

ETHIOPIAN ZION COPTIC CHURCH

Plaintiff,

vs.

DRUG ENFORCEMENT ADMINISTRATION

ORDER FOR PRE-TRIAL
CONFERENCE

THE above-styled cause is hereby set for pre-trial conference on

MONDAY, MAY 21, 1984 at 9:00 a.m. at the

United States Courthouse, Miami, Dade County, Florida, Pursuant to Local Rule 14 of this court the parties shall abide by the following time schedule under penalty of dismissal or other sanctions:

TIME SCHEDULE

TEN day prior to P-T conf.

---Attorneys must meet.

SEVEN days prior to P-T Conf.

---Resume of experts' report must be completed.

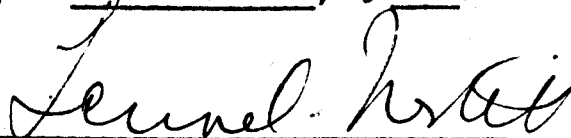
FIVE days prior to P-T Conf.

---Any memoranda of law must be filed.

---Pre-Trial Stipulation must be filed.

TRIAL DATE--- Parties must be ready for trial at any time after the P-T Conference.

Done and Ordered in Chambers this 30th day of January, 1984.


UNITED STATES DISTRICT JUDGE

COPIES FURNISHED TO:

- William French Smith, Esq.
- Rudolf Giuliani, Esq.
- Francis Mulder
- Stanley Marcus, Esq.
- Carl Eric Olsen

Carl Eric OLSEN, et al.,
Plaintiffs-Appellants,

v.

DRUG ENFORCEMENT ADMINISTRATION, Defendant-Appellee.

No. 85-5017

Non-Argument Calendar.

United States Court of Appeals,
Eleventh Circuit.

Nov. 14, 1985.

Action was brought seeking to compel response from Drug Enforcement Administration to petitions to amend rules on controlled substances to allow for religious use of marijuana. The United States District Court for the Southern District of Florida, Lenore Carrero Nesbitt, J., dismissed the complaint for failure to state a cause of action, and petitioners appealed. The Court of Appeals held that rule allowing religious use of marijuana could not be made under authority of statute providing that any interested party may petition to have substance added, removed, or transferred between schedules of controlled substances.

Affirmed.

1. Drugs and Narcotics ⇐46

Rule authorizing religious use of marijuana could not be made under authority of statute [21 U.S.C.A. § 811], which provides that any interested party may petition to have substance added, removed, or transferred between schedules of controlled substances. Comprehensive Drug Abuse Pre-

vention and Control Act of 1970, §§ 201, 201(c), 21 U.S.C.A. §§ 811, 811(c).

2. Drugs and Narcotics ⇐46

Duty of administrator of Drug Enforcement Administration to respond to all petitions for issuance, amendment, or repeal of rules required administrator to respond to petition to allow religious use of marijuana and to inform petitioners that rule they sought fell outside scope of statute [21 U.S.C.A. § 811(c)], providing that any interested party may petition to have substance added, removed, or transferred between schedules of controlled substances. Comprehensive Drug Abuse Prevention and Control Act of 1970, §§ 201, 201(c), 21 U.S.C.A. §§ 811, 811(c).

Appeal from the United States District Court for the Southern District of Florida.

Before FAY, JOHNSON and CLARK,
Circuit Judges.

PER CURIAM:

Appellants filed this action seeking to compel a response from the Drug Enforcement Administration (DEA) to their petitions to amend the rules promulgated under the Controlled Substances Act in such a way as to allow religious use of marijuana by members of the Ethiopian Zion Coptic Church. The district court dismissed the complaint for failure to state a cause of action. For reasons set forth below, we affirm the order of the district court.

[1] Appellants based their petitions to allow for the religious use of marijuana by members of their church upon 21 U.S.C. § 811 which provides that any interested party may petition to have a substance

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The Synopsis, Syllabi and Key Number Classification constitute no part of the opinion of the court.

added to the schedules of controlled substances, removed from the schedules of controlled substances, or transferred between those schedules. The factors to be considered in acting upon such a petition are the current state of knowledge and understanding of the effects of the substance upon the user and upon society. *See* 21 U.S.C. § 811(c). The petitions of the plaintiffs for a religious exemption for marijuana use thus fall outside the scope of the statute, and a rule such as they sought could not be made under authority of 21 U.S.C. § 811.

[2] The administrator of the DEA is, however, obliged to respond to all petitions for the issuance, amendment, or repeal of rules pursuant to 21 U.S.C. § 811 by 21 C.F.R. § 1308.44(c) which provides that “[w]ithin a reasonable time after the receipt of a petition, the administrator shall

notify the petitioner of his acceptance or nonacceptance of the petition, and if not accepted, the reason therefor.” This obligation pertains whether or not the object of the petition falls within the scope of 21 U.S.C. § 811.

Thus, in this case, the administrator was obliged to respond to the petitions of the appellants and to inform them that the petitions would not be accepted because the rule they sought fell outside the scope of the statute. However, since the appellants are on notice of the defect in their petition by virtue of this opinion and since a remand to the district court to order the DEA to restate what has just been stated would constitute a needless waste of judicial resources, the order of dismissal of the district court is

AFFIRMED.