'Act to Provide for the Safety, Development, and Research of Cannabis for Innovation and the Applicable Rules and Limitations' (MEDICAL CANNABIS ACT)";

Virgin Islands: "VI ST T. 19 § 774a, Medicinal Cannabis"; and

Northern Mariana Islands: "FL ST 385.212, Powers and duties of the Department of Health; Office of Medical Marijuana Use".

United States Congress has even been attempting to pass legislation to legalize marijuana for medical and recreational purposes:

January 19, 2021: "2021 CONG US HR 365, To provide for the rescheduling of marijuana into schedule III of the Controlled Substances Act", January 27, 2023: "2021 CONG US HR 610." Id.;

January 17, 2021: "2021 CONG US HR 394, To prohibit the Secretary of Veterans Affairs from denying a veteran benefits administered by the Secretary by reason of the veteran participating in a State-approved marijuana program, and for other purposes", January 21, 2021: "2021 CONG US HR 430". Id.;

February 4, 2021: "2021 CONG US S 253, To expand research on the cannabidiol and marihuana, and for other purposes", March 25, 2022: "2021 CONG US S 253", July 21, 2022: "2021 CONG US HR 8454", July 26, 2022: "2021 CONG US HR 8454", July 27, 2022: "2021 CONG US HR 8454", and November 16, 2022: "2021 CONG HR 8454". Id.;

March 8, 2021: "2021 CONG US HR 1614, To amend the Immigration and Nationality Act to provide that marijuana use, possession, and distribution may not be considered for determinations of whether a person is a person of good

moral character, and for other purposes.";

March 11, 2021: "2021 CONG US HRES 226, recognizing that the United States has a moral obligation to meet its foundational promise of guaranteed justice for all.";

March 18, 2021: "2021 CONG US HR 2068, To create a safe harbor for insurers engaging in the business of insurance in connection with a cannabis-related legitimate business, and for other purposes", March 18, 2021: "2021 CONG US S 862", April 27, 2023: "2023 CONG US HR 2984", April 27, 2023: "2023 CONG US S 1359";

March 18, 2021: "2021 CONG US HR 1996, To create protections for financial institutions that provide financial services to cannabis-related legitimate businesses and service providers for such businesses, and for other purposes", March 23, 2021: "2021 CONG US S 910", April 19, 2021: "2021 CONG US HR 1996", April 20, 2021: "2021 CONG US HR 1996", April 26, 2023: "2023 CONG US S 1323", April 26, 2023: "2023 CONG US HR 2891", September 20, 2023: "2023 CONG US S 2860", September 28, 2023: "2023 CONG US S 2860";

April 15, 2021: "2021 CONG US HR 2588, To allow veterans to use, possess, or transport medical marijuana and to discuss the use of medical marijuana with a physician of the Department of Veterans Affairs as authorized by a State or Indian Tribe, and for other purposes.", April 15, 2021: "2021 CONG US S 1183", April 18, 2023: "2023 CONG US HR 2682", April 19, 2023: "2023 CONG US S 1204". Id.;

April 19, 2021: "2021 US HR 2652, To ensure that certain entrepreneurial development services of the Small Business Administration are made available to cannabis-related legitimate businesses and service providers, and for other purposes.";

April 19, 2021: "2021 CONG HR 2649, To decriminalize cannabis to establish an Equitable Licensing.";

April 20, 2021: "2021 CONG US HR 2712, To ensure that certain loan programs of the Small Business Administration are made available to cannabis-related legitimate businesses and service providers, and for other purposes.", November 17, 2022: "2021 CONG US S 5131.";

April 22, 2021: "2021 CONG US HR 2830, To protect the Second Amendment rights of adults whose use of marijuana is permitted by State or Tribal law.", April 20, 2023: "2023 CONG US HR 2772". Id.;

April 27, 2021: "2021 CONG US S 1380, To require automatic sealing of certain records, and for other purposes.", April 28, 2021: "2021 CONG US HR 2864", April 27, 2023: "2023 CONG US HR 2930";

April 29, 2021: "2021 CONG US S 1456, To direct the Secretary of Health and Human Services to enter into a 10-year arrangement with the National Academy of Sciences to conduct and update biennially a study on the effects of State legalized marijuana programs, and for other purposes."; May 7, 2021: "2021 CONG US HR 3043". Id.

May 11, 2021: "2021 CONG US HR 3105, To limit the application of Federal laws to the distribution and consumption of marihuana, and other purposes.";

May 13, 2021: "2021 CONG US HR 3212, To provide that an individual who uses marijuana in compliance with State law may not be denied occupancy of federally assisted housing, and for other purposes.";

May 28, 2021: "2021 CONG US HR 3617, To decriminalize and deschedule cannabis, to provide for reinvestment in certain persons adversely impacted by the War on Drugs, to provide for expungement of certain cannabis offenses, and for other purposes."; March 24, 2022: "2021 CONG US HR 3617"; April 1, 2022: "2021 CONG US HR 3617"; April 4, 2022: "2021 CONG US HR 3617"; April 5, 2022: "2021 CONG US HR 3617"; July 21, 2022: "2021 CONG US S 4591"; and September 20, 2023: "2023 CONG US HR 5601". Id.;

May 28, 2021: "2021 CONG US HR 3601, To authorize physicians and other health care providers of the Department of Veterans Affairs to provide information regarding State-approved marijuana programs to veterans, and for other purposes.";

June 10, 2021: "2021 CONG US S 2016, To authorize elements of the Department of Transportation, and for other purposes."; December 17, 2021: "2021 CONG US S 2016";

July 19, 2021: "2021 CONG US HR 4536, To prohibit assistance provided under the program of block grants to States for temporary assistance for ready families from being accessed through the use of an electronic benefit transfer card at any store that offers marijuana for sale.";

October 21, 2021: "2021 CONG US HR 5657, To amend the Controlled Substances Act to make marijuana accessible for use by qualified marijuana researchers for medical purposes, and for other purposes."; April 4, 2022: "2021 CONG US HR 5657"; April 5, 2022: "2021 CONG US HR 5657"; and October 25, 2023: "2023 CONG US HR 6028". Id.;

November 15, 2021: "2021 CONG US HR 5977, To amend the Controlled Substances Act regarding marijuana, and for other purposes."; and October 25, 2023: "2023 CONG US HR 6028". Id.;

December 2, 2021: "2021 CONG US HR 6129, To authorize the Attorney General to make grants to States and units of local government to reduce the financial and administrative burden of expunging convictions for cannabis offenses, and for other purposes."; April 18, 2023: "2023 CONG US HR 2677". Id.;

March 8, 2022: "2021 CONG US HR 6991, To establish the policy of the Department of Veterans Affairs on medicinal cannabis, and for other purposes.";

April 7, 2022: "2021 CONG US HR 7446, To amend the Uniform Code of Military Justice to modify the treatment of certain controlled substance violations, and for other purposes.";

April 14, 2022: "2021 CONG US HR 7513, To establish a Commission on the Federal Regulation of Cannabis to Study a prompt and plausible pathway to the

Federal regulation of cannabis, and for other purposes."; December 1, 2022: "2021 CONG US S 5166"; April 13, 2023: "2023 CONG US HR 2598"; and July 27, 2023: "2023 CONG US S 2650". Id.;

June 23, 2022: "2021 CONG US HR 8200, To amend any applicable Federal law to permit access to community development, small business, minority development, and any other public or private financial capital sources for investment in and financing of cannabis-related legitimate businesses, and to amend the Securities Exchange Act of 1934 to create a safe harbor for national securities exchanges to list the securities of issuers that are cannabis-related legitimate businesses.";

June 23, 2022: "2021 CONG US HR 8197, To authorize Department of Veterans Affairs health care providers to provide recommendations and opinions to veterans regarding participation in State marijuana programs."; and March 30, 2023: "2023 CONG US HR 2431". Id.;

July 26, 2022: "2021 CONG US S 4622, To establish protections for radio and television stations that provide advertising services to cannabis-related legitimate businesses and service providers for such businesses, and for other purposes.";

July 27, 2022: "2021 CONG US HR 8540, To amend the Public Health Service Act to provide for the designation of institutions of higher education as Centers of Excellence in Cannabis Research, and for other purposes.";

July 28, 2022: "2021 CONG US HR 8557, To amend Federal law to create and expungement mechanism and a process to petition for expungement for low-level violations of the Controlled Substances Act as it relates to marijuana, to study the impact of expungement issued, and for other purposes.";

September 14, 2022: "2021 CONG US HR 8825, To provide authority for small cultivators of marijuana and small manufacturers of marijuana products to ship marijuana and marijuana products using the mail, and for other purposes.";

November 17, 2022: "2021 CONG US S 5123, To amend the Controlled Substances Act to modify the registration requirements relating to research, and for other purposes.";

December 22, 2022: "2021 CONG US HR 9679, To increase the number of manufacturers registered under the Controlled Substances Act to manufacture cannabis for legitimate research purposes, to authorize health care providers of the Department of Veterans to provide recommendations to veterans regarding participation in federally approved cannabis clinical trials, and for other purposes.";

December 30, 2022: "2021 CONG US HR 9702, To amend the Internal Revenue Code of 1986 to allow deductions and credits relating to expenditures in connection with marijuana sales conducted in compliance with State law."; and April 17, 2023: "2023 CONG US HR 2643". Id.;

January 13, 2023: "2023 CONG US HR 363, To amend title 18, United States Code, with respect to the sale, purchase, shipment, receipt, or possession of a firearm or ammunition by a user of medical marijuana, and for other purposes.";

February 9, 2023: "2023 CONG US S 326, To direct the Secretary of Veterans Affairs to carry out a study and clinical trials on the effects of cannabis on certain health outcomes of veterans with chronic pain and post-traumatic stress disorder, and for other purposes."; February 14, 2023: "2023 CONG US HR 1003"; and March 23, 2023: "2023 CONG US S 326." Id.;

June 5, 2023: "2023 CONG US HR 3829, To streamline the process for institutions of higher education to research marijuana.";

June 15, 2023: "2023 CONG US HRES 519, Recognizing that the United States has a moral obligation to meet its foundational promise of guaranteed justice for all. (2)(A)(iii).";

July 27, 2023: "2023 CONG US HR 5040, To amend the Intelligence Reform and Terrorism Prevention Act of 2004 to limit the consideration or marijuana use when making a security clearance or employment suitability determination, and for other purposes.";

September 1, 2023: "2023 CONG US HR 5323, To amend title 23, United States Code, to establish a natural requirement against the use of marijuana for recreational purposes.";

September 21, 2023: "2023 CONG US S 2909, To provide for congressional review of rules rescheduling marijuana.";

December 7, 2023: "2023 CONG US HR 6673, To amend the Controlled Substances Act to provide for a new rule regarding the application of the Act to marijuana, and for other purposes."; and

January 11, 2024: "2023 CONG HRES 960, Urging action to increase equity within cannabis policy and the legal cannabis marketplace.".

Marijuana now has "currently accepted medical use in treatment in the United States", "accepted safety for use of the drug or other substance under medical supervision" and recreational purposes. To say marijuana has no "currently accepted medical use in treatment in the United States", no "accepted safety for use of the drug or other substance under medical supervision", or no recreation purposes, is overly broad, vague, and violates Plaintiff's rights, and the rights of other similarly situated parties not before the Court. The Controlled Substances Act, Schedule I, is unconstitutional as applied to marijuana, Plaintiff and other similarly situated parties not before the Court. The classification of Marijuana into a Schedule I, is life threatening to Plaintiff, and other similarly situated parties not before the Court. For example, if a person has a life threatening condition, that only marijuana can keep at bay, that person cannot use the one drug keeping them alive: marijuana. Another example might include a person who has seizures all day, has tried every Food, Drug Administration (FDA), approved drug, and found that none of them work, but marijuana, that person will suffer from seizures all day because that person cannot use the one thing keeping their seizures at bay: marijuana. Another example might include a person who has a condition that causes loss of appetite, but marijuana helps that person to eat, that person will lose weight because he or she can't use the one drug helping them eat: marijuana. Plaintiff is suffering from chronic back pain and depression, and he can't use marijuana, the one thing that helps relieve the

and Xavier Becerra, Director of Department of Health and Human Services, pain he feels and helps break him out of depression, with no side effects. Marijuana can also help combat against the use of other potentially dangerous drugs. For example, Defendant Martuscello III has put out memos warning against the use of synthetic marijuana, which he alleges has caused hospitalizations and even death. The Defendants Merrick B. Garland, Attorney General of the United States, Anne Milgram, Administrator of the Drug Enforcement Administration, and Dr. Robert Califf, Commissioner of the Food, Drug Administration, who are mentioned and/or designated within the Controlled Substances Act, with the authority to, own their own, schedule, re- or deschedule any drug or other substances, have known, or reasonably should have known, that for the past fifteen (15) years or less, that every State in the United States, excluding Wyoming, the District of Columbia, Tribal, Guam, Puerto Rico, Virgin Islands and Northern Mariana Islands, have all enacted laws allowing the use of marijuana for medical treatment and recreational purposes, but have refused to decriminalize and deschedule or remove marijuana from a schedule I. Meanwhile, Defendants classify Fentanyl as a schedule II, a lower level schedule than marijuana, and it's responsible for thousands of deaths each year, and Defendants who have the authority to schedule re- or deschedule any drug, own their own, have refused to re-schedule that drug too. Even if Defendants, on their own, descheduled a drug like marijuana, their process takes years of delay. Defendants are biased towards the descheduling of marijuana for medical and recreational purposes. Defendants scheduling of marijuana into a schedule I, is life-or-death threatening to Plaintiff's health, and other similarly situated parties' health not before the Court. Defendants classification of marijuana into a schedule I has caused Plaintiff past and present pain and suffering, and will continue to cause him pain and suffering, as well as other similarly situated parties not before the Court. The Defendants' classification of marijuana into a schedule I, is negligent, or grossly negligent, is an intentional infliction of mental, emotional distress, upon Plaintiff and other similarly situated parties not before the Court, has caused Plaintiff and other similarly situated parties not before the Court, mental, emotional damages, is a deliberate indifference to Plaintiff's and other similarly situated parties' not before the Court, medical needs, denies Plaintiff and other similarly situated parties not before the Court, the right to choose his or their own path of medical treatment, is cruel and unusual punishment, violates substantive due process rights, violates due process rights, violates equal protection rights, and is a failure to protect. See page 17.

#### V. STATEMENT OF CLAIM(S)

State briefly and concisely the constitutional and/or statutory basis for each claim you seek to assert and identify the defendant(s) against whom each claim is asserted. Commonly asserted claims include: excessive force; failure to protect; deliberate indifference to medical needs; unconstitutional conditions of confinement; denial of due process in a disciplinary or other proceeding; denial of equal protection; retaliation for exercise of a First Amendment right; and interference with exercise of religion. Legal argument and case citations are not required. Use additional sheets of paper if necessary.

#### FIRST CLAIM

The Defendants' Garland's, Milgram's and Califf's, <sup>and Becerra's</sup> classification of marijuana as a schedule I controlled substance that "...has no accepted medical use in treatment in the United States", "...a lack of accepted safety for use of the drug or other substance under medical supervision", or no recreational

purposes, is: (1) so overbroad and vague as to sweep within its prohibitions constitutionally protected conduct, chills protected conduct; and (2) is unconstitutional as applied to marijuana, Plaintiff and other similarly situated parties not before the Court, and violates Plaintiff's rights, and other similarly situated parties' rights not before the Court, under the First Amendment of the United States Constitution; and Defendants' Martuscello III's, Sullivan's and Dill's refusal to develop and promulgate rules, directives and policies and procedures, that comply with the CCA of New York allowing the use of marijuana for medical and recreational purposes, violates Plaintiff's rights, and other similarly situated parties' rights not before the Court, under the First Amendment of the United States Constitution.

#### SECOND CLAIM

The Defendants' Garland's, Milgram's and Califf's, <sup>and Becerra's</sup> classification of marijuana as a schedule I controlled substance that "...has no accepted medical use in treatment in the United States", "...a lack of accepted safety for use of the drug or other substance under medical supervision", or no recreational purposes, is unconstitutional as applied to marijuana, Plaintiff and other similarly situated parties not before the Court, and violates Plaintiff's rights, and other similarly situated parties' rights not before the Court, to remain free of cruel and unusual punishment, a deliberate indifference to his or their medical needs, is a denial of the right to chose his or their own path of medical treatment, and is a failure to protect, under the Eighth Amendment of the United States Constitution; and Defendants' Martuscello III's, Sullivan's and Dill's, refusal to develop and promulgate rules, directives and policies and procedures, that comply with the CCA of New York, allowing the use of marijuana for medical and recreational purposes, violates Plaintiff's rights, and other similarly situated parties' rights not before the Court, to remain free of cruel and unusual punishment, a deliberate indifference to his or their medical needs, is a denial of the right to chose his or their own path of medical treatment, and is a failure to protect, in violation of the Eighth Amendment of the United States Constitution.

#### THIRD CLAIM

Defendants' Garland's, Milgram's and Califf's, <sup>and Becerra's</sup> classification of marijuana into a schedule I controlled substance that "...has no accepted medical use in treatment in the United States", "...a lack of accepted safety for use of the drug or other substance under medical supervision", or no recreational purposes, is: (1) so overbroad and vague as to sweep within its prohibitions constitutionally protected conduct, chills protected conduct; and (2) is unconstitutional as applied to marijuana, Plaintiff and other similarly situated parties not before the Court, and violates Plaintiff's rights, and other similarly situated parties' rights not before the Court, under the Substantive Due Process, the Due Process and Equal Protection Clauses of the Fifth and Fourteenth Amendments of the United States Constitution.

#### FOURTH CLAIM

Defendants' Garland's, Milgram's, Califf's, <sup>and Becerra</sup> Martuscello III's, Sullivan's and Dill's, actions or inactions, violate Plaintiff's rights, and other similarly situated parties' rights not before the Court, under the New York Compassionate Case Act, Public Health Law § 3360.

#### FIFTH CLAIM

Defendants's Garland's, Milgram's, Califf's, <sup>and Becerra's</sup> Martuscello III's, Sullivan's and Dill's, actions or inactions are causing Plaintiff and other similarly situated parties not before the Court, mental, emotional damages.

#### SIXTH CLAIM

Defendants's Garland's, Milgram's, Califf's, <sup>and Becerra's</sup> Martuscello III's, Sullivan's and Dill's, actions or inactions, are an intentional infliction of mental, emotional distress, upon Plaintiff and other similarly situated parties not before the Court.

#### SEVENTH CLAIM

Defendants's Garland's, Milgram's, Califf's, <sup>and Becerra's</sup> Martuscello III's, Sullivan's and Dill's, actions or inactions, are negligent, or grossly negligent, and violates the rights of Plaintiff and other similarly situated parties not before the Court.

#### VI. RELIEF REQUESTED

State briefly what relief you are seeking in this case.

WHEREFORE, Plaintiff respectfully requests that this Court grants:

A. Declaratory relief;

B. A preliminary and permanent injunction enjoining the Defendants, <sup>Becerra,</sup> Garland, Milgram and Califf, from classifying marijuana as a schedule I controlled substance, and to compel them to decriminalize and deschedule marijuana for medical and recreational purposes, allowing Plaintiff and other similarly situated parties not before the Court, to use marijuana for medical and recreational purposes; and a preliminary and permanent injunction enjoining Defendants Martuscello III, Sullivan and Dill, from denying Plaintiff and other similarly situated parties not before the Court, marijuana for medical and recreational purposes, and to compel them to develop and promulgate rules, directives and policies and procedures, that comply with the New York State CCA, allowing for the use of marijuana for medical and recreational purposes;

C. A temporary restraining order enjoining Defendants Garland, Milgram, <sup>Becerra,</sup> and Califf, during the pendency of this action, from classifying marijuana as a schedule I controlled substance, and compel them to decriminalize and deschedule marijuana for medical and recreational purposes, allowing Plaintiff and other similarly situated parties not before the Court, to use marijuana for medical and recreational purposes; and a temporary restraining order enjoining Defendants Martuscello III, Sullivan and Dill, during the pendency of this action, from denying Plaintiff and other similarly situated parties not before the Court, the use of marijuana for medical and recreational purposes, and to compel them to develop and promulgate rules, directives and policies and procedures, that comply with the New York State CCA, allowing for the use of marijuana for medical and recreational purposes;



D. An award of compensatory damages in the amount of \$50,000,000.00 dollars, for past, present and/or future pain and suffering, and mental, emotional damages;

E. An award of punitive damages in the amount of \$50,000,000.00 dollars, for past, present and/or future pain and suffering, and mental emotional damages;

F. An award of the costs and fees associated with this action;

G. An award of attorney fees; and

H. Any other further relief as this Court may deem just and proper.

I declare under the penalty of perjury, pursuant to 28 U.S.C. § 1746, and the laws of the United States, the foregoing is true and correct.

Executed: April 17, 2024  
Stormville, New York

Respectfully,

  
Michael Joshua Henderson

#06A5461

Green Haven Correctional Facility  
594 Rte. 216, P.O. Box 4000  
Stormville, N.Y. 12582-0010

### III. DEFENDANT(S) INFORMATION CONTINUED:

Defendant No. 7:           Xavier Becerra  
                          Department of Health and Human Services  
                          200 Independence Ave., S.W.  
                          Washington, DC 20201

### IV. STATEMENT OF FACTS CONTINUED:

Marijuana is readily available throughout DOCCS, the State of New York and the United States. On June 25, 2011, Plaintiff tested positive for marijuana, received a misbehavior report and 30 days keeplock. Plaintiff intends to use marijuana to treat his conditions, but fears prosecution from the Defendants Garland, Milgram, Califf and Becerra; and plaintiff fears prosecution from DOCCS Defendant Martuscello III, and his designees, or officers, and fears further misbehavior reports and years in Special Housing Unit confinement, for using marijuana to treat his conditions. Plaintiff alleges marijuana is not, and never was, a controlled substance or the inclusion of marijuana at the time the CSA was enacted was improper, and even now it is improper, as it has accepted medical use in treatment. Plaintiff alleges that the use of marijuana helps relieve his pain and improves his conditions, and that marijuana is life-saving. Defendants Garland's, Milgram's, Califf's and Becerra's inclusion of marijuana into the Controlled Substance Act, and Scheduling marijuana as a schedule I is improper, and they are bias towards the removal of marijuana from the CSA, and towards the re- or descheduling of marijuana, and their administrative process to re- or deschedule marijuana is inadequate and takes years of delay, which will cause Plaintiff significant harm. Defendants Garland, Milgram, Califf, Becerra, Martuscello III, Sullivan and Dill, are also violating Plaintiff's personal autonomy rights or the right to control his own body and to indulge in private, marijuana which helps his conditions, and his bodily privacy rights, including ingesting and or smoking marijuana, to treat his bodily and mental conditions. The Defendants's Garland's, Milgram's, Califf's and Becerra's police power does not extend so far as to permit the Government to protect Plaintiff against himself and the use of marijuana to treat his conditions, unless detrimental to his own health, and marijuana is not detrimental to Plaintiff's health, in fact it improves his health and conditions, significantly. Plaintiff is apart of a class: the patient or medical marijuana patient class, and other patients like him are able to use marijuana to treat their conditions, and Plaintiff should be permitted the same treatment for his conditions.

### V. STATEMENT OF CLAIM(S) CONTINUED:

#### EIGHTH CLAIM

Defendants Garland, Milgram, Califf, Becerra, Martuscello III, Sullivan and Dill, are violating Plaintiff's personal autonomy and or bodily privacy rights under the Fourth and Fourteenth Amendments of the United States Constitution

I declare under the penalty of perjury, pursuant to 28 U.S.C. § 1746, and the laws of the United States, the foregoing is true and correct.

Executed: April 17, 2024

  
Michael Joshua Henderson

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

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MICHAEL JOSHUA HENDERSON,

Plaintiff,

v.

MERRICK B. GARLAND, et al.,

Defendants.

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NOTICE OF APPEAL

9:24-CV-0228 (MAD/ML)

Please accept this as my Notice of Appeal from a Decision and Order rendered by the Honorable Mae A. D'Agostino, dated June 4, 2024, which dismissed a 42 U.S.C. § 1983 complaint without prejudice pursuant to 28 U.S.C. § 1915(e)(2)(B) and 28 U.S.C. § 1915A(b) for failure to state a claim upon which relief may be granted.

I declare under the penalty of perjury pursuant to 28 USC § 1746, and the laws of the United States, that the foregoing is true and correct.

Executed: June 13, 2024

Respectfully,

  
Michael Joshua Henderson

24-1720

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UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

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MICHAEL JOSHUA HENDERSON,  
Plaintiff-Petitioner-Appellant,

V.

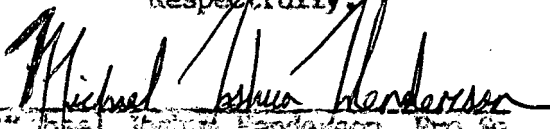
MERRICK B. GARLAND, et al.,  
Defendants-Respondents-Appellee(s).

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On Appeal from the United States District Court  
for the Northern District of New York

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Respectfully,

  
Michael Joshua Henderson, Pro Se  
#06A5461  
Sing Sing Correctional Facility  
354 Hunter Street  
Ossining, N.Y. 10562

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STATEMENT OF THE CASE

This case is being appealed to this Court after Appellant filed a civil action pursuant to 42 U.S.C. § 1983, challenging the Controlled Substances Act and its scheduling of marijuana as a schedule I, and DOCCS refusal to follow the OCA of the State of New York which allows use of marijuana for medical purposes. Upon initial review, the Honorable Mae A. D'Agostino dismissed the complaint for failure to state a claim upon which relief could be granted, on June 4, 2024. Appellant seeks to appeal the decision, and also seeks a Petition of Review by this Court.

### STATEMENT OF FACTS

Plaintiff-Petitioner-Appellant, is a medical and mental health patient, who is also incarcerated, with chronic back pain due to an injury he received as a child, which resulted in a crushed vertebra, and chronic depression, and cannabis use disorder, moderate. See Second (SAC) and Third (TAC) amended complaints, at 3. Appellant also has anxiety and trouble sleeping due to his conditions, and has tried to treat his conditions with medications, injections and physical therapy, and has found that nothing worked and experienced side effects. Id. Appellant has used marijuana prior to his incarceration, during his incarceration, to treat his conditions, which he has found relieves his pain and is life-saving, with no side effects. Id. at 3 and 17. Marijuana is readily available throughout DOCCS, the State of New York and the United States, and he intends to use it to continue treating his conditions, but fears prosecution. Id. New York State enacted the Compassionate Care Act (CCA) in the year 2014, under Public Health Law § 3360, which allows Appellant to become certified for the use of marijuana to treat his conditions, and he would like to become a certified medical marijuana patient, but DOCCS Defendants and others refuse to develop and promulgate rules, directives and policies and procedures, that comply with the CCA. Id. at 3-4. DOCCS Defendants also allege in their grievance response that "marijuana is a schedule I controlled substance by the DEA", as the reason for not following the CCA of New York State, which Appellant mistakenly excluded from his complaint. In regards to the CSA, Appellant alleges that in order to be a Schedule I, "[t]he drug or other substance has a high potential[...]...has no currently accepted medical use in treatment in the United States....[t]here is a lack of accepted medical safety for use of the drug or other substance under medical supervision.". Id. at 4. Appellant alleges that marijuana is not, and never was, a controlled

substance, and the inclusion of marijuana at the time the CSA was enacted was improper, and still is to this day. See, TAC at 17. Appellant alleges in this current time, marijuana has accepted medical use in treatment in the United States, in every State excluding Wyoming, all of its Territories and the District of Columbia, and Congress has been attempting to pass Bills relating to marijuana and its use for medical and recreational purposes. See SAC and TAC at 4-12. Appellant alleges that to say marijuana has no accepted medical use in treatment [or]...no accepted safety for use of the drug or other substance under medical supervision" or no recreational purposes, is overly broad, vague and life-threatening. Id. at 12. Appellant alleges that Defendants for the past fifteen (15) years have refused to deschedule marijuana, on their own, while every State has legalized for medical and recreational purposes. Id. at 13. Appellant alleges that the administrative process to deschedule marijuana is inadequate and takes years of delay, the Defendants are bias towards the descheduling of marijuana, the scheduling of marijuana as a schedule I is life-or-death threatening, has caused Appellant past and present pain and suffering, and will continue to do so. Id. at 13 and 17. Appellant also alleges the scheduling of marijuana as a schedule I violates his personal autonomy and bodily privacy rights, including ingesting, smoking or eating marijuana to treat his bodily conditions, and the Governments police powers do not extend so far as to permit them to protect Appellant from the use of marijuana to treat his conditions. Id. at 17. Appellant alleges that while he is currently incarcerated, he is still a medical and mental health patient, entitled to the same treatment as other medical and mental health patients, and every medical and mental health patient in the United States is able to use marijuana to treat their conditions or use it for recreational purposes, except Appellant. Id. Appellant alleged eight causes



of action: (1) the scheduling of marijuana as a schedule I, is overly broad, vague, and unconstitutional as applied to marijuana and Appellant, in violation of the First Amendment; (2) the scheduling of marijuana as a schedule I, and denial of marijuana so Appellant can treat his medical conditions, is cruel and unusual punishment, a deliberate indifference to his medical needs, a denial of the right to chose his own path of medical treatment, and is a failure to protect, in violation of the Eighth Amendment; (3) the scheduling of marijuana into a schedule I, is overly broad and vague, violates the equal rights of medical patients, and is unconstitutional as applied to marijuana and Appellant, in violation of the Substantive Due Process, Due Process and Equal Protection Clauses of the Fifth and Fourteenth Amendments; (4) a violation of New York State Public Health Law § 3360; (5) mental, emotional damages; (6) intentional infliction of mental emotional distress; (7) negligence and gross negligence; and (8) a violation of personal autonomy and bodily privacy rights, in violation of the Fourth and Fourteenth Amendments. Id. at 13-15, 17. Appellant seeks declaratory relief, a preliminary and permanent injunction, a temporary restraining order, compensatory damages, punitive damagaes, costs and fees, attorney fees and other relief. Id. at 15-16.

The District Court rendered two Decisions and Orders, dated April 10, 2024 (District Court [DC Dkt.] 13) and June 4, 2024 (Court of Appeals [CA Dkt.] 2), regarding the Second and Third Amended Complaints. In the First Decision and Order, the district court alleged that Appellant failed to state a claim upon which relief could be granted, because (1) "the Controlled Substances Act is a criminal statute, and no private right of action exists for a plaintiff to bring a civil suit for violations of the CSA."; (2) "the pleading fails to allege, for standing purposes, any facts which plausibly suggest that plaintiff has suffered or is immediately likely to suffer an injury in fact as a result

of enforcement of the statute....this Court has no basis to plausibly infer from the allegations in the second amended complaint that plaintiff is able to obtain marijuana, intends to use it in a way that would trigger punishment under the CSA, and has a legitimate fear of prosecution by one or more named defendants for such conduct."; (3) "plaintiff does not, as a threshold matter, have a fundamental right to use marijuana."; (4) "incarcerated individuals are not members of a protected class for purposes of an equal protection claim, and plaintiff, as an incarcerated individual, is not similarly situated to parolees."; and (5) "prohibiting inmates from possessing marijuana is rationally related to legitimate penological interests in security, safety, and maintaining order.". See DC Dkt. 13, at pgs. 10-15. The District Court allowed Appellant the opportunity to amend the complaint. See, DC Dkt. 13, at 15-19. Appellant filed another amended complaint and a letter motion requesting to renew, reargue or for reconsideration, pursuant to Rules 59 (to amend or alter a judgment) and or 60, or other rule, arguing that he inadvertently and mistakenly excluded some allegations. See, TAC and letter motion. The District Court in its second Decision and Order, ruled on Appellant's letter motion as one fore reconsideration instead of pursuant to Rule 59, to amend or alter a judgment, and denied his letter motion. See, CA Dkt. 2, at 2-4. The District Court held this time, that (1) "[t]o the extent the third complaint includes class action allegations, the Court has yet to receive a proper motion seeking certification of a proposed class of plaintiffs. Furthermore, it is well settled that a class action cannot be maintained by a pro se litigant because non-attorneys may not represent anyone other than themselves."; (2) "the pleading lacks allegations which plausibly suggest that if the Controlled Substances Act did not exist, DOCCS would allow him to possess and use marijuana."; (3) "the Court is once again unable to

plausibly infer from the allegations in plaintiff's pleading that he has a credible fear of prosecution under the Controlled Substances Act if he is found to be in possession of marijuana while in DOCCS custody, particularly in light of his allegation that he previously tested positive for marijuana and received, as his only punishment, 30 days of keeplock confinement."; (4) "plaintiff does not have a constitutional right to use marijuana in a prison setting, and any restrictions on such use, through enforcement on the Controlled Substances Act or otherwise, are rationally related to legitimate penological interests in security, safety, and maintaining order."; (5) Appellant's "...allegations that restrictions on plaintiff's access to marijuana violate his privacy and personal autonomy rights, the Court can only plausibly infer from the allegations in the third amended complaint that the restrictions on plaintiff's access to marijuana (and ability to use it) are based on DOCCS regulations prohibiting such access and use. Indeed, by plaintiff's own allegations, he was punished, not criminally charged, as a result of testing positive for marijuana in 2011, while in DOCCS custody."; and (6) "plaintiff does not have a constitutional right to use marijuana, and, in the prison context, there can be no doubt that prohibiting inmates from possession (and using) marijuana is rationally related to legitimate penological interests in security, safety and maintaining order....Thus, whatever limited right plaintiff may possess in bodily autonomy cannot form a basis for invalidating DOCCS regulations that prohibit him from possessing and using marijuana.". See, CA Dkt. 2, at 7-10. Appellant filed a Notice of Appeal, which was received June 25, 2024. See, CA Dkt. 5. Appellant now seeks review of his appeal, and now seeks a Petition of Review, as well.

### SUMMARY OF THE ARGUMENT

Appellant properly states a claim upon which relief could be granted.

### ARGUMENT

The Appellant properly states a claim upon which relief could be granted, where: (1) the Controlled Substances Act is subjected to a private civil action: See, for example: *Washington v. Barr*, 925 F.3d 109 (2019), *Nation v. Trump*, 818 Fed. Appx. 678 (2020), *Olsen v. Holder*, 610 F.Supp.2d 985 (2009), and compare them with *U.S. v. Kiffer*, 477 F.2d 349 (1973) and *United States v. Amalfi*, 47 F.4th 114 (2022). These cases speak about the difference between a civil action or criminal proceeding, requiring civil actions to exhaust under the CSA, before seeking review by this Court. Appellant however alleges exceptions to the exhaustion process of the CSA: (a) Appellant is not subjected to the exhaustion requirement of the CSA because, as a prisoner, is only required to exhaust his claims under the Prisoner's Litigation Reform Act, 42 U.S.C. § 1997e, and has fully exhausted his claims; (b) the Defendants under the CSA are bias towards the descheduling of marijuana; the procedures under the CSA for exhaustion are inadequate, and takes years of delay, which will subject Appellant to further pain and suffering; and (c) because Appellant intends to use marijuana to treat his conditions, he could be subjected to criminal prosecution, and therefore is precluded from exhausting under the CSA before seeking review by this Court; (2) the pleading properly alleges, for standing purposes, facts which plausibly suggest that he has suffered or is immediately likely to suffer an injury in fact as a result of enforcement of the CSA, where: (a) appellant alleges he "has used marijuana prior to his incarceration, during his incarceration, to treat his conditions, which he has found relieves his pain and is life-saving, with no side effects. See, SAC and TAC at 3-17. Marijuana is readily available...and he intends to use it to

continue treating his conditions, but fears prosecution. Id.; (3) appellant does have a fundamental right to eat, ingest, smoke and or use marijuana. Marijuana is a natural plant, God made, and the buds from the plant can be naturally plucked and eaten for survival, even if you were stranded on an island, with only 1,000 kilograms of marijuana to eat. It would be a Federal offense, but you would live. Marijuana is also being used for medical purposes, to save lives, relieve pain, for mental health purposes, and recreational purposes. It's a federal offense, but its saving lives, relieving pain, relieving mental health problems and improving the every day recreational purposes. If I could use it to survive, I could use it for medical and recreational purposes to treat my conditions. The first question that should be asked, is whether the human body can consume the plant naturally for survival, and the answer is yes, and this is how you connect the human's personal autonomy and bodily privacy rights, with a God made plant. Would it be a Federal offense to consume bananas on a stranded island for survival.; (4) incarcerated individuals are members of a protected class for purposes of an equal protection claim, as they are human beings, and some are medical patients, who have the same rights as all other medical patients, and all other medical patients are using marijuana to treat their conditions; (5) prohibiting inmates from possessing marijuana is not rationally related to legitimate penological interests in security, safety, and maintaining order, when it's being used for medical and recreational purposes.

With regards to the second Decision and Order, Appellant properly states a claim upon which relief could be granted, because (1) the district court should have ruled on Appellant's letter motion as one pursuant to Rule 59(e) motion to alter or amend a judgment, and or Rule 60(b)(1) mistake, inadvertence, surprise, or excusable neglect, as Appellant requested. See DC

Dkt. 17; see also Federal Rules of Civil Procedure, Rules 59 and 60; (2) Appellant was not raising a class action suit, instead he was trying to clarify that he is apart of the medical patients throughout our Country, using marijuana for medical purposes, but is not being permitted to use marijuana to treat his conditions. Appellant is similarly situated with medical patients, and medical marijuana patients, and we all have the same rights under the Patient Bill of Rights when it comes to treatment, and as such, appellant should be allowed to use medical marijuana to treat his conditions, like every other medical marijuana patient. See, DC Dkt. 17 and TAC at 17.; (3) the pleading mistakenly excluded the fact that DOCCS denied Appellant's grievance stating "Marijuana is a schedule I controlled substance as defined by the DEA. DOCCS does not prescribe any schedule I controlled substances. These are defined as substance, or chemicals are defined as drugs with no currently accepted medical use and high potential for abuse.". See, Appendix, page 1. If the CSA did not schedule marijuana into a schedule I or if the CSA did not exist, DOCCS would prescribe it under the CCA of the State of New York.; (4) the Court is able to plausibly infer from the allegations in plaintiff's pleading that he has a credible fear of prosecution, where: (a) appellant used marijuana prior to his incarceration, during his incarceration (where he received 30 days keeplock), to treat his conditions, and he intends to continuing use it to treat his conditions, but fears prosecution, where the amount of his use could exceed the federal limits over time and trigger prosecution under the CSA.; (5) plaintiff does have a constitutional right to use marijuana in a prison context, where Marijuana is a God Made plant and can be ingested for survival, and marijuana is now being used for medical and recreational purposes, for survival, it is life-saving, relieves pain, improves mental health and recreational purposes, and is rationally related to

legitimate penological interests in security, safety and maintaining order in this sense. Marijuana can also help substance abuse patients, who abuse other drugs because they cannot use marijuana. For example, DOCCS is always putting out memos warning Incarcerated Individuals against the use of synthetic marijuana, which DOCCS warns is responsible for hospitalizations, and even deaths. Marijuana can help combat against the use of other drugs, such as synthetic marijuana, and that is rationally related to legitimate penological interests in security, safety and maintaining order.

The scheduling of marijuana as a schedule I, is overly broad, vague, and unconstitutional as applied to marijuana and Appellant, in violation of the First Amendment; the scheduling of marijuana as a schedule I, and denial of marijuana so Appellant can treat his conditions, is cruel and unusual punishment, a deliberate indifference to his medical needs, a denial of the right to chose his own path of medical treatment, a failure to protect, a denial of the right to ingest marijuana for survival and to treat medical, mental health and recreational purposes, in violation of the Eighth Amendment; the scheduling of marijuana as a schedule I, is overly broad, vague, violates the equal rights of medical patients, and is unconstitutional as applied to marijuana and Appellant, in violation of the Substantive Due Process, Due Process and Equal Protection Clauses of the Fifth and Fourteenth Amendments; the scheduling of marijuana as a schedule I, is a violation of Appellant's personal autonomy and bodily privacy rights under the Fourth and Fourteenth Amendments; the refusal of defendants to deschedule and remove marijuana from all schedules, while every State past medical marijuana laws, is grossly negligence, an intentional infliction of mental, emotional distress, is causing mental, emotional damages. Appellant seeks compensatory damages, punitive damages, and injuction relief, costs and fees, attorney fees and other relief.

Appellant also seeks a Petition for Review, based upon every thing in the complaints.

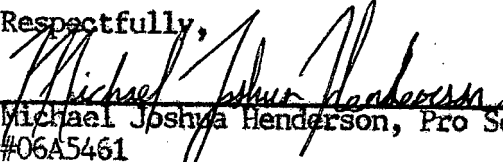


CONCLUSION

Appellant respectfully ask this Court to reverse the judgment of the District court with a finding of fact in favor of appellant, and or rules on this as a Petition of Review and grants all the relief requested in the complaints. In the alternative the Court should remand the case for a fair and impartial trial before a jury.

Dated: July 11, 2024

Respectfully,

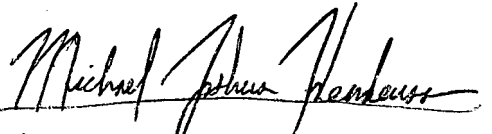
  
Michael Joshua Henderson, Pro Se

#06A5461

Sing Sing Correctional Facility  
354 Hunter Street  
Ossining, N.Y. 10562

CERTIFICATE OF COMPLIANCE

I, Michael Joshua Henderson, certify that this brief contains 14,000 words or less.

  
Michael Joshua Henderson

# Appendix

**IGRC Response:**

CL - 0356-21

CODE -22

The Facility investigation has revealed that: Marijuana is a schedule 1 controlled substance as defined by the DEA. DOCCS does not prescribe any Schedule 1 controlled substances. These are defined as substance, or chemicals are defined as drugs with no currently accepted medical use and a high potential for abuse. The IGP provides inmates with an orderly, fair, simple and expeditious method for resolving grievances for which there is no avenue for redress or correction. Grievant's specific action requested seeds a remedy which is not available through the IGP.

Date returned to inmate: ✓I.G.R.C. Members: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Chairperson: \_\_\_\_\_

Return within 7 days and check appropriate boxes.



I disagree with IGRC response and wish to appeal to the Superintendent.



I have reviewed deadlocked responses. Pass-Thru to Superintendent.



I agree with the IGRC response and wish to appeal to the Superintendent.



I apply to the IGP Supervisor for review of dismissal.

Grievant's Signature: Michael John PlandonDate: 4-15-21

Grievance Clerk's

Receipt: \_\_\_\_\_

Date: \_\_\_\_\_

To be completed by Grievance Clerk

Grievance Appealed to the Superintendent: \_\_\_\_\_

Date

Grievance forwarded to the Superintendent for action: \_\_\_\_\_

Date

\*An exception to the time limit may be requested under Directive #4040, section 701.6(g).

File Number: 2021-00000399 Seq: 27 Doc Seq: 5



Michael Joshua Henderson  
#06A5461  
Sing Sing Correctional Facility  
354 Hunter Street  
Ossining, N.Y. 10562

Clerk of the Court  
United States Court of Appeals for the Second Circuit  
United States Courthouse  
40 Foley Square  
New York, N.Y. 10007

July 17, 2024

Re: Henderson v. Garland, et al.  
Dkt. No.: 24-1720

Dear Clerk of the Court:

Enclosed for filing is an amended Brief and Appendix. The initial Brief excluded the Table of Authorities, Statement of Subject Matter and Appellate Jurisdiction and Statement of Issues Presented for Review, and the Appendix excluded the entire grievance process. These are now included in both the brief and appendix. Everything else is the same. I would like this to be filed as my Brief and Appendix.

I declare under the penalty of perjury the foregoing is true and correct.

cc: File

Respectfully,

  
Michael Joshua Henderson

24-1720

---

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

---

MICHAEL JOSHUA HENDERSON,  
Plaintiff-Petitioner-Appellant,

V.

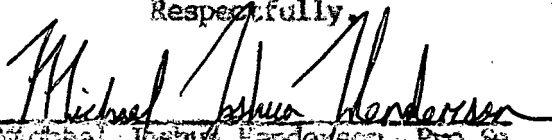
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STATEMENT OF SUBJECT MATTER

AND APPELLATE JURISDICTION

The district court has subject matter jurisdiction pursuant to 42 U.S.C. § 1983, Bivens v. Six Unknown Federal Narcotics Agents, 403 U.S. 388 (1971) and Petition for Review. The judgment appealed from is a Decision and Order, which is a final order. This Court has jurisdiction pursuant to 28 U.S.C. § 1291. Judgment was entered June 4, 2024; the notice of appeal was filed on June 13, 2024, which renders it timely under Fed. R. App. 4(b).

STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

Plaintiff-Petitioner-Appellant properly states a claim upon which relief could be granted, for all the reasons stated in the Brief. Appellant challenges the scheduling of marijuana by the Controlled Substances Act ("CSA"), as a schedule I. Appellant argues that marijuana should not be a schedule I or any other schedule, as it is being use for medical purposes in every State in the United States, including the District of Columbia, and all of the United States Territories. Appellant argues that marijuana should never have been scheduled by the CSA as a controlled substance during the CSA's enactment. The administrative procedure for descheduling marijuana is inadequate, takes years of delay and the Defendants are bias towards the descheduling of marijuana, as they sat around and did nothing to deschedule marijuana, while every State legalized it for medical purposes. Appellant intends to use marijuana to treat his medical conditions, but fears prosecution, because his use of marijuana, over time, could trigger prosecution under the CSA, and argues he does not have to exhaust under the CSA for this reason.

STATEMENT OF THE CASE

This case is being appealed to this Court after Appellant filed a civil action pursuant to 42 U.S.C. § 1983, challenging the Controlled Substances Act and its scheduling of marijuana as a schedule I, and DOCCS refusal to follow the OCA of the State of New York which allows use of marijuana for medical purposes. Upon initial review, the Honorable Mae A. D'Agostino dismissed the complaint for failure to state a claim upon which relief could be granted, on June 4, 2024. Appellant seeks to appeal the decision, and also seeks a Petition of Review by this Court.

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substance, and the inclusion of marijuana at the time the CSA was enacted was improper, and still is to this day. See, TAC at 17. Appellant alleges in this current time, marijuana has accepted medical use in treatment in the United States, in every State excluding Wyoming, all of its Territories and the District of Columbia, and Congress has been attempting to pass Bills relating to marijuana and its use for medical and recreational purposes. See SAC and TAC at 4-12. Appellant alleges that to say marijuana has no accepted medical use in treatment [or]...no accepted safety for use of the drug or other substance under medical supervision" or no recreational purposes, is overly broad, vague and life-threatening. Id. at 12. Appellant alleges that Defendants for the past fifteen (15) years have refused to deschedule marijuana, on their own, while every State has legalized for medical and recreational purposes. Id. at 13. Appellant alleges that the administrative process to deschedule marijuana is inadequate and takes years of delay, the Defendants are bias towards the descheduling of marijuana, the scheduling of marijuana as a schedule I is life-or-death threatening, has caused Appellant past and present pain and suffering, and will continue to do so. Id. at 13 and 17. Appellant also alleges the scheduling of marijuana as a schedule I violates his personal autonomy and bodily privacy rights, including ingesting, smoking or eating marijuana to treat his bodily conditions, and the Governments police powers do not extend so far as to permit them to protect Appellant from the use of marijuana to treat his conditions. Id. at 17. Appellant alleges that while he is currently incarcerated, he is still a medical and mental health patient, entitled to the same treatment as other medical and mental health patients, and every medical and mental health patient in the United States is able to use marijuana to treat their conditions or use it for recreational purposes, except Appellant. Id. Appellant alleged eight causes

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The District Court rendered two Decisions and Orders, dated April 10, 2024 (District Court [DC Dkt.] 13) and June 4, 2024 (Court of Appeals [CA Dkt.] 2), regarding the Second and Third Amended Complaints. In the First Decision and Order, the district court alleged that Appellant failed to state a claim upon which relief could be granted, because (1) "the Controlled Substances Act is a criminal statute, and no private right of action exists for a plaintiff to bring a civil suit for violations of the CSA."; (2) "the pleading fails to allege, for standing purposes, any facts which plausibly suggest that plaintiff has suffered or is immediately likely to suffer an injury in fact as a result

of enforcement of the statute....this Court has no basis to plausibly infer from the allegations in the second amended complaint that plaintiff is able to obtain marijuana, intends to use it in a way that would trigger punishment under the CSA, and has a legitimate fear of prosecution by one or more named defendants for such conduct."; (3) "plaintiff does not, as a threshold matter, have a fundamental right to use marijuana."; (4) "incarcerated individuals are not members of a protected class for purposes of an equal protection claim, and plaintiff, as an incarcerated individual, is not similarly situated to parolees."; and (5) "prohibiting inmates from possessing marijuana is rationally related to legitimate penological interests in security, safety, and maintaining order.". See DC Dkt. 13, at pgs. 10-15. The District Court allowed Appellant the opportunity to amend the complaint. See, DC Dkt. 13, at 15-19. Appellant filed another amended complaint and a letter motion requesting to ~~renew~~, reargue or for reconsideration, pursuant to Rules 59 (to amend or alter a judgment) and or 60, or other rule, arguing that he inadvertently and mistakenly excluded some allegations. See, TAC and letter motion. The District Court in its second Decision and Order, ruled on Appellant's letter motion as one fore reconsideration instead of pursuant to Rule 59, to amend or alter a judgment, and denied his letter motion. See, CA Dkt. 2, at 2-4. The District Court held this time, that (1) "[t]o the extent the third complaint includes class action allegations, the Court has yet to receive a proper motion seeking certification of a proposed class of plaintiffs. Furthermore, it is well settled that a class action cannot be maintained by a pro se litigant because non-attorneys may not represent anyone other than themselves."; (2) "the pleading lacks allegations which plausibly suggest that if the Controlled Substances Act did not exist, DOCCS would allow him to possess and use marijuana."; (3) "the Court is once again unable to



plausibly infer from the allegations in plaintiff's pleading that he has a credible fear of prosecution under the Controlled Substances Act if he is found to be in possession of marijuana while in DOCCS custody, particularly in light of his allegation that he previously tested positive for marijuana and received, as his only punishment, 30 days of keeplock confinement."; (4) "plaintiff does not have a constitutional right to use marijuana in a prison setting, and any restrictions on such use, through enforcement on the Controlled Substances Act or otherwise, are rationally related to legitimate penological interests in security, safety, and maintaining order."; (5) Appellant's "...allegations that restrictions on plaintiff's access to marijuana violate his privacy and personal autonomy rights, the Court can only plausibly infer from the allegations in the third amended complaint that the restrictions on plaintiff's access to marijuana (and ability to use it) are based on DOCCS regulations prohibiting such access and use. Indeed, by plaintiff's own allegations, he was punished, not criminally charged, as a result of testing positive for marijuana in 2011, while in DOCCS custody."; and (6) "plaintiff does not have a constitutional right to use marijuana, and, in the prison context, there can be no doubt that prohibiting inmates from possession (and using) marijuana is rationally related to legitimate penological interests in security, safety and maintaining order....Thus, whatever limited right plaintiff may possess in bodily autonomy cannot form a basis for invalidating DOCCS regulations that prohibit him from possessing and using marijuana.". See, CA Dkt. 2, at 7-10. Appellant filed a Notice of Appeal, which was received June 25, 2024. See, CA Dkt. 5. Appellant now seeks review of his appeal, and now seeks a Petition of Review, as well.

### SUMMARY OF THE ARGUMENT

Appellant properly states a claim upon which relief could be granted.

### ARGUMENT

The Appellant properly states a claim upon which relief could be granted, where: (1) the Controlled Substances Act is subjected to a private civil action: See, for example: Washington v. Barr, 925 F.3d 109 (2019), Nation v. Trump, 818 Fed. Appx. 678 (2020), Olsen v. Holder, 610 F.Supp.2d 985 (2009), and compare them with U.S. v. Kiffer, 477 F.2d 349 (1973) and United States v. Amalfi, 47 F.4th 114 (2022). These cases speak about the difference between a civil action or criminal proceeding, requiring civil actions to exhaust under the CSA, before seeking review by this Court. Appellant however alleges exceptions to the exhaustion process of the CSA: (a) Appellant is not subjected to the exhaustion requirement of the CSA because, as a prisoner, is only required to exhaust his claims under the Prisoner's Litigation Reform Act, 42 U.S.C. § 1997a, and has fully exhausted his claims; (b) the Defendants under the CSA are bias towards the descheduling of marijuana; the procedures under the CSA for exhaustion are inadequate, and takes years of delay, which will subject Appellant to further pain and suffering; and (c) because Appellant intends to use marijuana to treat his conditions, he could be subjected to criminal prosecution, and therefore is precluded from exhausting under the CSA before seeking review by this Court; (2) the pleading properly alleges, for standing purposes, facts which plausibly suggest that he has suffered or is immediately likely to suffer an injury in fact as a result of enforcement of the CSA, where: (a) appellant alleges he "has used marijuana prior to his incarceration, during his incarceration, to treat his conditions, which he has found relieves his pain and is life-saving, with no side effects. See, SAC and TAC at 3-17. Marijuana is readily available...and he intends to use it to

continue treating his conditions, but fears prosecution. Id.; (3) appellant does have a fundamental right to eat, ingest, smoke and or use marijuana. Marijuana is a natural plant, God made, and the buds from the plant can be naturally plucked and eaten for survival, even if you were stranded on an island, with only 1,000 kilograms of marijuana to eat. It would be a Federal offense, but you would live. Marijuana is also being used for medical purposes, to save lives, relieve pain, for mental health purposes, and recreational purposes. It's a federal offense, but its saving lives, relieving pain, relieving mental health problems and improving the every day recreational purposes. If I could use it to survive, I could use it for medical and recreational purposes to treat my conditions. The first question that should be asked, is whether the human body can consume the plant naturally for survival, and the answer is yes, and this is how you connect the human's personal autonomy and bodily privacy rights, with a God made plant. Would it be a Federal offense to consume bananas on a stranded island for survival.; (4) incarcerated individuals are members of a protected class for purposes of an equal protection claim, as they are human beings, and some are medical patients, who have the same rights as all other medical patients, and all other medical patients are using marijuana to treat their conditions; (5) prohibiting inmates from possessing marijuana is not rationally related to legitimate penological interests in security, safety, and maintaining order, when it's being used for medical and recreational purposes.

With regards to the second Decision and Order, Appellant properly states a claim upon which relief could be granted, because (1) the district court should have ruled on Appellant's letter motion as one pursuant to Rule 59(e) motion to alter or amend a judgment, and or Rule 60(b)(1) mistake, inadvertence, surprise, or excusable neglect, as Appellant requested. See DC

Dkt. 17; see also Federal Rules of Civil Procedure, Rules 59 and 60; (2) Appellant was not raising a class action suit, instead he was trying to clarify that he is apart of the medical patients throughout our Country, using marijuana for medical purposes, but is not being permitted to use marijuana to treat his conditions. Appellant is similarly situated with medical patients, and medical marijuana patients, and we all have the same rights under the Patient Bill of Rights when it comes to treatment, and as such, appellant should be allowed to use medical marijuana to treat his conditions, like every other medical marijuana patient. See, DC Dkt. 17 and TAC at 17.; (3) the pleading mistakenly excluded the fact that DOCCS denied Appellant's grievance stating "Marijuana is a schedule I controlled substance as defined by the DEA. DOCCS does not prescribe any schedule I controlled substances. These are defined as substance, or chemicals are defined as drugs with no currently accepted medical use and high potential for abuse.". See, Appendix, page 1. If the CSA did not schedule marijuana into a schedule I or if the CSA did not exist, DOCCS would prescribe it under the CCA of the State of New York.; (4) the Court is able to plausibly infer from the allegations in plaintiff's pleading that he has a credible fear of prosecution, where: (a) appellant used marijuana prior to his incarceration, during his incarceration (where he received 30 days keeplock), to treat his conditions, and he intends to continuing use it to treat his conditions, but fears prosecution, where the amount of his use could exceed the federal limits over time and trigger prosecution under the CSA.; (5) plaintiff does have a constitutional right to use marijuana in a prison context, where Marijuana is a God Made plant and can be ingested for survival, and marijuana is now being used for medical and recreational purposes, for survival, it is life-saving, relieves pain, improves mental health and recreational purposes, and is rationally related to

legitimate penological interests in security, safety and maintaining order in this sense. Marijuana can also help substance abuse patients, who abuse other drugs because they cannot use marijuana. For example, DOCCS is always putting out memos warning Incarcerated Individuals against the use of synthetic marijuana, which DOCCS warns is responsible for hospitalizations, and even deaths. Marijuana can help combat against the use of other drugs, such as synthetic marijuana, and that is rationally related to legitimate penological interests in security, safety and maintaining order.

The scheduling of marijuana as a schedule I, is overly broad, vague, and unconstitutional as applied to marijuana and Appellant, in violation of the First Amendment; the scheduling of marijuana as a schedule I, and denial of marijuana so Appellant can treat his conditions, is cruel and unusual punishment, a deliberate indifference to his medical needs, a denial of the right to chose his own path of medical treatment, a failure to protect, a denial of the right to ingest marijuana for survival and to treat medical, mental health and recreational purposes, in violation of the Eighth Amendment; the scheduling of marijuana as a schedule I, is overly broad, vague, violates the equal rights of medical patients, and is unconstitutional as applied to marijuana and Appellant, in violation of the Substantive Due Process, Due Process and Equal Protection Clauses of the Fifth and Fourteenth Amendments; the scheduling of marijuana as a schedule I, is a violation of Appellant's personal autonomy and bodily privacy rights under the Fourth and Fourteenth Amendments; the refusal of defendants to deschedule and remove marijuana from all schedules, while every State past medical marijuana laws, is grossly negligence, an intentional infliction of mental, emotional distress, is causing mental, emotional damages. Appellant seeks compensatory damages, punitive damages, and injunction relief, costs and fees, attorney fees and other relief.

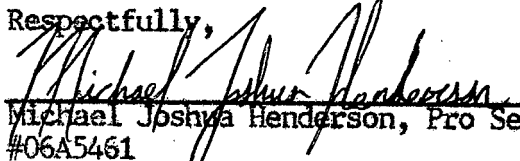
Appellant also seeks a Petition for Review, based upon every thing in the complaints.

CONCLUSION

Appellant respectfully ask this Court to reverse the judgment of the District court with a finding of fact in favor of appellant, and or rules on this as a Petition of Review and grants all the relief requested in the complaints. In the alternative the Court should remand the case for a fair and impartial trial before a jury.

Dated: July 17, 2024

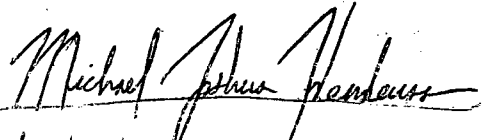
Respectfully,

  
Michael Joshua Henderson, Pro Se  
#06A5461

Sing Sing Correctional Facility  
354 Hunter Street  
Ossining, N.Y. 10562

CERTIFICATE OF COMPLIANCE

I, Michael Joshua Henderson, certify that this brief contains 14,000 words or less.

  
Michael Joshua Henderson



## Appendix

Michael Joshua Henderson  
#06A5461  
Clinton Correctional Facility  
1156 Cook St., Rt. 374, P.O. Box 2001  
Dannemora, NY 12929

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

April 5, 2021

Re: \_\_\_\_\_

Dear \_\_\_\_\_:

Under New York State's Public Health Law § 3360 (7)(a)(i) and (ii), herein attached as Exhibit A, I qualify as having a "serious condition" that allows me to be certified for the use of medical marijuana. Specifically "chronic" back pain and "chronic" depression. However, neither the Governor, the Department of Corrections and Community Supervision (DCCS) nor the Office of Mental Health (OMH) permit the use of medical marijuana for incarcerated individuals like myself or OMH patients. The Governor and DCCS does however permit parolees to use medical marijuana.

See Exhibit B, DOCS Directive 9435. To allow parolees, who, by law, are considered to be serving a sentence, the use of medical marijuana and not incarcerated individuals like myself who are serving a sentence is a violation of equal protection, negligence, cruel and unusual punishment and a deliberate indifference to my medical needs, under the New York State and Federal Constitutions, and even places individuals in life-threatening situations. For example, if I were a parolee with a life-threatening condition that only medical marijuana could treat, but violated parole and became incarcerated, I would not be able to use the one thing keeping me alive: medical marijuana.

#### Action Requested

1. That the Governor issues an Executive Order permitting incarcerated individuals and OMH patients like myself, who qualify medically under Public Health Law § 3360, to be certified for the use of medical marijuana;
2. That DOCS and OMH develop policies and directives permitting incarcerated individuals and OMH patients like myself, who qualify medically under Public Health Law § 3360, to be certified for the use of medical marijuana;

3. That I permitted to be certified and registered for the use of medical marijuana; and

4. That I am permitted to use medical marijuana for medical and mental health treatment.

CC: File

Respectfully,

TO: Governor

Inmate Grievance Resolution Committee

\_\_\_\_\_  
Michael Joshua Henderson

Page 27 of 31  
**IGRC Response:**

CL - 0356-21

CODE 22

The Facility investigation has revealed that Marijuana is a schedule I controlled substance as defined by the DEA. DOCCS does not prescribe any Schedule I controlled substances. These are defined as substance, or chemicals are defined as drugs with no currently accepted medical use and a high potential for abuse. The IGP provides inmates with an orderly, fair, simple and expeditious method for resolving grievances for which there is no avenue for redress or correction. Grievant's specific action requested seeds a remedy which is not available through the IGP.

Date returned to inmate: 4/15/21

IGRC Members: \_\_\_\_\_

Chairperson: \_\_\_\_\_

Return within 7 days and check appropriate boxes.



I disagree with IGRC response and wish to appeal to the Superintendent.



I have reviewed deadlocked responses. Pass-Thru to Superintendent.



I agree with the IGRC response and wish to appeal to the Superintendent.



I apply to the IGP Supervisor for review of dismissal.

Grievant's Signature: Michael John [Signature]

Date: 4-15-21

Grievance Clerk's

Receipt: \_\_\_\_\_

Date: \_\_\_\_\_

To be completed by Grievance Clerk

Grievance Appealed to the Superintendent: \_\_\_\_\_

Date


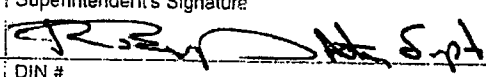
Grievance forwarded to the Superintendent for action: \_\_\_\_\_

Date

\*An exception to the time limit may be requested under Directive #4040, section 701.6(g).

File Number: 2021-00000399 Seq: 27 Doc Seq: 5 IGRS 21

135

 <b>Corrections and Community Supervision</b>  <b>INMATE GRIEVANCE PROGRAM</b> <b>E. BELL</b> Superintendent	Grievance No. CL- 0356-21	Date Filed 4/7/2021
	Facility Clinton Correctional Facility	Policy Designation D
	Title of Grievance MEDICAL MARIJUANA	Class Code 22
	Superintendent's Signature 	Date 4/22/21
	Grievant: HENDERSON, M	DIN # 06A5461

The grievant alleges that he should be permitted to use medical marijuana for chronic back pain and depression. The grievant states that DOCCS and OMH should develop a policy and procedure for the use of medical marijuana by incarcerated individuals who qualify.

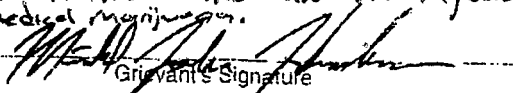
An investigation with the facility nurse administrator has revealed that, marijuana is a Schedule 1 controlled substance as defined by the DEA. DOCCS does not prescribe any Schedule 1 controlled substances. These drugs are defined as substances, or chemicals with no currently accepted medical use and the high potential for abuse.

Upon conclusion of the investigation, there is no compelling evidence that would warrant a change in current departmental policy and procedure. There is no evidence of staff malfeasance.

#### Appeal Statement

If you wish to refer the above decision of the Superintendent, please sign below and return this copy to your Inmate Grievance Clerk. You have seven (7) calendar days from receipt of this notice to file your appeal.\* Please state why you are appealing this decision to C.O.R.C.

*Marijuana is legal in the State of New York for both recreational and medical use. Further, the United States Congress has passed a bill or is passing a bill to decriminalize and tax marijuana and DOCCS policies are permitted the use of medical marijuana.*

  
Grievant's Signature

*April 26, 2021*  
Date

Grievance Clerk's Signature

Date

\*An exception to this time limit may be requested under Directive #4040, section 701.6(g)

File Number: 2021-00006399 Seq: 28 Doc Seq: 5



**Corrections and  
Community Supervision**

**ANDREW M. CUOMO**  
Governor

**ANTHONY J. ANNUCCI**  
Acting Commissioner

**MEMORANDUM**

**From:** Shelley Mallozzi, Director, Inmate Grievance Program  
**SUBJ:** Receipt of Appeal  
**Date:** 5/11/2021

M HENDERSON: 06A5461-CL-9-38  
Clinton Correctional Facility  
Your grievance CL-0356-21 entitled  
Medical Marijuana  
was rec'd by CORC on 5/6/2021

**A disposition will be sent to you after the grievance is reviewed by CORC**


**RECEIVED**  
**MAY 13 2021**  
Inmate Grievance  
Supervisor

The Harriman State Campus, 1220 Washington Avenue, Albany, NY 12226-2050 | (518) 457-8126 | [www.dccs.ny.gov](http://www.dccs.ny.gov)

**File Number: 2021-00000399 Seq: 29 Doc Seq: 5**

**157**

M. HENDERSON 06A5461 ELMIRA

 <b>Corrections and Community Supervision</b>  ANDREW M. CUOMO Governor ANTHONY J. ANNUNCI Acting Commissioner	Grievance Number CL-0356-21	Desig./Code 1/22	Date Filed 04/07/21
	Associated Cases		Hearing Date 06/10/21
Facility Clinton Correctional Facility			
INMATE GRIEVANCE PROGRAM CENTRAL OFFICE REVIEW COMMITTEE		Title of Grievance Medical Marijuana	

**GRIEVANT'S REQUEST UNANIMOUSLY ACCEPTED IN PART**

Upon a full hearing of the facts and circumstances presented in the instant case, and upon recommendation of the Division of Health Services, the action requested herein is accepted in part.

CORC notes that the grievant's complaint has been reviewed by the Division of Health Services' staff who advise that a complete investigation was conducted and that the grievant is receiving appropriate treatment. CORC further notes that Health Services policies are reviewed annually and changed when warranted.

CORC recommends that the grievant address any further medical concerns to medical staff via established sick call procedures.

MPS/

---

**RECEIVED**

JUL 13 2021

Inmate Grievance  
Supervisor

This document has been electronically signed by Shelley M. Mallozzi



Michael Joshua Henderson  
#06A5461  
Sing Sing Correctional Facility  
354 Hunter Street  
Ossining, N.Y. 10562

Clerk of the Court  
United States Court of Appeals for the Second Circuit  
United States Courthouse  
40 Foley Square  
New York, N.Y. 10007

August 4, 2024

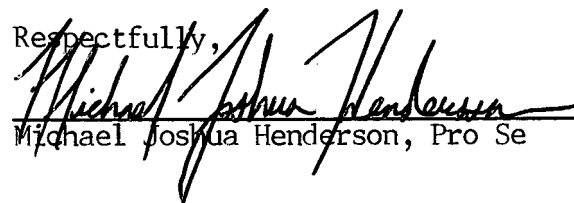
Re: Henderson v. Garland, et al.  
Dkt. No.: 24-1720

Dear Clerk of the Court:

Enclosed for filing is a Petition for Review, a Declaration of Inmate Filing and Certificate of Service.

cc: File

Respectfully,

  
Michael Joshua Henderson, Pro Se

24-1720

---

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

---

MICHAEL JOSHUA HENDERSON,  
Plaintiff-Petitioner-Appellant,

v.

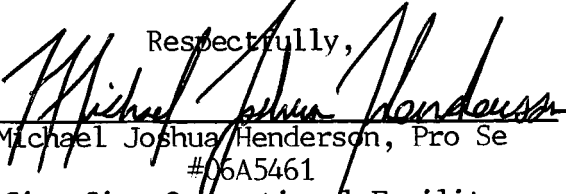
MERRICK B. GARLAND, et al.,  
Defendants-Respondents-Appellee(s).

---

On Petition for Review from the Controlled  
Substances Act (CSA)

---

Respectfully,

  
Michael Joshua Henderson, Pro Se  
#06A5461  
Sing Sing Correctional Facility  
354 Hunter Street  
Ossining, N.Y. 10562

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STATEMENT OF SUBJECT MATTER  
AND APPELLATE JURISDICTION

The district court has subject matter jurisdiction pursuant to 42 U.S.C. § 1983, *Bivens v. Six Unknown Federal Narcotics Agents*, 403 U.S. 388 (1971). The judgment appealed from is a Decision and Order, which is a final order. This Court has jurisdiction pursuant to 28 U.S.C. § 1291. Judgment was entered June 4, 2024; the notice of appeal was filed on June 13, 2024, which renders it timely under Fed. R. App. 4(b). Appellant now seeks a Petition for Review.

STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

Appellant seeks to remove marijuana from the Controlled Substances Act (CSA) altogether, so that it may be legalized for treatment with medical and mental health conditions, and recreational purposes. Marijuana should have never been included in the CSA during its enactment. The scheduling of marijuana as a schedule I, and any other schedule, and denial of marijuana so Appellant can treat his medical and mental health conditions, and recreational purposes, violates Appellants First, Fourth, Fifth, Eighth, Ninth and Fourteenth Amendments of the United States. Appellant Petitions for Review, with exceptions to the administrative exhaustion process under the CSA.

### STATEMENT OF THE CASE

This case is being appealed to this Court after Appellant filed a civil action pursuant to 42 U.S.C. § 1983, challenging the Controlled Substances Act (CSA) and its scheduling of marijuana as a schedule I, and DOCCS refusal to follow the New York State Compassionate Case Act (CCA), Public Health Law § 3360. Upon initial review, the Honorable Mae A. D'Agostino dismissed the complaint for failure to state a claim upon which relief could be granted, on June 4, 2024. Appellate filed a timely notice of appeal, and an Appeal Brief. Appellant also filed a Petition for a Hearing En Banc. Appellant now seeks a Petition for Review.

### STATEMENT OF FACTS

Plaintiff-Petitioner-Appellant, is a medical and mental health patient, who is also incarcerated, with chronic back pain due to an injury he received as a child, which resulted in a crushed vertebra, chronic depression, cannabis use disorder: moderate, anxiety and trouble sleeping. See Second (SAC) and Third (TAC) amended complaints, at 3; Appellant's Brief, at 7 and Petition for Hearing En Banc, at 7. Appellant has tried to treat his conditions with medications, injections and physical therapy, but has found that nothing worked and has experienced side effects. Id. Appellant has used marijuana to treat his conditions, prior to his incarceration and he was arrested as a kid for possession of marijuana and was given an appearance ticket for Town court; he has also used marijuana to treat his conditions during his incarceration and received 30 days keeplock; he finds marijuana relieves his pain and is life saving, with no side effects. See SAC and TAC, at 3 and 17; and Appellant's Brief and Petition for Hearing En Banc, at 7. Marijuana is readily available throughout DOCCS, the State of New York and the United States, and Appellant intends to use it to continue treating his conditions, and is, in fact, doing so right now as he writes this brief, but fears prosecution. Id. For example, the use of marijuana over short or long periods of time could result in more keeplock or solitary confinement, another appearance ticket in court, fines, county jail, state prison, probation, post-release supervision, parole, or trigger prosecution under the Controlled Substance Act (CSA) itself; although some of these penalties are not a result of any prosecution directly from the CSA, they were developed, and are being imposed because of the CSA. Id. New York State enacted the Compassionate Care Act (CCA), under Public Health Law § 3360, which allows Appellant to be a certified medical marijuana patient, to use marijuana to treat his conditions, which he would like to become, but DOCCS



alleges "Marijuana is a schedule I controlled substance by the DEA" or the CSA. See, SAC and TAC 3-4; Appellant's Brief and Petition for Hearing En Banc, at 7. Appellant alleges that marijuana is not, and never was, a controlled substance, and the inclusion of marijuana at the time the CSA was enacted was improper, and still is to this day. Id., at 7-8. Appellant alleges that in this current time, marijuana has accepted use in treatment in the United States, in every State excluding Wyoming, in all of its Territories and the District of Columbia, and Congress has been attempting to pass Bills relating to marijuana and its use for medical and recreational purposes. See, SAC and TAC, at 4-12; and Id., at 8. Appellant alleges that to say marijuana has no accepted medical use in treatment in the United States or no accepted safety for use of the drug or other substance under medical supervision, or no recreational purposes, is overly broad, vague and life-threatening. See SAC and TAC, at 12; and Id. Marijuana should not be a schedule I or any other schedule under the CSA. The Defendants for the past fifteen (15) years have refused to deschedule marijuana on their own, while every State has legalized it for medical and recreational purposes. See SAC and TAC, at 13; and Id. Appellant alleges that the administrative process to deschedule and remove marijuana is inadequate and takes years of delay, the Defendants are bias towards the descheduling and removal of marijuana from the CSA, the scheduling of marijuana as a schedule I or any other schedule, is life-or-death threatening, has caused Appellant past and present pain and suffering, and will continue to do so. See SAC and TAC, at 13 and 17; and Id. Appellant alleges that as a prisoner, he is not subjected to the administrative exhaustion process of the CSA. See Petition for Hearing En Banc, at 8. Appellant also alleges that the decision to deschedule or remove marijuana from the CSA, has already been decided by the Defendants in other cases, and the Defendants have refused to deschedule and

remove marijuana from the CSA. See, Appellant's Petition for Hearing En Banc, at 8. Appellant alleges the scheduling of marijuana by the CSA and denial of marijuana to Appellant to treat his conditions, violates his personal autonomy and bodily privacy rights, including ingesting, smoking or eating marijuana to treat his bodily conditions, and the Governments police powers doe not extend so far as to permit them to protect Appellant from the use of marijuana to treat his conditions. See TAC, at 17; Appellant's Brief, at 8; and Petition for Hearing En Banc, at 8-9. Appellant alleges that while he is an incarcerated individual, he is still a medical and mental health patient, entitled to the same treatment as other medical and mental health patients, and they're all able to use marijuana to treat their conditions, except him. See, Id.; and Petition for Hearing En Banc, at 9. Appellant alleges he is under the same medical and mental health Patient Bill of Rights, as any other medical or mental health patient. See, SAC and TAC, at 14; and Id. Appellant alleges the followingeight causes of action: (1) the scheduling of marijuana as a schedule I, and/or any other schedule, and denial of marijuana so Appellant can treat his medical and mental health conditions, and recreational purposes, is overly broad, vague, and unconstitutional as applied to marijuana and Appellant, in violation of the First Amendment; (2) the scheduling of marijuana as a schedule I, and/or any other schedule, and denial of marijuana so Appellant can treat his medical and mental health conditions, and recreational purposes, is cruel and unusual punishment, a deliberate indifference to his medical needs, a denial or the right to chose his own path of medical treatment for his body and personal autonomy, and is a failure to protect, in violation of the Eighth Amendment; (3) the scheduling of marijuana as a Schedule I, and/or any other schedule, and denial of marijuana so Appellant can treat his medical and mental health conditions, and recreational purposes, is overly broad and vague,

violates the equal rights of medical patients, and is unconstitutional as applied to marijuana, Appellant and other parties not before the Court, in violation of the Substantive Due Process, Due Process and Equal Protection Clauses of the Fifth and Fourteenth Amendments; (4) the scheduling of marijuana as a schedule I, and/or any other schedule, and denial of marijuana for Appellant so he can treat his medical and mental health conditions, and recreational purposes, is a violation of his, or other parties's not before the Court, personal autonomy and bodily privacy rights, under the Fourth and Fourteenth Amendments; (5) the scheduling of marijuana as a schedule I, and/or any other schedule, and denial of marijuana so Appellant can treat his medical and mental health conditions, and recreational purposes, violates the New York Compassionate Care Act (CCA), Public Health Law § 3360; (6) the refusal of Defendants to deschedule or remove marijuana from the CSA is arbitrary and capricious; (7) the refusal to deschedule or remove marijuana from the CSA, is negligent or grossly negligent; (8) Appellant has suffered mental, emotional damages; and (9) Defendants have caused Appellant an intentional infliction of mental, emotional distress. See, SAC and TAC, at 13-15, 17; Appellant's Brief, at 8-9; and Petition for Hearing Enbanc, at 10-11. Appellant seeks declaratory relief, a preliminary and permanent injunction, a temporary restraining order, compensatory damages, punitive damages, costs and fees, attorney fees and other relief. See SAC and TAC, at 15-16; Appellant's Brief, at 9; and Petition for Hearing En Banc, at 11.

Marijuana should be removed as a schedule I, and/or any other schedule of the CSA, and Appellant and others not before this Court, should be permitted to use marijuana to treat his or their medical and mental health conditions, and recreational purposes.

### SUMMARY OF THE ARGUMENT

Marijuana should be removed from the CSA, and the use of it should be legalized to treat medical and mental health conditions, and recreational purposes, throughout the Country, the District of Columbia and all Territories.

### ARGUMENT

Marijuana should be removed from the CSA (21 U.S.C. §§ 801-814, 841-846) altogether, and it should be legalized to treat medical and mental health conditions, and recreational purposes. Appellant argues that the scheduling of marijuana as a schedule I, or any other schedule under the CSA, and the denial of marijuana so he can treat his medical and mental health conditions, and recreational purposes, violates the First, Fourth, Fifth, Eighth and Fourteenth Amendments of the United States Constitution, as well as other violations. See SAC and TAC, at 13-15, 17; Appellant's Brief, at 9; and Petition for Hearing En Banc, at 10-11. Appellant argues that the right to use marijuana to treat his medical and mental health conditions, and recreational purposes, is a privacy right, implicit in the concept of ordered liberty, even when incarcerated. "Substantive Due Process protections extend only to those interests that are 'implicit in the concept of ordered liberty,' which are rights 'so rooted in the traditions and conscience of our people as to be ranked as fundamental.'" *Smith v. Hogan*, 794 F.3d 249, 255-56 (2d Cir. 2015)(quoting *Palko v. Connecticut*, 302 U.S. 319, 325, (1937) overruled in part on other grounds by *Benton v. Maryland*, 395 U.S. 784, 794 (1969); see also *Reno v. Flores*, 507 U.S. 292, 303 (1993)). The right to bodily integrity is a clearly established right protected by the Due Process Clause, see *Lombardi v. Whitman*, 485 F.3d 73, 79 (2d Cir. 2007)("The substantive component of due process encompasses, among other things, an individuals right to bodily integrity free from unjustifiable governmental interference." (citing *Washington v. Glucksberg*, 521 U.S. 702, 720

(1997)), although plaintiff does not allege any physical injury as a result of Defendant's actions. Finally, the Supreme Court has recognized a 'protected liberty interest in refusing unwanted medical treatment.' *Cruzan ex rel. v. Dir. Mo. Dep't of Health*, 497 U.S. 261, 278 (1990). In a line of cases going back as far as *Union Pacific R. Co. v. Botsford*, 141 U.S. 250, 251 (1881), the Court has recognized that a right of personal privacy, or a guarantee of certain areas or zones of privacy, does exist under the Constitution. In varying contexts, the Court or individual Justices have, indeed, found at least the roots of that right in the First Amendment, *Stanley v. Georgia*, 394 U.S. 557, 564 (1969); in the Fourth and Fifth Amendments. *Terry v. Ohio*, 392 U.S. 1, 8-9 (1968), *Katz v. United States*, 389 U.S. 347, 350 (1967), *Boyd v. United States*, 116 U.S. 616 (1886), see *Olmstead v. United States*, 277 U.S. 438, 478 (1928)(Brandeis, J., dissenting); in the penumbras of the Bill of Rights, *Griswold v. Connecticut*, 381 U.S. 486, 484-485 (1965); in the Ninth Amendment, *id.*, at 486, (Goldberg, J., concurring); or in the concept of ordered liberty, guaranteed by the first section of the Fourteenth Amendment, see *Myer v. Nebraska*, 262 U.S. 390, 399 (1923). The right to use marijuana so Appellant can treat his medical and mental health conditions, and recreational purposes is implicit in the concept of ordered liberty. It is deeply rooted in our Nations Traditions and History. Marijuana is God made, an Act of God, and it has likely been on our planet as long as human beings have been on this planet, and it has been repeatedly used throughout our time to treat medical and mental health conditions and recreational purposes. Marijuana should have never been placed on the CSA, and it was only placed there until further testing could be done. It has been years, and the Defendants have sat around and have done nothing to deschedule or remove marijuana from the CSA, while every State legalized marijuana for medical and recreational purposes. This Court is in a

position to strike Marijuana from the CSA, and set precedent for our Country.

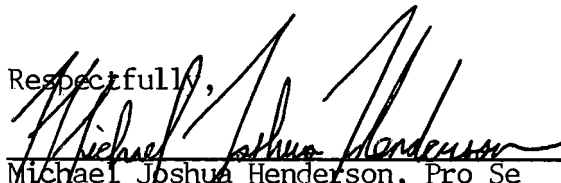
Appellant brings this Petition for Review under the Exceptions to exhaustion under the CSA, for the following reasons: (1) as a prisoner he is only required to exhaust his administrative remedies in a grievance process, pursuant to 42 U.S.C. 1997e; (2) the administrative process to deschedule or remove marijuana is inadequate and takes years of delay; (3) the Defendants are bias and arbitrary and capricious towards the descheduling and removal of marijuana from the CSA; (4) the scheduling of marijuana as a schedule I or any other schedule is life-or-death threatening, has caused Appellant past and present pain and suffering, and will continue to do so while exhausting; and (5) the Defendants decision to deschedule or remove marijuana from the CSA, has already been decided and denied by them in other cases or petitions, and the Defendants are wrong entirely. Finally, while Appellant is incarcerated, he is still entitled to the same medical and mental health treatment as every other patient under the Patient Bill of Rights, prison walls do not form a barrier guarding Appellant from his Constitutional rights, (Turner v. Safely, \_\_\_\_ U.S. \_\_\_\_ (\_\_\_\_)), and providing marijuana to Appellant so he can treat his medical and mental health conditions, and recreational purposes, is rationally related to legitimate penological interests in security, safety and maintaining order.

CONCLUSION

Appellant respectfully asks this Court to strike marijuana from the CSA entirely, for the use of marijuana to treat medical and mental health conditions, and recreational purposes, and grants any other further relief as it may deem just and proper.

Dated: August 4, 2024  
Ossining, N.Y.

Respectfully,

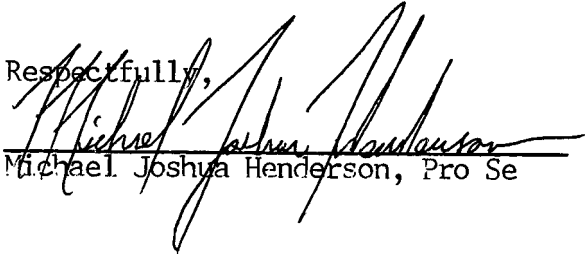
  
Michael Joshua Henderson, Pro Se  
Sing Sing Correctional Facility  
354 Hunter Street  
Ossining, N.Y. 10562

CERTIFICATE OF COMPLIANCE

I, Michael Joshua Henderson, certify that the foregoing is true and correct, and that this Petition for Review contains 14,000 words or less, and is less than 15 pages.

Dated: August 4, 2024  
Ossining, N.Y.

Respectfully,

  
Michael Joshua Henderson, Pro Se