

Appendix

17 F.4th 1273

United States Court of Appeals, Ninth Circuit.

UNITED STATES of America, Plaintiff-Appellee,

v.

Richard LANGLEY, aka Richard
M. Langley, Defendant-Appellant.

No. 20-50119

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Submitted August 30, 2021 * Pasadena, California

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Filed November 16, 2021

Synopsis

Background: Defendant moved to amend conditions of supervised release for child pornography conviction to permit him to use medical marijuana as allowed by state law. The United States District Court for the Southern District of California, [Michael M. Anello](#), J., denied motion. Defendant appealed.

[Holding:] The Court of Appeals held that federal law does not recognize a substantive due process right to use medical marijuana.

Affirmed.

Procedural Posture(s): Appellate Review; Sentencing or Penalty Phase Motion or Objection.

West Headnotes (3)

[1] Courts **Decisions of Same Court or Co-Ordinate Court**

Court of Appeals is bound by its prior precedential opinions until they are overruled by a higher authority.

[2] Constitutional Law **Drugs and medical devices**

Federal law does not recognize a substantive due process right to use medical marijuana,

even where doing so provides important medical benefits. [U.S. Const. Amend. 5](#).

[3] Courts **Decisions of Same Court or Co-Ordinate Court**

A published decision of Court of Appeals is binding authority which must be followed unless and until overruled by a body competent to do so.

Appeal from the United States District Court for the Southern District of California, [Michael M. Anello](#), District Judge, Presiding, D.C. Nos. 3:16-cr-00393-MMA-1, 3:16-cr-00393-MMA

Attorneys and Law Firms

[Doug Keller](#), The Law Office of Doug Keller, San Diego, California, for Defendant-Appellant.

[Zachary J. Howe](#), Assistant United States Attorney; [Daniel E. Zipp](#), Assistant United States Attorney, Chief, Appellate Section, Criminal Division; [Robert S. Brewer, Jr.](#), United States Attorney; United States Attorney; United States Attorney's Office, San Diego, California; for Plaintiff-Appellee.

Before: [Sandra S. Ikuta](#), [Mark J. Bennett](#), and [Ryan D. Nelson](#), Circuit Judges.

OPINION**PER CURIAM**

[1] This appeal asks us to revisit our prior decision that “federal law does not recognize a fundamental right to use medical marijuana,”  [Raich v. Gonzales](#), 500 F.3d 850, 866 (9th Cir. 2007), in light of the increasing number of states that no longer criminalize the use of marijuana for medical purposes. Because we are bound by our prior precedential opinions until they are overruled by a higher authority,  [Miller v. Gammie](#), 335 F.3d 889, 900 (9th Cir. 2003) (en banc), we decline to do so.

*1274 I

In 2017, Richard Langley pleaded guilty to possession of child pornography in violation of [18 U.S.C. § 2252\(a\)\(4\)\(B\)](#). The district court sentenced Langley to time served (56 days) and a ten-year term of supervised release. As required by statute, [18 U.S.C. § 3583\(d\)](#), the conditions of Langley's supervised release included that he “not commit [a] federal, state or local crime,” “not illegally possess a controlled substance,” and “refrain from any unlawful use of a controlled substance.”

In 2017, Langley moved the district court to amend the conditions of supervised release to permit him to use medical marijuana as allowed by California state law. *See* [Cal. Health & Safety Code § 11362.5](#). According to Langley, marijuana helps him alleviate pain stemming from a motorcycle accident that resulted in the amputation of his right leg below the knee. The district court denied the motion.

Langley renewed the motion in 2020. This time he supported his motion with a report from a physician opining that marijuana was the best medical solution for Langley's pain issues. The district court again denied the motion, holding that because possession of marijuana is a violation of federal law, and Langley had no constitutional right to use medical marijuana, the court lacked authority to modify the “statutorily required condition that [Langley] not ‘commit another *Federal*, State, or local crime during the term of supervision.’ ”

Langley timely appealed. We have jurisdiction under [28 U.S.C. § 1291](#). We review the conditions of supervised release imposed by a district court for an abuse of discretion, *see* [United States v. Bee](#), 162 F.3d 1232, 1234 (9th Cir. 1998), and “review de novo whether a supervised release condition violates the Constitution.” [United States v. Ochoa](#), 932 F.3d 866, 868–69 (9th Cir. 2019) (citation omitted).

II

Unless Langley has a constitutional right to use medical marijuana, the district court did not err in denying Langley's motion to amend his conditions of supervised release. If a court places a defendant on a term of supervised

release, it is required by statute to “order, as an explicit condition of supervised release, that the defendant not commit another Federal, State, or local crime during the term of supervision,” “that the defendant not unlawfully possess a controlled substance,” and that “the defendant refrain from any unlawful use of a controlled substance.” [18 U.S.C. § 3583\(d\)](#). Under the federal Controlled Substances Act (CSA), marijuana is an enumerated controlled substance. *See* [21 U.S.C. § 812\(b\)–\(c\)](#) (“Marihuana” listed on Schedule I of controlled substances). Therefore, the applicable federal statutes precluded the court from granting Langley's motion. *See* [18 U.S.C. § 3583\(d\)](#), [21 U.S.C. § 812\(b\)–\(c\)](#).

Accordingly, we turn to Langley's argument that the district court erred in denying his motion because he has a fundamental constitutional right under the Fourteenth Amendment's Due Process Clause to use medical marijuana under these circumstances. Langley defines the purported substantive right at issue as “the right to make a life-shaping decision on a physician's advice to use medical marijuana to preserve bodily integrity, avoid intolerable pain, and preserve life, when all other prescribed medications and remedies have failed.”

In [Raich](#), we rejected the claim that this purported right, which was defined using identical language, is a fundamental right. *See* [500 F.3d at 866](#). In [Raich](#), a plaintiff sought to enjoin the enforcement of the [*1275](#) CSA to prevent her from using marijuana to treat her inoperable, life-threatening brain tumor. *Id.* at 855–57. The plaintiff argued, among other things, that she had a substantive due process right to use medical marijuana in that context.

[Raich](#) rejected her argument. Applying the two-part test set out in [Washington v. Glucksberg](#), 521 U.S. 702, 719–20, 117 S.Ct. 2258, 138 L.Ed.2d 772 (1997), for determining whether a right is protected by the Due Process Clause, [Raich](#) first defined the asserted fundamental right at issue as the “right to make a life-shaping decision on a physician's advice to use medical marijuana to preserve bodily integrity, avoid intolerable pain, and preserve life, when all other prescribed medications and remedies have failed.” [500 F.3d at 864](#). [Raich](#) then determined that this right is not, objectively, “deeply rooted in this Nation's history and

tradition,” and “implicit in the concept of ordered liberty,” such that “neither liberty nor justice would exist if [it] were sacrificed,” *id.* (quoting *Glucksberg*, 521 U.S. at 720–21, 117 S.Ct. 2258). Therefore, *Raich* held that “federal law does not recognize a fundamental right to use medical marijuana prescribed by a licensed physician to alleviate excruciating pain and human suffering.” *Id.* at 866.

[2] *Raich* is controlling here. The substantive due process right claimed by Langley is identical to the right claimed by the plaintiffs in *Raich*, and Langley does not argue otherwise. Therefore we are bound by *Raich*'s conclusion that medical marijuana use is not “deeply rooted in this Nation's history and tradition” or “implicit in the concept of ordered liberty,” 500 F.3d at 864, and so federal law does not recognize a substantive due process right to use medical marijuana, even where doing so provides important medical benefits.

[3] Langley argues that we are no longer bound by *Raich*'s conclusion. He points out that *Raich* acknowledged that widespread legal recognition of a practice can sometimes provide additional evidence that a right is fundamental, *id.* at 865–66 (discussing *Lawrence v. Texas*, 539 U.S. 558, 571–72, 123 S.Ct. 2472, 156 L.Ed.2d 508 (2003)), and that 36 states and the District of Columbia no longer criminalize

the use of marijuana for medical purposes. But this argument misunderstands our rule that “a published decision of this court constitutes binding authority which must be followed unless and until overruled by a body competent to do so,” *Gonzalez v. Arizona*, 677 F.3d 383, 389 n.4 (9th Cir. 2012) (cleaned up), *aff'd sub nom.* *Arizona v. Inter Tribal Council of Arizona, Inc.*, 570 U.S. 1, 133 S.Ct. 2247, 186 L.Ed.2d 239 (2013). *Raich*'s conclusion that medical marijuana use is not “deeply rooted in this Nation's history and tradition” or “implicit in the concept of ordered liberty,” 500 F.3d at 864, is binding on us until it is overturned by a higher authority. Even if state laws decriminalizing marijuana use could constitute additional evidence under the *Glucksberg* test, we are bound by our holding in *Raich* until such time as a higher authority determines that there is a fundamental right to medical marijuana use that we are “blind to” today, *id.* at 866. See *Wilson v. Lynch*, 835 F.3d 1083, 1098 n.9 (9th Cir. 2016) (holding that a substantive due process claim based on a fundamental right to use medical marijuana is “foreclosed by our decision in *Raich*”).

AFFIRMED.

All Citations

17 F.4th 1273, 21 Cal. Daily Op. Serv. 11,476, 2021 Daily Journal D.A.R. 11,792

Footnotes

- * The panel unanimously concludes this case is suitable for decision without oral argument. See *Fed. R. App. P.* 34(a)(2).

FILED

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FEB 8 2022

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

RICHARD LANGLEY, AKA Richard M
Langley,

Defendant-Appellant.

No. 20-50119

D.C. Nos.

3:16-cr-00393-MMA-1

3:16-cr-00393-MMA

Southern District of California,
San Diego

ORDER

Before: IKUTA, BENNETT, and R. NELSON, Circuit Judges.

The panel has unanimously voted to deny appellant's petition for rehearing en banc. The petition for rehearing en banc was circulated to the judges of the court, and no judge requested a vote for en banc consideration.

The petition for rehearing en banc is DENIED.

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

UNITED STATES OF AMERICA,

Plaintiff,

v.

RICHARD LANGLEY,

Defendant.

Case No. 16cr393-MMA

**ORDER DENYING DEFENDANT'S
MOTION TO MODIFY
CONDITIONS OF SUPERVISED
RELEASE**

[Doc. No. 86]

On June 30, 2016, Defendant Richard Langley pleaded guilty to a single-count Information charging him with possession of images of minors engaged in sexually explicit conduct in violation of 18 U.S.C. § 2252(a)(4)(B). *See* Doc. No. 32. The Court sentenced Defendant to a custodial term of time-served and ten years of supervised release. *See* Doc. No. 57. Several months later, Defendant moved to modify the conditions of his supervised release to permit the use of medical marijuana in compliance with California law. *See* Doc. No. 64. The Court denied the motion. *See* Doc. No. 75. Defendant once again moves to modify the conditions of his release in a manner that would allow him to use medical marijuana without resulting in the revocation of his supervised release. *See* Doc. No. 86. The government filed a response in opposition, to

which Defendant replied. *See* Doc. Nos. 90, 93. For the reasons set forth below, the Court **DENIES** Defendant's motion.

DISCUSSION

Defendant suffers from several serious medical conditions, including debilitating pain due to the amputation of his right leg. Defendant is allergic to codeine and apprehensive of the addictive quality of opioids. Defendant requests that the Court modify the conditions of his supervised release in a manner that would permit use of medical marijuana as recommended by at least one medical expert and in compliance with California state law.¹ *See* Doc. No. 86-1, Def. Ex. A.

Generally, the conditions of a defendant's term of supervised release must "involve [] no greater deprivation of liberty than is reasonably necessary for the purposes set forth" in the sentencing statute. 18 U.S.C. § 3583(d)(2). A court "may modify, reduce, or enlarge the conditions of supervised release, at any time prior to the expiration or termination of the term of supervised release." *Id.* § 3583(e)(2).

Defendant is subject to the following standard conditions of supervised release:

The defendant shall not illegally possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance . . .

. . . the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;

. . . the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered.

Doc. No. 57 at 3.

¹ *See* Cal. Health & Safety Code §§ 11362.5, 11362.7-11362.9.

The Controlled Substances Act designates marijuana as a Schedule I narcotic. *See* 21 U.S.C. §§ 812(b)(1), 812(c). Consistent therewith, marijuana is “contraband for any purpose,” and in the event of a conflict between federal and state law with regard to marijuana, “federal law shall prevail” pursuant to the Supremacy Clause. *Gonzales v. Raich*, 545 U.S. 1, 27, 29 (2005). As a result, possession of marijuana remains illegal under federal law. *See United States v. Nixon*, 839 F.3d 885, 887 (9th Cir. 2016); *see also United States v. Kleinman*, 880 F.3d 1020, 1027 (9th Cir. 2017) (“In 2003, the California legislature enacted the Medical Marijuana Program . . . Federal law, however, still prohibits the use or sale of marijuana, even if distributed and possessed pursuant to state-approved medical marijuana programs.”) (citing *United States v. McIntosh*, 833 F.3d 1163, 1179 n.5 (9th Cir. 2016) (“Anyone in any state who possesses, distributes, or manufactures marijuana for medical or recreational purposes (or attempts or conspires to do so) is committing a federal crime.”)).

Likewise, physicians cannot prescribe marijuana consistent with federal law. *See United States v. Oakland Cannabis Buyers’ Cooperative*, 532 U.S. 483, 486 (2001). Any such prescription is invalid under the CSA. *See id.* at 491 (“Whereas some other drugs can be dispensed and prescribed for medical use[,] . . . the same is not true for marijuana.”). Moreover, there is no substantive due process right to use medical marijuana, as “federal law does not recognize a fundamental right to use medical marijuana prescribed by a licensed physician.” *Raich v. Gonzales*, 500 F.3d 850, 866 (9th Cir. 2007). And while “the passage of time coupled with changing social views may alter the fundamental rights analysis, a prior holding of th[e circuit] court may only be overturned through en banc consideration.” *Sacramento Nonprofit Collective v. Holder*, 552 F. App’x 680, 683 (9th Cir. 2014) (unpublished) (internal citation omitted) (citing *Raich*, 500 F.3d at 865-66).

The Court is sympathetic to Defendant’s suffering and the potential medical benefits he might gain from the use of medical marijuana as an analgesic. However, binding law has not changed appreciably in the three years since Defendant last sought

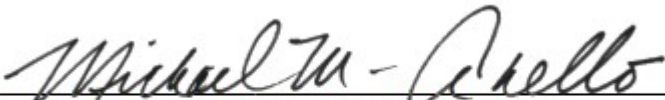
modification of the conditions of his supervised release. Because there is no constitutional right to use medical marijuana, possession of marijuana is a violation of federal law, and doctors cannot legally prescribe marijuana under federal law, the Court lacks the authority or discretion to modify the conditions of Defendant's supervised release in the manner he requests. To do so would directly contradict and potentially run afoul of the standard conditions of his release, *see supra*, as well as the statutorily required condition that Defendant not "commit another *Federal*, State, or local crime during the term of supervision." 18 U.S.C. §3583(d) (emphasis added).

CONCLUSION

Based on the foregoing, the Court **DENIES** Defendant's motion to modify the conditions of his supervised release.

IT IS SO ORDERED.

DATED: April 22, 2020



HON. MICHAEL M. ANELLO
United States District Judge