Nos. 02-16335, 02-16534, 02-16715, 03-15062

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

MARIN ALLIANCE FOR MEDICAL MARIJUANA and LYNNETTE SHAW,
Defendants-Appellants,

AND CONSOLIDATED APPEALS

ON APPEAL FROM THE UNITED STATES DISTRICT COURTS
FOR THE NORTHERN DISTRICT OF CALIFORNIA
Case Nos. C 98-0086 CRB, C 98-0087 CRB, C 98-0088 CRB, MC 02-7012 JF

SECOND SUPPLEMENTAL EXCERPTS OF RECORD

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IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES,

Plaintiff,

v.

CANNABIS CULTIVATORS CLUB, et al.,

Defendants.
_____/

and Related Cases.
_____/

No. C 98-00085 CRB
C 98-00086 CRB
C 98-00087 CRB
C 98-00088 CRB
C 98-00245 CRB

ORDER IN CASE NO. 98-00086 (Marin Alliance for Medical Marijuana)

Now before the Court is defendants' motion for reconsideration of the Court's October 13, 1998 Order denying defendants' motion to dismiss. In particular, defendants ask the Court to reconsider its decision denying defendants' "rational basis" challenge to the Controlled Substances Act's prohibition on the manufacture and distribution of marijuana on the ground that the Court does not have jurisdiction to hear such a challenge. After carefully considering the papers submitted by the parties, the motion for reconsideration is DENIED.

To the extent the Court has jurisdiction to hear defendants' rational basis challenge, the Court must nevertheless reject defendants' argument because the Ninth Circuit has previously determined that the Controlled Substances Act's restrictions on the manufacture and distribution of marijuana are rational. See United States v. Mirovan, 577 F.2d 489, 495

(9th Cir. 1978). Indeed, the Mirovan court stated that it "need not again engage in the task of passing judgment on Congress' legislative assessment of marijuana. As we recently declared, '[t]he constitutionality of the marijuana laws has been settled adversely to [the defendant] in this circuit.'" Id.

Since the Ninth Circuit, and indeed every Circuit that has addressed the issue, has held that the classification of marijuana as a Schedule I Controlled Substance is rational and therefore constitutional, defendants' proffered evidence on the medical benefits of marijuana is an argument that in light of the scientific evidence available today, the continuing classification of marijuana as a Schedule I drug is irrational; that is, that the government does not presently have a legitimate interest in prohibiting the medical use of marijuana.

No matter how defendants frame their argument, however, it is in essence an argument that this Court should reclassify marijuana because there is no substantial evidence to support its current classification. As the Court stated in its October 13, 1998 Order, when Congress enacted the Controlled Substances Act it

> established a statutory framework under which controlled substances may be rescheduled or removed from the schedules all together. See 21 U.S.C. § 811(a). Under this statutory framework, the Attorney General may by rule transfer a substance between schedules or remove a substance from the schedules all together. See id. § 811(a). In addition, any interested party can file a petition with the Attorney General to have substance, including marijuana, rescheduled or removed from the schedules. See id. The petitioner may appeal a decision not to reschedule a substance to the courts of appeal. See 21 U.S.C. § 877; see also Alliance for Cannabis Therapeutics v. Drug Enforcement Admin., 15 F.3d 1131, 1137 (D.C. Cir. 1994) (upholding decision not to reschedule marijuana). Review of the Attorney General's decision as to the classification of a controlled substance is limited to the District of Columbia Court of Appeals or the circuit in which petitioner's place of business is located. See 21 U.S.C. § 877.

October 13 Order at 8-9. Thus, Congress gave the Attorney General the exclusive authority to determine the reclassification of marijuana in the first instance, with appeal to the Court of Appeals. As the Seventh Circuit has held, "[t]he Act authorizes the Attorney General to reclassify a drug if presented with new scientific evidence. . . . We agree that this mechanism, and not the judiciary, is the appropriate means by which defendant should challenge Congress' classification of marijuana as a Schedule I drug." United States v. Greene, 892 F.2d 453, 455 (7th Cir. 1989); see also United States v. Burton, 894 F.2d 188,

191 (6th Cir. 1990) ("it has been repeatedly determined, and correctly so, that reclassification is clearly a task for the legislature and the attorney general and not a judicial one"); United States v. Wables, 731 F.2d 440, 450 ("we hold that the proper statutory classification of marijuana is an issue that is reserved to the judgment of Congress and to the discretion of the Attorney General"). Accordingly, defendants' motion for reconsideration is DENIED.

IT IS SO ORDERED.

Dated: December 3, 1998

CHARLES R. BREYER
UNITED STATES DISTRICT JUDGE