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RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

WO/MEN'S ALLIANCE FOR MEDICAL
MARIJUANA; MICHAEL CORRAL; and
VALERIE CORRAL

Movants,

vs.

UNITED STATES OF AMERICA,

Defendant.

No. 02-MC-7012 JF

ORDER DENYING MOTION FOR
RETURN OF PROPERTY
(Fed. R. Crim. Proc. 41(e))

[Doc. No's: 1, 2, 3]

Movants Valerie Corral and Michael Corral ("Corrals") and Wo/men's Alliance for Medical Marijuana ("WAMM") seek return of seized property pursuant to Federal Rule of Criminal Procedure 41(e). The Court has considered the evidence and legal authorities submitted by the parties and the arguments of counsel presented at the hearing on November 4, 2002. Although movants raise important issues of both public policy and constitutional law, the Court concludes that the disposition of the motion in the district court is controlled by Ninth Circuit precedent that precludes the relief sought. Accordingly, the motion will be denied.

I. BACKGROUND

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2 WAMM is a collective hospice organization located in Davenport, California. It assists
3 seriously ill and dying patients by providing patients with the opportunity to cultivate marijuana
4 for their personal and collective medical use. Both the cultivation and the use of marijuana are
5 carried out only upon the recommendation of the patients' respective physicians. WAMM is
6 supported by voluntary contributions, but patients are not charged for the marijuana they use and
7 assist in cultivating the plants to the extent of their physical abilities. Valerie Corral is the
8 executive director of WAMM, and Michael Corral is the agricultural director. The Corrals reside
9 on a farm in Davenport, California, where they permit participants in WAMM to cultivate
10 marijuana plants for medicinal use. Valerie Corral herself uses medicinal marijuana on
11 recommendation of her physician to control seizures.¹

12 On the morning of September 5, 2002, between twenty and thirty armed agents of the
13 United States Drug Enforcement Administration ("DEA") arrived at the Corrals' property to
14 execute a search warrant. The agents forcibly entered the premises, pointed loaded rifles at
15 movants, and forced movants to the ground and handcuffed them. Movants did not resist the
16 agents at any time. After four hours, movants were transported to the federal courthouse in San
17 Jose, where they were released without being charged. No arrest warrant was issued. The DEA
18 agents remained on the premises for eight hours, seizing 167 marijuana plants, numerous plastic
19 bags containing marijuana, hash oil, a laptop computer, photo albums, an instructional video
20 tape, firearms, and various documents and records.

II. LEGAL STANDARD

22 Rule 41(e) of the Federal Rules of Criminal Procedure provides that: "[A] person
23 aggrieved by an unlawful search and seizure or by the deprivation of property may move the
24

25 ¹ It is undisputed for purposes of the instant motion that movants' activities are legal
26 under California's medical marijuana statute. *See* Cal. Health & Safety Code § 11362.5. The
27 government, however, contends that the California statute is superseded by the federal Controlled
28 Substances Act, 21 U.S.C. §§ 841, 846. *See United States v. Oakland Cannabis Buyers' Coop.*,
532 U.S. 483 (2001). (No medical necessity exception to prohibitions with respect to marijuana
contained in Controlled Substances Act.)

1 district court for the district in which the property was seized for the return of the property on the
2 ground that such person is entitled to lawful possession of the property.” The Court of Appeals
3 for the Ninth Circuit has held that district courts have the power to entertain motions for return of
4 property even when there are no criminal proceedings pending against the movants. *Ramsden v.*
5 *United States*, 2 F.3d 322, 324 (9th Cir. 1993), *cert. denied*, 511 U.S. 1058 (1994). Such motions
6 “are treated as equitable proceedings and, therefore, a district court must exercise ‘caution and
7 restraint’ before assuming jurisdiction.” *Id.* Certain factors must be considered by the district
8 court before entertaining a pre-indictment motion for return of property, including (1) whether
9 the government has displayed a callous disregard for the constitutional rights of the movants; (2)
10 whether the movants have an individual interest in and need for the property requested to be
11 returned; (3) whether the movants would be irreparably injured if return of the property were
12 denied; and (4) whether the movants have an adequate remedy at law for the redress of their
13 grievances. *Id.* at 325. These factors are balanced by the court. In *Ramsden*, the court found that
14 even though the movant did not show irreparable injury, the balance of equities tilted in favor of
15 reaching the merits of his claim. *Id.* Similarly, in *In re Singh*, 892 F. Supp. 1, 4 (D.D.C. 1995),
16 the court found that movant had satisfied two of the four factors, and that the balance of the
17 factors weighed in favor of the court exercising jurisdiction over the merits of the motion. It is
18 not necessary that all four factors exist in order for the district court to exercise its jurisdiction.

19 Once the district court decides to reach the merits of a Rule 41(e) claim, the motion “is
20 properly denied if the defendant is not entitled to lawful possession of the seized property, the
21 property is contraband or subject to forfeiture or the government’s need for the property as
22 evidence continues.” *United States v. Mills*, 991 F.2d 609, 612 (9th Cir. 1993). The burden at this
23 point is on the government to show it has a legitimate reason to retain the property. *Id.*
24 Reasonableness under all of the circumstances is the appropriate test when a person seeks a
25 return of property. *In re Singh*, 892 F. Supp. at 4 (citing to Advisory Committee Notes to the
26 1989 Amendment of Rule 41(e)). The government’s retention of the property generally is
27 reasonable if it has a need for the property in an investigation or prosecution. *Ramsden*, 2 F.3d. at
28 326. If the government’s interests can be satisfied even if the property is returned, then retention

1 of the property becomes unreasonable. *Id.* (citing to Advisory Committee Notes to the 1989
2 Amendment of Rule 41(e)).

3 III. DISCUSSION

4 A. The Ramsden Factors are Satisfied

5 Applying the test established in *Ramsden*, this Court concludes that it has jurisdiction to
6 address the merits of the instant motion. Movants have made a sufficient showing that they have
7 an individual interest and need for the property to be returned, that they will suffer irreparable
8 injury if the property is not returned and that they do not have an adequate remedy at law. While
9 it is true that movants have alternative remedies, the Court concludes that these alternative
10 remedies are insufficient. Because movants have not been charged with a crime, it is unclear if
11 and when they will be able to request the return of their property. While a civil suit could result
12 in an award of monetary damages, it would not result in the return of their property. *See Bivens v.*
13 *Six Unknown Named Agents of Fed. Bureau of Narcotics*, 403 U.S. 388 (1971).

14 B. Movants are Not Entitled to Lawful Possession of the Seized Property Under Settled 15 Ninth Circuit Authority

16 As noted above, a Rule 41(e) motion “is properly denied if the defendant is not entitled to
17 lawful possession of the seized property, the property is contraband or subject to forfeiture or the
18 government’s need for the property as evidence continues.” *Mills*, 991 F.2d at 612. The
19 government contends that because the Controlled Substances Act (“CSA”) prohibits the
20 cultivation and possession of marijuana, even in the absence of sale or distribution,² movants
21 cannot be entitled to lawful possession of the seized marijuana.

22 Movants claim that their particular conduct, which is limited to cultivation and use of
23 medical marijuana pursuant to the recommendations of physicians, does not affect interstate
24 commerce, and thus the application of the CSA to such conduct constitutes an unlawful exercise

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26 ² The record reflects that some members of WAMM are too ill or disabled to cultivate
27 their own marijuana and therefore obtain their marijuana through the assistance of others. The
28 parties dispute whether this practice constitutes distribution for purposes of the statute. The Court
concludes that this dispute is immaterial in light of the relevant case law and thus will assume
without deciding that movants are not engaged in distribution.

1 of Congressional powers under the Commerce Clause. The Supreme Court expressly reserved
2 this issue in *United States v. Oakland Cannabis Buyers' Coop*, 532 U.S. 483 (2001), *see id.* at fn.
3 7, and at least one Ninth Circuit judge has advanced a thoughtful argument in support of this
4 position.³

5 This Court, however, is bound by the express holding of the Ninth Circuit in *United*
6 *States v. Visman*, 919 F.2d 1390 (9th Cir. 1990); *see also United States v. Bramble*, 103 F.3d
7 1475 (9th Cir. 1996); *United States v. Rodriguez-Camacho*, 462 F.2d 1220 (9th Cir. 1972).
8 Although movants appropriately note that many of the appellate cases relied upon by the
9 government involve distribution and trafficking as well as non-commercial possession and
10 cultivation, *Visman* addresses cultivation of marijuana explicitly. It holds unambiguously that
11 "Congress may constitutionally regulate intrastate criminal cultivation of marijuana plants found
12 rooted in the soil..." and that "local criminal cultivation of marijuana is within a class of
13 activities that adversely affects interstate commerce." 919 F.2d at 1393. While it was decided
14 before *United States v. Lopez*, 514 U.S. 549 (1995) and *United States v. Morrison*, 529 U.S. 598
15 (2000), in which the Supreme Court sustained challenges to federal statutes passed pursuant to
16 the Commerce Clause, *Visman* is still the law in the Ninth Circuit, and it was cited with express
17 approval in *United States v. Kim*, 94 F.3d 1247, 1250 (9th Cir. 1996), which was decided after
18 *Lopez*. This Court would not hesitate to reach the merits of movants' broader arguments were it
19 considering the present motion as a matter of first impression, but it is not at liberty to ignore
20 directly applicable appellate authority.⁴


23 ³ *See Conant v. Walters*, 2002 WL 31415494 (concurring opinion of Kozinski, J., at *8).
24 The government correctly notes that the actual holding in *Conant* - that the powers of Congress
25 under the Commerce Clause do not permit it to interfere with physicians' ability to counsel
patients with respect to medical marijuana - is tangential to the precise issues presented here.

26 ⁴Nothing in this order should be construed as indicating how this Court would rule with
27 respect to movants' arguments were it free to do so. One reasonably may assume that at least
28 part of movants' motivation in the instant proceeding is to encourage the Ninth Circuit to
reexamine *Visman* and to invite the Supreme Court to consider the constitutional question it left
open in the *Oakland Cannabis Buyers' Coop* case.

IV. ORDER

Good cause therefore appearing, IT IS HEREBY ORDERED that the motion for return of property is DENIED.⁵

DATED: 12-2-02


JEREMY FOGEL
United States District Judge

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⁵ With respect to seized items other than marijuana, the government indicated at oral argument that it would return those items shortly, perhaps within a week after the hearing. Assuming that the government has in fact returned the items, the remainder of the instant motion appears to be moot.

1 Copies of Order mailed on 12-3-02 to:

2
3 Counsel for Movants:

4 Gerald Uelmen
5 Santa Clara University School of Law
6 500 El Camino Real
7 Santa Clara, CA 95053

8 Benjamin Rice
9 331 Soquel Ave., Suite 110
10 Santa Cruz, CA 95062

11 Counsel for Defendant:

12 Mark Quinlivan
13 U.S. Dept. of Justice
14 Civil Division; Room 1048
15 901 E. Street, N.W.
16 Washington, D.C. 20530
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