

**MOTION TO DISMISS FOR LACK OF JURISDICTION FOR U.S. DISTRICT COURT**  
(based on Attorney Allison Margolin’s motion) - Packet

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We are freely offering this information on jurisdiction gleaned from our research. We are not attorneys and are not offering this as legal advice or legal counsel. The Motion is based on the motion filed by Attorney, Allison Margolin. Consult with your attorney.

Common Sense Law, POB 6528, Santa Rosa, CA 95406 – For mail response include SASE.

Email: commonsenselaw@yahoo.com

Download copies of this packet and other articles at website: [www.commonsenselaw.com](http://www.commonsenselaw.com)

**SAMPLE MOTION FOR FEDERAL DISTRICT COURT**

At greyed Italics: Put in your own information for your motion on template provided, whether the Argument is simple or with an added argument concerning a previous plea agreement.

**Joe Prisoner, #111222**  
**Name County or Federal jail**  
**111 Main St.**  
**Jailtown, CA 99999**

**IN THE UNITED STATES DISTRICT COURT**  
FOR THE **NORTHERN DISTRICT OF CALIFORNIA**

UNITED STATES OF AMERICA,  
Plaintiff,  
vs.  
**Joe Prisoner**  
Defendant

) Case No. **CR-06-9999 ABC**  
) MOTION TO DISMISS FOR LACK OF  
) JURISDICTION  
) Notice of Hearing  
) Date: **February 19, 2007**  
) Time: **1:00 pm**

**MOTION TO DISMISS FOR LACK OF JURISDICTION**

Defendant **Joe Prisoner** hereby moves this Court to dismiss charges for lack of jurisdiction.

**THE PRECEDENT UPON WHICH THE FEDERAL GOVERNMENT'S ABILITY TO GOVERN INTERSTATE COMMERCE, WICKARD V. FILBURN, 317 U.S. 111, IS PREMISED UPON THE FACT THAT THE PLAINTIFF IN THAT CASE REGISTERED IN A FEDERAL PROGRAM; BECAUSE DEFENDANT NEVER TOOK ADVANTAGE AS A REGISTRANT OR RECIPIENT OF BENEFITS OF A FEDERAL PROGRAM, THE WICKARD BASIS OF JURISDICTION IS INAPPLICABLE HERE.**

Wickard v. Filburn, 317 U.S. 111 (1942), is considered to be the controlling precedent upon which Congress has relied to expand the definition of interstate commerce. The common notion is that nearly any aspect of commerce can be regulated if a piece of wheat could be governed by the federal government. In fact, in that case, the federal government had developed a subsidy system to help farmers in a particular field, that of wheat farming. One farmer, the plaintiff in the Wickard, 317 U.S. 111, filed a complaint asking to enjoin enforcement of the Agricultural Adjustment Act of 1938. The Act set up quotas for farmers and imposed penalties for farmers who while taking advantage of the federal subsidies dolled out by the agency, wanted to be immunized from the penalties associated from not following the conditions required to take advantage of these benefits.

Defendant never registered nor received benefits from any federal agency regulating controlled substances. Therefore, the federal government lacks the jurisdictional basis asserted in Wickard, 317 U.S. 111. As the Wickard court wrote, acknowledging the role the plaintiff had in bringing about federal jurisdiction over his activity:

We can hardly find a denial of due process in these circumstances, particularly since it is even doubtful that appellee's burdens under the program outweigh his benefits. It is hardly lack of due process for the Government to regulate that which it subsidizes. 317 U.S. 111 at p. 130.

The Supreme Court clearly states that unregulated "others" exist outside the jurisdiction of the administrative agency.

It is of the essence of regulation that it lays a restraining hand on the self-interest of the regulated and that advantages from the regulation commonly fall to others. Ibid. at p. 129

Defendant is one of the "others", as defendant has never registered for benefit or received benefit from any federal agency regulating controlled substances.

THEREFORE, defendant asks the court to dismiss all charges against defendant and return all property seized or attached in this case.

Respectfully submitted,

**Joe Prisoner**, **January 30, 2007**  
**Joe Prisoner** Date

**Instructions for Prisoners filing the Motion to Dismiss for Lack of Jurisdiction  
in the Federal District Court**

We are freely offering this information on jurisdiction gleaned from our research. We are not attorneys and are not offering this as legal advice or legal counsel. The Motion is based on the motion filed by Attorney, Allison Margolin. First, ask your attorney to file the motion. You may have to do it yourself as *pro se*, if your attorney refuses to do it. If you have signed a plea agreement, use the 3-page motion, which has the first argument dealing with the plea, followed by the simple motion to dismiss for lack of jurisdiction. If no plea agreement has been signed, use the simpler 2-page motion that only addresses the Motion to dismiss for lack of jurisdiction. If you are currently serving your sentence in prison or on probation, you must take into consideration the rules for filing a 2255 or 2241 motion. (see 28 U.S.C. 2241, 2255)

**You fill in the Motion brief with type or pen (see condensed sample motion filled in with italics)**

- replace the italics with your own information (there are about 10 entries)
- Don't forget to enter your case number followed by initials of your judge
- Notice it for hearing on page 1 with date and time. Your judge's Motion and Hearing day, is the day and time you have generally gone for hearing.  
Add at least 2 weeks (14 days) to this weeks Motion and Hearing Day.

**Send Clerk: Most important to at least send the Clerk one original motion if you cannot make copies.**

- if you can make copies:

- 1 Original and 1 copy of completed and signed Motions
- Clerk cover note / Dear Clerk, please return file -stamped copy to me in SASE.  
(Include folded self-addressed stamped envelope – 1 first class stamp will do.)
- Proof of Service original (if you have copy of motion available to send to AUSA)

**You fill in Proof of Service template or make your own: (see sample below filled in with italics)**

- replace the italics with your own information (there are about 8 entries)

If you have enough copies of motions:

**Send the Assistant US Attorney (AUSA) prosecuting your case:**

- Copy of filled-in and signed Motion

**Keep for yourself:**

- 1 filled out Motion copy for your record.
- Proof of Service copy for your record. (if you have enough copies of motions)

*SAMPLE PROOF OF SERVICE*

At Italics: Put in your own information for your motion  
Note: Server can be Defendant and is considered so in this Sample  
If necessary, make your own in printed writing, copied after this sample.

**PROOF OF SERVICE**

I, Joe Prisoner, hereby certify that I properly placed Joe Prisoner's

**MOTION TO DISMISS FOR LACK OF JURISDICTION,**

in an envelope, sealed the envelope and mailed it with First Class postage

at Name of County or Federal Jail,

in Jailtown, California 99999,

on November 7, 2006.

The letter was addressed as follows:

Your Prosecuting Attorney's Name, Assistant U. S. Attorney

A.U.S.A. Office Address 600 Main Street

Metropolis, California 99999

Server's Address:

Joe Prisoner, #111222

Some County or Federal jail

111 Main St.

Jailtown, CA 99999

Joe Prisoner

SIGNATURE

February 7, 2007

DATE

The following 2-page motion is for those who have NOT signed a plea agreement.

(If the person has signed a plea agreement, use the 3-page motion.)

We are freely offering this information on jurisdiction gleaned from our research. We are not attorneys and are not offering this as legal advice or legal counsel. The Motion is based on the motion filed by Attorney, Allison Margolin. First, ask your attorney to file the motion. You may have to do it yourself as *pro se*, if your attorney refuses to do it. If you have signed a plea agreement, use the 3-page motion, which has the first argument dealing with the plea, followed by the simple motion to dismiss for lack of jurisdiction. If no plea agreement has been signed, use the simpler 2-page motion that only addresses the Motion to dismiss for lack of jurisdiction.

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**IN THE UNITED STATES DISTRICT COURT**

FOR THE \_\_\_\_\_ DISTRICT OF \_\_\_\_\_

UNITED STATES OF AMERICA,  
  
                  Plaintiff,  
  
                  vs.  
  
\_\_\_\_\_,  
  
                  Defendant  
  
\_\_\_\_\_

)  
) Case No. \_\_\_\_\_  
)  
) MOTION TO DISMISS FOR LACK OF  
) JURISDICTION  
)  
) Notice of Hearing  
) Date: \_\_\_\_\_  
)  
) Time: \_\_\_\_\_

**MOTION TO DISMISS FOR LACK OF JURISDICTION**

Defendant \_\_\_\_\_ hereby submits motion to  
dismiss charges for lack of jurisdiction.

**THE PRECEDENT UPON WHICH THE FEDERAL GOVERNMENT’S ABILITY TO GOVERN INTERSTATE COMMERCE, WICKARD V. FILBURN, 317 U.S. 111, IS PREMISED UPON THE FACT THAT THE PLAINTIFF IN THAT CASE REGISTERED IN A FEDERAL PROGRAM; BECAUSE DEFENDANT NEVER TOOK ADVANTAGE AS A REGISTRANT OR RECIPIENT OF BENEFITS OF A FEDERAL PROGRAM, THE WICKARD BASIS OF JURISDICTION IS INAPPLICABLE HERE.**

Wickard v. Filburn, 317 U.S. 111 (1942), is considered to be the controlling precedent upon which Congress has relied to expand the definition of interstate commerce. The common notion is that nearly any aspect of commerce can be regulated if a piece of wheat could be governed by the federal government. In fact, in that case, the federal government had developed a subsidy system to help farmers in a particular field, that of wheat farming. One farmer, the plaintiff in the

1 Wickard, 317 U.S. 111, filed a complaint asking to enjoin enforcement of the Agricultural  
2 Adjustment Act of 1938. The Act set up quotas for farmers and imposed penalties for farmers  
3 who while taking advantage of the federal subsidies dolled out by the agency, wanted to be  
4 immunized from the penalties associated from not following the conditions required to take  
5 advantage of these benefits.

6 Defendant never registered nor received benefits from any federal agency regulating  
7 controlled substances. Therefore, the federal government lacks the jurisdictional basis asserted  
8 in Wickard, 317 U.S. 111. As the Wickard court wrote, acknowledging the role the plaintiff had  
9 in bringing about federal jurisdiction over his activity:

10 We can hardly find a denial of due process in these  
11 circumstances, particularly since it is even doubtful that  
12 appellee's burdens under the program outweigh his benefits. It is  
13 hardly lack of due process for the Government to regulate that  
14 which it subsidizes. 317 U.S. 111 at p. 130.

15 The Supreme Court clearly states that unregulated "others" exist outside the jurisdiction  
16 of the administrative agency.

17 It is of the essence of regulation that it lays a restraining  
18 hand on the self-interest of the regulated and that advantages  
19 from the regulation commonly fall to others. Ibid. at p. 129

20 Defendant is one of the "others", as defendant has never registered for benefit or received  
21 benefit from any federal agency regulating controlled substances.

22 THEREFORE, defendant asks the court to dismiss all charges against defendant and return  
23 all property seized or attached in this case.

24 Respectfully submitted,

25 \_\_\_\_\_  
IN PRO SE

The following 3-page motion is for those who HAVE signed a plea agreement.

(If the person has NOT signed a plea agreement, use the 2-page motion.)

We are freely offering this information on jurisdiction gleaned from our research. We are not attorneys and are not offering this as legal advice or legal counsel. The Motion is based on the motion filed by Attorney, Allison Margolin. First, ask your attorney to file the motion. You may have to do it yourself as *pro se*, if your attorney refuses to do it. If you have signed a plea agreement, use the 3-page motion, which has the first argument dealing with the plea, followed by the simple motion to dismiss for lack of jurisdiction. If no plea agreement has been signed, use the simpler 2-page motion that only addresses the Motion to dismiss for lack of jurisdiction

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**IN THE UNITED STATES DISTRICT COURT**

FOR THE \_\_\_\_\_ DISTRICT OF \_\_\_\_\_

UNITED STATES OF AMERICA,  
  
Plaintiff,  
  
vs.  
  
\_\_\_\_\_,  
  
Defendant  
  
\_\_\_\_\_

)  
) Case No. \_\_\_\_\_  
)  
) **MOTION TO DISMISS FOR LACK OF**  
) **JURISDICTION**  
)  
) Notice of Hearing  
) Date: \_\_\_\_\_  
)  
) Time: \_\_\_\_\_

**MOTION TO DISMISS FOR LACK OF JURISDICTION**

Defendant \_\_\_\_\_ hereby submits motion to  
dismiss charges for lack of jurisdiction.

**THE PLEA INTO WHICH THE DEFENDANTS ENTERED DID NOT WAIVE  
THEIR RIGHT TO CHALLENGE THIS COURT’S SUBJECT MATTER  
JURISDICTION.**

The defendant retains his/her right to challenge the subject matter jurisdiction of the  
government despite the waivers included in their plea. According to the Ninth Circuit's decision  
in United States v. Ventre, 338 F.3d 1047 (2003), a valid plea waiving appeal rights does not  
waive a challenge to jurisdiction. "Despite the plea, if the district court lacked jurisdiction to

1 convict, 'the indictment would fail to state an offense against the United States and the district  
2 court would be deprived of jurisdiction." *Ventre*, *Ibid.*, p.1051.

3  
4 In *Ventre*, as in the instant matter, the defendant had entered into a plea agreement waiving  
5 his right to appeal. "Although *Ventre* entered into a valid plea agreement waiving his right to  
6 appeal the conviction, 'he could not by that waiver confer jurisdiction on the district court to  
7 receive the plea.'" *Ruelas*, 106 F.3d 1416 at 1418; cf. *Stock West, Inc. v. Confederated Tribes of*  
8 *Colville Reservation*, 873 F.2d 1221, 1228 (explaining that parties may not waive the court's  
9 subject matter jurisdiction) quoting from *Ventre*, p. 1051. As the *Ventre* court said, "*Ventre* did  
10 not waive his jurisdictional challenge by waiving his statutory right to appeal." *Ventre*, p. 1051,  
11 quoting *Ruelas*, 106 F. 3d at 1418.

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14 **THE PRECEDENT UPON WHICH THE FEDERAL GOVERNMENT'S ABILITY**  
15 **TO GOVERN INTERSTATE COMMERCE, WICKARD V. FILBURN, 317 U.S.**  
16 **111, IS PREMISED UPON THE FACT THAT THE PLAINTIFF IN THAT CASE**  
17 **REGISTERED IN A FEDERAL PROGRAM; BECAUSE DEFENDANT NEVER**  
18 **TOOK ADVANTAGE AS A REGISTRANT OR RECIPIENT OF BENEFITS OF**  
19 **A FEDERAL PROGRAM, THE WICKARD BASIS OF JURISDICTION IS**  
20 **INAPPLICABLE HERE.**

21 *Wickard v. Filburn*, 317 U.S. 111 (1942), is considered to be the controlling precedent upon  
22 which Congress has relied to expand the definition of interstate commerce. The common notion  
23 is that nearly any aspect of commerce can be regulated if a piece of wheat could be governed by  
24 the federal government. In fact, in that case, the federal government had developed a subsidy  
25 system to help farmers in a particular field, that of wheat farming. One farmer, the plaintiff in the  
*Wickard*, 317 U.S. 111, filed a complaint asking to enjoin enforcement of the Agricultural  
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13 of the administrative agency.

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18 benefit from any federal agency regulating controlled substances.

19 THEREFORE, defendant asks the court to dismiss all charges against defendant and return all  
20 property seized or attached in this case.

21  
22 Respectfully submitted,

23 \_\_\_\_\_,  
24 IN PRO SE  
25

PROOF OF SERVICE

I, \_\_\_\_\_, hereby certify that I properly placed  
\_\_\_\_\_ 's **MOTION TO DISMISS FOR LACK OF  
JURISDICTION**, in an envelope, sealed the envelope and mailed it with First Class postage  
at \_\_\_\_\_, in \_\_\_\_\_  
on \_\_\_\_\_, \_\_\_\_\_.

The letter was addressed as follows:

\_\_\_\_\_, Assistant U. S. Attorney  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Server's Address: \_\_\_\_\_  
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SIGNATURE

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PROOF OF SERVICE

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on \_\_\_\_\_, \_\_\_\_\_.

The letter was addressed as follows:

\_\_\_\_\_, Assistant U. S. Attorney  
\_\_\_\_\_  
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