

IN THE
UNITED STATES COURT OF APPEALS
FIRST CIRCUIT

CARL ERIC OLSEN, in propria persona,	*	
	*	
	*	
Petitioner-Appellant,	*	No. 07-1883
	*	
v.	*	
	*	
UNITED STATES,	*	Notice that Fee has been Paid and
	*	Request to have it Applied to this
Respondent-Appellee.	*	Appeal

**NOTICE THAT FEE HAS BEEN PAID
AND REQUEST TO HAVE IT APPLIED TO THIS APPEAL**

Appellant, Carl Eric Olsen, hereby notices the Court that the fee for this appeal has been paid and applied to a Writ of Mandamus, No. 07-2310 in this Court. Appellant attempted to file an appeal from the dismissal of his Petition for Writ of Habeas Corpus (Writ of Error Coram Nobis) which was filed under 28 U.S.C. § 2241 and 28 U.S.C. § 1651. The District Court misconstrued the Petition as being filed under an incorrect statute, 28 U.S.C. § 2255, and required the Appellant to file for a certificate of appealability and then denied the certificate of appealability. This Court perpetuated the error by demanding a certificate of appealability (see Docket Entry for 8/16/2007), depriving the Appellant of the right to appeal. The Appellant was forced to file a Petition for Writ of Mandamus to compel the District Court to rule on his 28 U.S.C. § 1651 claim so that the Appellant could file an appeal without a certificate of appealability, which this Court now admits is the right of the Appellant to do. The filing fee for the Petition for Writ of Mandamus was \$450 which the Appellant paid.

On March 21, 2008, this Court issued an Order declaring that the Appellant was correct in asserting the right to appeal without a certificate of appealability, proving that the Appellant was forced by this Court's ruling that

the motion under 28 U.S.C. § 1651 / 28 U.S.C. § 2241 was a motion under 28 U.S.C. § 2255 to file the Petition for Writ of Mandamus without good cause. Because it was this Court's ruling, and not the fault of the Appellant, that the appeal was incorrectly construed as an appeal from a motion under 28 U.S.C. § 2255, and because it was this Court's ruling, and not the fault of the Appellant, that a Petition for Writ of Mandamus had to be filed, in the interest of justice the fee the Appellant paid for filing the Writ of Mandamus should now be applied to this appeal.

On March 21, 2008, this Court dismissed the Petition for Writ of Mandamus, No. 07-2310, on the grounds that such an extraordinary writ is not available when an appeal is available. The Appellant takes the position that the appeal was not available until March 21, 2008, when this Court removed the condition that a request for certificate of appealability under the incorrect statute, 21 U.S.C. § 2255, be filed.

If this Court does not apply the fee from the Writ of Mandamus to this appeal, the Appellant will be forced to ask for a rehearing on the dismissal of his Petition for Writ of Mandamus and take the matter to the U.S. Supreme Court if necessary.

Both the District Court and this Court have misconstrued the Petition for Writ of Error Coram Nobis when it was clearly presented to the District Court as a Petition for Writ of Error Coram Nobis under 28 U.S.C. § 1651. This Court should not punish the Appellant for doing what the Appellant originally had the right to do - which was to seek justice by having the denial of strict scrutiny at Appellant's trial in 1982 reviewed in light of new statutory law, 42 U.S.C. §§ 2000bb et seq. and 42 U.S.C. §§ 2000cc et seq., and Supreme Court precedent, *Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal*, 546 U.S. 418(2006), which now require examination of factual evidence of marijuana's actual physical dangers to persons and society at trial and is fully retroactive to any previous implementation of federal law. See 42 U.S.C. § 2000bb-3(a).

The Appellant agrees not to pursue the Writ of Mandamus any further if this Court will now apply the fee of \$450 that the Appellant paid to docket the Petition for Writ of Mandamus to this Appeal. The Appellant understands that an additional filing fee of \$5 for the notice of appeal will be required if this Court agrees to apply the \$450 already paid by the Appellant to this appeal. First Circuit Local Rules, December 1, 2007, Schedule of Fees.

Therefore, the Appellant respectfully moves this Court to apply the \$450 filing fee the Appellant paid to docket the Petition for Writ of Mandamus to the filing fee for this appeal and to allow the Appellant time to mail the additional \$5 to the Clerk of this Court. If the Court agrees to apply the \$450 filing fee the Appellant paid to docket the writ to this appeal, the Appellant agrees not to pursue the Writ of Mandamus any further.

Respectfully submitted this 26th day of March, 2008.

CARL ERIC OLSEN
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IN PROPRIA PERSONA

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing NOTICE THAT FEE HAS BEEN PAID AND REQUEST TO HAVE IT APPLIED TO THIS APPEAL was mailed by first class mail on this 26th day of March, 2008 to the following respondent:

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