

Carl Olsen
130 E Aurora Ave
Des Moines, IA 50313-3654

Patrick White
Jefferson County Correctional Facility
1200 W. Grimes Ave.
Fairfield, IA 52556

Louv Brother Patrick,

I got your letter.

I remember going through the courts as a victim of the system. I no longer have my long hair and beard, I eat pork on occasion, and I don't use ganja (except as a topic of conversation). I still believe I should have long hair and a beard, use the dietary laws of the Old Testament, and use ganja, but I gave all of that up because I was being persecuted severely for it. The courts claim that being forced to give up your religion is a recognizable injury under the law. Even though complaining about that injury hasn't gotten me anywhere, it has kept me out of jail and has allowed me to attack the persecutors on their own ground and win some smaller battles (hopefully, in preparation for some bigger ones).

In your letter, you seem to consider me some kind of legal wizard able to work miraculous feats of law. You say I'm someone to be reckoned with and not taken lightly. There is a reason for that which you seem to be overlooking. I pick my battles carefully and don't let the system decide when and where to attack me. You did not pick this battle that you are presently engaged in. The powers that be know exactly who I am and exactly why I'm winning. They are not fooled into thinking I'm some kind of legal wizard. They just know I'm right because I stick to what I know I can win. They know I cannot just work magic. I'm sure they know I'm someone to be reckoned with, but they also know my limitations. Satan is not unaware of what is going on. Satan is actually much more aware of what is going on than most of the people, which is exactly how Satan is able to work so much evil.

I'm still working on the religious argument here in Iowa and I have not perfected it. It's not ready for production yet. I don't know how to make it work right now with the current state of the law here in Iowa. I'm sure it will work some day. I've filed a religious claim with the Iowa Board of Pharmacy, but the Board has not responded. I have not complained about the Board's failure to respond because I'm using my religious claim in the context of the due process violation I won against the Board in April for misclassifying marijuana as a substance with no accepted medical use in the United States. I based that complaint on the injury to my religious freedom. As long as my religious claim is holding up in that case, there's no reason to start another one right now.

The argument I'm planning to make in the future is based on existing exceptions to the marijuana laws and there are no existing exceptions in Iowa right now. That is rapidly looking like it will change because of my current misclassification law suit that I've been winning so far. People

claim that the two federal medical marijuana patients in Iowa are proof of an exception, but there nothing actually written in the law recognizing them. Iowa law vaguely refers to medical use of marijuana, but it says only pursuant to rules adopted by the Board of Pharmacy, and the Board has not adopted any rules. It's similar to the statements made by U.S. Attorney General Eric H. Holder saying there is a new federal medical marijuana policy. I just got a letter back from the U.S. Department of Justice saying there is no new federal medical marijuana policy. These unwritten statements do not create any legal rights. It has to be written in the law before it can be used as evidence. There's nothing written in Iowa law about the two federal medical marijuana patients that live in Iowa. That is exactly why I'm winning my case against the Board, because it says they have a duty to create rules and they haven't created any. That's what I mean about picking my arguments. I picked this one carefully and I'm winning it because they have not obeyed the law.

Sacramental use of marijuana is recognized in the 9th Circuit (federal circuit), but not in the 8th Circuit. Iowa is in the 8th Circuit. You went with me to listen to the oral argument in my case in the 8th Circuit last year and you know I lost that case. The Rutherford Institute also lost that case, but you are referring to them as if they had some kind of power now. I don't see any hope of making a religious case in Iowa right now, but that seems to be changing rapidly. As soon as I get a written ruling that marijuana does have accepted medical use in Iowa, then I have the missing piece I need to make the religious claim. Also, the ACLU is representing medical patients in the same case as mine. The ACLU is not representing me or my religious claim. Both the ACLU and the Rutherford Institute said you had no protected speech in mandatory drug treatment as part of a criminal sentence. I have a case from the 9th Circuit that says different, but that's not the 8th Circuit.

Anyway, I'm just writing to let you know that some of the stuff you are saying doesn't make any sense to me. After the conversation we had on our trip to St. Louis about Brother David's interpretation of how the Ethiopian Zion Coptic Church got hopelessly caught up on judging everyone over the law of the Old Testament which nobody was following (all have sinned and fallen short), it seems odd that you are still holding on to that as if it could save anyone.

When I was in your position, I did what you are doing because I didn't know what else to do and I was caught up in the same thing Brother David is talking about. I knew I was supposed to be doing something, but I didn't know what it was. Now, I know what it is.

We have to recognize our weaknesses and admit that we are human, if we are going to make any real progress. I would suggest you figure out what battles you can win and which ones you can't and then do whatever it takes to get ready to fight the ones you can win.

One Louv,

Brother Carl

June 8, 2009

Lloyd K. Jessen, R.Ph., J.D.
Executive Secretary/Director
Iowa Board of Pharmacy
400 SW Eighth Street, Suite E
Des Moines, Iowa 50309-4688

Re: Use of marijuana in religious ceremonies of the Ethiopian Zion Coptic Church

Dear Mr. Jessen:

Iowa Code § 124.204(4)(p) lists peyote as a Schedule I controlled substance in Iowa, as follows: "Peyote, except as otherwise provided in subsection 8." Iowa Code § 124.204(8), exempts the religious use of peyote in bona fide religious ceremonies of the Native American Church:

Peyote. Nothing in this chapter shall apply to peyote when used in bona fide religious ceremonies of the Native American Church; however, persons supplying the product to the church shall register, maintain appropriate records of receipts and disbursements of peyote, and otherwise comply with all applicable requirements of this chapter and rules adopted pursuant thereto.

I am enclosing documents verifying that the Ethiopian Zion Coptic Church is a bona fide religious organization which requires an exemption for the religious use of marijuana in order to conduct religious ceremonies in the State of Iowa.

Attached is a copy of the ruling of the Iowa Supreme Court in State of Iowa v. Carl Eric Olsen, No. 171/69079, July 18, 1984, which establishes that the Ethiopian Zion Coptic Church is a bona fide religious organization, marijuana is used as a religious sacrament, and I am a member and priest of the church.

Certified Mail Receipt No. 7007 1490 0002 0045 8401

I also understand that the Iowa Uniform Controlled Substances Act is established to protect public health and safety as set forth in the 8 criteria listed under Iowa Code § 124.201. Accordingly, I have attached two permits I obtained in 1995 and 1996 to use the Iowa State Capitol grounds for public gatherings to support the medical use of marijuana in the State of Iowa. Those two permits show that two people are authorized to use marijuana at the Iowa State Capitol, George McMahan and Barbara Douglass. The fact that these two Iowans are allowed to use marijuana by the State of Iowa establishes beyond doubt the fact that there is no threat to public health and safety from the use of marijuana sufficient to deny an application for religious use on equal terms.

Please send me the necessary information for making an application and any other qualification my religious organization must show to obtain an exemption.

Thank you for your prompt attention to this matter.

Very truly yours,

Carl Olsen, President and Chief Executive Officer
Ethiopian Zion Coptic Church
130 East Aurora Avenue
Des Moines, Iowa 50313-3654
515-288-5798

IN THE SUPREME COURT OF IOWA

STATE OF IOWA,

) Filed July 18, 1984

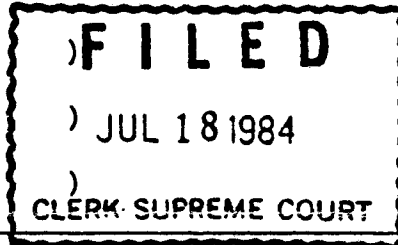
Appellee,

)

vs.

CARL ERIC OLSEN,

Appellant.



$\frac{171}{69079}$

Appeal from the Iowa District Court for Muscatine
County, R. K. Stohr, Judge.

Defendant appeals from a judgment convicting him of
unlawful possession of marijuana with intent to deliver, a
violation of Iowa Code section 204.401(1). AFFIRMED.

Carl Eric Olsen, Miami Beach, Florida, pro se.
James R. Cook of Cook & Waters, Des Moines, on the brief.

Thomas J. Miller, Attorney General, Joseph P. Weeg,
Assistant Attorney General, and Stephen J. Petersen,
County Attorney, for appellee.

Considered by Reynoldson, C.J., and Uhlenhopp, Larson,
Schultz, and Wollé, JJ.

PER CURIAM.

Defendant, Carl Eric Olsen, appeals from a judgment convicting him of unlawful possession of marijuana with intent to deliver, a violation of Iowa Code section 204.401(1). This case was before us in State v. Olsen, 293 N.W.2d 216 (Iowa), cert. denied, 449 U.S. 993, 101 S. Ct. 530, 66 L. Ed. 2d 290 (1980), in which we reversed and remanded when a State's witness was permitted to testify beyond the scope of the minutes of testimony. Following his conviction on a second trial, defendant again appeals and we affirm.

Olsen admits that when stopped by the West Liberty police in May of 1978, he was transporting 129 pounds of marijuana and \$10,915 in cash. His sole defense is that his possession and use of the marijuana are protected by the first amendment's guarantee of religious freedom.

Olsen is a member and priest of the Ethiopian Zion Coptic Church. Testimony at his trial revealed the bona fide nature of this religious organization and the sacramental use of marijuana within it. Testimony also revealed church members use marijuana continuously and publicly, commencing at an early age. Olsen admitted to smoking marijuana while driving and to using the drug a few hours before testifying in his second trial. Nonetheless, he asks us on this appeal to afford his religious use of marijuana unlimited constitutional protection.

I. This court dealt at length with Olsen's first amendment claim in State v. Olsen, 315 N.W.2d 1, 7-9 (Iowa

1982), a case involving this defendant but based on a different automobile stop and arrest. We find no reason to retreat from our holding there that "[a] compelling state interest sufficient to override Olsen's free exercise clause argument is demonstrated in this case." In fact, since our last Olsen decision, we have been joined in our analysis by yet another court, see Whyte v. United States, 471 A.2d 1018 (D.C. 1984).

Olsen now contends we must make an independent finding of a compelling state interest rather than defer to the legislature's decision to regulate marijuana. The cases do not support Olsen's assertion. See Leary v. United States, 383 F.2d 851, 860-61 (5th Cir. 1967), rev'd on other grounds, 395 U.S. 6, 89 S. Ct. 1532, 23 L. Ed. 2d 57 (1969); Whyte, 471 A.2d at 1021; State v. Rocheleau, 142 Vt. 61, 68, 451 A.2d 1144, 1148 (1982).

II. Defendant also raises an equal protection challenge, based on the legislative exemption granted the peyote ceremonies of the Native American Church. See Iowa Code § 204.204(8) (1983). This statutory exemption may be derived from the California Supreme Court's decision in People v. Woody, 61 Cal. 2d 716, 394 P.2d 813, 40 Cal. Rptr. 69 (1964). The Woody court noted in granting the prosecution exemption that peyote was used only in a desert enclosure and only during a special Saturday sundown to Sunday sunrise ceremony. The participants were fed breakfast at the close of the ceremony and were kept isolated from the general population

until the drug's effects had dissipated. Defendant can point to no such safeguards in the Coptic Church's indiscriminate use of marijuana; the drug is smoked publicly and continuously and made available to church members regardless of age or occupation. These significant distinctions render meritless defendant's equal protection argument.

We affirm the judgment of the district court.

AFFIRMED.



TERRY E. BRANSTAD, GOVERNOR

DEPARTMENT OF GENERAL SERVICES
JANET E. PHIPPS, DIRECTOR

June 2, 1995

Carl E. Olson, Chairperson
P.O. Box 4091
Des Moines, Iowa 50333

Dear Mr. Olson;

The Department of General Services has reserved for your use the West steps of the State Capitol for a rally of Iowans for Medical Marijuana to be held on Sunday, August 5, 1995 beginning at Noon until 2:00 p.m. I appreciate your appointing two marshalls, yourself and John Hartog (515/262-4660) to assist the 50 - 100 people expected to attend the event.

I understand that your organization will again provide your own security arrangements as well as public address system. We can offer you the use of the 110 volt electrical outlet located at the base of the light post immediately east of the Lincoln and Tad statue. There are no charges for the use of the State Capitol grounds or electricity.

Please remember no signs can be hung from the building, lamp posts or trees but signs carried by a single individual are acceptable. I appreciate the efforts outlined in your letter to restrict the use of illegal drugs on the complex. Capitol Police will be informed that two participants, George McMahon and Barbara Douglas are authorized to use marijuana by the federal government as well as the Iowa Board of Pharmacy Examiners.

If you have any questions, please do not hesitate to call me at 242-5120.

Sincerely,

Dean Crocker
Customer Service Center

cc: Janet E. Phipps
Carl Parker
Capitol Police



TERRY E. BRANSTAD, GOVERNOR

DEPARTMENT OF GENERAL SERVICES
JANET E. PHIPPS, DIRECTOR

August 16, 1996

Mr. Carl E. Olson, Chairperson
Iowans for Medical Marijuana
P.O. Box 4091
Des Moines, Iowa 50333

Dear Mr. Olson,

The Department of General Services has reserved for your use the West steps of the State Capitol from noon until 3:00 p.m. on Sunday, October 6, 1996. It is understood that the purpose for this rally is to encourage the Iowa Legislature to enact legislation allowing the medical use of marijuana in the state of Iowa. The Iowa Legislature is not in session during your requested time period; please let the Customer Service Center know if there is anything they can assist with in the preparation of this event. There is a 110 volt electrical outlet located at the base of the light post immediately east of the Lincoln and Tad statue. There are no charges for the use of the State Capitol grounds or electricity.

Please remember no signs can be hung from the building, lamp posts or trees, but signs carried by a single individual are acceptable. At no time should signs, pictures or any other form of media be displayed or voiced, that suggest a correlation between the State of Iowa and an individual, group, association or business. The Customer Service Center appreciates the efforts outlined in your letter to restrict the use of illegal drugs on the complex as well as appointing two marshals, yourself and John Hartog (515/ 262-4660) to assist the 50 - 100 people expected to attend this event. Capitol Police has been informed that two participants, George McMahon and Barbara Douglas, have legal prescriptions for marijuana and are approved to use marijuana by the federal government as well as the Iowa Board of Pharmacy Examiners.

Good luck with your event! If you have any questions, please do not hesitate to call me at 242-5120.

Sincerely,

Stephen J. Rodriguez
Customer Service Center

cc: Carl Parker
Capitol Police

May 19, 2009

Carmen L. Mallon
Chief of Staff
Office of Information Policy
Department of Justice
Suite 11050
1425 New York Avenue, N.W.
Washington, D.C. 20530-0001

Re: Freedom of Information Request

Dear Ms. Mallon:

Pursuant to the Freedom of Information Act, 5 U.S.C. § 552, I hereby request a copy of the current policy of the United States Department of Justice (USDOJ) regarding state-authorized medical use of marijuana.

I have attached a copy of a newspaper article from February 27, 2009, describing the new USDOJ policy on state medical marijuana laws announced by U.S. Attorney General Eric H. Holder, Jr., at a Washington news conference on February 25, 2009. U.S. to yield marijuana jurisdiction to states, by Bob Egelko, San Francisco Chronicle, Friday, February 27, 2009, page A-1.

See also <http://www.washingtonpost.com/wp-dyn/content/article/2009/04/10/AR2009041001288.html> (Attorney General Holder announced that the federal government would no longer go after groups that supply medical marijuana in the thirteen states where it is legal) and “Holder’s pot policy unclear on old state cases,” available at <http://www.sfgate.com/cgi-bin/article.cgi?f=/c/a/2009/04/10/MN5816UOLA>. DTL (Attorney General Holder announced that federal agents will target only persons who violate both federal and

Carl Olsen, Post Office Box 4091, Des Moines, Iowa 50333

state law; anyone complying with the medical marijuana law in the 13 other states with such laws would be left alone).

Also attached are orders from the U.S. District Court in Los Angeles, United States v. Lynch, No. CR 07-689-GW (C.D. Cal), requesting information on the new policy and the USDOJ response which acknowledges the change in federal policy but fails to include an actual copy of the new policy in the response.

If any expenses are incurred in connection with this request, please obtain my approval before any such charges are incurred. I am a public researcher and political activist. Disclosure of the information will contribute significantly to public understanding of the operations and activities of the government because states like mine are considering medical marijuana legislation and have a legitimate concern about the impact federal laws may have on medical patients residing in those states.

I will expect a response within 20 working days as provided by law. If my request is denied in whole or in part, I expect a detailed justification for withholding records. I also request any segregable portions that are not exempt to be disclosed.

Thank you for your prompt attention to this matter.

Very truly yours,

Carl Olsen
Iowans for Medical Marijuana
Post Office Box 4091
Des Moines, Iowa 50333
515-288-5798

Certified Mail Receipt No. 7007 1490 0002 0045 8517

SFGate.com

U.S. to yield marijuana jurisdiction to states

Bob Egelko, Chronicle Staff Writer

Friday, February 27, 2009



(02-26) 20:00 PST San Francisco -- U.S. Attorney General Eric Holder is sending strong signals that President Obama - who as a candidate said states should be allowed to make their own rules on medical marijuana - will end raids on pot dispensaries in California.

Asked at a Washington news conference Wednesday about Drug Enforcement Administration raids in California since Obama took office last month, Holder said the administration has changed its policy.

"What the president said during the campaign, you'll be surprised to know, will be consistent with what we'll be doing here in law enforcement," he said. "What he said during the campaign is now American policy."

Bill Piper, national affairs director of the Drug Policy Alliance, a marijuana advocacy group, said the statement is encouraging.

"I think it definitely signals that Obama is moving in a new direction, that it means what he said on the campaign trail that marijuana should be treated as a health issue rather than a criminal justice issue," he said.

Piper said Obama has also indicated he will drop the federal government's long-standing opposition to health officials' needle-exchange programs for drug users.

During one campaign appearance, Obama recalled that his mother had died of cancer and said he saw no difference between doctor-prescribed morphine and marijuana as pain relievers. He told an interviewer in March that it was "entirely appropriate" for a state to legalize the medical use of marijuana "with the same controls as other drugs prescribed by doctors."

After the federal Drug Enforcement Agency raided a marijuana dispensary at South Lake Tahoe on Jan. 22, two days after Obama's inauguration, and four others in the Los Angeles area on Feb. 2, White House spokesman Nick Schapiro responded to advocacy groups' protests by noting that Obama had not yet appointed his drug policy team.

"The president believes that federal resources should not be used to circumvent state laws" and expects his appointees to follow that policy, Schapiro said.

The federal government has fought state medicinal pot laws since Californians voted in 1996 to repeal criminal penalties for medical use of marijuana.

President Bill Clinton's administration won a Supreme Court case, originating in Oakland, that allowed federal authorities to shut down nonprofit organizations that supplied medical marijuana to their members. Clinton's Justice Department was thwarted by federal courts in an attempt to punish California doctors who recommended marijuana to their patients.

President George W. Bush's administration went further, raiding medical marijuana growers and clinics, prosecuting suppliers under federal drug laws after winning another Supreme Court case and pressuring commercial property owners to evict marijuana dispensaries by threatening legal action.

The Bush administration also blocked a University of Massachusetts researcher's attempt to grow marijuana for studies of its medical properties. Piper, of the Drug Policy Alliance, said he hopes Obama will reverse that position.

"If you removed the obstacles to research," he said, "in 10 to 15 years, marijuana will be available in pharmacies."

E-mail Bob Egelko at begeko@sfgate.com.

<http://sfgate.com/cgi-bin/article.cgi?f=/c/a/2009/02/27/MN2016651R.DTL>

This article appeared on page **A - 1** of the San Francisco Chronicle

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CRIMINAL MINUTES - GENERAL

Case No. CR 07-689-GW

Date March 23, 2009

Present: The Honorable **GEORGE H. WU, UNITED STATES DISTRICT JUDGE**

Interpreter None

Javier Gonzalez

Wil Wilcox

David P. Kowal; Rasha Gerges

Deputy Clerk

Court Reporter/Recorder, Tape No.

Assistant U.S. Attorney

<u>U.S.A. v. Defendant(s):</u>	<u>Present</u>	<u>Cust.</u>	<u>Bond</u>	<u>Attorneys for Defendants:</u>	<u>Present</u>	<u>App.</u>	<u>Ret.</u>
1. Charles C. Lynch	✓		✓	1. Reuven L. Cohen; John Littrell;	✓	✓	
				Guy Iverson, Michael Tanaka	✓	✓	

PROCEEDINGS: STATUS CONFERENCE RE SENTENCING

Hearing is held. Court and counsel confer.

For reasons stated on the record, the Sentencing hearing is **continued** to **April 30, 2009 at 10:30 a.m.**

The Government is ordered to submit a response as to whether the Department of Justice's position has changed regarding criminal cases and medical marijuana dispensaries. A telephonic status conference is set for **March 27, 2009 at 10:00 a.m.** Counsel for the government will be prepared to discuss the timetable of the Department of Justice's response.

IT IS SO ORDERED.

_____ : _____ 52
Initials of Deputy Clerk JG

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CRIMINAL MINUTES - GENERAL

Case No. CR 07-689-GW

Date March 27, 2009

Present: The Honorable **GEORGE H. WU, UNITED STATES DISTRICT JUDGE**

Interpreter None

Javier Gonzalez

Wil Wilcox

David P. Kowal; Rasha Gerges

Deputy Clerk

Court Reporter/Recorder, Tape No.

Assistant U.S. Attorney

<u>U.S.A. v. Defendant(s):</u>	<u>Present</u>	<u>Cust.</u>	<u>Bond</u>	<u>Attorneys for Defendants:</u>	<u>Present</u>	<u>App.</u>	<u>Ret.</u>
1. Charles C. Lynch	not		✓	1. Reuven L. Cohen; John Littrell; Guy Iverson	✓	✓	✓

PROCEEDINGS: TELEPHONIC STATUS CONFERENCE

Hearing is held. Court and counsel confer.

The Government is ordered to submit a response as to Department of Justice's position regarding criminal cases and medical marijuana dispensaries by no later than April 23, 2009. Defendants' response will be due by close of business on April 27, 2009.

The Sentencing hearing remains set for April 30, 2009 at 10:30 a.m.

IT IS SO ORDERED.

Initials of Deputy Clerk JG
_____ : _____
24

1 THOMAS P. O'BRIEN
 United States Attorney
 2 CHRISTINE C. EWELL
 Assistant United States Attorney
 3 Chief, Criminal Division
 DAVID P. KOWAL (State Bar No. 188651)
 4 RASHA GERGES (State Bar No. 218248)
 Assistant United States Attorneys
 5 OCDETF Section
 1400 United States Courthouse
 6 312 North Spring Street
 Los Angeles, California 90012
 7 Telephone: (213) 894-5136/6530
 Facsimile: (213) 894-0142
 8 E-mail: David.Kowal@usdoj.gov
Rasha.Gerges@usdoj.gov

9 Attorneys for Plaintiff
 10 UNITED STATES OF AMERICA

11 UNITED STATES DISTRICT COURT

12 FOR THE CENTRAL DISTRICT OF CALIFORNIA

13 UNITED STATES OF AMERICA,)	No. CR 07-689-GW
)	
14 Plaintiff,)	<u>GOVERNMENT'S RESPONSE TO</u>
)	<u>INQUIRY BY THE COURT REGARDING</u>
15 v.)	<u>SENTENCING</u>
)	
16 CHARLES C. LYNCH, et al.,)	
)	
17 Defendants.)	
)	

18
 19 The United States, by and through its counsel of record, the
 20 United States Attorney for the Central District of California,
 21 hereby responds to the Court's order regarding the sentencing of
 22 Charles C. Lynch ("defendant") as set forth during the March 23,
 23 2009 hearing and March 27, 2009 telephone conferences in the
 24 above-captioned case:

25 1. The enforcement policies of the Department of Justice
 26 ("DOJ"), including those expressed by the United States
 27 Attorney's Office ("USAO"), or by Attorney General Holder on this
 28 topic, do not confer any rights or defenses on any person.



U.S. Department of Justice

Executive Office for United States Attorneys

Office of the Director

Room 2261, RFK Main Justice Building
950 Pennsylvania Avenue, NW
Washington, DC 20530

(202) 514-2121

APR 17 2009

Hon. Thomas P. O'Brien
United States Attorney
Central District of California
United States Courthouse
312 North Spring Street, 12th Floor
Los Angeles, California 90012

Re: United States v. Charles C. Lynch, et al.,
No. CR 07-689-GW

Dear Mr. O'Brien:

This responds to your request for guidance in responding to questions from the court in the above-captioned case as to whether recent public statements by the Attorney General indicate a change in Department of Justice policy that would impact the sentencing of Mr. Lynch.

In response to your request, the Office of the Deputy Attorney General reviewed the facts of this case to determine whether the prosecution of Mr. Lynch comports with the Department of Justice's policies with respect to marijuana prosecutions. Based on the facts of this case, the Office of the Deputy Attorney General concurs with your office that the investigation, prosecution, and conviction of Mr. Lynch are entirely consistent with Department policies as well as public statements made by the Attorney General. Accordingly, you should seek to proceed with the sentencing recommendations which your office has filed with the court.

If you have any questions regarding any of the above, please let me know.

Sincerely,

A handwritten signature in black ink, appearing to read "H. Marshall Jarrett".

H. Marshall Jarrett
Director



U.S. Department of Justice

Office of Information Policy

Telephone: (202) 514-3642

Washington, D.C. 20530

SEP - 8 2009

Mr. Carl Olsen
Iowans for Medical Marijuana
P.O. Box 4091
Des Moines, IA 50333

Re: AG/09-R0712
CLM:VRB:VAV


Dear Mr. Olsen:

This is a final response to your Freedom of Information Act (FOIA) request dated May 19, 2009, which was received in this Office on May 29, 2009, in which you requested a copy of the United States Department of Justice's current policy regarding state-authorized medical use of marijuana, as reflected in Attorney General Holder's statement to the media in February 2009. This response is made on behalf of the Office of the Attorney General.

In your request, you indicated that you are seeking a record which constitutes the "new" Department of Justice policy on state medical marijuana laws. Please be advised that a search has been conducted in the Office of the Attorney General, and of the electronic database of the Departmental Executive Secretariat, which is the official records repository for the Office of the Attorney General, and no such record was located.

If you are not satisfied with my response on this request you may administratively appeal by writing to the Director, Office of Information Policy, United States Department of Justice, Suite 11050, 1425 New York Avenue, NW, Washington, D.C. 20530-0001, and your appeal must be received within sixty days from the date of this letter. Both the letter and the envelope should be clearly marked "Freedom of Information Act Appeal."

Sincerely,


Carmen L. Mallon
Chief of Staff

[Home](#) > [Cases](#) > 2000 Valrey

UNITED STATES OF AMERICA, Plaintiff, v. RAYNARD EARL VALREY, Defendant

NO. CR96-549Z

UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF WASHINGTON

February 22, 2000, Decided

February 22, 2000, Filed

COUNSEL: For RAYNARD EARL VALREY, defendant: Michael Filipovic, Robert Charles Owen, FEDERAL PUBLIC DEFENDER'S OFFICE, SEATTLE, WA.

JUDGES: THOMAS S. ZILLY, UNITED STATES DISTRICT JUDGE.

OPINION BY: THOMAS S. ZILLY

OPINION

ORDER

This matter comes before the Court on the Parties' Joint Motion to Determine Defendant's Terms of Supervised Release. See docket no. 50 (minutes of revocation hearing). Defendant, a Rastafarian, has tested positive for the presence of marijuana. Defendant invokes the First Amendment of the United States Constitution and the Religious Freedom Restoration Act of 1993 and seeks to modify the terms of his supervised release. Having fully considered the issue, the Court MODIFIES the conditions of the defendant's supervised release.

BACKGROUND

On March 27, 1997, after a plea of guilty to possession of an unregistered firearm. Mr. Valrey was sentenced to a term of thirty months imprisonment followed by three years of supervised release. On June 16, 1999. Mr. Valrey's release began.

On August 4, August 20, September 17, October 4 and November 8, 1999, Mr. Valrey acknowledged Probation that he had used marijuana in the days immediately preceding the urine tests administered on these dates. Mr. Valrey tested positive for the presence of marijuana on each test. The government alleges that Mr. Valrey violated the terms of his supervised release by submitting urine specimens which tested positive to the presence of marijuana.

On December 20, 1999, a hearing was held concerning whether Mr. Valrey's use of marijuana as part of his practice of the Rastafarian religion warrants revocation of his supervised release. The parties stipulated to the following facts:

1. Rastafarianism is among the religious groups sufficiently stable and distinctive to be identified as one of the existing religions in the United States and is thus a recognized religion within the meaning of the First Amendment to the United States Constitution and the Religious Freedom Restoration Act.
2. Rastafarianism emphasizes the use of marijuana in ceremonies designed to bring the believer closer to the divinity and to enhance unity among believers. Functionally, marijuana operates as a sacrament with the power to raise the partakers above the mundane and to enhance their spiritual unity.
3. Mr. Valrey is a sincere and practicing member of the Rastafarian Religion.
4. Mr. Valrey has indicated that his use of marijuana since being placed on supervised release has been in the context of his practice of Rastafarianism as described above. The government has no information to the contrary.

Stipulation at 1-2 (attached to docket no. 52). The Court accepts the Stipulation of the parties for purposes of this Order.

DISCUSSION

The First Amendment of the United States Constitution states, "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." Under the Religious Freedom Restoration Act (RFRA) a "person whose religious exercise has been burdened in violation of this section may assert that violation as a claim or defense in a judicial proceeding and obtain appropriate relief against a government." 42 U.S.C. § 2000bb-1(c). The RFRA provides that the government "shall not substantially burden a persons exercise of religion even if the burden results from a rule of general applicability" unless the government demonstrates that application of the burden to the person "(1) is in furtherance of compelling governmental interest." 42 U.S.C. § 2000bb-1. The purpose of the RFRA is "to restore the compelling interest test as set forth in *Sherbert v. Verner*, 374 U.S. 398, 83 S. Ct. 1790, 10 L. Ed. 2d 965 (1963) and

Wisconsin v. Yoder, 406 U.S. 205, 92 S. Ct. 1526, 32 L. Ed. 2d 15 (1972), and to guarantee its application to all cases where free exercise of religion is substantially burdened." 42 U.S.C. § 2000bb(b)(1). To satisfy this test, the government must meet the burdens of "going forward with the evidence and persuasion." 42 U.S.C. § 2000bb-2(3).

The Court must determine whether the supervised release condition prohibiting Mr. Valrey from the possession and use of marijuana violates his right to the free exercise of his religion. The fact that this issue is raised in the context of supervised release following Mr. Valrey's conviction and imprisonment does not affect the application of the RFRA. Congress debated and rejected an amendment that would have exempted prisons from the RFRA's stringent test. See *Bryant v. Gomez*, 46 F.3d 948, 949 & n. 1 (9th Cir. 1995) (citing S. Rep. No. 111, 103rd Cong., 1st Sess. §§ V(d) and XI (1993); H.R., Rep. No. 88, 103rd Cong., 1st Sess. (1993)); *Stefanow v. McFadden*, 103 F.3d 1466, 1471 (9th Cir. 1996) (The RFRA applies to claims of prisoners).

In *City of Boerne v. Flores*, 521 U.S. 507, 117 S. Ct. 2157, 138 L. Ed. 2d 624 (1997), the Supreme Court held that the RFRA was unconstitutional insofar as it applies to local and state laws. The Court found that Congress had exceeded its authority under Section 5 of the Fourteenth Amendment. However, the RFRA is still applicable to federal laws. *Sutton v. Providence St. Joseph Medical Center*, 192 F.3d 826, 832 [(9th Cir. 1999).

In *United States v. Bauer*, 84 F.3d 1549 (9th Cir. 1996), *cert. denied*, 519 U.S. 131, 117 S. Ct. 991, 992, 136 L. Ed. 2d 872 (1997), the Ninth Circuit held that, under the RFRA, it was error to exclude a religious defense to charges of simple possession of marijuana for personal use. *Id.* at 1559. *Bauer* requires that Mr. Valrey show, as an initial matter, that he is a member of the Rastafarian religion and that his use of marijuana is part of that religion's practice. *Id.* Both parties have stipulated to these required facts.

Mr. Vairey must also show that prohibiting him from using marijuana is a substantial burden on his practice of the Rastafarian religion within the meaning of the RFRA. See 42 U.S.C. § 2000bb-1. "Putting substantial pressure on an adherent to modify his behavior and to violate his beliefs" burdens the free exercise of religion, and thus is a substantial burden. *Thomas v. Review Bd. of Indiana Employment Sec. Division*, 450 U.S. 707, 718, 101 S. Ct. 1425, 67 L. Ed. 2d 624 (1981); 42 U.S.C. § 2000bb-1. The joint stipulation provides that Rastafarians emphasize the use of marijuana as a means of bringing the believer closer to the divinity and enhancing unity among the believers. Marijuana thus acts as a sacrament for the Rastafarians. In *Bauer*, the Ninth Circuit impliedly found that prohibition of this sacrament was a substantial burden when it held that the prosecution of a Rastafarian for the personal possession and use of marijuana gives rise to a valid, religious-exercise defense under the RFRA. *Bauer*, 84 F.3d at 1559. The terms of Mr. Vairey's supervised release, which require him to refrain from using marijuana, places substantial pressure on him to modify his 'behavior in violation of his beliefs as a Rastafarian. Thus, a substantial burdening of Mr. Vairey's free exercise of Rastafarianism has occurred.

Consequently, the government has the burden to prove that restricting defendant's use of marijuana during supervised release (1) furthers a compelling government interest and (2) 'is the least restrictive means of furthering that interest. 42 U.S.C. § 2000bb-1(b). The government argues that because of the correlation between drug use and criminal behavior, the Court is required by 18 U.S.C. § 3583 to order prohibition of any drug use as a condition of supervised release. See *United States v. Blackston*, 940 F.2d 877, 886 n. 12 (3rd Cir. 1991). However, 18 U.S.C. § 3583 is a law of general applicability and was not intended to discriminate against or inhibit a religious practice. See 42 U.S.C. § 2000bb-1(a); *Bauer*, 84 F.3d at 1557-59. The government also argues that this requirement, combined with the ultimate goal of rehabilitating Mr. Valrey, demonstrates a compelling interest in burdening Mr. Vairey's free exercise of his religion by prohibiting him from using controlled substances. However, the government has offered no proof that Mr. Vairey himself is in danger of recidivism as a result of his marijuana use. A contrary argument can even be made' that the devout practice of his religion in conjunction with the other terms of supervised release may help ensure Mr. Vairey's rehabilitation. Therefore, the government has not met its statutorily required burden of evidence and persuasion regarding the "compelling interest" prong of the test.

The government has offered no arguments regarding the "least restrictive means" prong of the test. In contrast, Mr. Vairey argues that five factors will accomplish a less restrictive means of furthering the government's interest. These five factors are: (1) continued self-reporting of marijuana use, (2) regular urine-testing for other controlled substances, (3) monthly reporting, (4) periodic criminal history checks, and (5) compliance with all of the other incidents of supervision. Mr. Vairey argues that these factors are fully adequate to ensure that he is not using any other controlled substances and is achieving the goals of the supervised release. Because the government bears the burden as to this issue but 'declined to address this second prong, the Court finds that Mr. Valrey's suggested factors will accomplish a less restrictive means of furthering the government's rehabilitative interest without burdening Mr. Valrey's exercise of his religion.

The government argues that *People v. Peck*, 52 Cal. App. 4th 351, 61 Cal. Rptr. 2d 1 (1997), "expressly rejected a similar request" to change the terms of supervised release for a Rastafarian asserting a defense under the RERA. In *Peck*, the defendant was convicted of the transportation of 28.5 grams of marijuana and possession of marijuana for sale. The court found that permitting him to continue to possess and use marijuana probably would lead him to engage in future criminal conduct.

This case is distinguishable from *Peck*. Mr. Valrey was convicted of the illegal possession of a firearm, not of transportation and possession of controlled substances for sale. In *Peck*, the court stated, "Although the use of marijuana as a sacrament is central to the [defendant's religion], defendant was prosecuted not for using marijuana but for transporting a large quantity of it and possessing it for sale. These activities are only

related peripherally, if at all, to the practice of defendant's religion." 14. at 360-61. In this case, the parties have stipulated that Mr. Valrey's use and possession of marijuana is in the context of his religious practice. The government argues that Mr. Valrey was smoking marijuana at the time he was arrested and that his use at that time was unrelated to his religious practice. However, there is no evidence currently before the Court supporting this assertion, nor was Mr. Valrey prosecuted for that incident.

The government's final argument is that Mr. Valrey should not be permitted to use marijuana during supervised release because he could not have used marijuana for religious purposes in prison. However, in the context of a Rastafarian on supervised release, prison regulations are not at issue.

CONCLUSION

For the above reasons, the Court MODIFIES the conditions of Mr. Valrey's supervised release. The Court will allow Mr. Valrey's personal use and possession of marijuana exclusively in connection with his practice of his religion. Mr. Valrey shall (1) self-report his marijuana use (affirming that such use is in the context of his continuing participation in the Rastafarian religion), (2) undergo regular urine-testing for controlled substances, (3) report monthly, (4) submit to periodic criminal history checks, and (5) comply with all of the other conditions of supervision.

IT IS SO ORDERED

DATED this 22nd day of February, 2000