

**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 TEMPORARY RESTRAINING ORDER
PURSUANT TO LOCAL RULE 7(j) FOR EXPEDITED RELIEF**

Plaintiff hereby moves the court to issue a temporary restraining order preventing the Defendants from enforcing the fraudulent regulation of marijuana in Schedule I of the Controlled Substances Act (“CSA”) which is unlawfully listed at 21 C.F.R. § 1308.11(d)(22). The grounds for this motion are as follows:

1. In their supplemental brief (Docket #22, Exhibit #2), the Defendants claim the Plaintiff has now exhausted an administrative remedy because of a letter the Plaintiff received from the Drug Enforcement Administration (“DEA”) on January 5, 2009.
2. In Original Complaint in this matter (Docket #1), the Plaintiff demanded that the DEA remove marijuana remove from Schedule I of the Controlled Substance Act because it no longer meets the statutory requirements for inclusion in schedule I of the CSA, 21 U.S.C. § 812(b)(1)(B).
3. Congress mandated the list of controlled substances in 21 C.F.R. § 1308 to be updated and republished annually, 21 U.S.C. § 812(a), and the DEA is the

administrative agency responsible for updating and republishing those regulations in Title 21, Chapter II (Parts 1300 to End) of the Code of Federal Regulations.

4. On Monday, January 5, 2009, the Plaintiff received a letter dated December 19, 2008, from the DEA (Docket #22, Exhibit #1, Page #4), interpreting the finding required by Congress for including a substance in Schedule I of the CSA (“accepted medical use in treatment in the United States”), 21 U.S.C. § 812(b)(1)(B), as follows:

Furthermore, the CSA plainly does not assign to the states the authority to make findings relevant to CSA scheduling decisions. Rather, the CSA expressly delegates the task of making such findings – including whether a substance has any accepted medical use – to the Attorney General.

5. The letter from the DEA stated: “The Deputy Administrator finds, for the reasons stated herein, that the grounds upon which you rely are not sufficient to justify the initiation of proceedings for the removal of marijuana from schedule I of the CSA.” (Docket #22, Exhibit #1, Page #1).

6. The letter from the DEA was clearly based on an unlawful interpretation of the CSA by the Deputy Administrator.

7. The Defendants have notified this Court that the Plaintiff’s complaint must now be dismissed because the Plaintiff has exhausted his administrative remedies and must now file an appeal in the United States Court of Appeals.

8. The controlling statute for judicial review from final orders of the DEA is 21 U.S.C. §877.

9. The time limit in 21 U.S.C. §877 for filing a request for judicial review of a final order of the DEA is 30 days.

10. The letter from the DEA was dated December 19, 2009 and the Plaintiff received it on January 5, 2009.

11. The letter from the DEA was not sent by certified or registered mail.

12. The Plaintiff did not keep the envelope the letter from the DEA was delivered in, but believes the letter was sent by Federal Express because it was left on the Plaintiff's door step on Monday, January 5, 2009.

13. The effect of the DEA's letter has put the Plaintiff in a dilemma of trying to figure out how to preserve the right to seek review of the letter from the DEA.

14. Expedited relief is required to prevent the loss of any right the Plaintiff may have to seek judicial review of the DEA's letter.

Dated: January 14, 2009.

/s/ Carl Olsen

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on January 14th, 2009 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

TAMARA ULRICH, U.S. Department of Justice, Civil Division

Filed Electronically

/s/ Carl Olsen

CARL OLSEN