UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

CARL OLSEN, Plaintiff, v. MICHAEL MUKASEY, et al., Defendants.	))))))	No. 4:08-cv-00370

PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

Comes Now the Plaintiff, pursuant to Federal Rule of Civil Procedure 56, and respectfully moves the court to issue summary judgment as follows:

1. By issuing a declaratory order that, as a matter of law, marijuana has "accepted medical use in treatment in the United States" for the purpose of interpreting the statutory language of 21 U.S.C. § 812(b)(1)(B); and

2. By issuing a declaratory order that, as a matter of law, the regulation listing marijuana in Schedule I of the regulations of the United States Drug Enforcement Administration, 21 C.F.R. § 1308.11(d)(22), is unlawful.

MATERIAL FACTS

1. Thirteen States currently have laws in place defining and accepting "medical use" of marijuana. Alaska: Alaska Stat. § 17.37.070(8) (2008); California: Cal. Health & Saf. Code § 11362.5 (2008); Colorado: Colo. Const. Art. XVIII, Section 14(b) (2007); Hawaii: Haw. Rev. Stat. § 329-121(3)(paragraph 3) (2008); Maine: 22 Maine Rev. Stat. §2383-B(5) (2008); Montana: Mont. Code Anno., § 50-46-102(5) (2007); Nevada: Nev. Rev. Stat. Ann. § 453A.120 (2007); New Mexico: N.M. Stat.

Ann. § 26-2B-2 (2008); Oregon: Ore. Rev. Stat. § 475.302(8) (2007); Rhode Island: R.I. Gen. Laws § 21-28.6-3(4) (2008); Vermont: 18 Vermont Stat. Ann. §4472(10) (2007); Washington: Rev. Code Wash. (ARCW) § 69.51A.010(2) (2008). On November 4, 2008, Michigan Proposal 1 received 63% of the votes, making Michigan the thirteenth state to legalize the medical use of marijuana.

2. Each of the thirteen states allows authorized medical users and authorized caregivers to manufacture marijuana for medical use.

3. The Defendants have been growing marijuana and supplying that marijuana continuously to a handful of medical patients since 1978. ***Conant v. Walters***, 309 F.3d 629, 648-649 (9th Cir. 2002) (affidavits of patients receiving marijuana from the Defendants).

4. Congress stated the specific intent not to preempt state authority to determine accepted medical practice in 21 U.S.C. § 903. ***Gonzales v. Oregon***, 546 U.S. 243 (2006).

5. The 8 factors in 21 U.S.C. § 811(c) are used by the Secretary of Health and Human Services and the Administrator of the Drug Enforcement Administration to implement 21 U.S.C. § 811(a) and 21 U.S.C. § 812(b) and do not override the "findings" required by Congress in 21 U.S.C. § 812(b) (whether a substance has "accepted medical use in treatment in the United States").

6. It is the States and not the Secretary of Health and Human Services nor the Administrator of the Drug Enforcement Administration that determine whether a substance has "accepted medical use in treatment in the United States."

CONCLUSION

Plaintiff asserts that for the foregoing reasons and the arguments in the Plaintiff's Memorandum of Law attached to his Original Complaint (Docket #1, Attachment #1) and in his Reply to the Defendants' Motion to Dismiss (Docket #8) there is no genuine issue as to any material fact and that the Plaintiff is entitled to a judgment as a matter of law.

Respectfully submitted:

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on November 22, 2008 I filed the foregoing electronically through the CM/ECF system, which caused the following parties or counsel to be served by electronic means, as more fully reflected on the Notice of Electronic Filing:

CHRISTOPHER D. HAGEN, Assistant U.S. Attorney

Filed Electronically

/s/ Carl Olsen

CARL OLSEN