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A Lawsuit Against Sessions Could Be The One To Legalize Marijuana

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On Wednesday, advocates and professionals in the cannabis industry descended on a federal court in New York to watch Justice Department lawyers try to dismiss a case against Attorney General Jeff Sessions.

The suit involves a motley crew of plaintiffs: Alexis Bortell and Jager Cotte, both pediatric medical marijuana patients, Jose Belen, an Army combat veteran who uses cannabis to treat his PTSD, Marvin Washington, a former New York Jet-turned cannabis entrepreneur, and the Cannabis Cultural Association, a non-profit dedicated to ending the war on drugs and promoting people of color in the cannabis industry.

Over the years, many have attempted to challenge the federal government's classification of marijuana as a Schedule I substance. Wednesday's hearing was both an example of how far the country has come on the issue and how far there still is to go. During the hearing, Judge Alvin Hellerstein considered the Justice Department's motion to dismiss the suit.

Assistant U.S. Attorney Samuel Dolinger argued that the case should be dismissed because "courts around the country have considered similar or identical claims and have rejected them." Dolinger and Hellerstein spent a good deal of time discussing the case of *U.S. v. Kiffer*, which affirmed the drug's Schedule I status.

"When they talk about *Kiffer*, a 1973 case... you really don't know the rest of the history," Michael Hiller, lead counsel for plaintiffs in the case, told reporters after the hearing. He cited numerous developments since 1973, including the government's [Investigational New Drug program](#), Nixon's [Schafer Commission](#), the

federal government's very own cannabis [patent](#), and the emergence of state-level marijuana programs.

"There is a well-established body of case law that when the facts change, the courts have to change too," said Hiller. "If you only decided case law based upon what people thought years before, we would never have Brown vs Board of Education... We would never have Windsor. We wouldn't have marriage equality."

Indeed, while other attempts to challenge marijuana's Schedule I status have failed, the atmosphere in the court reflected the times. Supporters of cannabis reform showed up in droves, quickly filling the court and spilling into an overflow room. They laughed and cheered when the judge grilled Dolinger, who [seemingly struggled](#) to answer some of his questions. They scoffed when Dolinger cited Kiffer, suggesting that marijuana's Schedule I status "was constitutionally rational."

But perhaps most indicative of our changing times was that "the judge made absolutely clear that cannabis does not meet one of the three requirements," for Schedule I status, said Hiller. "As far as I'm aware, very few judges have commented openly on [that]."

"Your clients are living proof of the medical applications of marijuana," Hellerstein told Hiller during the hearing. "I have to take the plausible allegations in your complaint as true. How could anyone say that your clients' lives have not been saved by marijuana? How can anyone say that your clients' pain and suffering has not been alleviated by marijuana? You can't, right?"

"I could not agree with you more, your Honor," responded Hiller.

While the judge's views did reflect the changing times – a majority of Americans now support some sort of cannabis reform – he questioned whether it made sense to challenge the matter in a district court.

"There are lots of things district judges have to do," said Hellerstein. "When agencies are set up to do the very kind of thing that you want me to do, I think the right thing is to defer to the agency."

The lawyers for the plaintiffs recognized this.

"We can't carry the day necessarily with a judge that feels constrained by what the law may keep him from doing, which is declaring this unconstitutional," said co-counsel David Holland. "He knows it is, but he may not be able to do it. We need you all to keep the fight alive."

Still, the pro-cannabis camp was heartened by the judge's statements.

"Our judge gets it," said Lauren Rudick, counsel for the plaintiffs. "And that was really important today."

For the time being, the judge delayed making a decision on the government's motion to dismiss the case. "He's going to consider the issues over the next several days or weeks until he comes to a conclusion," said Hiller.

But the plaintiffs came away from the hearing feeling optimistic.

"I think the judge made it very clear that he agrees and understands that cannabis is helping Alexis and Jagger and so many other people," said Jagger's father Sebastien Cotte. "We're going to keep fighting because we have to make this happen for everybody.... we're in it for the long run."

Dean Bortell, Alexis' father, agreed.

"Kids are growing up seeing this hypocrisy... if we don't get it done. But we're going to get it done."