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8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA

10 UNITED STATES OF AMERICA,)	Case No. 2:12-CR-00198-MCE-10
)	
11)	
12 Plaintiff,)	MOTION AND [PROPOSED]
)	ORDER FOR STAY OF
13 v.)	SELF SURRENDER
)	
14 STEVEN ADGATE,)	
)	
15 Defendant.)	
16)	

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18 Defendant Steven Adgate, by and through his undersigned counsel, hereby moves this
19 court for a stay of his pending 26-month sentence based upon the recent decision by the Ninth
20 Circuit Court of Appeals, United States v. McIntosh, a copy of which is attached. In McIntosh,
21 a unanimous panel

22 *held that Congressional appropriations rider, Consolidated*
23 *Appropriations Act, 2016, Pub. L. No. 114-113, § 542, 129 Stat. 2242,*
24 *2332-33 (2015) prohibits DOJ from spending funds from relevant*
25 *appropriations acts for the prosecution of individuals who engaged in*
conduct permitted by state medical marijuana laws and who fully complied
with such laws.

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1 The court continued:

2 *The Appropriations Clause plays a critical role in the Constitution’s*
3 *separation of powers among the three branches of government and the*
4 *checks and balances between them. “Any exercise of a power granted by*
5 *the Constitution to one of the other branches of Government is limited by a*
6 *valid reservation of congressional control over funds in the Treasury.”* *Id.*
7 *at 425. The Clause has a “fundamental and comprehensive purpose . . . to*
8 *assure that public funds will be spent according to the letter of the difficult*
9 *judgments reached by Congress as to the common good and not according*
10 *to the individual favor of Government agents.”* *Id.* *at 427–28. Without it,*
11 *Justice Story explained, “the executive would possess an unbounded power*
12 *over the public purse of the nation; and might apply all its moneyed*
13 *resources at his pleasure.”* *Id.* *at 427 (quoting 2 Joseph Story,*
14 *Commentaries on the Constitution of the United States § 1348 (3d ed.*
15 *1858)). Thus, if DOJ were spending money in violation of § 542, it would*
16 *be drawing funds from the Treasury without authorization by statute and*
17 *thus violating the Appropriations Clause. That Clause constitutes a*
18 *separation-of-powers limitation that Appellants can invoke to challenge*
19 *their prosecutions.*

20 The Ninth Circuit noted the significance of the fact that states had been allowed by the
21 United States Department of Justice to implement various laws pertaining to the growth and
22 distribution of marijuana:

23 *DOJ, without taking any legal action against the Medical Marijuana*
24 *States, prevents them from implementing their laws that authorize the use,*
25 *distribution, possession, or cultivation of medical marijuana by*
26 *prosecuting individuals for use, distribution, possession, or cultivation of*
27 *medical marijuana that is authorized by such laws. By officially permitting*
28 *certain conduct, state law provides for non-prosecution of individuals who*
engage in such conduct. If the federal government prosecutes such
individuals, it has prevented the state from giving practical effect to its law
providing for non-prosecution of individuals who engage in the permitted
conduct. 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.

According to their decision, the cases under review must be remanded to the U.S.
District Court for hearings on the defendants’ compliance with relevant state marijuana laws
before the prosecutions could continue by the U.S. Department of Justice.

1 *We therefore must remand to the district courts. If DOJ wishes to continue*
2 *these prosecutions, Appellants are entitled to evidentiary hearings to*
3 *determine whether their conduct was completely authorized by state law,*
4 *by which we mean that they strictly complied with all relevant conditions*
5 *imposed by state law on the use, distribution, possession, and cultivation of*
6 *medical marijuana. We leave to the district courts to determine, in the first*
7 *instance and in each case, the precise remedy that would be appropriate.*

8 In other words, the United States Department of Justice has been prohibited by a
9 separate and equal branch of government, the United States Congress, from prosecuting persons
10 charged with marijuana cultivation and distribution without first establishing that the charged
11 conduct was in violation of California state law pertaining to the same conduct.

12 In the instant case, having plead guilty to a federal marijuana charge, Mr. Adgate has
13 been sentenced to 26 months incarceration and has been ordered to self-surrender to FCI
14 Sheridan on September 1, 2016 to begin serving his sentence or a warrant will issue for his
15 arrest. The United States Bureau of Prisons and the United States Marshall's Service are within
16 the United States of Justice and are therefore within the scope of this ruling.

17 This ruling is of particular significance to Steven Adgate because his Presentence
18 Investigation Report, which was adopted by the Court, included an additional four levels under
19 the U.S. Sentencing Guidelines based upon his involvement with an earlier marijuana grow in
20 Antioch, California which was not prosecuted by the State of California. That earlier 738 plant
21 marijuana grow was investigated by the Antioch Police Department and found to be legitimate
22 under California law. Accordingly, neither Steven Adgate nor the other person involved, who
23 owns his own marijuana dispensary, were charged with any crime arising out of that grow. That
24 second person was also not charged in the instant case.

25 However, this same Antioch grow, which was in accordance with California law, was
26 considered and cited by the Probation in calculating Mr. Adgate's guideline range and resulted
27 in their recommendation of two additional points per USSG 2D1.1(c)(8) and another two
28 additional points added for maintaining a premises for the purpose of cultivating marijuana per
29 USSG2D1.1(b)(17). This resulted in a Total Offense Level of 21 instead of 17, and a guideline
30 range of 37-46 months instead of 24-30 months.

1 In light of the foregoing, it is respectfully requested that Mr. Adgate's date of self-
2 surrender, September 1, 2016, be stayed for a reasonable period of time pending the resolution
3 of this issue.

4 Respectfully Submitted,

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6 Dated: August 18, 2016

/s/ William J. Portanova

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WILLIAM J. PORTANOVA
Attorney for Defendant
STEVEN ADGATE

IT IS SO ORDERED.

Dated: _____

THE HON. MORRISON C. ENGLAND, JR.
Chief United States District Judge