

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

UNITED STATES OF AMERICA,)	
Plaintiff,)	
v.)	No. 8:08-cr-00388
)	
DEJAY MONSON,)	
Defendant.)	

**DEFENDANT’S MOTION TO DISMISS
FOR FAILURE TO STATE A VALID CAUSE OF ACTION,
NOTICE OF CONSTITUTIONAL AND STATUTORY DEFENSE,
AND MOTION FOR EMERGENCY INJUNCTION**

Comes Now the Defendant Dejay Monson, by and through his attorney Michael F. Maloney, and pursuant to Fed.R.Crim.P. 47(a), the First and Sixth Amendments to the Constitution of the United States of America, and the Religious Freedom Restoration Act, 42 U.S.C. §§ 2000bb et seq., and respectfully moves the court for an order dismissing the Indictment for failing to state a justiciable cause of action, depriving this court of jurisdiction.

As grounds in support, Mr. Monson states as follows:

1. The Religious Freedom Restoration Act (“**RFRA**” hereafter), 42 U.S.C. §§ 2000bb, et seq., expressly provides an exception to the Controlled Substances Act (“**CSA**” hereafter), 21 U.S.C. §§ 801-904, for a “controlled substance” offense under 21 U.S.C. § 841. “[RFRA] applies to all Federal law, and the implementation of that law, whether statutory or otherwise, and whether adopted before or after the enactment of this Act [enacted Nov. 16, 1993].” 42 U.S.C. § 2000bb-3(a). See

Gonzales v. O Centro Espirita Beneficente Uniao Do Vegetal, 546 U.S. 418 (2006) (application of RFRA to the Controlled Substances Act).

2. The First Amendment to the Constitution of the United States also provides an exception to the CSA for a “controlled substance” offense under 21 U.S.C. § 841, where exceptions to the CSA exist and the law is not applied equally to a case of religious hardship. See *Employment Division v. Smith*, 494 U.S. 872, 884 (1990) (“[W]here the State has in place a system of individual exemptions, it may not refuse to extend that system to cases of ‘religious hardship’ without compelling reason.” (citation omitted)).

3. The indictment against Mr. Monson must be dismissed because the indictment substantially burdens Mr. Monson’s establishment and exercise of religion.

4. Mr. Monson also hereby notices the Court that by moving to dismiss the indictment he is not waiving his Sixth Amendment right to present a defense based on the First Amendment to the Constitution of the United States and **RFRA** to a jury. This motion serves notice to the Court that Mr. Monson demands that a jury consider his First Amendment and **RFRA** defense if a trial is held on this matter.

5. Mr. Monson has been a member of the Baptist Church since 1990.

6. Mr. Monson believes that God made marijuana for his medicine. “And God said, Behold, I have given you every herb bearing seed, which is upon the face of all the earth, and every tree, in the which is the fruit of a tree yielding seed; to

you it shall be for meat.” Genesis 1:29. “And by the river upon the bank thereof, on this side and on that side, shall grow all trees for meat, whose leaf shall not fade, neither shall the fruit thereof be consumed: it shall bring forth new fruit according to his months, because their waters they issued out of the sanctuary: and the fruit thereof shall be for meat, and the leaf thereof for medicine.” Ezekiel 47:12. “In the midst of the street of it, and on either side of the river, [was there] the tree of life, which bare twelve [manner of] fruits, [and] yielded her fruit every month: and the leaves of the tree [were] for the healing of the nations.” Revelation 22:2.

7. Because the acts charged in the indictment in this case are constitutionally and statutorily protected, the charges should be dismissed with prejudice.

8. The actions of the Plaintiffs have a chilling and prohibitive effect on Mr. Monson’s establishment and exercise of his religion and are causing Mr. Monson to suffer physically and spiritually because he is deprived of his medicine and sacrament.

9. The Defendant moves the court to immediately enjoin the Plaintiffs from interfering with his religious use of marijuana while this matter is pending before the Court.

10. An evidentiary hearing is requested on this motion.

CONCLUSION

Defendant asserts that for the foregoing reasons the Indictment should be dismissed as a matter of law.

Respectfully submitted:

Filed Electronically

MICHAEL F. MALONEY
Attorney for Dejay Monson
222 South 15th Street
Suite 300N, One Central Park Plaza
Omaha, NE 68102
(402) 221-7884

Carl Eric Olsen
Legal Assistant
Patients Out of Time
130 E Aurora Ave
Des Moines, IA 50313-3654
(515) 288-5798

Ralph Anthony Smith, #13905
Attorney
Patients Out of Time
11211 156th
Louisville, NE 68037
(402) 234-4152

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on November 12, 2008 I filed the foregoing electronically through the CM/ECF system, which caused the following parties or counsel to be served by electronic means, as more fully reflected on the Notice of Electronic Filing:

KIMBERLY C. BUNJER, Assistant U.S. Attorney

Filed Electronically

MICHAEL F. MALONEY