No. 13-436

In the Supreme Court of the United States

STATE OF ARIZONA,

Petitioner,

v.

VALERIE ANN OKUN,

Respondent.

On Petition for a Writ of Certiorari to the Court of Appeals of Arizona

BRIEF FOR RESPONDENT IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether a county sheriff who complies with a court order directing the return of marijuana to its owner in accordance with the requirements of Arizona's medical marijuana law is protected against federal criminal liability by 21 U.S.C. § 885(d), which immunizes state and local government officials from criminal liability when those officials are "lawfully engaged in the enforcement of any law or municipal ordinance relating to controlled substances."

2. Whether this Court should consider the State of Arizona's contention that respondent is not entitled to return of her marijuana on the ground that Arizona's medical marijuana law is preempted by federal law even though the Arizona Court of Appeals held the claim not ripe as a matter of Arizona law and Arizona lacks Article III standing to press that claim in this Court.

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STATEMENT

The certiorari petition paints this case as presenting broad questions regarding the preemption of state medical marijuana laws. In fact, the issues here are narrow and not properly presented for the Court's review.

The intermediate state court below concluded that the federal Controlled Substances Act's broad grant of immunity to state and local officials, which provides federal civil and criminal immunity for acts relating to the enforcement of "any state or municipal law relating to controlled substances" (21 U.S.C. § 885(d)), applies to a sheriff's return of marijuana pursuant to a state court order. Every court to consider the question has reached the same result, concluding that the broad federal immunity provision plainly applies to state or local officers returning medical marijuana that was confiscated in violation of state law. Moreover, this claim, which is premised on fear of federal prosecution, is not justiciable on ripeness grounds. There is thus no basis for this Court to grant review.

Although the petition is not clear, Arizona also appears to seek review by this Court of the general question whether federal law preempts Arizona's own voter-adopted medical marijuana law. But the state court expressly declined to reach this question, finding it not ripe as a matter of state law. That independent and adequate state-law ground precludes review by this Court. Moreover, Arizona's desire to overturn its own duly-enacted law provides no basis for Article III standing. Again, there is no warrant for this Court's review.

A. The Arizona Medical Marijuana Act.

In November 2010, Arizona's voters adopted Proposition 203—the Arizona Medical Marijuana Act (AMMA)—in order to "protect patients with debilitating medical conditions, as well as their physicians and providers, from arrest and prosecution, criminal and other penalties and property forfeiture if such patients engage in the medical use of marijuana." Ariz. Sec'y of State, *Arizona Ballot Proposition Guide, General Election—November 2, 2010*, at 73, http://tiny.cc/8pctbx.

The statute provides that "qualifying patient[s]" may apply to the Arizona Department of Health Services for "registry identification cards." Once issued, the cards permit patients to purchase an "allowable amount of marijuana" for treatment of their medical conditions. Ariz. Rev. Stat. Ann. § 36-2801(1), (9), (13), (14), -2804.02. A registered, qualifying patient is "not subject to arrest, prosecution, or penalty" under state law for the use of medical marijuana, as long as the patient complies with the Act's provisions. *Id.* § 36-2811(B).

The Act states that any "[p]roperty * * * otherwise subject to forfeiture * * * that is possessed, owned or used in connection with the medical use of marijuana authorized under [the AMMA] * * * is not subject to seizure or forfeiture." *Id.* § 36-2811(G).

B. The Federal Controlled Substances Act.

The federal Controlled Substances Act (CSA) makes it a crime "for any person knowingly or intentionally to possess a controlled substance"—a category that includes marijuana. 21 U.S.C. §§ 812(c)(a)(c)(10), 829, 844(a). The statute includes a

provision conferring broad immunity on law enforcement officers:

> no civil or criminal liability shall be imposed * * * upon any duly authorized officer of any State, territory, political subdivision thereof, * * * who shall be lawfully engaged in the enforcement of any law or municipal ordinance relating to controlled substances.

21 U.S.C. § 885(d).

Following the enactment of state laws relating to medical and recreational use of marijuana, the federal government has explained several times that its enforcement priorities under the CSA do not encompass prosecution of individuals for possessing or distributing marijuana in compliance with these state laws.

Thus, the Justice Department issued guidelines in 2009 directing prosecutors to avoid "focus[ing] federal resources * * * on individuals whose actions are in clear and unambiguous compliance with existing state laws providing for the medical use of marijuana." David W. Ogden, *Memorandum for Selected United States Attorneys*, Oct. 19, 2009, http://tiny.cc/cvctbx.

Dennis Burke, the United States Attorney for the District of Arizona, included nearly identical language in a letter providing guidance to Arizona on the implementation of the AMMA. Burke cited Deputy Attorney General Ogden's guidance that

> in districts where a state had enacted medical marijuana programs, [United States Attorney's Offices] ought not focus their limited resources on those seriously ill individuals

> who use marijuana as part of a medically recommended treatment regimen and are in clear and unambiguous compliance with such state laws. And, as has been our policy, this USAO will continue to follow that guidance.

Letter from Dennis K. Burke, United States Attorney for the District of Arizona, to Will Humble, Director of the Arizona Department of Health Services (May 2, 2011).

A 2013 Justice Department memorandum reiterated the same policy, declaring that "it likely was not an efficient use of federal resources to focus enforcement efforts [of federal marijuana laws] on seriously ill individuals, or on their individual caregivers." James M. Cole, *Memorandum for All United States Attorneys* at 3, Aug. 29, 2013, http://tiny.cc/pwctbx.

C. Proceedings Below.

Respondent Valerie Okun, a California resident, had the right to possess and use marijuana for medical purposes under a California law similar to Arizona's AMMA.[1] The AMMA's reciprocity provision therefore entitled her to possess and use the substance within Arizona. Ariz. Rev. Stat. Ann. § 36-2801(17); Pet. App. 5, 6-7.

On January 28, 2011, while driving through Yuma County, Arizona, Ms. Okun and her husband were stopped by a Border Patrol official. Pet. App.

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[1] California's law provides that "qualified patients" can apply to the State's Department of Health Services for "identification cards," which permit the holder to possess a specified amount of medical marijuana. Cal. Health & Safety Code §§ 11362.7, 11362.71, 11362.77.

16. Respondent was in possession of medical marijuana.

Although Ms. Okun was subsequently charged with three felonies, the charges were dropped when she provided proof that she was authorized to possess marijuana under California law—which in turn permitted her to possess medical marijuana under the AMMA. Pet. App. 5, 6-7; Ariz. Rev. Stat. Ann. § 36-2801(17); Notice of Supervening Indictment, *State* v. *Okun*, No. S1400CR201100593 (Ariz. Sup. Ct. May 4, 2011).

At Ms. Okun's request (and without opposition from the State), the superior court issued an order directing that the marijuana be returned to her. Pet. App. 5, 16. The Yuma County Sheriff refused to comply, claiming that the return of the marijuana could subject him to prosecution under the CSA. *Id*. at 16.

The superior court held, following the receipt of briefs on the issue, that the AMMA required the return of the marijuana, that the sheriff's actions would not subject him to federal prosecution, and that the AMMA was not preempted by the CSA. Pet. App. 16, 19-20, 22. "As a practical matter," the court stated, it was "exceedingly unlikely that federal prosecutors would ever attempt to haul a local constable into federal court for complying with a state judicial order calling for the return of a qualified patient's medical marijuana." *Id*. at 19.

The Arizona Court of Appeals affirmed. Pet. App. 14. It found that Section 885(d) "immunizes law enforcement officers such as the Sheriff from any would-be federal prosecution for complying with a court order to return Okun's marijuana to her." *Id*. at 10. It held that "federal law immunizes a law en-

forcement official from liability under circumstances such as these." *Id.* at 10.

The court expressly "decline[d] to address the State's suggestion that the Controlled Substances Act preempts and thereby invalidates the AMMA." Pet. App. 12. It found that "[i]n the absence of any actual or threatened prosecution of Okun under federal law, and given the immunity that federal law affords the Sheriff for complying with the return order, the question is not ripe." *Id.* at 12. The court added that "on the facts of this case, the State lacks standing to argue that federal law prohibits Okun from possessing the marijuana" because "the Sheriff has no 'personal stake' in whether the federal Controlled Substances Act might invalidate Okun's right under the AMMA to possess an allowable amount of marijuana." *Id.* at 12-13. Finally, citing state-law waiver doctrine, the court explained that "the State's brief fails to provide any meaningful discussion about federal preemption, the Supremacy Clause, legislative intent and how those complex principles might apply in this context." *Id.* at 13.

The Arizona Supreme Court denied the State's petition for review. Pet. App. 1.

ARGUMENT

The only issue actually presented by the petition—whether a sheriff who complies with a court order directing the return of marijuana to its owner in accordance with the requirements of state medical marijuana law is protected against federal criminal liability by Section 885(d)—does not warrant review. There is no conflict among the lower courts; the question does not arise with frequency; the issue is

not ripe in this case; and the holding below is clearly correct.

To the extent that Arizona seeks to raise a broader question whether federal law preempts the AMMA, the lower court expressly declined to reach that issue on state-law ripeness grounds. Arizona, moreover, lacks Article III standing to assert that its own law is unconstitutional.

A. There Is No Conflict Among The Lower Courts.

Petitioner does not point to a conflict among the lower courts and there is none.

Each of the other three lower courts to address Section 885(d)'s grant of immunity in the context of state medical marijuana laws has concluded that this immunity precludes federal prosecution of a law enforcement officer who returns seized medical marijuana pursuant to a state court order. See *People* v. *Crouse*, 2013 WL 6673708, at *6-7 (Col. App. Dec. 19, 2013); *City of Garden Grove* v. *Superior Court*, 68 Cal. Rptr. 3d 656, 663-664 (Cal. Ct. App. 2007), cert. denied, 555 U.S. 1044 (2008); *State* v. *Kama*, 39 P.3d 866, 868 (Or. Ct. App. 2002).

Given the absence of a conflict, there is no reason for this Court to address the issue.

B. The Issue Presented Has Arisen Rarely And Will Arise Even Less Frequently In The Future.

Petitioner makes no attempt to demonstrate that the principal issue presented here—whether a law enforcement officer is protected by Section 885(d) immunity when returning seized marijuana pursu-

ant to a court order—arises frequently. All available evidence indicates that it does not.

First, only a small number of reported decisions—three rulings by intermediate state appellate courts—address the issue.

Second, as state and local police become familiar with state medical marijuana laws they will rarely if ever confiscate medical marijuana in the first place. The AMMA, and other similar state laws, require authorized users of marijuana to have a valid registration card. Ariz. Rev. Stat. Ann. § 36-2804.2. Confronted with such a card, police will have no reason to seize property, and patients will have no need to petition the state courts for a return of property. Arizona courts—and other courts in States that have medical marijuana laws—will rarely have to confront this issue in the future.

The same conclusion applies with respect to the general preemption issue. The small number of reported cases, and lack of any other basis for finding the issue important, precludes any claim that the issue warrants this Court's attention.

C. The Claim Based On The Sheriff's Interest In Avoiding Prosecution Is Not Ripe Because There Is No Credible Threat Of Federal Prosecution.

Article III standards govern this Court's jurisdiction over cases coming from state courts. See, *e.g.*, *Princeton Univ.* v. *Schmid*, 455 U.S. 100, 102 n.* (1982) ("That Princeton had standing in state court does not determine the power of this Court to consider the issue. Any determination of who has standing to assert constitutional rights is a federal question to be decided by the Court itself."). Fundamental prin-

ciples of ripeness demonstrate that a claim based on the sheriff's fear of prosecution under federal law is not justiciable.

The requirement that a claim be ripe for adjudication "prevent[s] the courts, through avoidance of premature adjudication, from entangling themselves in abstract disagreements." *Abbott Labs.* v. *Gardner*, 387 U.S. 136, 148 (1967). As a general matter, "ripeness doctrine is drawn both from Article III limitations on judicial power and from prudential reasons for refusing to exercise jurisdiction." *Reno* v. *Catholic Soc. Servs., Inc.*, 509 U.S. 43, 57 n.18 (1993).

When determining whether the threat of government enforcement renders a claim ripe, this Court assesses two considerations: the "fitness of the issues for judicial decision and the hardship to the parties of withholding court consideration." *Abbott Labs.*, 387 U.S. at 149. To demonstrate that a claim is ripe, the plaintiff must show a strong probability that the relevant government official will initiate an enforcement action. See, *e.g.*, *Renne* v. *Geary*, 501 U.S. 312, 321-322 (1991) (finding "no ripe controversy" given lack of "evidence of a credible threat that [the statute] will be enforced" against plaintiffs); *Babbitt* v. *United Farm Workers Nat'l Union*, 442 U.S. 289, 302 (1979) (the "fear of criminal prosecution under an allegedly unconstitutional statute" must not be "imaginary or wholly speculative"); *O'Shea* v. *Littleton*, 414 U.S. 488, 498 (1974) (controversy not ripe when "threat of injury from the alleged course of conduct [plaintiffs] attack is simply too remote to satisfy the case-or-controversy requirement").

Here, the DOJ guidance memoranda demonstrate that the likelihood of a federal prosecution of

the sheriff for complying with the trial court's order is extremely remote. The most recent memorandum states that DOJ's enforcement of the CSA is guided by eight "enforcement priorities," such as curbing the activities of drug cartels. *Memorandum for All United States Attorneys*, *supra*, at 1-2. And the memorandum also indicates that any conduct complying with state laws legalizing marijuana—such as the conduct here—is "less likely to threaten the federal priorities" listed in the memorandum. *Id.* at 3.

Given the fact that the sheriff's return of the marijuana does not fall within any of the eight priority areas and DOJ's own conclusion that the sheriff's decision to return the marijuana would not "threaten the federal priorities," a prosecution for such conduct is doubly unlikely.

Moreover, the federal government is even more unlikely to prosecute a government official for complying with a state court's order. As a general matter, police are not prosecuted for doing their job—even when that requires them to handle contraband. Such prosecutions would expose law enforcement officers to crushing uncertainty in the line of duty. Cf. *Harlow* v. *Fitzgerald*, 457 U.S. 800, 818-819 (1982) (noting that conferring immunity on law enforcement officials whose actions were objectively reasonable will help to "avoid excessive disruption of government").

The threat of federal prosecution is illusory for another reason: the sheriff's return of the marijuana is unlikely to be accompanied by the mental state required to establish criminal liability under the CSA. In *City of Garden Grove* v. *Superior Court*, a police officer was ordered to return marijuana to a person from whom it had been confiscated in violation of

state law. 68 Cal. Rptr. 3d at 659, 661-662. The court concluded that the officer would not be prosecuted because, in part, the officer's duties in effectuating the court order were "ministerial" rather than volitional. *Id.* at 662. In both *Garden Grove* and in this case, the officers' actions were motivated only by their official duties and evinced no intent to violate the CSA. Cf. *United States* v. *Feingold*, 454 F.3d 1001, 1008 (9th Cir.), cert denied, 549 U.S. 1067 (2006) (holding that a doctor could be convicted of distributing marijuana under 21 U.S.C. § 841(a) only if jury found that the doctor intended "to act as a pusher rather than a medical professional").

The federal government has not threatened to prosecute the sheriff, and it has not warned the sheriff or the State that compliance with the order would subject them to liability. Moreover, there is no history of similar prosecutions, which weighs strongly against a finding of ripeness. See, *e.g.*, *Stormans, Inc.* v. *Selecky*, 586 F.3d 1109, 1125 (9th Cir. 2009) (claim unripe in light of the fact that relevant state commission "has never initiated an action against any" party situated similarly to the plaintiff); *Thomas* v. *Anchorage Equal Rights Comm'n*, 220 F.3d 1134, 1140 (9th Cir. 2000) (similar).

Indeed, the State's prior attempt to invalidate its law was rejected by the United States District Court for the District of Arizona on ripeness grounds.

Arizona sued the United States in May 2011, asking the district court to "determine whether strict compliance and participation by citizens and state employees in the AMMA provides a safe harbor from federal prosecution, or in the alternative, whether the AMMA is preempted by the [CSA] and federal law." Complaint for Declaratory Judgment, *Arizona*

v. *United States*, No. 2:11-cv-01072-SRB, at 7. The district court dismissed the claim, holding that the State had satisfied neither the constitutional nor the prudential requirements for ripeness. *Arizona* v. *United States*, No. CV 11-1072-PHX-SRB, at 5-9 (D. Ariz. 2012).

The federal government's brief in that case emphasized that the U.S. Attorney for Arizona has never indicated that he will prosecute government employees who handle marijuana pursuant to their official duties—much less those who do so pursuant to an official court order. Federal Defendant's Motion to Dismiss and Memorandum of Law in Support Thereof, *Arizona* v. *United States*, No. 2:11-cv-01072-SRB, at 14-15 (D. Ariz. Aug. 1, 2011).

In dismissing the claim for lack of ripeness, the district court noted that "a claim is not ripe unless the plaintiff is 'subject to a *genuine* threat of *imminent* prosecution.'" *Arizona* v. *United States*, No. CV 11-1072-PHX-SRB at 6-7 (quoting *Wolfson* v. *Brammer*, 616 F.3d 1045, 1058 (9th Cir. 2010)). Arizona had "not shown that any action against state employees in this state is imminent or even threatened," and there was no "history of prosecution of state employees for participation in state medical marijuana licensing schemes." *Id.* at 8.

The same conclusion applies here.[2]

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[2] Moreover, it is not even clear that the sheriff is a state official, calling into question the State's ability to invoke his interests in arguing that Article III's requirements are satisfied. The Arizona legislature has designated the sheriff as an "officer[] of the county" (Ariz. Rev. Stat. Ann. § 11-401(A)(1)), and a number of the sheriff's statutory duties indicate his subservience to county officials. For example, all expenses

D. The Sheriff Is Immune From Federal Criminal Liability.

Even if petitioner's claim on behalf of the sheriff were justiciable, petitioner still would not prevail. The sheriff here—and any other state or local official who returns medical marijuana pursuant to state law—is immune from federal prosecution under the Controlled Substances Act. There accordingly would be no conflict between federal and state law.

The statutory immunity is framed in exceedingly broad terms: "no civil or criminal liability shall be imposed by virtue of this subchapter upon * * * any duly authorized officer of any State * * * who shall be lawfully engaged in the enforcement of any law or municipal ordinance relating to controlled substances." 21 U.S.C. § 885(d).

Here, the State cannot dispute that the sheriff is a duly authorized officer under Arizona law and that the sheriff would be enforcing the express terms of the AMMA by executing the state court's order.

All of the courts that have considered this question have agreed with the decision below that Section

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incurred by the sheriff in his official capacity are treated as "county charge[s]" (*id.* § 11-444(A)), and all fees collected by the sheriff are paid into the county treasury, (*id.* § 11-446). The county board of supervisors oversees "the official conduct of all county officers," including the sheriff. *Id.* § 11-251(1). Given these statutory provisions, coupled with the legislature's grant of independent litigating authority to counties (see *id.* §11-201(A)(1)), the county—rather than the State—may be the correct party to this litigation. In addition, the Ninth Circuit has held that county attorneys, who are also "officers of the county" (*id.* § 11-401(A)(1)), do not have standing to bring claims "on behalf of the State." *Thomas* v. *Mundell*, 572 F.3d 756, 762 (9th Cir. 2009).

885(d) confers federal immunity on state officials who return marijuana as part of their official duties. See *Crouse*, 2013 WL 6673708, at *6-7; *City of Garden Grove*, 68 Cal. Rptr. 3d at 663-664; *Kama*, 39 P.3d at 868.

Congress wrote broadly to protect law enforcement officers engaged in their official duties, and that is the precise reason that Section 885(d) applies here.

E. The State's Preemption Claim Is Not Properly Before This Court.

To the extent that the petition advances an argument separate from the claim relating to the sheriff's fear of prosecution—that Arizona has a separate legally-cognizable interest in federal preemption of the AMMA—that claim is not properly before this Court for two separate reasons.

First, the lower court's decision on this issue rests on an independent and adequate state ground. The Arizona Court of Appeals expressly "decline[d] to address the State's suggestion that the Controlled Substances Act preempts and thereby invalidates the AMMA." Pet. App. 12. It found that "several principles restrain[ed]" it "from deciding in this case whether federal law preempts the AMMA." *Ibid*.

Citing state-law doctrines of ripeness and standing, the state court concluded that "the question is not ripe" "[i]n the absence of any actual or threatened prosecution of Okun under federal law, and given the immunity that federal law affords the Sheriff for complying with the return order." Pet. App. 12. The court further explained that "[w]hether Okun's possession of marijuana may subject her to federal prosecution despite her state-law right to possess it

is not a controversy before this court because the federal government has not charged Okun with any crime." *Id*. at 13. And "public policy" did not "require" the court "to decide the abstract issue the State presents." *Ibid*.

The state court also declined to rule on the issue because petitioner failed to preserve it. The court observed that "the State's brief fails to provide any meaningful discussion about federal preemption," and it noted that state law requires an "opening brief" to "present significant arguments supported by authority, otherwise the party abandons and waives the claim." Pet. App. 13.

Petitioner does not see this differently; Arizona candidly admits that "[t]he court of appeals declined to address the State's argument that the court's order to return marijuana to Okun is ordering a violation of federal law." Pet. 3.

Plaintiffs do not, indeed they cannot, challenge the correctness of those state-law determinations. These independent and adequate state grounds of decision bar review by this Court. R. Stern, E. Gressman, S. Shapiro, & K. Geller, *Supreme Court Practice* 192 (8th ed. 2002) ("[P]roblems as to a state court's jurisdiction cannot be entertained unless preserved in the form of a substantial federal question * * *."); *id.* at 195 ("If in fact the judgment rests on a state ground, the Supreme Court has no jurisdiction to review the case.").

Second, the State's claim does not constitute a case or controversy cognizable under Article III.

"No one doubts that a State has a cognizable interest 'in the continued enforceability' of its laws that is harmed by a judicial decision declaring a state law

unconstitutional." *Hollingsworth* v. *Perry*, 133 S. Ct. 2652, 2664 (2013). But Arizona here is seeking a declaration that its law is *invalid* on the ground that it is preempted by federal law.

The Arizona Constitution requires the Governor to "take care that the laws be faithfully executed," Ariz. Const. Art. 5, § 4. Any attempt to overturn or limit enforcement of a state law—absent some more specific injury to the State—would run afoul of that constitutional duty. In other words, to claim that the State has an interest in striking down its law is to claim that the executive has an interest in shirking her obligations under the state constitution.

The Arizona Constitution's command is perhaps even more compelling given that the law at issue was passed by referendum. The Arizona government alleges that it will suffer an injury if it is required to enforce a law that was directly enacted by its own citizens—the very citizens whom that government claims to represent.

Article III "limit[s] the federal judicial power 'to those disputes which confine federal courts to a role consistent with a system of separated powers and which are traditionally thought to be capable of resolution through the judicial process.'" *Valley Forge Christian College* v. *Americans United for Separation of Church and State, Inc.*, 454 U.S. 464, 472 (1982) (quoting *Flast* v. *Cohen*, 392 U.S. 83, 97 (1968)). This case presents a textbook example of a dispute better resolved by democratic deliberation than by judicial decree.

Likewise, the State has no legally-cognizable interest in protecting Ms. Okun from the risk of prosecution under the federal CSA. Respondent is not a

citizen of Arizona and is fully capable of deciding for herself whether the risk of prosecution is sufficiently substantial to warrant seeking a judicial determination regarding the status of her impounded marijuana.

And any such claim by respondent or on her behalf would run headlong into the ripeness barrier just discussed. The same Article III considerations that preclude a finding of ripeness based on the sheriff's interest also precludes a finding that respondent has a ripe claim.

Perhaps if the United States sought to challenge State medical marijuana laws, it would have standing to raise a preemption argument. But the federal government has not raised such a claim; instead of challenging state laws, federal authorities have adjusted their enforcement of the CSA.

In sum, Arizona cannot demonstrate that the enforcement of state law will cause it injury. The State's lack of any permissible interest in overturning state law, the availability of better-situated plaintiffs, and the infinitesimal risk of the sheriff's prosecution—Arizona points to no prosecutions ever, anywhere, of police in any comparable context—demonstrate that Arizona cannot satisfy the requirements of Article III in this case.

Even if the Court were to reach the State's nonjusticiable claim that its own law is pre-empted, it would reject petitioner's preemption argument.

In adopting the Controlled Substances Act, Congress disclaimed any intent to "occupy the field" on controlled substances "unless there is a positive conflict" between state and federal law "so that the two cannot consistently stand together." 21 U.S.C. § 903.

The question, therefore, is whether compliance with both laws is impossible.

"Impossibility pre-emption is a demanding defense." *Wyeth* v. *Levine*, 555 U.S. 555, 573 (2009). Petitioners must show more than "[t]he existence of a hypothetical or potential conflict." *Rice* v. *Norman Williams Co.*, 458 U.S. 654, 659 (1982). Rather, the state and federal laws must be in "irreconcilable conflict," such that compliance with both sets of laws is impossible. *Ibid.*

The state court's order does not require a violation of the Controlled Substances Act because Arizona is not obligated under the Controlled Substances Act to deny respondent the return of medical marijuana that is not "subject to seizure or forfeiture" under the AMMA. Ariz. Rev. Stat. Ann. § 36-2811(G). Certainly nothing in the AMMA prevents the *federal government* from enforcing the Controlled Substances Act against respondent. Accord, *Beek* v. *City of Wyoming*, 2014 WL 486612 (Mich. Feb. 6, 2014); *Emerald Steel Fabricators, Inc.* v. *Bureau of Labor and Industries*, 230 P.3d 518, 528 (Or. 2010); *Qualified Patients Ass'n* v. *City of Anaheim*, 187 Cal. App. 4th 734, 758-759 (Cal. Ct. App. 2010).

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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