

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
WESTERN DIVISION

FILED

AUG 13 2002


CLERK

UNITED STATES OF AMERICA,

Civ. 02-5071

Plaintiff,

TEMPORARY RESTRAINING
ORDER

v.

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

Defendants.

The Court having heard testimony and review all relevant documents and law in the matter of Plaintiff's Motion for Temporary Restraining Order on this 13th day of August, 2002, and pursuant to Federal Rule of Civil Procedure 65 the Court does determine:

- a. that the Court has jurisdiction over the matter pursuant to 21 U.S.C. § 882 and 28 U.S.C. §§ 1331, 1345 and 1355. Venue is proper under 28 U.S.C. § 1391(b).
- b. that Defendant Alexander "Alex" White Plume was properly served with the Summons, Complaint, Motion for Temporary Restraining Order, Affidavit of J.C. Salley with attachments and Brief and Support of Motion.
- d. that defendants Alexander "Alex" White Plume and Percy White Plume are represented by legal counsel Bruce Ellison;
- e. that plaintiff's Motion for Temporary Restraining Order shall be heard upon notice

to all parties who duly consented to the the same;

f. that due to time constraints, the Court does not require a written response from the defendants;

g. that the Court, through a member of its staff, orally notified counsel for the parties of a hearing that was held at 10:00 a.m. on Tuesday, August 13, 2002;

h. that the Plaintiff appeared through Assistant United States Attorneys John Holm and Mark Vargo;

i. that defendant, Alex White Plume appeared personally and through his attorney, Bruce Ellison. The defendant, Percy White Plume, was not present, but appeared through his attorney, Bruce Ellison;

j. that the United States called as witness Special Agent J.C. Salley, of the Drug Enforcement Administration;

k. that the defendants did not call witnesses on their behalf, though they were afforded an opportunity to do so;

l. that the Court has also considered the allegations of the Complaint as supported by the Affidavit of J.C. Salley and the exhibits appended to the Complaint as Exhibits 1 through 23.

THE COURT having carefully considered the issues and the evidence presented and having heard the arguments of counsel for the parties, the Court finds:

a. that there is a licensing provision of 28 C.F.R. § 0.100 as authorized by 21 U.S.C. §§ 822-823, inclusive. There is no evidence here that the defendants are entitled to assert a privilege under that licensing requirement.

- b. the Court takes judicial notice that there is a broad description of marijuana in the statute and the Code of Federal Regulations;
- c. that under 21 U.S.C. § 841(a)(1) it is unlawful to manufacture a controlled substance;
- d. that under the schedules at 21 U.S.C. §§ 802(b), 812(a), and 802(16), marijuana is listed as a controlled substance;
- e. that the Eighth Circuit Court of Appeals in *Dataphase Sys., Inc. v. C.L. Inc.*, 640 F.2d 109 (8th Cir. 1981)(en banc) set forth the general factors a court must determine while sitting in equity on a Motion for Temporary Restraining Order. Those factors are:
- i. The threat of irreparable harm to the moving party;
 - ii. The balance between this harm and the injury caused by granting the injunction;
 - iii. The probability that the moving party will succeed on the merits; and
 - iv. The public interest.
- f. that Congress in enacting 21 U.S.C. § 882(a), which 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]” Congress has answered, for the Court’s benefit, the public interest, balancing the equities, and irreparable harm elements for a Temporary Restraining Order;
- g. that the proper role of the Court is only to determine whether a violation of the

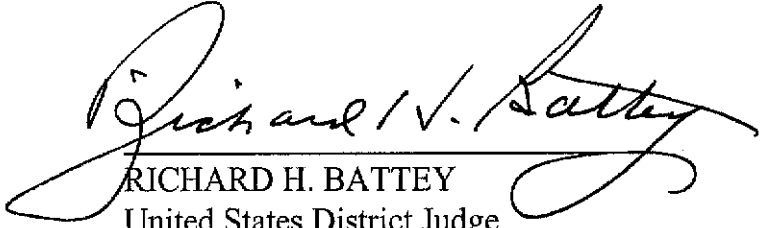
statute has or is about to occur.

Based upon the foregoing the Court concludes as a matter of law that the evidence is sufficient to warrant the Court in issuing the Temporary Restraining Order.

Based upon the foregoing it is HEREBY ORDERED Defendants are hereby temporary restrained until further order of the Court from violating Title 21 of the United States Code, including possessing, manufacturing, or distributing marijuana, further including "industrial hemp".

Dated the 13th day of August, 2002.

BY THE COURT:


RICHARD H. BATTEY
United States District Judge