

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
WESTERN DIVISION

FILED

AUG 09 2002


CLERK

UNITED STATES OF AMERICA,

CIV02- 5071

Plaintiff,

v.

ALEXANDER "Alex" WHITE PLUME,
PERCY WHITE PLUME, their agents,
servants, assigns, attorneys, and all others
acting in concert with the named
Defendants,

Defendants.

COMPLAINT FOR
DECLARATORY RELIEF,
TEMPORARY, PRELIMINARY
AND PERMANENT INJUNCTIVE
RELIEF

I. INTRODUCTION

1. The United States of America, by its undersigned attorneys, brings this action under the Controlled Substances Act (hereinafter "the Act"), 21 U.S.C. § 801, et seq., for declaratory relief, temporary restraining order, preliminary and permanent injunctive relief, arising out of Defendants Alexander "Alex" White Plume, Percy White Plume and all those acting in concert with those named Defendants' ongoing manufacture, possession and distribution of marijuana, a Schedule I controlled substance, and possession of marijuana with the intent to manufacture and distribute the substance, in violation of 21 U.S.C. § 841(a)(1); and defendants Alexander "Alex" White Plume, Percy White Plume and all those acting in concert with those named Defendants' ongoing conspiracy to violate the Act, in violation of 21 U.S.C. § 846.

Defendants Alexander “Alex” White Plume, Percy White Plume and others acting in concert with them have utilized parcel 6645, located within Range 44 West, Township 38 North, Sections 11 and 12, South Dakota, whose beneficial owners are Percy White Plume, Alex White Plume, Alta Lou White Plume, Wyoma Ureta Smith, Roger Bissonette, Alexander White Plume, Carlene Crazy Thunder, Rita Sue White Plume, Sonya Ramona White Plume, Mildred E. Weasel Alkire and Carla Denise Crazy Thunder, for the purpose of manufacturing and distributing marijuana, in violation of 21 U.S.C. § 856(a)(1).

Defendants Alexander “Alex” White Plume, Percy White Plume and others acting in concert with them have utilized parcel 6647, located within Range 44 West, Township 38 North, Section 12, South Dakota, whose beneficial owners are Alex White Plume, Alexander (Ghost) Bad Bear, Alex Bad Bear, Barbara Bad Bear, Leon A. LaDeaux and Steven L. LaDeaux, for the purpose of manufacturing and distributing marijuana, in violation of 21 U.S.C. § 856(a)(1).

II. JURISDICTION AND VENUE

2. This action arises under § 512(a) of the Act, 21 U.S.C. § 882(a), which authorizes injunctive relief; and 28 U.S.C. §§ 2201 and 2202, which authorizes declaratory relief. Jurisdiction is conferred on this Court pursuant to § 512(a) of the Act, 21 U.S.C. § 882(a); and 28 U.S.C. §§ 1331, 1345 and 1355(a). Venue lies in this district pursuant to 28 U.S.C. § 1391(b).

III. PARTIES

3. The Plaintiff is the UNITED STATES OF AMERICA acting on behalf of the Drug Enforcement Administration.

4. Defendants, together with others acting in concert with them, have been actively involved in the manufacture, distribution and possession with the intent to distribute marijuana.

5. Percy White Plume, Alex White Plume, Percy White Plume, Jr., Alta Lou White Plume, Alexander White Plume, Wyoma Ureta Smith, Roger Bissonette, Carlene Crazy Thunder, Rita Sue White Plume, Sonya Ramona White Plume, Mildred E. Weasel Alkire, Carla Denise Crazy Thunder, Alexander (Ghost) Bad Bear, Alex Bad Bear, Barbara Bad Bear, Leon A. LaDeaux and Steven L. LaDeaux are the beneficial owners of federal trust land located within the exterior boundaries of the Pine Ridge Indian Reservation utilized for the manufacture of marijuana by the Defendants.

IV. STATUTORY AND REGULATORY REQUIREMENTS

6. In 1970, Congress passed the Act, 21 U.S.C. § 801, et seq., as part of the Comprehensive Drug Abuse Prevention and Control Act of 1970, Pub. L. No. 91-513, 84 Stat. 1236.

7. Pursuant to § 501(a) of the Act, 21 U.S.C. § 871(a), the functions vested in the Attorney General under the Act have been assigned to the Administrator of the Drug Enforcement Administration ("DEA"). See 28 C.F.R. § 0.100(b). In accordance with 21 U.S.C. § 871(a) the Attorney General has vested the DEA with the authority under 21 U.S.C.

§§ 821-830 for the registration of manufacturers, distributors, and dispensers of controlled substances. The Defendants have not sought nor have they been granted any authority or right to manufacture, distribute, possess or dispense any controlled substance, including marijuana.

8. In § 101 of the Act, 21 U.S.C. § 801, Congress found and declared, in pertinent part, that:

- (2) The illegal importation, manufacture, distribution, and possession and improper use of controlled substances have a substantial and detrimental effect of the health and general welfare of the American people.
- (3) A major portion of the traffic in controlled substances flows through interstate and foreign commerce. Incidents of the traffic which are not an integral part of the interstate or foreign flow, such as manufacture, local distribution, and possession, nonetheless have a substantial and direct effect upon interstate commerce because--
 - (A) after manufacture, many controlled substances are transported in interstate commerce,
 - (B) controlled substances distributed locally usually have been transported in interstate commerce immediately before their distribution, and
 - (C) controlled substances possessed commonly flow through interstate commerce immediately prior to such possession.
- (4) Local distribution and possession of controlled substances contribute to swelling the interstate traffic in such substances.
- (5) Controlled substances manufactured and distributed intrastate cannot be differentiated from controlled substances manufactured and distributed interstate. Thus, it is not feasible to distinguish, in terms of controls, between controlled substances manufactured and distributed interstate and controlled substances manufactured and distributed intrastate.
- (6) Federal control of the intrastate incidents of the traffic in controlled substances is essential to the effective control of the interstate incidents of such traffic.

9. Section 102(6) of the Act, 21 U.S.C. § 802(6), defines a controlled substance as "a drug or other substance, or immediate precursor, included in schedule I, II, III, IV, or V of part B of this subchapter." 21 U.S.C. § 802(16) defines "marihauna" as:

all parts of the plant *Cannabis sativa* L., whether growing or not; the seeds thereof; the resin extracted from any part of such plant; and every compound, manufacture, salt, derivative, mixture, or preparation of such plant, its seeds or resin. Such term does not include the mature stalks of such plant, fiber produced from such stalks, oil or cake made from the seeds of such plant, and other compound, manufacture, salt, derivative, mixture, or preparation of such mature stalks (except the resin extracted therefrom), fiber, oil, or cake or the sterilized seed of such plant which is incapable of germination.

10. Section 202(b) of the Act, 21 U.S.C. § 812(b), provides that the findings required for a drug or other substance to be placed in Schedule I are as follows:

- (A) The drug or other substance has a high potential for abuse.
- (B) The drug or other substance has no currently accepted medical use in treatment in the United States.
- (C) There is a lack of accepted safety for use of the drug or other substance under medical supervision.

11. Section 202(c) of the Act, 21 U.S.C. § 812(c), further provides that "Schedules I, II, III, IV, and V shall, unless and until amended pursuant to section 811 of this title, consist of the following drugs or other substances, by whatever official name, common or usual name, chemical name, or brand name designated:

Schedule I

* * * *

any material, compound, mixture, or preparation, which contains any of the following hallucinogenic substances

* * * *

(10) Marihuana

12. Section 401(a) of the Act, 21 U.S.C. § 841(a)(1), makes it unlawful, except as authorized by the Act, for any person knowingly or intentionally "to manufacture, distribute, or dispense, or possess with intent to manufacture, distribute, or dispense, a controlled substance."

13. Section 102(15) of the Act, 21 U.S.C. § 802(15), defines "manufacture" as "the production, preparation, propagation, compounding, or processing of a drug or other substance * * * ." 21 U.S.C. § 802(15). Section 102(22) of the Act, 21 U.S.C. § 802(22), defines "production" as "the manufacturing, planting, cultivation, growing, or harvesting of a controlled substance."

14. Section 416(a) of the Act, 21 U.S.C. § 856(a)(1), makes it unlawful, except as authorized by the Act, to "knowingly open or maintain any place for the purpose of manufacturing, distributing, or using any controlled substance."

15. Section 406 of the Act, 21 U.S.C. § 846, makes it unlawful for any person to conspire to violate the Act.

16. Section 512(a) of the Act, 21 U.S.C. § 882(a), provides that "[t]he district courts of the United States . . . shall have jurisdiction in proceedings in accordance with the Federal Rules of Civil Procedure to enjoin violations of [the Controlled Substances Act]."

V. STATEMENT OF CLAIMS

17. Defendants are enrolled members of the Oglala Sioux Tribe who, in concert with others, have manufactured, planted, cultivated and grown marijuana on three successive

crop years beginning with the 2000 crop year. Defendants, in concert with others, have utilized federal trust lands for the manufacture, distribution and possession with the intent to distribute of marijuana.

18. At all times relevant to this action, or from at least May 2000, to the present, defendants, in concert with others, have been engaged in the manufacture of marijuana.

19. At all times relevant to this action, or from at least May 2000, to the present, defendants, in concert with others, have been engaged in the manufacture, distribution and possession with the intent to distribute of marijuana.

20. At all times relevant to this action, or from at least May 2000, to the present, defendants, in concert with others, have maintained various tracts of land for the purpose of manufacturing and distributing marijuana.

21. At all times relevant to this action, or from at least May 2000, to the present, defendants, in concert with others, have conspired among themselves and with unknown individuals to violate the Act.

COUNT I

22. The United States hereby incorporates by reference paragraphs 1-21 and attached affidavits, motions and briefs.

23. In violation of section 401(a) of the Act, 21 U.S.C. § 841(a)(1), defendants, in concert with others, have engaged in the possession, manufacture, distribution and possession with the intent to distribute marijuana, a Schedule I controlled substance.

24. Defendants' actions, in concert with others, to manufacture, distribute, and possess with intent to distribute marijuana, is ongoing and continuing and, based on information and belief, are likely to continue unless enjoined by the Court.

COUNT II

25. The United States hereby incorporates by reference paragraphs 1-24 and attached affidavits, motions and briefs.

26. In violation of section 416(a) of the Act, 21 U.S.C. § 856(a)(1), defendants, in concert with others, have maintained tracts of federal trust land, of which they are beneficial owners for the purpose of manufacturing and distributing marijuana.

27. Defendants' actions, in concert with others to utilize tracts of federal trust land of which they may have beneficial or other legal interest or right, for the purpose of manufacturing and distributing marijuana is ongoing and continuing and, based on information and belief, is likely to continue unless enjoined by the Court.

COUNT III

28. The United States hereby incorporates by reference paragraphs 1-27 and attached affidavits, motions and briefs.

29. In violation of section 406 of the Act, 21 U.S.C. § 846, Defendants, in concert with others, have conspired among themselves and with unknown individuals to violate the Act.

30. Defendants' actions, in concert with others, to conspire to violate the Act is ongoing and continuing and, based on information and belief, is likely to continue unless enjoined by the Court.

PRAYER FOR RELIEF

WHEREFORE, plaintiff, the United States of America, prays that this Court enter judgment against defendants, as follows:

(a) Declare that Defendants, together with their agents, servants, assigns, attorneys, and all others acting in concert with those named Defendants and those acting directly or indirectly on Defendants' behalf, are in violation of § 401(a) of the Act, 21 U.S.C. § 841(a)(1), by engaging in the possession, manufacture, and distribution of marijuana and possession with the intent to distribute marijuana, a Schedule I controlled substance.

(b) Declare that Defendants, together with their agents, servants, assigns, attorneys, and all others acting in concert with those named Defendants and those acting directly or indirectly on Defendants' behalf, are in violation of § 416(a) of the Act, 21 U.S.C. § 856(a)(1), by maintaining federal trust lands above-described, for the purpose of manufacturing, distributing and possessing with the intent to distribute marijuana.

(c) Declare that Defendants, together with their agents, servants, assigns, attorneys, and all others acting in concert with those named Defendants and those acting directly or indirectly on Defendants' behalf, are in violation of § 406 of the Act, 21 U.S.C. § 846, by conspiring among themselves and with unknown individuals to violate the Act.

(d) Enter a temporary restraining order, preliminary and permanent injunctions enjoining Defendants, together with their agents, servants, assigns, attorneys, and all others acting in concert with the named Defendants and those acting directly or indirectly on Defendants' behalf, from hereafter manufacturing, manufacturing with intent to distribute or distributing marijuana, a Schedule I controlled substance, or possessing marijuana with the intent to manufacture or distribute the substance, in violation of § 401(a) of the Act, 21 U.S.C. § 841(a)(1).

(e) Enter a temporary restraining order, preliminary and permanent injunctions enjoining defendants, together with their agents, servants, assigns, attorneys, and all others acting in concert with the named Defendants and those acting directly or indirectly on Defendants' behalf, from hereafter maintaining any lands, for the purpose of manufacturing, possessing or distributing marijuana, in violation of § 416(a) of the Act, 21 U.S.C. § 856(a)(1).

(f) Enter a temporary restraining order, preliminary and permanent injunctions enjoining defendants, together with their agents, servants, assigns, attorneys, and all others acting in concert with the named Defendants and those acting directly or indirectly on Defendants' behalf, from hereafter conspiring to violate the Act.

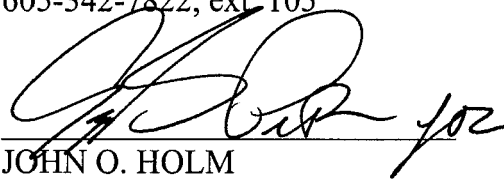
(g) Grant such other relief as the Court may deem just and equitable, including plaintiff's costs.

Date: August 9, 2002

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