UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

KURT ST. ANGELO,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Cause No: 1:19-cv-02754-JMS-DLP
	)	
UNITED STATES OF AMERICA and STATE OF INDIANA,	)	
	)	
	)	
Defendants.	)	

MEMORANDUM OF LAW IN SUPPORT OF
THE UNITED STATES OF AMERICA'S MOTION TO DISMISS

Kurt St. Angelo is an Indiana resident who regularly uses marijuana. [Filing No. 1 at 12 (Compl. ¶ 11).] He asserts that, by virtue of being a "natural-born" American citizen, he possesses "various natural, constitutional and substantive rights" to possess, cultivate, and use drugs for recreational purposes. [*Id.* at 11 (Compl. ¶ 10).]

St. Angelo brings this lawsuit to expose what he sees as a "grand fraudulent conspiracy." [*Id.* at 45 (Compl. ¶ 91).] Based on his own idiosyncratic reading of the federal Controlled Substances Act, 21 U.S.C. §§ 801 *et seq.*, and Indiana Controlled Substances Act, St. Angelo asserts that federal and state law actually "recognize and codify" his "natural right of drug possession" and, thus, "[d]rug possession and dealing are not misdemeanors or felonies."[1] [*Id.* at 15 & 21 (Compl. ¶¶ 21 & 38).] However, he claims, the federal and state governments have distorted the "proper operation of Indiana and U.S. drug statutes" by arresting and prosecuting

[1] This point is, perhaps, stated most succinctly by the URL of the website that St. Angelo created to publicize this lawsuit: http://www.drugsarelegal.com. [*See* Filing No. 2 at 25 (referencing site).]

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individuals for dealing and possessing drugs, which he views as "wrongful, unlawful and performed under false color of law." [*Id.* at 10, 11, 21 (Compl. ¶¶ 7, 10, 38).]

In this suit, St. Angelo seeks to vindicate his own "rights as a marijuana user" as well as "the constitutional rights of drug dealers" in general.[2] [*Id.* at 11 (Compl. ¶ 10); *see also* Filing No. 30-1 at 7 (Am. Compl. ¶ 19).] He asks this Court to issue broad injunctive and declaratory relief prohibiting the state and federal governments from arresting individuals for possessing drugs and ordering the release of everyone imprisoned for drug offenses, among other things.[3]

Lengthy as it is, however, the complaint does not plead a justiciable case or controversy nor plausibly allege any entitlement to relief. St. Angelo does not have standing to sue on his own behalf, he cannot bring claims on behalf of absent drug users or dealers, and he cannot show that he is entitled to injunctive or declaratory relief. In short, this suit is hopelessly defective and should be dismissed.

LEGAL STANDARD

A suit should be dismissed under Rule 12(b)(1) where the Court lacks subject–matter jurisdiction, which is limited solely to "cases and controversies." U.S. CONST. art. III. In deciding a motion to dismiss under Rule 12(b)(1), the Court accepts the allegations in the complaint as

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[2] On October 7, 2019, St. Angelo filed a motion to amend the complaint to add the Attorney General, William P. Barr, along with various state officials, as defendants. [Filing No. 30.] The Court has not yet ruled on that motion. Regardless, as the Amended Complaint rehashes much of the original Complaint, ad the arguments in this brief regarding St. Angelo's lack of entitlement to relief apply equally to the Amended Complaint as to the original Complaint.

[3] In Counts 8–10 of the original Complaint, St. Angelo also sought hundreds of millions of dollars in compensatory and punitive damages stemming from what he sees as Defendants' wrongful enforcement of the drug laws and their "utter incompetence to read statutes and to know and uphold the republican form of government." [Filing No. 1 at 51–52 (Compl. ¶¶ 98–99).] St. Angelo has since filed a motion to dismiss those allegations, leaving only his requests for declaratory and injunctive relief. [Filing No. 18.]

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true and draws all reasonable inference in the plaintiff's favor. *Long v. Shorebank Dev. Corp.*, 182 F.3d 548, 554 (7th Cir. 1999). Plaintiff has the burden of proving that subject-matter jurisdiction exists. *See Lee v. City of Chicago*, 330 F.3d 456, 468 (7th Cir. 2003).

Under Rule 12(b)(6), the complaint must "contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). Here, too, the Court accepts the well-pled facts as true and gives plaintiff the benefit of permissible inferences, *Tucker v. City of Chicago*, 907 F.3d 487, 491 (7th Cir. 2018), but the complaint's factual allegations must state an entitlement to relief "to a degree that rises above the speculative level." *Munson v. Gaetz*, 673 F.3d 630, 633 (7th Cir. 2012).

ARGUMENT

St. Angelo's complaint proceeds from the mistaken premise that the federal Controlled Substances Act (and its Indiana analogue) "declare individual drug possession to be lawful." [Filing No. 1 at 21 (Compl. ¶ 36); *id.* at 15 (Compl. ¶ 21); *see also* Filing No. 30-1 at 17 (Amended Compl. ¶ 41).] That is incorrect. The Controlled Substances Act makes clear that possession of controlled substances (including marijuana)—even for personal use—is unlawful.[4] St. Angelo's reading cannot be squared with either the statutory language or binding precedent.

St. Angelo's basic misunderstanding of the Controlled Substances Act permeates the complaint. He cannot show that he has standing to sue on his own behalf, and his assertion that

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[4] St. Angelo focuses his allegations on marijuana, so this brief primarily addresses the federal criminal prohibitions on marijuana possession and use. While St. Angelo also says that he also "occasionally possesses other drugs" too [Filing No. 30-1 at 8 (Am. Compl. ¶ 20)], and asserts that he has the "right within Indiana to possess *any* drug — not just marijuana" [Filing No. 30 at 3 (emphasis added)], he does not argue that there is any meaningful distinction between the criminal prohibitions on various Schedule I controlled substances that he may use for recreational purposes. For purposes of this motion, such distinctions are not relevant.

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he has standing to sue on behalf of an untold number of third-party drug users fares no better. Nor can he plausibly show any entitlement to injunctive or declaratory relief, especially where his request is premised on an erroneous understanding of the drug laws' operation.

A. <u>There Is No Individual Right to Possess Marijuana or Other Illegal Drugs</u>

St. Angelo's understanding of (what he calls) the Controlled Substances Act's "'ultimate user' provision" is central to his complaint. [*See, e.g.,* Filing No. 1 at 15 & 21 (Compl. ¶¶ 21 & 36).] He asserts that "21 U.S.C. § 822(c) [of the Controlled Substances Act] . . . read in conjunction with 21 U.S.C. § 802(27) . . . say[s] that end users of controlled substances—called 'ultimate users'—may 'lawfully possess' . . . drugs for their own use and use of their households." [*Id.* at 15 (Compl. ¶ 21); *see also* Filing No. 30-1 at 11 (Am. Compl. ¶ 27).] For several reasons, this is wrong.

In the Controlled Substances Act, Congress sought to combat recreational drug abuse by prohibiting the manufacture, distribution, possession, and improper use of controlled substances. *See* 21 U.S.C. § 801. The CSA classifies marijuana as a Schedule I controlled substance. *Id.* § 812(c)(10). This classification reflects Congress's findings that marijuana "has a high potential for abuse," that it "has no currently accepted medical use in treatment in the United States," and that "[t]here is a lack of accepted safety for use of [marijuana] under medical supervision." *Id.* § 812(b). Accordingly, federal law makes it illegal to distribute or dispense marijuana, 21 U.S.C. § 841(a)(1), and (with limited exceptions not relevant here) makes it illegal to possess marijuana. 21 U.S.C. §§ 841(a)(1) & 844(a).

St. Angelo's claim that he "may lawfully possess and produce (cultivate)" marijuana "for his own use and use of his household" cannot be squared with the Supreme Court's decision in *Gonzales v. Raich*, 545 U.S. 1 (2005), which upheld the CSA's criminalization of marijuana for

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personal use. [Filing No. 1 at 30 (Compl. ¶ 57(a)); *see also, e.g., id.* at 15 (Compl. ¶ 21); Filing No. 30-1 at 26 (Am. Compl. ¶ 61(a)).] In *Raich*, California residents who used marijuana for medical purposes sought to prohibit the federal government from enforcing the CSA as to their marijuana use. Endorsing the Controlled Substances Act as a valid exercise of Congress's powers under the Commerce Clause, the Supreme Court made clear that, pursuant to the CSA, marijuana is "contraband for *any* purpose" and possession of it is "a criminal offense." *Id.* at 14 & 27 (emphasis in original). In other words, as other federal courts have recognized, *Raich* "uph[e]ld the prohibition of all intrastate, noncommercial cultivation, possession, and use of marijuana." *United States v. Neth*, No. 6:09-cr-00210-PCF-GJK, 2010 WL 1257699, at *3 (M.D. Fla. Mar. 30, 2010). St. Angelo's assertion that he is entitled to possess marijuana for his personal use is inconsistent with *Raich* and, thus, has no legal merit.

Furthermore, St. Angelo's interpretation of the "ultimate user provision" in 21 U.S.C. § 822(c) is not supported by the statute. Section 822 of the Controlled Substances Act deals with registration requirements. *See* 21 U.S.C. § 822 ("Persons Required to Register"). The CSA requires anyone who "manufactures or distributes" or "dispenses . . . any controlled substance" to register annually. *Id.* § 822(a). 21 U.S.C. § 822(c) lists three specific exceptions to the registration obligations for (1) registered entities' agents and employees, acting in the usual course of business or employment; (2) common carriers, warehousing facilities, and their employees acting in the ordinary course of business; and (3) "[a]n ultimate user who possesses such substance for a purpose specified in [21 U.S.C. § 802(27)]."[5] *Id.* § 822(c)(1)–(3). Section

[5] The statute originally referenced 21 U.S.C. § 802(25) here. As a result of renumbering through subsequent amendments, the reference now refers to § 802(27). *See* Pub. L. 99-570, Title I, § 1003(b)(2).

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