

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN**

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.)
)
 [REDACTED],)
)
 Defendant.)
 _____)

Ticket [REDACTED]
**MOTION TO DISMISS BASED UPON
JUSTICE SPENDING FUNDS TO
PREVENT IMPLEMENTATION OF
MICHIGAN MARIJUANA LAWS**

TO: THE CLERK OF THE ABOVE-ENTITLED COURT:


PLEASE TAKE NOTICE that on the 1st day of March, 2017, at the hour of 8:30 am or as soon thereafter as the matter may be heard before the court, defendant [REDACTED] [REDACTED] through counsel, will and hereby does move the Court for an order dismissing the charges herein based upon the Consolidated and Further Continuing Appropriations Act of 2015 which prohibits the Department of Justice from spending funds to prevent Michigan from implementing its own laws regarding the use, distribution, possession, or cultivation of medical marijuana. This motion is based on this notice of motion and motion, the memorandum of points and authorities filed herewith, those files and records on file with this Court in this action, and such other evidence, oral or documentary, as may be presented at the hearing on this motion.

Dated: March 1, 2017


Respectfully submitted,

/s/ Michael A. Komorn
Michael A. Komorn (P47970)
Attorney for the Defendant

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN**

UNITED STATES OF AMERICA,)	Ticket H2001060
)	
Plaintiff,)	MOTION TO DISMISS BASED UPON
)	JUSTICE SPENDING FUNDS TO
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)	MICHIGAN MARIJUANA LAWS
)	
)	
Defendant.)	
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MEMORANDUM OF POINTS AND AUTHORITIES

According to the Criminal Complaint filed in this case, the government alleges that  possessed marijuana. Based on information and belief the defendant was a valid medical marihuana patient and was acting in compliance with the law as allowed under the Michigan Medical Marihuana Act. MCL 333.26421 et seq

ARGUMENT

I. BECAUSE THE DEPARTMENT OF JUSTICE IS PROHIBITED FROM SPENDING FUNDS TO INTERFERE WITH IMPLEMENTATION OF MICHIGAN’S MEDICAL MARIJUANA LAWS, THE CHARGES MUST BE DISMISSED.

In December 2014, Congress passed the Consolidated and Further Continuing Appropriations Act of 2015, which President Obama signed. Section 538, Title V of Division B of the bill states the following:

SEC. 538. None of the funds made available in this Act to the Department of Justice may be used, with respect to the States of Alabama, Alaska, Arizona, California, Colorado, Connecticut, Delaware, District of Columbia, Florida, Hawaii, Illinois, Iowa, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota,

Mississippi, Missouri, Montana, Nevada, New Hampshire, New Jersey, New Mexico, Oregon, Rhode Island, South Carolina, Tennessee, Utah, Vermont, Washington, and Wisconsin, to prevent such States from implementing their own State laws that authorize the use, distribution, possession, or cultivation of medical marijuana.

Consolidated and Further Continuing Appropriations Act of 2015, Pub. L. No. 113-235 (2014); available at <http://www.gpo.gov/fdsys/pkg/BILLS-113hr83enr/html/BILLS-13hr83enr.htm>

Prosecuting persons who may be operating in compliance with state medical marijuana laws prevents states from implementing their own laws in at least two ways. First, federal prosecutions mean that “[i]n States with medical marijuana laws, people with multiple sclerosis, glaucoma, cancer, HIV, and AIDS and other medical issues continue to face uncertainty when it comes to accessing the medicine that they need to provide some relief.” (*See* Congressional Floor debates – remarks of Rep. Barbara Lee).¹

Second, federal prosecutions take away Michigan’s authority to determine for itself whether someone is in compliance with its laws or not.

The Congressional debates demonstrate a clear intent to prevent federal marijuana prosecutions of state medical marijuana growers in states like Michigan that permit medical marijuana possession, cultivation and distribution. As Congressman Sam Farr (D-CA), explained on the House floor:

“This [amendment] is essentially saying, look, if you are following State law, you are a legal resident doing your business under State law, the Feds can’t come in and bust you and bust the doctors and bust the patient. This doesn’t affect one law, just lists the States that have already legalized it only for medical purposes, and says, Federal Government, you can’t bust people.”

See H4983 Congressional Record, <http://www.gpo.gov/fdsys/pkg/CREC-2014-05-29/pdf/CREC-2014-05-29-pt1-PgH4968-2.pdf>.

Similarly, Congresswoman Dina Titus (D-NV) elaborated that the amendment “simply ensures that patients do not have to live in fear when following the laws of their States and the recommendations of their doctors. Physicians in those States will not be prosecuted for prescribing the substance [marijuana], and local businesses will not be shut down for dispensing the same.” *Id.*

Several members also noted that the amendment was intended to reserve states’ rights to implement their own marijuana laws without federal interference. Georgia Representative Broun stated, “his is a state’s rights, states’ power issue, because many States across the country— in fact, my own State of Georgia is considering allowing medical use under the direction of a physician. This is a states’ rights, Tenth Amendment issue. We need to reserve the states’ powers under the Constitution.” *Id.*

Given that the government’s own Complaint in this case indicates that the defendants were operating under Michigan’s medical marijuana laws with state issued permits and tax registration, the federal prosecution herein clearly prevents California from implementing its own marijuana laws. Any further action by the Department of Justice in this case would violate Section 538.

In the case *US v. McIntosh et al.* the case involved defendants who were charged with federal marijuana offenses and they moved to dismiss their indictments or to enjoin their prosecutions on the grounds that the Department of Justice was barred from spending funds to prosecute them. The case out of California made it all the way to the 9th Circuit Court, where the court ruled in favor of the defendants. The Court held that: 1.) the defendants had Article III standing to invoke separation of powers principles to seek to enjoin the DOJ from spending federal funds to prosecute them for federal marijuana offenses, on ground that any such use of

federal funds violated a Congressional appropriations rider; 2.) While the DOJ, in spending federal funds to prosecute individuals engaging in conduct allegedly permitted by states' medical marijuana laws, was not taking legal action against states themselves, it was nonetheless spending federal funds to prevent these states from giving practical effect to their medical marijuana laws, in violation of rider attached to appropriations acts; 3.) the DOJ did not spend federal funds to prevent implementation of state medical marijuana laws, in violation of rider attached to appropriations act, if it prosecuted individuals for engaging in any conduct not authorized under state medical marijuana laws; 4.) If the DOJ wishes to continue with prosecutions, then defendants were entitled to evidentiary hearings to determine whether their conduct was completely authorized by state medical marijuana laws.

The case *USA v. McIntosh et al.*, resulted in the court determining that the federal government is not allowed to interfere with the states. "We therefore conclude that, at a minimum, § 542 prohibits DOJ from spending funds from relevant appropriations acts for the prosecution of individuals who engaged in conduct permitted by the State Medical Marijuana Laws and who fully complied with such laws." United States v McIntosh, 833 F3d 1163, 1177 (CA 9 2016) The court further stated that "We therefore must remand to the district courts. If DOJ wishes to continue these prosecutions, Appellants are entitled to evidentiary hearings to determine whether their conduct was completely authorized by state law, by which we mean that they strictly complied with all relevant conditions imposed by state law on the use, distribution, possession, and cultivation of medical marijuana. We leave to the district courts to determine, in the first instance and in each case, the precise remedy that would be appropriate." *Id.* at 1179

In the present case, the defendant was arrested, based on understanding and belief, with less than a single joint holding approximately 1 gram of marijuana. With a valid identification

card and no additional underlying facts as to the defendant's actions causing him to be out of compliance with the MMMA the defendant was in possession of a registry identification card and he was in possession of an amount of marihuana that does not exceed the amount allowed under this act.

The government does not get to pick and choose which laws it will abide or enforce. Because further action by the Department of Justice is barred by Sections 538 and 542, this Court must either dismiss the charges against [REDACTED] or this Court must require any further prosecution to be brought forth under Michigan's state law.

Dated: March 1, 2017

Respectfully submitted,

/s/ Michael A. Komorn
Michael A. Komorn (P47970)
Attorney for the Defendant