No. 00-151

IN THE SUPREME COURT OF THE UNITED STATES

UNITED STATES OF AMERICA, PETITIONER

v.

OAKLAND CANNABIS BUYERS' COOPERATIVE
AND JEFFREY JONES

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

LODGING

BARBARA D. UNDERWOOD
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U.S. Department of Justice

Drug Enforcement Administration

Washington, D.C. 20537

MAR 20 2001

Jon Gettman
Rt. 1 Box 26
Lovettsville, VA 22080

Dear Mr. Gettman:

On July 10, 1995, you petitioned the Drug Enforcement Administration (DEA) to initiate rulemaking proceedings under the rescheduling provisions of the Controlled Substances Act (CSA). Specifically, you petitioned DEA to propose rules, pursuant to 21 USC 811(a), that would amend the schedules of controlled substances with respect to the following controlled substances: marijuana; tetrahydrocannabinols; dronabinol; and nabilone. Although you grouped these substances together in your petition, the scheduling analysis differs for each. To avoid confusion, DEA is providing you with a separate response for each of the controlled substances that you proposed be rescheduled. This letter responds to your petition to reschedule marijuana.

Summary

You requested that DEA remove marijuana from schedule I based on your assertion that "there is no scientific evidence that [it has] sufficient abuse potential to warrant schedule I or II status under the [CSA]." In accordance with the CSA rescheduling provisions, DEA gathered the necessary data and forwarded that information and your petition to the Department of Health and Human Services (HHS) for a scientific and medical evaluation and scheduling recommendation. HHS concluded that marijuana does have a high potential for abuse and therefore recommended that marijuana remain in schedule I. Based on the HHS evaluation and all other relevant data, DEA has concluded that there is no substantial evidence that marijuana should be removed from schedule I. Accordingly, your

(4) Its history and current pattern of abuse;
(5) The scope, duration, and significance of abuse;
(6) What, if any, risk there is to the public health;
(7) The drug's psychic or physiological dependence liability; and
(8) Whether the drug is an immediate precursor of a substance already controlled under the CSA.

21 USC 811(c).

In this case, you submitted your petition by letter dated March 10, 1995. After gathering the necessary data, DEA referred the petition to HHS on December 17, 1997, and requested from HHS a scientific and medical evaluation and scheduling recommendation. HHS forwarded its scientific and medical evaluation and scheduling recommendation to DEA on January 17, 2001.

B. HHS Scientific and Medical Evaluation and Other Relevant Data Considered by DEA

Attached to this letter is the scientific and medical evaluation and scheduling recommendation that HHS submitted to DEA.[2] Also attached is a document prepared by DEA that specifies other data relevant to your petition that DEA considered.

C. Basis for Denial of Your Petition: The Evidence Demonstrates that Marijuana Does Have A High Potential For Abuse

Your petition rests on your contention that marijuana does not have a "high potential for abuse" commensurate with schedule I or II of the CSA. The Assistant Secretary has concluded, based on current scientific and medical evidence, that marijuana does have a high potential for abuse commensurate with schedule I. The additional data gathered by DEA likewise reveals that marijuana has a high potential for abuse. Indeed, when the HHS evaluation is viewed in combination with the additional data

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[2] To avoid confusion, those parts of the HHS document that are not relevant to your petition with respect to marijuana (i.e., those parts that are relevant only to the scheduling of tetrahydrocannabinols, dronabinol, or nabilone) have been redacted from the attachment. The HHS evaluation of these other substances will be addressed when DEA responds (in separate letters) to your petitions with respect to these other substances.

Thus, when it comes to a drug that is currently listed in schedule I, if it is undisputed that such drug has no currently accepted medical use in treatment in the United States and a lack of accepted safety for use under medical supervision, and it is further undisputed that the drug has at least some potential for abuse sufficient to warrant control under the CSA, the drug must remain in schedule I. In such circumstances, placement of the drug in schedules II through V would conflict with the CSA since such drug would not meet the criterion of "a currently accepted medical use in treatment in the United States." 21 USC 812(b).

Therefore, even if one were to assume, theoretically, that your assertions about marijuana's potential for abuse were correct (i.e., that marijuana had some potential for abuse but less than the "high potential for abuse" commensurate with schedules I and II), marijuana would not meet the criteria for placement in schedules III through V since it has no currently accepted medical use in treatment in the United States -- a determination that is reaffirmed by HHS in the attached medical and scientific evaluation.

For the foregoing reasons, your petition to reschedule marijuana cannot be granted under the CSA and is, therefore, denied.

Sincerely,

Donnie R. Marshall
Administrator

Attachments