

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA)
)
 v. Criminal No. 19-192
)
DAQUAY WRIGHT)

**DEFENDANT’S REPLY IN SUPPORT OF MOTION TO MODIFY
CONDITIONS OF PRETRIAL RELEASE
TO PERMIT THE USE OF MEDICAL MARIJUANA**

Mr. Daquay Wright, through his counsel, Assistant Federal Public Defender Andrew Lipson, submits this reply to the government’s response to his motion to modify the conditions of his pretrial release so as to permit him to use medical marijuana.

1. On April 20, 2021, Mr. Wright filed a motion to modify the conditions of pretrial release so he may use medical marijuana. Dkt. Nos. 55 & 58.

2. On May 3, 2021, the government filed a response in opposition to Mr. Wright’s motion to modify. Dkt. No. 59. Effectively, the government makes the following arguments in opposition: (1) Mr. Wright’s condition does not qualify as a “serious medical condition” under Pennsylvania law qualifying him for use of medical marijuana, and (2) possession of marijuana is illegal under federal law and therefore no exception ought to be made for Mr. Wright. Both of the government’s arguments should be rejected.

Mr. Wright has a qualifying “serious medical condition”

3. The government is incorrect that Mr. Wright’s medical condition does not qualify as a “serious medical condition” under Pennsylvania Law. On July 20,

2019, [REDACTED] were classified as a “serious medical condition” under Pennsylvania’s medical marijuana program.

4. Under the 2016 Medical Marijuana Act, the Pennsylvania legislature created the Medical Marijuana Advisory Board, which was charged with “examin[ing] and analyz[ing] the statutory and regulatory law relating to medical marijuana within this Commonwealth,” and submitting a report making recommendations on “whether to change, add or reduce the types of medical conditions which qualify as serious medical conditions under” the Act. 35 Pa. Stat. Ann. § 10231.1201(j). Thereafter, the Secretary of Health of the Commonwealth may “promulgate regulations to effectuate the recommendations” made by the Medical Marijuana Advisory Board. 35 Pa. Stat. Ann. § 10231.1202.

5. On July 11, 2019, the Pennsylvania Department of Health issued a press release announcing that Pennsylvania Health Secretary Dr. Rachel Levine approved making [REDACTED] a serious medical condition, effective July 20, 2019, in the medical marijuana program. Press Release, Pennsylvania Department of Health (July 11, 2019), *available at* <https://www.media.pa.gov/Pages/Health-Details.aspx?newsid=620>. Secretary Levine’s decision was “based on the recommendation of the Medical Marijuana Advisory Board and a review of the medical research on the use of marijuana to treat these conditions.” *Id.*

6. Mr. Wright recently was able to access his PA Department of Health web portal, which contains his Medical Marijuana Program Patient Certification.

That certification indicated that he was certified based on his diagnosis of [REDACTED]

[REDACTED] See Patient Certification (attached as Exhibit B).

7. Accordingly, Mr. Wright obtained his certification and medical marijuana card in conformity with Pennsylvania law.

The Court should modify his conditions

8. The government's position on Mr. Wright's motion is rife with inconsistencies and divorced from the science that has emerged since marijuana was made illegal in the Controlled Substances Act of 1970. The government reflexively argues that because marijuana is illegal under federal law, permitting Mr. Wright to use medical marijuana pursuant to Pennsylvania law should be prohibited. The Court should reject its arguments.

9. One inconsistency demonstrated by the government's position is that it is contrary to its position in *United States v. Nicole Hooper*, 19-cr-142 (W.D. Pa. Aug. 1, 2020) (Dkt. No. 61). There, the government consented to Ms. Hooper's continued use of medical marijuana. The government provides no basis to treat Mr. Wright differently than the defendant in that case.

10. Another inconsistency contains an added smack of unfairness. Judge Cercone recently observed that although use of marijuana is a "technical violation" of supervision because possession remains a violation federal law, the federal government "has chosen not to interfere with the state providing this form of medical treatment to those who comply with state law and its accompanying regulations." Memorandum Order, *United States v. Martin*, 09-cr-98 (W.D. Pa. Apr. 24, 2019) (Dkt.

No. 133). So while the federal government permits states to administer their medical marijuana programs and has issued guidance on how it will tax businesses involved in that industry,¹ the Department of Justice seeks to limit and sanction individuals seeking to avail themselves of the medicinal benefits it provides. The Court should not countenance such irreconcilable and self-serving positions.

11. The government's position in this case is even more curious in light of Congress's mandate under the Consolidated Appropriations Act of 2021 that "none of the funds made available under this Act to the Department of Justice may be used, with respect to the State[] of ... Pennsylvania ... to prevent [it] from implementing their own laws that authorize the use, distribution, possession, or cultivation of medical marijuana." P.L. No. 116-260, sec. 531. In *United States v. McIntosh*, the Ninth Circuit held that an earlier substantively-identical version of this appropriations rider "prohibits DOJ from spending money on actions that prevent the Medical Marijuana States' giving practical effect to their state laws that authorize ... medical marijuana," such as by "prosecut[ing] ... individuals who engaged in conduct permitted by the State Medical Marijuana Laws and who fully complied with such laws." 833 F.3d 1163, 1176-77 (9th Cir. 2016). Notwithstanding Congresses directive, the government continues to oppose Mr. Wright from taking part in the Commonwealth's medical marijuana program.

¹ IRS.gov, Marijuana Industry, *available at* <https://www.irs.gov/businesses/small-businesses-self-employed/marijuana-industry> (last visited May 11, 2021) ("Income from any source is taxable and taxpayers are generally required to file a tax return to report that income to the IRS. Many marijuana-industry businesses conduct transactions in cash, which need to be reported, like any other form of payment.")

12. Furthermore, in other cases in this District, the court has declined to impose any punishment or sanction for use of medical marijuana so long as the defendant did so in conformity with Pennsylvania law. Indeed, as Judge Ranjan recently found, “[a]s evidenced by a medical practitioner prescribing Defendant medical marijuana, Defendant’s marijuana use is necessary to treat his serious medical conditions, and is not used for otherwise illicit purposes. The Court defers to the medical expertise of Pennsylvania’s licensed practitioners.” Order, *United States v. James*, 20-cr-86 (W.D. Pa. Nov. 3, 2020). Likewise, Judge Cercone ruled that “the medical benefits from the treatment should not be discounted ... [and] [d]eference about such assessments should be given to those who are skilled in prescribing treatment.” Memorandum Order, *United States v. Martin*, 09-cr-98 (W.D. Pa. Apr. 24, 2019) (Dkt. No. 133).

13. Ultimately, the government’s position is (a) inconsistently applied across cases within this District, (b) inconsistently applied across agencies of the executive branch, (c) arguably runs contrary to law as reflected in the Consolidated Appropriations Act of 2021 and, (d) perhaps most significantly, frustrates efforts by the medical community to adhere to the science behind the medicinal benefits that marijuana has to offer. Mr. Wright collected his medical records during a pandemic, submitted himself to an evaluation by a licensed Pennsylvania medical practitioner, obtained his certification, obtained his medical marijuana card, and wishes to receive the treatment he needs. Contrary to the government’s arguments, the Court should not frustrate those efforts.

WHEREFORE, Mr. Daquay Wright requests this Court to modify the conditions of his pretrial release to permit his use of medical marijuana.

Respectfully submitted,

s/ Andrew Lipson

Andrew Lipson

Assistant Federal Public Defender

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🔒 padohmmp.custhelp.com

Patient ID:

MEDICAL MARIJUANA PROGRAM PATIENT CERTIFICATION

<h2>Section 1 - Patient Information</h2>	
Patient's Name : DaQuay Wright	Email Address : [REDACTED]@gmail.com
Patient's Address :2 [REDACTED]	Patient's DOB : [REDACTED]
	Primary Phone Number : [REDACTED]
Date of patient consultation: <input type="text" value="10/28/2020"/>	
Length of time patient has been under practitioner's	

continuing care:
 Less than 1 Year ▼

Treatment period for this certification

One Year

A treatment period less than one year (please specify):

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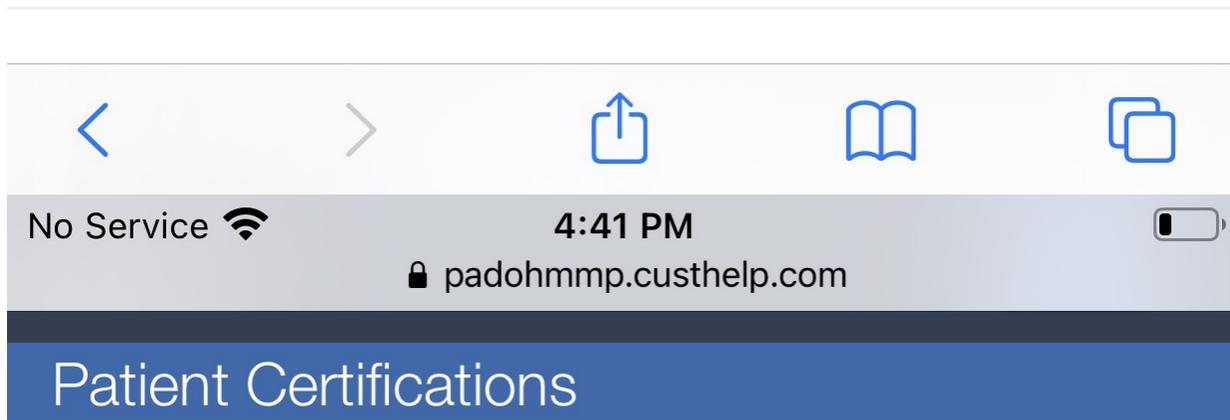
AA  padohmmp.custhelp.com 

<input type="checkbox"/> Neuropathies	<input type="checkbox"/> Parkinson's Disease
<input type="checkbox"/> Post-traumatic Stress Disorder	<input type="checkbox"/> Severe chronic or intractable pain of neuropathic origin or severe chronic or intractable pain
<input type="checkbox"/> Sickle Cell Anemia	<input type="checkbox"/> Neurodegenerative diseases
<input type="checkbox"/> Terminal illness	<input type="checkbox"/> Dyskinetic and spastic movement disorders
<input type="checkbox"/> Opioid use disorder	

Exhibit B

<p>for which conventional therapeutic interventions are contraindicated or ineffective, or for which adjunctive therapy is indicated in combination with primary therapeutic interventions</p>	
<p><input type="checkbox"/> Tourette Syndrome</p>	

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List of Patient Certifications:

Certification#	Create Date	Status	View Certification
613287	2021-04-02T16:46:03Z	Active	

[Email Certification](#) [Print Certification](#)

Section 2 - Serious Medical Conditions Under Act 16

Select whichever is applicable; can select more than 1

<input type="checkbox"/> Amyotrophic Lateral Sclerosis	<input type="checkbox"/> Autism
<input type="checkbox"/> Cancer, including remission therapy	<input type="checkbox"/> Crohn's Disease
<input type="checkbox"/> Damage to the nervous tissue of the	<input type="checkbox"/> Epilepsy