

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION

UNITED STATES OF AMERICA

V.

Case No. B-14-876-1

KEVIN LYNDEL MASSEY,

DEFENDANT

**DEFENDANT KEVIN LYNDEL MASSEY'S SECOND OPPOSED MOTION TO
DISMISS INDICTMENT**

TO THE HONORABLE :

The Defendant, Kevin Lyndel Massey, in the above styled and numbered cause, through his counsel of record, files this Second Opposed Motion to Dismiss Indictment and would show the Court as follows:

I.

The Defendant asks the Court to take judicial notice of the prior motion to dismiss and incorporates those facts into this motion.

II. 18 U.S.C. § 922(g)(1) Violates The Tenth Amendment

The Tenth Amendment provides: the powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people. As this Amendment makes clear, and as the Supreme Court has long-recognized, the federal government is one of enumerated, limited powers. See, e.g., *McCulloch v. Maryland*, 1 *Cranch* 137, 176 (1803). Accordingly, the

federal government may act only where the Constitution so authorizes. *Cf. New York v. United States*, 505 U.S. 144 (1992).

A corollary to this rule is that Congress may not act in areas prohibited to it. As Justice Thomas noted in his concurrence in *Printz v. United States*, 521 U.S. 898, 937 (1997) (Thomas, J., concurring), the Constitution “places whole areas outside the reach of Congress,” such as the First Amendment’s preventing “Congress from ‘prohibiting the free exercise’ of religion or ‘abridging the freedom of speech.’” *Id.* Justice Thomas went on to explain that the “Second Amendment similarly appears to contain an express limitation on the government’s authority,” and stated: This Court has not had recent occasion to consider the nature of the substantive right safeguarded by the Second Amendment. If, however, the Second Amendment is read to confer a personal right to “keep and bear arms,” a colorable argument exists that the federal government’s regulatory scheme, at least as it pertains to the purely intrastate sale or possession of firearms, runs afoul of that Amendment’s protections. *Id.* at 937-38. Although *Printz* dealt with a successful challenge to the Brady Act’s requirement that state law enforcement officers conduct background checks on prospective handgun purchasers, the logic of Justice Thomas’s reasoning is compelling with respect to § 922(g)(1): the Tenth Amendment limits federal power; the Second Amendment specifically prohibits the federal government from infringing the individual right to bear arms; thus, it surely cannot be constitutional for the federal government to prohibit a person’s purely intrastate possession of firearms.

III. CONCLUSION

For the reasons stated above, Mr. Massey respectfully requests that the Court find §922(g)(1) unconstitutional as applied to him and dismiss the pending indictment.

Counsel for the Defendant conferred with Assistant United States Attorney William Hagan about this motion on August 31, 2015. The government is opposed to this motion.

Respectfully Submitted,

/s/

Louis S. Sorola
Texas State Bar Number: 00794990
Federal ID No. 19533
1999 West Jefferson Street
Brownsville, Texas 78520
Telephone: (956) 504-2911
Fax: (956) 544-7766
Attorney for the Defendant

CERTIFICATE OF SERVICE

I certify that a true and exact copy of the Defendant's Second Opposed Motion to Dismiss Indictment was emailed to William Hagan, Assistant United States Attorney on the 5th day of September, 2015.

/s/

Louis S. Sorola

CERTIFICATE OF CONFERENCE

Counsel for the Defendant conferred with Assistant United States Attorney William Hagan about this motion on August 31, 2015. The government is opposed to this motion.

/s/

Louis S. Sorola

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION

UNITED STATES OF AMERICA

V.

Case No. B-14-876-1

KEVIN LYNDEL MASSEY,

DEFENDANT

**ORDER ON KEVIN LYNDEL MASSEY'S SECOND OPPOSED MOTION TO DISMISS
INDICTMENT**

Defendant Kevin Lyndel Massey's Second Opposed Motion to Dismiss

Indictment is hereby:

_____ GRANTED

_____ DENIED

Signed in Brownsville, Texas on this the _____ day of _____, 2015.

United States Judge Presiding