UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

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

PLAINTIFF'S MOTION FOR JUDICIAL NOTICE
PURSUANT TO FEDERAL RULE OF EVIDENCE 201

On Wednesday, December 17, 2008, the Plaintiff's Petition for Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit (attached as Exhibit #1) was docketed in the Supreme Court of the United States in ***Carl Eric Olsen v. Michael B. Mukasey, et al.***, No. 08-777. See ***Olsen v. Mukasey***, 541 F.3d 827 (8th Cir. 2008). The document is relevant in that is shows the Plaintiff has been arrested for possession of marijuana on numerous occasions and has been denied a religious defense because of marijuana's scheduling in the Controlled Substances Act. The Defendants claimed this Plaintiff did not have standing in that case because the Plaintiff had not been arrested:

> Plaintiff, however, has failed to establish that his claims are ripe for review, given that he is not currently facing an impending threat of prosecution.

Olsen v. Gonzales, No. 4:07-cv-23, United States District Court for the Southern District of Iowa, Docket No. 21, Attachment 1 (Defendants' Memorandum in Support of Federal Defendants' Motion to Dismiss), at Page 1. There is no doubt the Plaintiff

would have standing to bring this complaint if the Plaintiff were to be arrested for possession of marijuana again. However, offering the Plaintiff standing on the condition the Plaintiff be arrested is unethical and in complete opposition to the reason Congress enacted the Declaratory Judgment Act, 28 U.S.C. § 2201 and 28 U.S.C. §2202.

> The Act was adopted so that in such a case it would not be "necessary to breach a contract or a lease, or act upon one's own interpretation of his rights when disputed;" instead, under the Declaratory Judgment Act "it is not necessary to bring about such social and economic waste and destruction in order to obtain a determination of one's rights."

S. Rep. No. 1005, 73d Cong., 2d Sess. 3 (1934).

Although the Petition for Writ of Certiorari does not address the issue of marijuana's scheduling presented in this case, it shows that the Plaintiff has an injury in fact to his First Amendment right to freedom of religion. The Plaintiff's use of marijuana is otherwise lawful except for the unlawful inaction of the Defendants allowing marijuana to remain in schedule I of the Controlled Substances Act. The fact that marijuana no longer meets the requirements for inclusion in schedule I of the Controlled Substances Act proves the injury to the Plaintiff.

Simply moving marijuana to another schedule would not make it legal for the Plaintiff to use marijuana. If marijuana were simply moved to another schedule, the parties would still have to apply the compelling interest tests of ***Sherbert v. Verner***, 374 U.S. 398 (1963), and ***Wisconsin v. Yoder***, 406 U.S. 205 (1972), required by the Religious Freedom Restoration Act, 42 USCS §§ 2000bb *et seq*.

However, it cannot simply be assumed that removing marijuana from schedule I will result in marijuana being moved to another schedule. The U.S. Supreme Court

has actually commented that state medical marijuana laws are beyond the scope of any schedule in the Controlled Substances Act. ***Gonzales v. Raich***, 545 U.S. 1, 27 ("[T]he CSA would still impose controls beyond what is required by California law"). ***Gonzales v. Oregon***, 546 U.S. 243, 258 (2006), says state law is controlling on the federal meaning of "accepted medical use" in the CSA ("The Attorney General ... is not authorized to make a rule declaring illegitimate a medical standard for care and treatment of patients that is specifically authorized under state law").

The Administrative Procedures Act (APA) authorizes suit by "[a] person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute." 5 U. S. C. § 702. Where no other statute provides a private right of action, the "agency action" complained of must be "final agency action." § 704 (emphasis added). "Agency action" is defined in § 551(13) to include "the whole or a part of an agency rule, order, license, sanction, relief, or the equivalent or denial thereof, or failure to act." (Emphasis added.) The APA provides relief for a failure to act in § 706(1): "The reviewing court shall ... compel agency action unlawfully withheld or unreasonably delayed."

Because the Plaintiff is a lawful user of marijuana except for the unlawful inaction of the Defendants, the attached document shows the Plaintiff has standing.

Respectfully submitted this 26th day of December, 2008.

Carl Olsen, Pro Se
130 E Aurora Ave, Des Moines, IA 50313-3654, 515-288-5798

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on December 26th, 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