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8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE EASTERN DISTRICT OF CALIFORNIA

10

11 UNITED STATES OF AMERICA,)	Cr. No. S-09-023 GGH
)	
12 Plaintiff,)	GOVERNMENT'S OPPOSITION TO
)	DEFENDANT'S MOTION FOR RETURN
13)	OF PROPERTY AND REQUEST FOR
)	ORDER FOR DESTRUCTION OF
14)	PROPERTY
)	
15 JORDAN CRITTLE,)	DATE:
)	TIME:
16 Defendant.)	JUDGE: Hon. Gregory G. Hollows
_____)	

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18 The United States of America, by and through its undersigned
19 attorney, respectfully opposes the defendant's Motion for Return
20 of Property, and hereby requests the Court order the destruction
21 of property that contains residual amounts of marijuana.

22 INTRODUCTION

23 On November 22, 2008, Officer Ken Marcus seized from Jordan
24 Crittle, the defendant, a blue pill bottle with a label indicating
25 that it contained medicinal marijuana. The label noted "H&S Code
26 Sec 11362.5(B)(1)(A)," a reference to California Health and Safety
27 Code Section 11362.5, the California statute for medical
28 marijuana. Officer Marcus seized the bottle and inquired as to

1 its owner. The defendant volunteered that the pill bottle was his
2 and, upon demand by the officer, handed over two additional glass
3 containers, one clear and one opaque, each containing measurable
4 amounts of marijuana, and a clear plastic smoking device, commonly
5 known as a "bong." A field test confirmed that the substance each
6 item contained was marijuana.

7 The defendant was charged under 21 U.S.C. §844(a) for
8 possession of a controlled substance in an information filed on
9 January 12, 2009. On August 24, 2009, Judge Hollows granted the
10 Government's motion to dismiss the information pursuant to Rule
11 48(a) of the Federal Rules of Criminal Procedure, based on
12 prosecutorial discretion regarding medical marijuana. The
13 defendant has since filed a Motion for the Return of Property.

14 ARGUMENT

15 The Government opposes the return of the containers and
16 smoking device seized from the defendant because they contain
17 marijuana and marijuana is illegal to possess under federal law.

18 Individuals have no property right in per se contraband
19 materials, so such items should not be returned regardless of
20 whether any person connected with the seizure was convicted of a
21 crime. United States v. Jeffers, 342 U.S. 48, 72 S.Ct. 93 (1951).
22 Rule 41(g) provides that "[a] person aggrieved...by the
23 deprivation of property may move for the property's return." Fed.
24 R. Crim. P. 41(g). However, the Rule predicates lawful rights
25 over the property. An individual has no right to contraband per
26 se. Boggs v. Rubin, 161 F.3d 37, 40 (D.C. Cir. 1998), cert.
27 denied, 528 U.S. 811, 120 S.Ct. 45 (1999).

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REQUEST

Because the containers and smoking device contain marijuana residue and cannot be returned to the defendant, they should be destroyed. Therefore, the Government requests an order for destruction of those items.

DATED: February 4, 2010

Respectfully Submitted,

BENJAMIN B. WAGNER
United States Attorney

By: /s/ Matthew C. Stegman
MATTHEW C. STEGMAN
Assistant U.S. Attorney