

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,	)	CASE NO. 8:08CR388
	)	
Plaintiff,	)	
	)	
v.	)	<b>MOTION TO DISMISS</b>
	)	<b>INDICTMENT AND REQUEST</b>
DEJAY MONSON,	)	<b>FOR EVIDENTIARY HEARING</b>
	)	<b>AND ORAL ARGUMENT</b>
	)	
Defendant.	)	

The Defendant, Dejay Monson, by and through his attorney, Michael F. Maloney, moves the Court for an order dismissing the indictment. In support of this motion, the Defendant states as follows:

1. The Defendant is charged with manufacturing and possessing with intent to distribute 100 kilograms or more of marijuana, in violation of 21 U.S.C. § 841(a)(1) and (b)(1).

2. During the execution of the search warrant at the Defendant's property, law enforcement allegedly discovered 67 pounds of processed marijuana and 35 marijuana plants in the Defendant's residence. Additional plants were discovered in an outside grow operation which were destroyed by law enforcement without any testing performed to determine whether the plants were cultivated marijuana or feral hemp ("ditch weed").

3. Law enforcement's actions in destroying the plants without testing deprived the Defendant of his ability to defend against the charges that he possessed 100 kilograms or 100 plants of marijuana as alleged in the indictment. Therefore, the indictment must be dismissed because law enforcement has violated the Defendant's due process rights by depriving him of access to potentially exculpatory evidence, in violation of the standards set forth in California v. Trombetta, 467 U.S. 479 (1982).

WHEREFORE, the Defendant moves the Court for an order dismissing the indictment. The Defendant further requests an evidentiary hearing and oral argument.

Respectfully submitted,

DEJAY MONSON, Defendant,

By: s/ Michael F. Maloney

**MICHAEL F. MALONEY**  
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**CERTIFICATE OF SERVICE**

I hereby certify that on February 17, 2009, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which sent notification of such filing to the following: Kim Bunjer, Assistant United States Attorney, Omaha, NE.

s/ Michael F. Maloney