

No. 02-10356, 02-10673, 02-10674

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

KEITH ALDEN

Defendant-Appellant.

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APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
NDCA No. CR-01-202-MJJ
(Hon. Martin J. Jenkins, U.S.D.J., Presiding)

PETITION FOR REHEARING OF APPELLANT

KEITH ALDEN
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PETITION FOR REHEARING

Appellant hereby petitions for rehearing of his appeal for the **issue at law**, which this Court has **failed** to hear, and has **failed** to rule on. “Conclusive presumption” is not **due process** of law. This Court’s “presumption”, that there is a law that is applicable here, is a violation of my God-given right to **due process**, secured by Our Bill of Rights at Article 5.

Due Process of Law : 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

Since May of 2001 I have “controverted by proof , every material fact.”

I have brought up an issue at law, which has **not** been responded to by the Government, **not** heard by this Court and **not ruled on by this Court**. In this moment this criminal deprivation of my Rights continues.

Perhaps there is a misreading of my argument, that led this Court to affirm my convictions?

This Court stated:

Third, Alden argues that the CSA cannot be applied to him because it **lacks** implementing regulations. - Page 4, paragraph 2 of this Court’s appellate ruling

However, as I have presented in my briefs, there **are** implementing regulations for the statutes 841 and 856 of the CSA. -- In my first conviction I argued :

This group of statutes all **have** a published regulation at 21 CFR Part 5. This would include §841. - Page 3, paragraph 2 of my brief

It is also a fact that §841 of the Act (CSA), **has been implemented** by regulation as called for at §821 of the Act). - Page 1, paragraph 2, of my reply brief

In my appeal for my second (and third) conviction I argued:

This would include §841 as well as §856. This group of statutes **have** a published regulation at 21 CFR Part 5. - Page 3, Paragraph 1 of my brief

The government states the defendant persists in a contention that §841 **lacks** regulations. This is **incorrect**. §841 (and §856) **have** been implemented by regulation at 21 CFR Part 5. - Page 1, paragraph 2 of my reply brief

In addition to the 4 briefs, I have also presented this issue in Rule 28j letters.

My argument is and has been that §§841 & 856 **are implemented** by administrative regulations at 21 CFR Part 5 (Food and Drugs). The Controlled Substance Act's administrative statutes and their implementing regulations comprise an "**Administrative Code of Regulation**" for registrants. Farmer Filburn in the famous Wickard case, as a registrant for benefit, violated the regulations of the Wheat Program. In contrast, **I am not a registrant**. Am I not one of the "others" the Supreme Court referred to in the Wickard case (317 U.S. 111)?

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, p. 129

Contrary to what I was told in a closed hearing at the Ninth Circuit, that attorneys would not file or argue this issue, an attorney has stepped forward and filed a motion on the issue of lack of agency jurisdiction for non-registrants. Being pro se, perhaps I can make myself clearer with the same argument, written by an attorney, a member of the bar:

THE PRECEDENT UPON WHICH THE FEDERAL GOVERNMENT'S ABILITY TO GOVERN INTERSTATE COMMERCE, WICKARD V. FILBURN, 317 U.S. 111, IS PREMISED UPON THE FACT THAT THE PLAINTIFF IN THAT CASE REGISTERED IN A FEDERAL PROGRAM; BECAUSE DEFENDANT NEVER TOOK ADVANTAGE OF A FEDERAL PROGRAM, AND BECAUSE THERE IS NO FEDERAL PROGRAM REGULATING MEDICAL MARIJUANA, THE WICKARD BASIS OF JURISDICTION IS INAPPLICABLE HERE.

Wickard v. Filburn, 317 U.S. 111 (1942), is considered to be the controlling precedent upon which Congress has relied to expand the definition of interstate commerce. The common notion is that nearly any aspect of commerce can be regulated if a piece of wheat could be governed by the federal government. In fact, in that case, the federal government had developed a subsidy system to help farmers in a particular field, that of wheat farming. One farmer, the plaintiff in the Wickard, 317 U.S. 111, filed a complaint asking to enjoin enforcement of the Agricultural Adjustment Act. The Act set up quotas for farmers and imposed penalties for farmers who while taking advantage of the federal subsidies dolled out by the agency, wanted to be immunized from the penalties associated from not following the conditions required to take advantage of these benefits.

There is no federal government organization regulating medical marijuana. Therefore, the federal government lacks the jurisdictional basis asserted in Wickard, 317 U.S. 111. As the Wickard court wrote, acknowledging the role the plaintiff had in bringing about federal jurisdiction over his activity, “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.

- Excerpt from Motion in U.S. v. Landa

Hopefully I have made this issue clearer.

The convicting of non-registrants by using the CSA as “**criminal statutes**” are proceedings done under the color of law. CSA statutes may call for potential criminal sanctions, but only for registrants of this **Administrative Code of Regulation**.

These statutes 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.

For almost 200 years the Department of Justice was without jurisdiction to regulate marijuana, as the Government’s attempt was ruled unconstitutional. Through legislation, in the form of the Controlled Substance Act, the Government fraudulently claims jurisdiction over non-registrants, thereby filling our prisons. This fraudulent claim is upheld by Our Federal Judiciary, including this Court in this case, currently.

This Court's failure to hear and failure to rule on jurisdiction is a violation of my Fifth Amendment right to the **due process of law**. Isn't the Deprivation of Rights, while pretending there is a "law," that establishes jurisdiction applicable to an unregistered individual like myself, a **"Deprivation of rights under color of law?"** Isn't this deprivation of Right (**due process**) a **crime** pursuant to 18 U.S.C. §242 and §1001? Why would Our Federal Judiciary turn Our delegated sacred trust, to uphold **Our law (due process)**, into a crime? Wasn't the independence of Our Judiciary established to secure the right of **due process** for All? Is now the time to uphold Our "rule of law" and stop the **crimes** against the People?

Respectfully submitted,

Keith Alden, October 6, 2005