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September 16, 1989

Clerk of the Court
United States Court of Appeals
District of Columbia Circuit
333 Constitution Avenue, N.W.
Washington, D.C. 20001

Re: Olsen v. DEA, 878 F.2d 1458 (D.C. Cir. 1989)
Petition for Rehearing and Suggestion for Rehearing En Banc

Dear Clerk:

Pursuant to Federal Rule of Appellate Procedure 28(j), I would wish the Court to consider the following, in regard to its decision of June 20, 1989:

I was a witness for David and Christine Nissenbaum at a motion to suppress hearing some years ago in the Hampden, Massachusetts, Superior Court. I thought I remembered David telling me that the decision would not be published, and I was hoping his attorney, John Thompson, would send me a copy. I went to the law library today, and decided to look for a reference to it, and I found the published decision, Commonwealth v. Nissenbaum, 536 N.E.2d 592 (Mass. 1989). The Nissenbaum decision again demonstrates the total confusion involved in these defenses to criminal marijuana charges based on free exercise of religion grounds. The courts are not making good law in this area. The solution I am seeking in this case is the only reasonable alternative to this lack of direction. The exemption of peyote when used in religious ceremonies of the Native American Church is a perfect remedy to this situation, although even that area of the law has been confused. In actuality, there is no confusion, because the Native American Church is not, and never has been, sui generis, although it may have appeared that way to some legislators when the 1965 amendments to the federal Controlled Substances Act were considered. See, Olsen v. DEA, 878 F.2d at 1464. The term sui generis was applied to the Native American Church by a misinformed person back in 1965, and I lost my citations for it, but the citation and the quote are both found in Native American Church of New York v. United States, 468 F.Supp. 1247 (S.D.N.Y. 1979), affirmed, 633 F.2d 205 (2nd Cir. 1980). The person responsible for the application of the term sui generis was dealing only with the Native American Church at the time

and was considering only state court decisions involving the Native American Church, the most prominent being People v. Woody, 61 Cal.2d 716, 40 Cal.Rptr. 69, 394 P.2d 813 (1964). See, 111 Cong. Rec. 15977-15978 (July 8, 1965). The Native American Church is not, and was not, sui generis at the time the peyote exemption was created, and this could have been discerned easily by simply looking at the companion case to People v. Woody, In re Grady, 61 Cal.2d 887, 39 Cal.Rptr. 912, 394 P.2d 728 (1964), as well as the book The Peyote Cult, by Weston La Barre (Schocken Books 1975), quoted extensively in People v. Woody. Nor was the Native American Church the only church using a controlled substance in 1965, as revealed by Town v. State, 377 So.2d 648 (Fla. 1979). The peyote exemption found in 21 C.F.R. § 1307.31 is definitely on solid constitutional footing, and creates no confusion in the law, as we see present in the cases involving the Ethiopian Zion Coptic Church. If this Court and/or the DEA does not address this issue, then the religious rights of members of the Ethiopian Zion Coptic Church will continue to confuse the law in this country because of this negligence. The religious use of marijuana is not something that has gone unnoticed in the laws. References to the religious use of marijuana by Native American Indians is found in the book The Peyote Cult. References to the religious use of marijuana in Africa is found in the book Cannabis and Culture, edited by Vera Rubin (World Anthropological Series). References to the religious use of marijuana on the ancient continent of India are found in the Commentary to the 1961 Single Convention, an international treaty signed by the United States. I ask this Court to read the Nissenbaum decision, the opinions of all seven justices, and to reconsider this case En Banc, because it is of extreme importance in preventing the waste of precious judicial resources that will be spent in future litigations with members of the Ethiopian Zion Coptic Church, and who knows how many other religious groups, if this matter is not given serious consideration by the DEA.

Dated this 16th day of September, 1989.

Respectfully submitted,

Carl Eric Olsen
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CERTIFICATE OF SERVICE

I, Carl Eric Olsen, hereby certify that a true copy of the foregoing letter, filed pursuant to Federal Rule of Appellate Procedure 28(j), was delivered by first class mail to each of the following:

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Dated this 16th day of September, 1989.