

No.

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IN THE  
SUPREME COURT OF THE UNITED STATES

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Keith Alden, *in propria persona* - PETITIONER

vs.

The United States of America - RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI TO  
The United States Court of Appeals for the Ninth Circuit

PETITION FOR A WRIT OF CERTIORARI

Keith Alden, *in propria persona*

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## **QUESTIONS PRESENTED**

1. Whether petitioner has been deprived of his right to due process of law by the failure of the courts to hear and rule on his argument?
  
2. Whether the precedent upon which the Federal government's ability to govern interstate commerce, *Wickard v. Filburn*, is premised upon the fact that the plaintiff in that case registered in a Federal program for benefit?
  
3. Whether non-registrants are specifically included as "any person" under 21U.S.C. 841(a), and its rules, regulations and procedures used to enforce the statute.

## **LIST OF PARTIES**

All parties appear in the caption of the case on the cover page.

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APPENDIX B- United States 9<sup>th</sup> Circuit Court of Appeals, U.S. v. Alden, case No. 02-10356, 02-10673, 02-10674 – Petition for Rehearing denied.

## **TABLE OF AUTHORITIES**

Wickard v. Filburn, 317 U.S. 111 (1942)

Miranda v. Arizona, 384 U.S. 491

American Banana Co. v United Fruit Co., 213 U.S. 347

## **OPINIONS BELOW**

The opinion of the United States Court of Appeals for the Ninth Circuit # 02-10356, 02-10673, 02-10674, unpublished opinion.

There is no opinion of the United States District Court for the Northern District of California, CR 01-0202 MJJ, CR 01-0236 MJJ, on petitioner's motion and argument, either published or unpublished.

## **JURISDICTION**

The date on which the United States Ninth Circuit Court of Appeals decided my case was July 27, 2005.

A timely petition for rehearing was denied by the United States Ninth Circuit Court of Appeals on October 17, 2005, and a copy of the order appears at Appendix C.

An extension of time to file the petition for a writ of certiorari was granted to and including February 14, 2006 on December 28, 2005 in Application No. 05A568.

The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

## CONSTITUTION AND STATUTORY PROVISIONS INVOLVED

Bill of Rights, Article 5, Right to Due Process of Law

21 U.S.C. §821 - Rules and regulations

21 U.S.C. §871(b) - Rules and regulations

21 U.S.C. §841(a)- provides in relevant part:

Except as authorized by this subchapter, it shall be unlawful for any person knowingly or intentionally-

21 U.S.C. §856 - Establishment of manufacturing operations

21 C.F.R. Part 5 - Delegations of authority and organization, is relevant in it's entirety.

18 U.S.C. § 242 - Deprivation of rights under color of law.

## STATEMENT

Petitioner has been deprived of his right to due process of law. Petitioner has controverted by proof every material fact that the government has used to claim jurisdiction over his cultivation of marijuana. The petitioner's argument, that the government does not have jurisdiction, has never been heard or ruled on by any court, thus depriving the petitioner of his right to due process of law.

The precedent upon which the Federal government's ability to govern interstate commerce, *Wickard v. Filburn* 317 U.S. 111 (1942), is premised upon the fact that the plaintiff in that case chose to register in a Federal program.

In its effort to control total supply, the Government gave the farmer a choice which was, of course, designed to encourage cooperation... *Wickard*, 317 U.S. 111, 130

Other persons chose not to cooperate with the program.

It is of the essence of regulation that it lays a restraining hand on the self-interest of the regulated and that advantages from the regulation commonly fall to others. *Wickard*, 317 U.S. 111, 129

To this day any person may grow as much wheat as desired, unless he chooses to waive that right through contract, for benefit. This Court has ruled "Where rights secured by the constitution are involved, there can be no rule making or legislation which would abrogate them." *Miranda v. Arizona*, 384 U.S. 491

Petitioner has never registered with a Federal agency for a program that regulates marijuana nor received benefits from such a program. The *Wickard* basis is inapplicable here.

The Executive Branch is authorized by the Controlled Substance Act to enforce the Act (21 U.S.C. §871(b)) by all necessary rules and regulations, which pertains only to regulated persons and officials of the agency's program.

21 U.S.C. §821 - Rules and regulations - The Attorney General is authorized to promulgate rules and regulations ... relating to the registration ... and control of regulated persons and of regulated transactions.

Sections 841 and 856 of the Controlled Substance Act are implemented by agency regulation at 21 C.F.R. Part 5. This important fact is proof that the Act's statutes and their implementing regulations comprise an agency's administrative code of regulation for registrants. Sections 841 and 856 are administrative statutes, implemented by administrative regulation, which carry potential for criminal sanctions.

These statutes, 21 USC Sections 801 et al, do not apply to every person, but to "only everyone subject to such legislation, not all that the legislator subsequently may be able to catch." - *American Banana Co. v United Fruit Co.*, 213 U.S. 347.

The District Court and the Appellate Court moved on presumption that there is Federal jurisdiction over petitioner's marijuana, without ever addressing the petitioner's argument.

The court opinions and docket record show both courts obfuscated the petitioner's argument and failed to rule on it. Petitioner's motion on June 20, 2001 before the District Court to bring forward the implementing regulation(s) for Section 841 – thus showing that it was part of an administrative code of regulation for registrants. A ruling on the motion does not appear on the District Court's docket for this case, and petitioner has never received a written opinion on his motion. At a later hearing petitioner offered the Court and the Government copies of the regulation, 21 CFR Part 5, but which were refused without comment, as the court immediately moved onto other matters.

The Appellate Court ruled on the Government's misstatement of my motion:

Third, Alden argues that the CSA cannot be applied to him because it lacks implementing regulations. There is no general requirement that criminal statutes have implementing regulations, however... - Page 4, paragraph 2 of appellate ruling

This misstatement of my motion is typical of the obfuscation and refusal to hear or rule by both courts since this case opened five years ago. Such presumption that I am involved in a criminal act is a violation of my right to due process, secured by our Bill of Rights.

Due Process of Law: To be heard, by testimony or otherwise, and to have the right of controverting, by proof, every material fact... If any question of fact or liability be conclusively presumed against him, this is not due process of law. - Black's Law Dictionary

Filburn received his due process as a registrant of the agency:

... as the result of the wheat programs he is able to market his wheat at a price 'far above any world

price based on the natural reaction of supply and demand.' We can hardly find a denial of due process in these circumstances, particularly since it is even doubtful that appellee's burdens under the program outweigh his benefits. It is hardly lack of due process for the Government to regulate that which it subsidizes. 317 U.S. 111 at 130.

Unlike *Filburn*, petitioner has been denied his right to due process. The preceding argument has never been addressed or ruled on in petitioner's case, though petitioner has repeatedly brought it before the courts. Our Constitution, our rule of law, requires that every person have the right to due process. There are others currently arguing the same issue, also awaiting a ruling.

Until a Federal court hears and rules on the issue at hand, the petitioner's (and others') right to due process continues to be deprived. Pretending that there is a law, that establishes jurisdiction applicable to an unregistered individual like myself, is a crime that has a victim with injuries and damages. This crime is codified at 18 U.S.C. §242 - Deprivation Of Right Under Color Of Law.

## **REASONS FOR GRANTING THE WRIT**

This case is important to persons who have been convicted of, facing charges of, or may face charges of manufacturing or possessing marijuana, who are not registered with a Federal Agency regulating marijuana. This issue was never addressed by either the Federal District Court or the 9<sup>th</sup> Circuit Court of Appeals.

**CONCLUSION**

The petition for a writ of certiorari should be granted.

Respectfully submitted,

\_\_\_\_\_, \_\_\_\_\_  
Keith Alden Date