UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

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

MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFF'S MOTION FOR TEMPORARY RESTRAINING ORDER

In ***Oregon v. Ashcroft***, 368 F.3d 1118, 1120 (9th Cir. 2004), the U.S. Court of Appeals found that a petition for review of a final interpretive rule must be filed in the U.S. Court of Appeals pursuant to 21 U.S.C. § 877:

> We have original jurisdiction over "final determinations, findings, and conclusions of the Attorney General" made under the CSA. 21 U.S.C. § 877. Because the Attorney General maintains that his interpretive rule is a "final determination" and because the Directive orders sanctions for violations of its provisions, we have original jurisdiction pursuant to § 877. *See Hemp Indus. Ass'n v. DEA*, 333 F.3d 1082, 1085 (9th Cir. 2003) (holding that an interpretive rule issued by the Attorney General pursuant to the CSA is a "final determination" for jurisdictional purposes because the rule "imposes obligations and sanctions in the event of violation [of its provisions]"); *see also City of Auburn v. Qwest*, 260 F.3d 1160, 1171-73 (9th Cir. 2001). We consider the matter transferred to us from the district court pursuant to 28 U.S.C. § 1631.

In contrast to ***Oregon v. Ashcroft***, the Plaintiff's rights were not affected by the letter he received from the Drug Enforcement Administration ("DEA") on January 5, 2009 (Docket #22, Exhibit #1), because the injury the Plaintiff is complaining of occurred in 1996 when the first state law accepting the medical use of marijuana was enacted in California. The letter from the DEA changed nothing, but simply

continued the unlawful interpretation by the DEA of the statutory language in 21 U.S.C. 812(b)(1)(B). The so-called findings in the letter from the DEA were not the result of any administrative hearing, but simply an unlawful interpretation of the statutory language.

The Defendants cite ***Doe v. DEA***, 484 F.3d 561 (D.C. Cir. 2007), as authority for this Court to dismiss the Plaintiff's complaint's for lack of jurisdiction. In ***Doe***, the U.S. Court of Appeals found that the substance Doe was trying to import was actually in Schedule I and not in Schedule III as Doe had claimed on his permit application. The DEA then refused to issue Doe a permit to import his Schedule I substance. Doe never claimed that the substance he was trying to import was not a controlled substance because it fell outside the scope of the statute and his only recourse was to file an administrative proceeding to have his substance rescheduled to a lower schedule.

In contrast to ***Doe v. DEA***, the Plaintiff is not seeking rescheduling. The plain statutory language says marijuana must have "no accepted medical use in treatment in the United States" to remain in Schedule I. The U.S. Supreme Court has ruled that the DEA is bound by the decisions of the States in interpreting the statutory language. ***Gonzales v. Oregon***, 546 U.S. 243 (2006). The DEA is not authorized to make an accepted state medical practice authorized by state law makers illegal through an unlawful administrative regulation. ***Oregon v. Ashcroft***, 368 F.3d 1118, 1123-24 (9th Cir. 2004). The DEA claims that it cannot put marijuana into any of the schedules II through V because marijuana has not been approved for medical use by

the Secretary of Health and Human Services. Therefore, marijuana does not meet the findings required by Congress for inclusion in Schedule I and the DEA says it cannot put marijuana in any of the remaining schedules. That means that marijuana is not a controlled substance at all.

CONCLUSION

Because the Defendants are claiming the letter the Plaintiff received from the DEA on January 5, 2009, is a "FINAL ORDER" from the DEA, and because the Defendants characterize the Plaintiff's petition and notice to the DEA (Docket #1, Exhibits #12 through #18) as requests for rescheduling rather than demands that the DEA obey the findings required by Congress in the statute itself and remove marijuana from Schedule I, the Plaintiff seeks expedited relief.

The Plaintiff seeks a temporary restraining order to restrain the Defendants from the unlawful enforcement of the fraudulent regulation of marijuana in 21 C.F.R. §1308.11(d)(22).

In the alternative, the Plaintiff seeks some kind of stay or waiver of time limits of any right to judicial review the Plaintiff may have under 21 U.S.C. § 877 and 28 U.S.C. § 1631.

Dated: January 14, 2009.

/s/ Carl Olsen

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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