CA NOS. 10-50219, 10-50264

IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA, Plaintiff-Appellee/Cross-Appellant, v. CHARLES C. LYNCH, Defendant-Appellant/Cross-Appellee.	DC NO. CR 07-689-GW

OPPOSITION TO GOVERNMENT'S MOTION TO DELAY ADJUDICATION OF LYNCH'S MOTION TO ENFORCE SECTION 538

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA

HONORABLE GEORGE H. WU
United States District Judge

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Defendant-Appellant/Cross-Appellee Charles C. Lynch, by and through counsel of record Deputy Federal Public Defender Alexandra W. Yates, files his opposition to the Government's Motion for Leave To File Response to Defendant's Section 538 Motion with Fourth Brief on Cross-Appeal, which effectively seeks to delay this Court's adjudication of Mr. Lynch's motion to a point when it may become moot.

This motion is based upon the attached Memorandum of Points and Authorities, Exhibits D through M, all files and records in this case, and any other

information that may be properly brought to the attention of this Court in connection with the consideration of this motion.[1]

Respectfully submitted,

HILARY POTASHNER
Acting Federal Public Defender

DATED: March 23, 2015

By */s Alexandra W. Yates*
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Cross-Appellee

[1] Under this Court's rules, only a motions panel may properly decide whether to grant the relief sought in the government's motion and objected to in this opposition. Although the government's motion is nominally procedural, because of its potential effect on Mr. Lynch's motion, it is actually substantive. Moreover, "[a] procedural motion filed during the pendency of a substantive motion shall be referred to the court unit that is handling the substantive motion." Ninth Cir. Gen. Order 6.3.d.

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

On January 30, 2015, Defendant-Appellant/Cross-Appellee Charles C. Lynch notified the government that its continued expenditure of funds on his medical marijuana prosecution violates Section 538 of Public Law Number 113-235, the Consolidated and Further Continuing Appropriations Act, 2015; the Anti-Deficiency Act, 31 U.S.C. §§ 1341 *et seq.*, 1511 *et seq.*; and Article I, Sections 8 and 9 of the United States Constitution. On February 24, having received no notice from the government that it would comply with the relevant statutory and constitutional provisions, Mr. Lynch filed a motion asking this Court to enforce the law and direct the Department of Justice to cease spending funds on this case.

The government did not file an opposition to Mr. Lynch's motion. Instead, the government filed a motion to refer Mr. Lynch's motion to the merits panel ultimately assigned to hear his case and for leave to file its response several months from now, at the time when it files its final brief on the merits. This Court should reject the government's thinly veiled attempt to divest the Court of jurisdiction to adjudicate Mr. Lynch's motion, which will result in the government's continued violation of the law without oversight or consequence.

II. ARGUMENT

A. Neither the Novelty Nor the Length of Mr. Lynch's Motion Require Referral to a Merits Panel

The government argues that the length and novelty of Mr. Lynch's motion require referral to the merits panel ultimately assigned to hear his case. (*See* Govt. Mot. 4.) Although technically oversized at twenty-six pages (the presumptive limit for motions is twenty pages), Mr. Lynch's motion is not particularly lengthy. Motions panels of this Court have considered far lengthier motions without hesitation. *See, e.g.*, *Townley v. Miller*, CA No. 12-16881, Dkt. No. 14 (granting leave to file forty-page motion); *In Defense of Animals v. U.S. Dept. of Interior*, CA No. 10-16715, Dkt. No. 14 (granting leave to file thirty-six-page motion). There is no reason why a motions panel will be unable to address Mr. Lynch's minimally-oversized motion.

As to novelty, the government claims, without citation, that "[t]his Court has a long tradition of referring such potentially precedent-setting motions to merits panels." (Govt. Mot. 4.) To the contrary, this Court has a long tradition of deciding important, substantive, and precedent-setting motions via motions panel.

There are, for example, a number of significant motions panel decisions regarding election disputes. In one, a three-judge motions panel, acting on an expedited schedule, heard oral argument and issued a lengthy opinion enjoining and postponing the recall election of then-Governor Gray Davis. *See SW Voter*

Reg. Educ. Proj. v. Shelley, 344 F.3d 882 (9th Cir. 2003), *rev'd en banc*, 344 F.3d 914 (9th Cir.). In another, a three-judge motions panel extensively analyzed the constitutionality of Montana's political contribution limits law, concluded that it likely passed constitutional muster, and stayed a district court ruling to the contrary. *See Lair v. Bullock*, 697 F.3d 1200 (9th Cir. 2012). In a third, a motions panel stayed a district court injunction that would have altered the available options for voters in an upcoming Nevada election. *See Townley v. Miller*, 693 F.3d 1041 (9th Cir. 2012) (order). And in a fourth, a *two-judge* motions panel enjoined Arizona from enforcing its Proposition 200, requiring proof of citizenship and identification at the polls, during the November 2006 election. The issue was sufficiently important that the Supreme Court granted certiorari and vacated the injunction. *See Purcell v. Gonzalez*, 549 U.S. 1 (2006).

This Court has seen fit to resolve other weighty issues via motions panel. In *Coalition for Economic Equity v. Wilson*, a three-judge motions panel reviewed a preliminary injunction of California's Proposition 209, which prohibited race- and gender-based affirmative action programs. After hearing argument, the panel assumed jurisdiction over the appeal itself, deferred ruling on the motion to stay the injunction, set an expedited schedule for additional briefing, and issued a decision vacating the stay and upholding the constitutionality of the proposition. *See Coalition for Econ. Equity v. Wilson*, 110 F.3d 1431 (9th Cir. 1997), *amended*

on denial of reh'g en banc, 122 F.3d 692 (9th Cir.). In *Perry v. Schwarzenegger*, a three-judge motions panel addressed whether proponents of Proposition 8, which amended California's constitution to prohibit same-sex marriage, could be forced to produce internal campaign communications. The panel heard oral argument, granted a stay of the district court order requiring disclosure, and proceeded to decide the case on First Amendment grounds without receiving further briefing. *See Perry v. Schwarzenegger*, 2009 WL 4795511 (9th Cir. 2009), *amended on denial of reh'g en banc*, 591 F.3d 1147 (9th Cir. 2010). In *Dawson v. Mahoney*, a three-judge motions panel denied a stay of execution and request for certificate of appealability on whether a capital defendant was competent to discharge his attorneys and waive further appeals, effectively allowing the defendant's execution to go forward. *See Dawson v. Mahoney*, 451 F.3d 550 (9th Cir. 2006) (order). And in *United States v. Loughner*, a three-judge motions panel heard oral argument and enjoined the Bureau of Prisons from forcibly medicating infamous defendant Jared Lee Loughner to restore his competency, pending resolution of his case by a merits panel eight months later. *See United States v. Loughner*, 2011 WL 2694294 (9th Cir. 2011) (unpublished order).

Additional examples of motions panels deciding significant and precedent-setting cases abound. *See, e.g.*, *Pearson v. Muntz*, 606 F.3d 606 (9th Cir. 2010) (order and op.) (per curiam) (issuing authoritative interpretation of recent en banc

decision on constitutionality of California parole review procedures); *Andreiu v. Reno*, 223 F.3d 1111 (9th Cir. 2000) (deciding in split decision, after supplemental briefing and argument, the post-IIRIRA standard for granting a stay of removal in immigration cases, an issue of first impression), *aff'd on reh'g en banc sub nom. Andreiu v. Ashcroft*, 253 F.3d 477 (9th Cir. 2001); *Medhekar v. U.S. Dist. Ct.*, 99 F.3d 325 (9th Cir. 1996) (per curiam). The *Medhekar* case is of particular note because in it this Court did precisely what the government claims that it can or should not—decided, by motions panel, an issue of first impression in any circuit court on the proper interpretation of a recently enacted federal statute.

These examples are unsurprising. Ninth Circuit Rules and General Orders specifically contemplate that motions panels will resolve significant issues without referral to merits panels. A motions panel has the authority to hear oral argument on a pending motion, and may choose to publish its decision. *See* Ninth Cir. Gen. Order 6.3.g(3) ("Three judges shall participate and decide by majority . . . whenever . . . the panel chooses to publish its order."); *id.* at 6.3.g(4) ("If 2 judges determine that oral argument on a motion is necessary, the panel shall direct the staff attorney to make the necessary arrangements."); Ninth Cir. R. 36-5 ("An order may be specially designated for publication by a majority of the judges acting and when so published may be used for any purpose for which an opinion may be used."); *see also Haggard v. Curry*, 631 F.3d 931, 932 n.1 (9th Cir. 2010)

(amended order and op.) (per curiam) (explaining that if a motions panel "must promptly adjudicate a [motion] during a time of rapid changes in the controlling . . . law, we may publish an opinion and order to clarify or explain the law"). Orders issued by motions panels may be reconsidered by the full court—and in some instances have been reheard en banc. *See* Ninth Cir. Gen. Order 6.11; Ninth Cir. R. 27-10(b); *see, e.g.*, *SW Voter Reg. Educ. Proj. v. Shelley*, 344 F.3d 913 (9th Cir. 2003) (ordering rehearing en banc of decision by three-judge motion panel); *Andreiu v. Reno*, 237 F.3d 1168 (9th Cir. 2000) (same).

Motions panels are authorized to decide not only important legal issues, but case-dispositive ones. *See* Ninth Cir. R. 27-1 adv. cmte. n.3(a) ("The motions panel shall rule on substantive motions, including motions to dismiss, for summary affirmance, and similar motions."); *id.* at n.3(c) ("All three judges of the motions panel participate in ruling on motions that dispose of the appeal."). Motions panels have a particularly well developed history of ruling on motions for preliminary injunctions that, for all intents and purposes, resolve the appeals. *See, e.g.*, *In Defense of Animals v. U.S. Dept. of Interior*, 648 F.3d 1012 (9th Cir. 2011) (per curiam) (explaining appeal became moot after motions panel denied request for injunction to prevent removal of animals from their native habitat; roundup already occurred); *Greenpeace Action v. Franklin*, 14 F.3d 1324, 1329 (9th Cir. 1992) (explaining that, after motions panel refused to stay district court order, merits

panel could not grant plaintiffs effective relief on their claim that an increase in 1991 pollock harvest levels would harm the Stellar sea lion population; 1991 fishing season had ended); *Headwaters, Inc. v. Bureau of Land Mgt.*, 893 F.2d 1012 (9th Cir. 1989) (explaining appeal became moot after motions panel denied request for injunction to prevent logging on public land; all of the timber already had been cut).

In sum, there is nothing to prevent a three-judge motions panel from resolving Mr. Lynch's motion. Indeed, this Court has decided novel issues of national importance in *single-judge* orders. *See, e.g.*, *In re Golinski*, 587 F.3d 956 (9th Cir. 2009) (order) (deciding, as issue of first impression, what showing judicial employee denied health benefits for her same-sex spouse must make to receive back pay); *In re Golinski*, 587 F.3d 901 (9th Cir. 2009) (amended order) (directing Administrative Office of the United States Courts to process federal employee's health benefit forms for her same-sex spouse); *In re Levenson*, 560 F.3d 1145 (9th Cir. 2009) (order) (holding Defense of Marriage Act unconstitutional); *Harris v. Vasquez*, 901 F.2d 724 (9th Cir. 1990) (order) (staying first execution of California's modern death penalty era).

If this Court believes that Mr. Lynch's motion is best addressed by a merits panel, the motions panel may so refer it on an expedited schedule, separate from the substantive cross-appeals. But there is no reason why a motions panel is not

equally capable of resolving the motion—and of doing so in a more timely fashion. Fundamentally, the only difference between a motions panel and a merits panel is that the former must be comprised of three Ninth Circuit judges, whereas the latter may include visiting judges. *Compare* Ninth Cir. Gen. Order 6.2.a ("Visiting judges shall not serve on motions . . . panels."), *with id.* at 3.2.a ("Oral argument panels will be composed of no fewer than 2 members of the Court . . . .").

B. The "Host of Sub-Issues" Suggested by the Government Are Red Herrings

The government claims, "Referral to the merits panel would be particularly prudent because of a host of sub-issues that defendant's motion potentially implicates," including whether Mr. Lynch may raise his claim as a criminal defendant on appeal; whether Section 538 applies to defendants not in compliance with state medical marijuana laws; and the procedure for determining whether a defendant so complied. (Govt. Mot. 4-5.) These so-called sub-issues are red herrings. The government can address each of them in its response to Mr. Lynch's motion. There is no reason why a motions panel will be any less capable of resolving them than a merits panel.

The government further claims that "[s]ome of these issues also implicate and/or overlap with the briefing on the merits of these consolidated appeals, which is another settled basis on which this Court regularly refers motions to the merits panel assigned to hear an appeal." (Govt. Mot. 5.) But only one, not "some," of

these issues is remotely related to the issues the merits panel will resolve in this case—specifically, whether Mr. Lynch complied with state and local laws. And even that issue will not require resolution by a merits panel.

The government writes that "the issue whether defendant complied with State or local law when he operated his medical marijuana store has been heavily briefed by the parties in their first and second briefs on cross-appeal," citing to pages 64 through 73 of the latter brief. (Govt. Mot. 6.) But the government has not actually disputed Mr. Lynch's compliance on appeal. Quite the opposite: at the cited pages of the government's brief, the government acknowledges "the overwhelming and undisputed evidence of defendant's compliance with the rules of his city and county." (Govt. Second Cross-Appeal Br. 72; *see also id.* at 65 ("Defendant offered ample evidence on the undisputed issue of his compliance with local law."); *id.* at 68 (referring to "this undisputed and overwhelming evidence on the topic").) The government then catalogues this "undisputed" evidence, including that Mr. Lynch "[c]omplied with all eight provisions for obtaining Morro Bay's business license, including . . . complying with the California Health and Safety Code"—i.e., state law. (*Id.* at 66.) In addition to these direct concessions of Mr. Lynch's compliance with state and local law, the government potentially has waived any argument that Mr. Lynch was not compliant by failing to respond to the contrary legal arguments made by *amicus*

curiae Americans for Safe Access in support of Mr. Lynch's appeal. (*See* Dkt. No. 42 (explaining, in detail, why Mr. Lynch's dispensary was legal under state law).)

In sum, the issue on appeal will not be Mr. Lynch's undisputed compliance, but rather whether the district court improperly excluded relevant evidence of this compliance at trial. By contrast, to resolve Mr. Lynch's pending motion, this Court (at most) must decide whether Mr. Lynch was sufficiently compliant with California law that he would have been entitled to the medical marijuana affirmative defense in state court—a certainty the government can hardly dispute.

In a similar vein, the government briefly notes that Mr. Lynch's motion refers to trial instructions that precluded the jury from considering his compliance with state law, and that Mr. Lynch has challenged the propriety of these instructions on appeal. (*See* Govt. Mot. 6.) But this is just another red herring. This Court need not address the correctness of any jury instructions to resolve Mr. Lynch's motion. It is undisputed that those instructions prevented the jury from considering a defense analogous to California's affirmative medical marijuana defense. Whether the instructions were correct or not, this Court need only recognize their existence, for purposes of Mr. Lynch's motion.

There will be no duplication of legal issues between Mr. Lynch's motion and the pending cross-appeals. Any "sub-issues" the government raises in its response to Mr. Lynch's motion can be resolved by a motions panel.

C. Lengthy Delay of Mr. Lynch's Motion and Referral to a Merits Panel Will Not Be "Efficient," "Prudent," or "Fair"

The government concludes with the argument that "having the motion handled during the course of the briefing on this appeal will be efficient, prudent, and fair." (Govt. Mot. 7.) It will be none of these things.

Granting the government's motion will be particularly *inefficient* for three reasons. First, it will delay resolution of a motion that may render the cross-appeals moot. If the government may not spend additional funds prosecuting Mr. Lynch, the result should be dismissal of his case. It would be highly inefficient to require the parties to submit additional cross-appeal briefs and assign a panel to review those briefs, only to have that panel rule favorably on Mr. Lynch's motion.

Second, three federal defendants in unrelated cases recently lodged interlocutory appeals in this Court on the meaning of Section 538 and its application to federal medical marijuana prosecutions. *See United States v. Iane Lovan*, CA No. 15-10122; *United States v. Steve McIntosh*, CA No. 15-10117; *United States v. Sinyo Silkeutsabay*, CA No. 15-30045. There is no efficiency in delaying adjudication of Mr. Lynch's motion while simultaneously resolving similar cases.[2]

[2] The first two cases were docketed last week. As interlocutory appeals, their briefing schedules likely will be expedited. *See* Ninth Cir. R. 27-4, 27-12. The third case is under review for its suitability as an interlocutory appeal.

Third, although Mr. Lynch does not believe this Court needs to decide any factual issues to resolve his motion, to the extent this Court ultimately concludes otherwise and wishes to remand to the district court, doing so will take time. It would be more efficient to begin that process now, so that any lingering factual issues are resolved by the time the Court takes up Mr. Lynch's substantive appeal.

In addition to being inefficient, the government's requested relief is imprudent. In the extended interim between Mr. Lynch's filing of his motion and the government's filing of its response, the Department of Justice's unlawful actions—and their chilling effects on California's medical marijuana system—would continue unabated. Government employees would be free to violate statutory and constitutional law without oversight or consequence. Indeed, by continuing to expend resources on Mr. Lynch's case, including resources to prepare the government's final cross-appeal brief, the assigned federal prosecutors would be *committing criminal acts*. (*See* Lynch Mot. 21-22.) This Court has the duty and authority to prevent the unlawful practice of law within the Court's jurisdiction. (*See id.* at 1-2.) This Court should not abdicate its responsibility to decide a ripe issue presented in the proper forum, thereby allowing the government's unlawful conduct to continue unchecked.

The government claims that delay would be prudent because of its need to "coordinate any response to this new law with the Department of Justice's

Criminal Division, and to assure that any position taken is informed and consistent with other cases in this Circuit and around the country." (Govt. Mot. 7.) The government also purports to need time to "examine not only the substantive issues potentially addressed with respect to defendant's claims about this new law, but also the procedural [sub-]issues outlined above." (*Id.* at 7-8.) These claims are disingenuous. The government has set forth its position on Section 538 and each and every one of the sub-issues, following discussion with the Department of Justice, in several cases in district court. (*See, e.g.*, Ex. D, United States' Resp. to Def.'s Mot. To Dismiss, *United States v. Harvey*, E.D. Wash. CR-13-24-TOR, Dkt. No. 549; Ex. E, United States' Resp. to Def.'s Mot. To Dismiss, *United States v. Gregg*, E.D. Wash. CR 13-24-TOR, Dkt. No. 566; Ex. F, Govt. Opp. to Def. Lovan's Mot. To Dismiss, *United States v. Lovan*, E.D. Cal. CR 13-294-LJO, Dkt. No. 90; Ex. G, United States' Opp. to Def. McIntosh's Mot. To Dismiss, *United States v. McIntosh*, N.D. Cal. CR 14-16-MMC, Dkt. No. 94; *see also* Ex. H, United States' Mot. for Ext. of Time, *United States v. Harvey*, Dkt. No. 544 (seeking extension to January 29, 2015, "based upon a Department of Justice request for additional time to further investigate the legislative history so they can have a unified national response"); Ex. I, Stip. To Cont. Filing and Hearing Dates, *United States v. Watson and Walker*, C.D. Cal. CR-12-84-JVS & CR-12-240-JVS, Dkt. No. 647 (seeking extension to March 9, 2015, because "DOJ is in the process of

formulating an official policy memorandum addressing these issues," with a "definitive release date for the DOJ guidance" occurring shortly after February 12).)[3] If the government needs a *short* extension of time to adapt its previously-presented position to this case, Mr. Lynch will not object.[4]

A significant delay in ruling on Mr. Lynch's motion would also be imprudent because litigants and judges in this Circuit are awaiting guidance on whether and how Section 538 impacts federal medical marijuana prosecutions. Mr. Lynch is aware of at least one case where sentencing twice has been continued so that the parties and the district court may benefit from such guidance. (*See* Ex. K, Mot. for Adjournment of Sentencing, *United States v. Pisarski*, N.D. Cal. CR-14-278-RS, Dkt. No. 92; Ex. L, Govt. Resp. to Def. Mot., *id.*, Dkt. No. 95; Ex. M, Docket Sheet, *id.* (indicating at Dkt. No. 96 that sentencing has been rescheduled to June 16, 2015).)

Finally, contrary to what the government would have this Court believe, delaying resolution of Mr. Lynch's motion will be fundamentally unfair. Section

[3] The government filed its position on Section 538 in the *Watson*/*Walker* case under seal. The district court ordered the government to file a public, redacted version no later than March 26. (*See* Ex. J, Order, Dkt. No. 676.) Mr. Lynch will file that document as an exhibit once it becomes available.

[4] Mr. Lynch defers to this Court on whether the government should be permitted to file any further briefing in this matter, including in response to Mr. Lynch's pending motion. As discussed in that motion, the relevant statutes and constitutional amendments prohibit further government expenditures on this case. They contain no exception for participating in litigation over their meaning.

538 prevents the Department of Justice from spending fiscal year 2015 funds on medical marijuana prosecutions. Fiscal year 2015 ends on September 30, 2015. Should this Court grant the government's motion to delay briefing on Mr. Lynch's motion, that briefing would be completed in late June 2015, at the earliest. Realistically, the briefing would be completed many months later, given that the initial two briefs on cross-appeal are 80 and 149 pages long, respectively, and the parties required more than a year of extensions each to complete those briefs. Then, only after Mr. Lynch files his third cross-appeal brief, would his case be placed on calendar for oral argument; the date for argument would be at least ten weeks from his filing. *See* Ninth Cir. Gen. Order 3.3.b. As a practical matter, under the government's proposal, this Court will be unable to decide Mr. Lynch's motion before September 30.

At its heart, the government's motion seeks to delay Mr. Lynch's motion to the point of potential mootness.[5] The government is well aware that its proposal may moot Mr. Lynch's motion, but neglects to mention this crucial fact.

[5] Although Mr. Lynch could argue that the expiration of fiscal year 2015 does not render his motion moot, there is no guarantee that this Court would agree. *See ACLU of Nevada v. Lomax*, 471 F.3d 1010, 1017 (9th Cir. 2006); *Greenpeace Action*, 14 F.3d at 1329-30; *cf. Townley*, 693 F.3d at 1043 (Reinhardt, J., concurring) ("[T]hese attempts to frustrate the jurisdiction of the appellate court, and, necessarily, the Supreme Court—at least until the issue in this case is mooted—itself constitutes a sufficient basis for our exercise of jurisdiction.").

The government also misses the mark when it suggests that an extended delay "would not be unfair to defendant, given that he has already taken months from his already-extended time to file his third brief on cross-appeal to bring this motion based on a law that was passed several months ago." (Govt. Mot. 8.) The government fails to explain how the deadline for Mr. Lynch's third cross-appeal brief is relevant to the timing of his pending motion, which is a direct response to legislation passed by Congress in December. The President signed Congress's bill, including Section 538, on December 16, 2014. Mr. Lynch's counsel then—as expeditiously as possible given the December holidays and counsel's full caseload as a deputy federal public defender—developed, researched, and drafted the arguments presented in Mr. Lynch's motion. As the government is well aware, Mr. Lynch shared his draft briefing with the United States Attorney's Office, to provide the government an opportunity to consider his arguments in the first instance and dismiss or negotiate the case if it saw fit to do so. As a professional courtesy, Mr. Lynch gave the government two weeks to respond, and then extended that time at the government's request. Within twenty-four hours of learning that the government did not intend to resolve his case based on Section 538, Mr. Lynch filed his motion in this Court. In sum, Mr. Lynch moved expeditiously to prepare and file his pending motion, but delayed that filing as a courtesy, to provide the government the opportunity to negotiate or dismiss his

case based on the new law. The government's suggestion that Mr. Lynch's effort to resolve this matter without court intervention should work against him is improper and discourteous.

The government's requested relief will be inefficient, imprudent, and unfair. This Court should resolve Mr. Lynch's motion, which is ripe for review.

III. CONCLUSION

In an obvious attempt to avoid resolution of the issues raised in Mr. Lynch's motion, the government has provided this Court with unsupported suppositions, irrelevant distractions, and false assertions. This Court's precedents are clear: a motions panel is authorized and qualified to address Mr. Lynch's motion. Motions panels decide important issues, including novel questions of statutory construction, with regularity. In this particular case, nothing prevents a motions panel from hearing Mr. Lynch's motion; the merits of his substantive appeal are unrelated to the questions presented in the motion. Moreover, serious concerns about efficiency, prudence, and fairness caution not for a lengthy delay, as the government asserts, but in favor of prompt resolution of the pending motion.

For the foregoing reasons, Defendant-Appellant/Cross-Appellee Charles C. Lynch respectfully requests that this Court deny the Government's Motion for Leave To File Response to Defendant's Section 538 Motion with Fourth Brief on Cross-Appeal, and promptly adjudicate Mr. Lynch's Motion To Enforce Section

538 of the Consolidated and Further Continuing Appropriations Act, 2015, or in the Alternative for a Limited Remand.

CERTIFICATE OF RELATED CASES

Counsel for appellant certifies that she is aware of the following pending cases presenting an issue related to those raised in this brief:

United States v. Steve McIntosh, CA No. 15-10117;

United States v. Iane Lovan, CA No. 15-10122; and

United States v. Sinyo Silkeutsabay, CA No. 15-30045.

DATED: March 23, 2015

/s Alexandra W. Yates
ALEXANDRA W. YATES

CERTIFICATE OF SERVICE

I hereby certify that on March 23, 2015, I electronically filed the foregoing **OPPOSITION TO GOVERNMENT'S MOTION TO DELAY ADJUDICATION OF LYNCH'S MOTION TO ENFORCE SECTION 538** with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

Lorena Macias
LORENA MACIAS

EXHIBIT D

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA, Plaintiff, v. LARRY LESTER HARVEY, Defendant.	)	CR 13-00024-TOR United States' Response to Defendant's Motion to Dismiss and/or Enjoin Prosecution or Other Relief (ECF No. 541)

Plaintiff, United States of America, by and through Michael C. Ormsby, United States Attorney for the Eastern District of Washington, and Earl A. Hicks and Caitlin A. Baunsgard, Assistant United States Attorneys for the Eastern District of Washington, submits the following Response to Defendant's Motion to Dismiss and/or Enjoin Prosecution or Other Relief (ECF No. 541).

The Defendant has not provided the Court with a complete statement of the relevant and material facts in this case pertinent to the issues before this Court. The Defendant wants the Court to believe that this case only involves the growing of 74

marijuana plants for medical purposes and that the reason why he and the other defendants are being prosecuted inappropriately by the United States is their collective misunderstanding of the Washington State law involving medical marijuana. *See* the Washington State Medical Use of Cannabis Act, chapter RCW 69. 51A.(hereinafter MUCA) *cf. State v. Reis*, No.69911-3-I, 2014 WL 1284863, at*2-* 4 (March 31, 2014) (describing the State of Washington's Marijuana Laws). The Defendant then argues that based upon the recent enactment by Congress that this case should be dismissed or the United States should be enjoined (in effect a dismissal) from further prosecution of the defendants because the United States is interfering with the implementation of the Washington State medical marijuana laws. The Defendant further claims that in order to avoid interference with the implementation of the Washington State medical marijuana laws that the United States should not be allowed to prosecute cases in states where medical marijuana is legal. The Defendant argues that it should be up to the state to determine whether or not there has been a violation of the medical marijuana laws and whether or not the defendants should be prosecuted. The defendant seems to imply that all a person needs to do to avoid federal prosecution for manufacturing marijuana in the state of Washington is to claim that he was manufacturing medical marijuana.

Throughout all the pleadings filed by the defense on behalf of all the defendants there is a perpetually false claim that the defendants were acting lawfully under MUCA.

The United States contends that the defendants knowingly violated both state and federal law.

The United States also submits that in order to be provided the protections of MUCA they must comply with all the terms and conditions of the state law. As part of the 2011 amendments to the medical marijuana statutes in the State of Washington, the legislature created a new method for qualifying patients to manufacture and deliver marijuana: the collective garden. The law provides that two to ten patients may participate in the collective garden and a collective garden with 3 or more patients can grow up to 45 marijuana plants and members may collectively possess up to 72 ounces of marijuana. No marijuana from the collective garden may be delivered to anyone other than one of the qualifying patients participating in the collective garden. Although the section concerning collective gardens does not specifically provide for an affirmative defense, it implies one would be available. Subsection (3) provides that “a person who knowingly violates a provision of this subsection (1) of this section is not entitled to the protections of this chapter." *See* RCW 69.51A .085 attached as Exhibit A. Possession of marijuana, even in small amounts, is still a crime in the state of Washington. *See* RCW 69.50.4014. *State v. Fry*, 168 Wn.2d 1, 7, 228 P.3d 1, 2010 Wash.

ADDITIONAL MATERIAL FACTS

On August 9, 2012, state law enforcement officers and federal law enforcement officers executed a state search warrant at Defendant's Rhonda Firestack-Harvey and Larry Harvey's residence. During the search of the residence officers discovered marijuana, a scale, packaging material, records of drug transactions and firearms in the den area. They also found processed marijuana in other locations on the property well as a 75 plant marijuana grow on the property. The state officers seized the records and subsequently turned them over to DEA.

When the records were examined law enforcement saw what they will testify is a record of and expenses involving the sales of marijuana in 2011. *See* Exhibit #1 and #1a (Exhibits marked with an A were also found on a computer seized from the Harvey residence during a forensic search of the computer. Not all of the records found on the computer or seized from the residence will be exhibits used in this pleading). Also found was a record that summarized the amount of marijuana bud that was trimmed from the marijuana plants grown in 2011. *See* Exhibits #2 and #2A. This record is not dated although most of the other records are. All the records with dates are dated in the year 2011. The record indicates the name of the trimmer and the amount of marijuana bud he or she trimmed. There is a column indicating the ounces (labeled z) of bud trimmed, a column headed “el” and a column with dollar amounts paid to the trimmers and for some of them the amount of money paid. Based upon simple math it appears

that "el" is shorthand for estimated pounds. The total for this column is over 162 pounds. This summary record appears to be a summary of numerous other trimming records when looking at all the records in total. *See* Exhibits #3, 3A, 4, 5, 6, 6A, 7, 8, 9A, and 10A. There was also a record indicating that marijuana was sold to other persons. *See* Exhibits #12 and 12A. It appears from a review of all these records that that the defendants possessed more than 72 ounces at one time and that they sold some of this marijuana to people who were not part of any collective garden. It also is apparent that more than 10 people participated in the collective garden based upon the number of identified trimmers. There appear to have been at least 10 trimmers based upon this summary and all the marijuana records in this case. It should be noted that the defense has argued that there are multiple conspiracies because the defendants were required to renew their medical marijuana recommendations each year. This is an indication that they had prior medical marijuana authorizations in effect during 2011.

During the search of the computer numerous photographs were taken of the marijuana grow and the drying of the marijuana. These pictures depict larger than average marijuana plants and contain metadata indicating approximately when the photographs were taken. The metadata indicates that these pictures were put in the computer during 2011. Law enforcement officers familiar with the Harvey property will testify that these are photographs of the Harvey property. *See* Exhibits #13a thru 17A. There are photographs of the processed marijuana drying in an outbuilding on the

defendant's property. *See* Exhibits #18A thru 22A. It is clear by looking at the amount of marijuana in the photographs that the defendants substantially exceeded the maximum of 72 ounces for a collective garden.

Also found during the search warrant and located on the computer was a document indicating "partners" and in an amount advanced to R/L and an amount owed to J/H. *See* Exhibits #11 and 11A. The other 2 initials for the partners are M/R. The United States has information that Defendant, Jason Zucker's wife's name begins with the letter H. This document appears to indicate that this is a for profit marijuana illegal business and not a mistaken attempt to follow MUCA. It is clear that the defendants are hiding behind the medical marijuana laws in Washington in order to profit from their manufacture of marijuana. It is clear that they have violated both state and federal law.

The Consolidated and Further Continuing Appropriations Act of 2015, Pub. L. No. 113-235 (2014) is not intended to protect people who violate state law.

The FY2015 appropriations bill, called the Consolidated and Further Continuing Appropriations Act of 2015, was signed by President Obama on December 16, 2014. The legislation included a rider that states that no funding allocated under the bill to the Department of Justice can be used to prevent states from implementing their own laws related to medical marijuana. Consolidated and Further Continuing Appropriations Act of 2015, Pub. L. No. 113-235 (2014).

Section 538, Title V of Division B of the bill states the following:

> SEC. 538. None of the funds made available in this Act to the Department of Justice may be used, with respect to the States of Alabama, Alaska, Arizona, California, Colorado, Connecticut, Delaware, District of Columbia, Florida, Hawaii, Illinois, Iowa, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nevada, New Hampshire, New Jersey, New Mexico, Oregon, Rhode Island, South Carolina, Tennessee, Utah, Vermont, Washington, and Wisconsin, to prevent such States from implementing their own State laws that authorize the use, distribution, possession, or cultivation of medical marijuana.

Consolidated and Further Continuing Appropriations Act of 2015, Pub. L. No. 113-235 (2014); available at, http://www.gpo.gov/fdsys/pkg/BILLS-113hr83enr/html/BILLS-113hr83enr.htm

The provision is the only place in the appropriations bill that mentions the word marijuana. Lawmakers introduced the provision as an amendment in the House in May 2014. It passed the House in May 2014. The House amendment was included in the final spending bill in December 2014.

Floor statements made by lawmakers in support of the amendment before the law was passed focus on three main issues: (1) preventing federal prosecutions of physicians that prescribe medical marijuana, patients that are prescribed medical marijuana, and distributors of medical marijuana in states that allow medical marijuana; (2) preserving states' rights; and (3) enabling research related to medical marijuana.

On December 9, 2014, Rep. Sam Farr (D-Calif.), a co-sponsor of the House amendment, said in a statement on his website that the amendment "prevents the federal government from using funds to arrest and prosecute medical marijuana patients or

distributors who are in compliance with their state's laws." Medical Marijuana Amendment Included in Spending Bill, Congressman Sam Farr (Dec. 9, 2014), http://www.farr.house.gov/index.php/newsroom/press-releases/1122-medical-marijuana-amendment-included-in-spending-bill Farr also said the amendment "prevents the unnecessary prosecution of patients . . . ." *Ibid*. Farr said the amendment was designed to focus federal dollars on "prosecuting criminals and not patients." Rohrabacher, Farr Hail Medical Marijuana Amendment in Funding Bill, Congressman Dana Rohrabacher (Dec. 16, 2014), http://rohrabacher.house.gov/media-center/press-releases/rohrabacher-farr-hail-medical-marijuana-amendment-in-funding-bill

> In a statement on the House floor on May 29, 2014, Farr said:
>
> This doesn't affect one law, just lists the States that have already legalized it only for medical purposes, only medical purposes, and says, Federal Government, in those States, in those places, you can't bust people.

160 Cong. Rec. H4914, H4984 (daily ed. May 29, 2014) (statement of Rep. Sam Farr), http://www.gpo.gov/fdsys/pkg/CREC-2014-05-29/pdf/CREC-2014-05-29.pdf (p. 72 of pdf)

Rep. Dana Titus (D-Nev.), a co-sponsor of the amendment, said on the House floor on May 29, 2014, that the amendment "simply ensures that patients do not have to live in fear when following the laws of their States and the recommendations of their doctors. Physicians in those States will not be prosecuted for prescribing the substance, and local businesses will not be shut down for dispensing the same. 160 Cong. Rec.

H4914, H4984 (daily ed. May 29, 2014) (statement of Rep. Dana Titus), http://www.gpo.gov/fdsys/pkg/CREC-2014-05-29/pdf/CREC-2014-05-29.pdf (p. 72 of pdf).

Rep. Barbara Lee (D-Calif.), another co-sponsor of the amendment, said the purpose of the amendment was to provide "clarity to patients and businesses" in states that "provide safe and legal access to medicine." 160 Cong. Rec. H4914, H4984 (daily ed. May 29, 2014) (statement of Rep. Barbara Lee), http://www.gpo.gov/fdsys/pkg/CREC-2014-05-29/pdf/CREC-2014-05-29.pdf (p. 72 of pdf).

Lawmakers' statements about the amendment focus on enabling doctors to prescribe medical marijuana and patients to obtain medical marijuana in compliance with state law. They also mention medical marijuana dispensaries and distributors. They do not focus on medical marijuana growers, and they do not mention the Controlled Substances Act.

Rep. Barbara Lee (D-Calif.), a co-sponsor of the amendment, said in a House floor statement on May 29, 2014:

> This amendment will provide much needed clarity to patients and businesses in my home State of California and 31 other jurisdictions that provide safe and legal access to medicine. We should allow for the implementation of the will of the voters to comply with State laws rather than undermining our democracy.

> In States with medical marijuana laws, patients face uncertainty regarding their treatment, and small business owners who have invested millions creating jobs and revenue have no assurances for the future. *It is past time for the Justice Department to stop its unwarranted persecution of medical marijuana and put its resources where they are needed.*

160 Cong. Rec. at H4984 (statement of Rep. Barbara Lee), http://www.gpo.gov/fdsys/pkg/CREC-2014-05-29/pdf/CREC-2014-05-29.pdf (p. 72 of pdf) (emphasis added).

Rep. Thomas Massie (R-Ky.), a supporter of the amendment, said on the House floor on May 29, 2014, that the amendment would enable research about the potential of using cannabidiol, an oil that comes from the cannabis plant, to treat epilepsy, autism, and other neurological disorders. He said:

> We need to remove the roadblocks to these potential medical breakthroughs. This amendment would do that. The Federal Government should not countermand State law. In this case, the absurd result of that is that medical discoveries are being blocked.

160 Cong. Rec. H4914, H4983 (daily ed. May 29, 2014) (statement of Rep. Thomas Massie), http://www.gpo.gov/fdsys/pkg/CREC-2014-05-29/pdf/CREC-2014-05-29.pdf (p. 71 of pdf).

Rep. Earl Blumenauer (D-Ore.), another amendment supporter, said:

> [T]here are a million Americans now with the legal right to medical marijuana as prescribed by a physician. The problem is that the Federal Government is getting in the way. The Federal Government makes it harder for doctors and researchers to be able to do what I think my friend

> from Louisiana wants than it is for parents to self-medicate with buying marijuana for a child with violent epilepsy.
>
> This amendment is important to get the Federal Government out of the way. Let this process work going forward where we can have respect for states' rights and something that makes a huge difference to hundreds of thousands of people around the country now and more in the future.

160 Cong. Rec. at H4984 (statement of Rep. Earl Blumenauer), http://www.gpo.gov/fdsys/pkg/CREC-2014-05-29/pdf/CREC-2014-05-29.pdf pp. 72 of pdf).

The statements show that amendment supporters were primarily interested in preventing prosecutions of physicians who prescribe medical marijuana and prosecutions of patients who are prescribed medical marijuana in states where such actions are legal, as well as owners of licensed medical marijuana dispensaries. The floor statements do not discuss marijuana growers. The statements briefly touch on medical marijuana dispensaries and distributors, but mainly focus on doctors and patients.

On May 29, 2014, the House voted to approve the amendment. The amendment passed 219-189. http://clerk.house.gov/evs/2014/roll258.xml Section 558 of H.R. 4660 uses identical language to Section 538 of the final appropriations bill:

> Sec. 558. None of the funds made available in this Act to the Department of Justice may be used, with respect to the States of Alabama, Alaska, Arizona, California, Colorado, Connecticut, Delaware, District of

> Columbia, Florida, Hawaii, Illinois, Iowa, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nevada, New Hampshire, New Jersey, New Mexico, Oregon, Rhode Island, South Carolina, Tennessee, Utah, Vermont, Washington, and Wisconsin, to prevent such States from implementing their own State laws that authorize the use, distribution, possession, or cultivation of medical marijuana.

H.R. 4660, http://www.gpo.gov/fdsys/pkg/BILLS-113hr4660pcs/pdf/BILLS-113hr4660pcs.pdf

Farr Statement on Rohrabacher-Farr Medical Marijuana Amendment, Congressman Sam Farr (May 30, 2014), http://www.farr.house.gov/index.php/press-releases/1083-farr-statement-on-rohrabacher-farr-medical-marijuana-amendment (emphasis added).

According to the May 30 press release from Farr's office, the amendment was intended to "prevent the federal government from prosecuting medical marijuana patients or distributors who are in compliance with the laws of their state." *Ibid.*

On December 9, 2014, after Congress included the amendment in the final appropriations bill, Farr's office released a statement. Medical Marijuana Amendment Included in Spending Bill, Congressman Sam Farr (Dec. 9, 2014), http://www.farr.house.gov/index.php/newsroom/press-releases/1122-medical-marijuana-amendment-included-in-spending-bill Farr's office said that the amendment "prevents the federal government from using funds to arrest and prosecute medical marijuana patients or distributors who are in compliance with their state's laws." *Ibid.* Farr stated:

> This is great news for medical marijuana patients all across the country. The public has made it clear that they want common sense drug policies. The majority of states have passed reasonable medical marijuana laws but the federal government still lags behind. Our amendment prevents the unnecessary prosecution of patients while the federal government catches up with the views of the American people.
>
> We need to rethink how we treat medical marijuana in this country and today's announcement is a big step in the right direction. Patients can take comfort knowing they will have safe access to the medical care they need without fear of federal prosecution. And all of us can feel better knowing our federal dollars will be spent more wisely fighting actual crimes and not wasted going after patients.

Ibid.

> The amendment would require the federal government to respect state sovereignty over medical marijuana, depriving the Department of Justice of taxpayers' dollars to prevent states from carrying out their medical marijuana laws. Thirty-two states and the District of Columbia are listed in the amendment as having legalized marijuana or its ingredients for medical purposes.

Ibid.

It is clear that there is still a political debate regarding marijuana. This amendment has said nothing about the Controlled Substances Act so it is clear that it is still a violation of federal law to manufacture or distribute marijuana. The new law is intended to help patients and doctors and promote research into the uses of marijuana. It is not intended to protect or shield criminals from federal prosecution. The United States submits that if you are in violation MUCA that you are subject to federal

prosecution as well as state prosecution. There is no way that the manufacture of 74 marijuana large marijuana plants capable of producing pounds of marijuana bud per plant is lawful under MUCA. There is also no way that the sales of marijuana in 2011 or the manufacture of approximately 162 pounds of marijuana or the payment of over $20,000 to people to trim your marijuana plants is lawful under MUCA. This is clearly a for profit marijuana grow operation and a criminal act by people who are trying to set up an affirmative defense to their crimes under state law.

Washington State Medical Marijuana Law

The United States is attaching a copy of the Washington state law regarding Medical Marijuana (now known as Medical Cannabis). This information is available on a public internet site available to the public). *See* Attachment A. This law has previously been implemented by the state and sets out the requirements and authorized amounts of medical marijuana that can be grown and possessed. What is most relevant to the facts of this case is that the defendants were not in compliance with MUCA when they were allegedly growing medical marijuana under Washington State law. The state law only provides them with an affirmative defense if they follow the law. Pursuant to RCWA 69.51A.010 (4)(c) a qualifying patient must be a person who is a resident of the state of Washington who pursuant to RCWA 69.51A.010 (4)(b) has been diagnosed by a health care professional with a terminal or debilitating disease. A person meeting these requirements and the other features of this definition section is then authorized to

possess no more than 15 plants and /or 24 ounces of useable marijuana. RCWA 69.51A.040 (1)(a) and 1(a)(i). A designated provider can also possess the same amount of marijuana if he meets the definition section. *See* RCWA 69.51A.010 (1). A person who is both a designated provider and a qualifying patient can possess or manufacture 30 plants and 48 ounces of useable marijuana. *See* RCWA 69.51A.040 (1)(b).

The State of Washington authorizes Collective Gardens. *See* RCWA 69.51A.085. Collective gardens can have no more than 10 qualifying patients participating who may participate in a single collective garden at one time and the collective garden cannot contain more than 45 plants and 72 ounces of useable marijuana. *See* RCWA 69.51A.085 (1)(a-c). No useable marijuana from the collective garden can be delivered to anyone other than a member of the collective garden. (RCWA 69.51A.085 (1)(e)). This clearly indicates that the distribution or sales of marijuana to persons who are not members of the collective garden is a violation of MUCA. It is also clear that using people in a collective garden who may or may not qualify as medical marijuana patients under MUCA is not in compliance with state law. Nowhere in MUCA does it suggest that people can hire other people and pay them to trim their marijuana plants.

No Tenth Amendment Violation

The Defendant's motion seems to suggest that if a state has or is developing its medical marijuana laws that the state is the only entity that should be allowed to prosecute alleged violations of the state law involving medical marijuana. The first

problem with this claim or suggestion is that all anyone has to do is claim that he is growing medical marijuana and then he is shielded from federal prosecution. The second problem is that this suggestion raises Tenth Amendment issues that have already been decided contrary to Defendants' suggestion.

Claims similar to this have already been presented and rejected by the Supreme Court, the Ninth Circuit and several district judges in the Eastern District of Washington. The Supreme Court has held that, given the Controlled Substance Act's ("CSA's) unequivocal language, "marijuana has 'no currently accepted medical use.'" *United States v. Oakland Cannabis Buyers' Co-op*., 532 U.S. 483, 491 (2001). The Supreme Court has also held that Congress's authority under the Commerce Clause empowers it to prohibit marijuana distribution and possession, even if the prohibited activities are not also illegal under state law. *Gonzales v. Raich* ("Raich I"), 545 U.S. 1 (2005). The Ninth Circuit has held that violators of the CSA are not shielded by the Tenth Amendment, nor do they have a fundamental right to use marijuana for claimed medicinal or other purposes. *Raich v. Gonzales* ("Raich II"), 500 F.3d 850 (9th Cir. 2007). District court judges in the Eastern District of Washington, following Supreme Court and Ninth Circuit precedent, have denied Motions to Dismiss based on claims of a Tenth Amendment violation, holding that Congress had the power to regulate the interstate market for marijuana and to enact the CSA provision prohibiting the manufacture of marijuana, thus, there can be no violation of the Tenth Amendment. In

addition, district court judges in the Eastern District of Washington have held that CSA does not commandeer state legislatures or state officials. *See United States v. Paul E. Ellis*, CR-13-039-JLQ, ECF No. 56 and *United States v. Even Gabriel Barajas-Martinez*, CR-12-146-RMP, ECF No. 65. Defendants' baseless attempts to circumvent well-settled law by challenging the government's charging of violations of federal law are without merit and should be denied.

The Tenth Amendment's reservation of powers "to the States, or to the people" expressly excludes those powers "delegated to the United States," which include "those specifically enumerated powers listed in Article I along with the implementation authority granted by the Necessary and Proper Clause." *United States v. Comstock*, 130 S. Ct. 1949, 1962 (2010); *see also United States v. Jones*, 231 F.3d 508, 515 (9th Cir. 2000) ("[I]f Congress acts under one of its enumerated powers, there can be no violation of the Tenth Amendment."); *New York v. United States*, 505 U.S. 144, 156 (1992) (explaining that Congress's authority under Article I and the powers reserved to the states under the Tenth Amendment are "mirror images of each other"). The Ninth Circuit accordingly held in *Raich II*, on remand from the Supreme Court's decision, that the CSA does not violate the Tenth Amendment, even applied to actions relating to "medical marijuana" that would be legal under state law. *Raich II*, 500 F.3d at 867.

The Supreme Court long ago rejected the suggestion that Congress invades areas reserved to the States by the Tenth Amendment simply because it exercises its authority

under the Commerce Clause in a manner that displaces the States' exercise of their police powers. *Hodel v. Virginia Surface Mining & Reclamation Ass'n, Inc.*, 452 U.S. 264, 291 (1981*); see also United States v. Jones*, 231 F.3d 508, 515 (9th Cir.2000) ("We have held that if Congress acts under one of its enumerated powers, there can be no violation of the Tenth Amendment."). Even though "such congressional enactments obviously curtail or prohibit the States' prerogatives to make legislative choices respecting subjects the States may consider important, the Supremacy Clause permits no other result." *Hodel*, 452 U.S. at 290. Thus, "[i]f a power is delegated to Congress in the Constitution, the Tenth Amendment expressly disclaims any reservation of that power to the States. . .." *New York v. United States*, 505 U.S. 144, 156 (1992). The fact that the activity may be legal under state law has no import because "[t]he Supremacy Clause unambiguously provides that if there is any conflict between federal and state law, federal law shall prevail." *Raich I*, 545 at 29.

Not only has Defendant's Tenth Amendment claim been rejected by the Supreme Court, similar Tenth Amendment arguments have been rejected in other district courts. *See Turner v. United States*, 2012 WL 3848653 (N.D. Ala. Aug. 30, 2012) reconsideration denied, 2012 WL 6186067 (N.D. Ala. Dec. 7, 2012) (the defendant's "reliance on Bond to establish a Tenth Amendment claim is misplaced, because in *Bond* the Supreme Court decided that individuals had standing to challenge statutes under the Tenth Amendment, not that any statute at issue in the case was a violation of the Tenth

Amendment. No decision of the Supreme Court or [the Eleventh Circuit] supports [the] argument that [Title 18 or 21] violate [] the Tenth Amendment"); *United States v. Sanderson*, 2011 WL 6042394 (E.D. Cal. Dec. 5, 2011) ("[e]ven disregarding the procedural bars, defendant's argument lacks merit. Generally speaking, Congress has the power to regulate those purely intrastate activities that, in aggregate, substantially affect interstate commerce").

Here the United States has not assumed any unenumerated powers by this federal prosecution. In *Gonzales v. Raich*, 545 U.S. 1, 5 (2005), the Supreme Court held that the Commerce Clause grants the federal government authority to regulate, prohibit, and prosecute the production or use of even locally grown marijuana used exclusively for medical purposes. *Raich*, 545 U.S. at 5, 9. Because *Raich* holds that the Constitution affirmatively gives the federal government the power to prosecute the cultivation of marijuana that would otherwise be legal under state law, *Raich* also holds, a fortiori, that this power is not reserved to the states under the Tenth Amendment.

It is well-established under United States Supreme Court authority that "[i]f a power is delegated to Congress in the Constitution, the Tenth Amendment expressly disclaims any reservation of that power to the states." *New York v. United States*, 505 U.S. 144, 156 (1992). Since the power to regulate the interstate possession, manufacturing, and distribution of marijuana "is delegated to Congress" through the Commerce Clause, *Raich I*, 545 U.S. at 15, Defendant's allegation that the power to

regulate marijuana in Washington was reserved to Washington through the Tenth Amendment is foreclosed by United States Supreme Court precedent. *New York* at 156. Thus, what amounts to Defendants' Tenth Amendment challenge should not be considered as a valid basis for the dismissal or injunction of further action on this case.

Conclusion

Based upon the above the United States submits that the Defendants' joint motion should be denied.

DATED January 29, 2015.

MICHAEL C. ORMSBY
UNITED STATES ATTORNEY

s/Earl A. Hicks
Earl A. Hicks
Assistant United States Attorney

CERTIFICATION

I hereby certify that on January 29, 2015, I electronically filed the foregoing with the Clerk of the Court and counsel of record using the CM/ECF System.

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA, Plaintiff, v. ROLLAND M. GREGG, Defendant.	)))))))))	CR 13-00024-TOR-4 United States' Response to Defendant's Motion to Dismiss as Required by Act of Congress (ECF No. 553)

Plaintiff, United States of America, by and through Michael C. Ormsby, United States Attorney for the Eastern District of Washington, and Earl A. Hicks and Caitlin A. Baunsgard, Assistant United States Attorneys for the Eastern District of Washington, submits the following Response to Defendant's Motion to Dismiss as Required by Act of Congress (ECF No. 553).

The Defendant, Rolland Mark Gregg, is moving to dismiss the Superseding Indictment filed on May 6, 2014, based upon the Consolidated and Further Continuing Appropriations Act 2015, Section 538, 113 P. L. 235, 128 Stat. 2130, 2014 Enacted

H.R. 83 (enacted December 16, 2014). The Defendant is claiming that this appropriation bill prevents the prosecution of the defendants in this case. The Defendant claims that the continued prosecution of this case violates an Act of Congress. The Defendant's claim is based upon his belief that this prosecution interferes with the State of Washington's implementation of its medical marijuana laws. He claims that the continued prosecution of this case interferes with the State of Washington's independent decision-making authority, the medical health of patients in the State of Washington, the economic development of Washington State, and the State of Washington's efforts to collect tax revenue.

The United States submits that this is not a medical marijuana case and that the Defendant's motion to dismiss should be denied because Section 538 only applies to cases involving medical marijuana and also does not supersede the provisions of the Controlled Substances Act. The United States also incorporates by reference into this response its prior responses, United States' Response to Defendant's Motion to Dismiss and/or Enjoin Prosecution or Other Relief (ECF No. 541) in the case of United States v. Larry Lester Harvey; CR-13-00024-TOR and 13-CR-00140-TOR (*See* ECF No. 549) and the United States' Response to Defendants' Motion to Dismiss and/or Enjoin Prosecution (ECF No. 156) in the case of United States v. Khamlay Silkeutsabay; 13-CR-00140-TOR. (*See* ECF No. 159).

I. The Defendants Do Not Meet the Legal Requirements for Medical Marijuana in the State of Washington and Therefore Are Not Entitled to Rely on Section 538.

The term medical marijuana has not been defined in section 538. It appears from reading section 538 that the state's legal definition of medical marijuana should be relied on. Under the medical marijuana laws of the State of Washington only qualified patients and providers have legal protection from state prosecution or have an affirmative defense if they are in compliance with the state law. *See* Washington State Medical Use of Cannabis Act, chapter RCW 69. 51A(hereinafter MUCA). Under MUCA "medical use of marijuana" "means the production, possession, or administration of marijuana as defined in RCW 69.50 .101(q), (now subsection (s)) for the exclusive benefit of the qualifying patient in the treatment of his or her terminal illness or debilitating medical condition". *See* RCWA 69.51A.010(3). Nowhere in MUCA is medical marijuana authorized to be sold. What is most relevant to the facts of this case is that there is no evidence that any of the Defendants when they were growing marijuana for medical use under Washington State law qualified for an affirmative defense. Pursuant to RCWA 69.51A.010 (4)(c) a qualifying patient must be a person who is a resident of the state of Washington who pursuant to RCWA 69.51A.010 (4)(b) has been diagnosed by a health care professional with a terminal or debilitating disease. A person meeting these requirements and the other features of this definition section is then authorized to possess no more than 15 plants and 24 ounces of useable marijuana. RCWA 69.51A.040 (1)(a)

and 1(a)(i). A designated provider can also possess the same amount of marijuana if he meets the definition section. *See* RCWA 69.51A.010 (1). A person who is both a designated provider and a qualifying patient can possess or manufacture 30 plants and 48 ounces of useable marijuana. *See* RCWA 69.51A.040 (1)(b).

The State of Washington also authorizes Collective Gardens. *See* RCWA 69.51A.085. Collective gardens can have no more than 10 qualifying patients participating in the collective garden and are limited to 45 plants and 72 ounces of useable marijuana. *See* RCWA 69.51A.085 (1)(a-c). It is also required that there is a copy of each qualifying patient's valid documentation (RCWA 69.51A.085 (1)(d)) and no useable marijuana from the collective garden can be delivered to anyone other than a member of the collective garden let alone be sold or traded for labor. (RCWA 69.51A.085 (1)(e)). Although the section concerning collective gardens does not specifically provide for an affirmative defense, it implies one would be available. Subsection (3) provides that "a person who knowingly violates a provision of this subsection (1) of this section is not entitled to the protections of this chapter." *See* RCW 69.51A .085. Possession of marijuana, even in small amounts, is still a crime in the state of Washington. *See* RCW 69.50.4014. *State v. Fry*, 168 Wn.2d 1, 7, 228 P.3d 1, 2010 Wash.

Pursuant to MUCA there is nothing in the medical marijuana laws of Washington that supersedes "Washington State law prohibiting the acquisition, possession,

manufacture, sale, or use of cannabis for non-medical purposes…". *See* RCWA 69.51A.020. If you violate the provisions of MUCA you are therefore subject to state prosecution and can be prevented from providing an affirmative defense.

On April 22 – 23, 2014, the Hon. Fred Van sickle, Senior Judge for the Eastern district of Washington had a pretrial conference and hearing on motions in this case. (ECF Nos. 369 and 370). During the hearing Sgt. Loren Erdman with the Stevens County Sheriff's Office testified regarding his involvement in the seizure of firearms from the Harvey residence. The defense had moved to suppress this evidence because it was seized without being listed in the items to be seized. The United States argued that it was a plain view seizure.

During the hearing, Sgt. Erdman testified that in the den area in the Harvey residence, records that he believed were for drug sale were found and seized. He also indicated that a scale, packaging material and a vacuum sealer were located in the den and seized. (ECF No. 370 at pgs. 141-142).

Erdman, later testified:

> "The totality of what we observed there as far as records, marijuana, processed marijuana, the amount of marijuana being produced, and the possessions of firearms, being loaded in the proximity of the marijuana all took part in our decision there. We seized them (referring to the firearms) under RCW 9.41. .098." (ECF No. 370 at pg.144).

In reference to why the firearms were seized from the house Erdman indicated that medical marijuana is just an affirmative defense. He further

indicated that the manufacturing of marijuana was still a felony. He also testified that he understood that they weren't meeting the requirements of the medicinal marijuana act then the entire process or grow was illegal. (ECF No. 370 at pgs. 159 – 160).

When Sgt. Erdman was asked in cross-examination about seizing currency he indicated,

> "What we determined was that the totality of the circumstances, as far as the number of plants, the size of the plants, the quantity of marijuana, the records that were discovered, it appeared to be a for-profit marijuana grow that was trying to use medicinal-- the Medicinal Marijuana Act as a cover to conduct this business."
>
> And that was our reasoning. And what we observed. That was part of the profits. And some of the records that we observed had dollar amounts related to the strains of marijuana.
>
> It had to do with what we observed as far as the drying racks, labeling the types of marijuana, and the quantity of the drying racks in the shop.
>
> Basically it was the whole totality of what we observed. That was where all of that information came from and that decision was made." (ECF No. 370 at pgs.161 – 162).

It was Sgt. Erdman's view that what he observed that day was an illegal grow operation. (ECF No. 370 at pg.176).

Sgt. Erdman indicated when he was asked why he kept the evidence seized during the State search warrant he answered, "we were going to prosecute the case through the state courts" he also indicated that he had discussed that with the prosecutor. (ECF No. 370 at pg.178).

Clearly, from the testimony of a state law enforcement official it appears that the State of Washington was going to prosecute the defendants for violating the provisions of MUCA. The United States has always maintained that this case is about hiding behind the Washington law involving medical use of marijuana. The Defendants also clearly violated federal law. There is absolutely nothing in the state law that authorizes the sale of marijuana for medical use and therefore, Section 538 does not apply to the facts of this case.

II. Section 538 Does Not Apply to Criminal Prosecutions or Civil Enforcement or Forfeiture Actions The Controlled Substances Act

A. The Controlled Substances ACT

Defendants charged with violations of the Controlled Substances Act ("CSA"), 21 U.S.C. § 801 *et seq.*, have begun filing motions challenging their prosecutions on the ground that the government's expenditure of funds in enforcing the CSA against them violates Section 538.

Section 538 does not bar the use of funds to enforce the CSA's criminal prohibitions or to take civil enforcement and forfeiture actions against private individuals or entities. Section 538 also does not provide a legal defense in enforcement actions against individuals.

Enforcement of the federal drug laws is governed by the Controlled Substances Act, 21 U.S.C. § 801 *et seq.* "Enacted in 1970 with the main objectives of combating drug abuse and controlling the legitimate and illegitimate traffic in controlled substances,

the CSA creates a comprehensive, closed regulatory regime criminalizing the unauthorized manufacture, distribution, dispensing, and possession of substances classified in any of the Act's five schedules." *Gonzales v. Oregon*, 546 U.S. 243, 250 (2006). The purpose of the CSA was to "consolidate various drug laws on the books into a comprehensive statute, provide meaningful regulation over legitimate sources of drugs to prevent diversion into illegal channels, and strengthen law enforcement tools against the traffic in illicit drugs." *Gonzales v. Raich*, 545 U.S. 1, 10 (2005); *see also id.* at 12-13 (noting that "Congress was particularly concerned with the need to prevent the diversion of drugs from legitimate to illicit channels"). "To effectuate these goals, Congress devised a closed regulatory system making it unlawful to manufacture, distribute, dispense, or possess any controlled substance except in a manner authorized by the CSA." *Id.* at 13.

In *Raich*, the Supreme Court held that the application of the CSA provisions criminalizing the manufacture, distribution, or possession of marijuana to intrastate growers and users of medical marijuana did not violate the Commerce Clause. The Court had "no difficulty concluding that Congress had a rational basis for believing that failure to regulate the intrastate manufacture and possession of marijuana would leave a gaping hole in the CSA." 545 U.S. at 22. The Court rejected the argument that states could displace federal regulation of marijuana by approving cultivation and possession of the drug in certain circumstances; to the contrary, "[t]he Supremacy Clause

unambiguously provides that if there is any conflict between federal and state law, federal law shall prevail." *Id.* at 29. Nor do the drug's medical properties exempt it from the CSA's scope. *Id.* at 28 ("[T]he mere fact that marijuana—like virtually every other controlled substance regulated by the CSA—is used for medicinal purposes cannot possibly serve to distinguish it from the core activities regulated by the CSA."); *see also United States v. Oakland Cannabis Buyers' Cooperative*, 532 U.S. 483, 491 (2001) ("In the case of the Controlled Substances Act, the statute reflects a determination that marijuana has no medical benefits worthy of an exception (outside the confines of a Government-approved research project).").

B. Section 538

Section 538 is best read not to prohibit federal criminal prosecutions, civil enforcement actions, or civil forfeiture actions against individuals or entities who are in violation of the CSA. This reading best conforms with the statute's text, and contrary floor statements in the House are insufficient to overcome the plain text.

1. Statutory Text

In construing section 538, "[w]e begin with the statutory text." *DePierre v. United States*, 131 S. Ct. 2225 (2011). Section 538 prohibits expenditure of the Department's 2015 appropriations "to prevent [the listed] States from implementing their own State laws." Several features of this text suggest that it does not bar the Department from prosecuting or pursuing civil enforcement or forfeiture actions against individual or entities that violate the CSA. The text addresses actions directed against *States*, not

individuals. It prohibits the Department from *preventing* the *implementation* of state laws—that is, from impeding the ability of states to carry out their medical marijuana laws, not from taking actions against particular individuals or entities, even if they are acting compliant with state law. And the text does not expressly address federal law, including the CSA, or federal enforcement actions; by contrast, when Congress seeks to withhold funding from the enforcement of federal law or regulations it disfavors, it typically uses much more direct language. *See, e.g.*, Pub.L. 100-404, Title I, Aug. 19, 1988, 102 Stat. 1021.

The text of section 538 is best read not to prohibit the Department from prosecuting, or pursuing civil enforcement or civil forfeiture actions against, individuals or entities who are in violation of Federal law. It is a closer question whether the statute would bar a wide-ranging, categorical policy of enforcement against individuals and entities that comply with state law. But this question would not be presented by prosecutions and enforcement actions that are taken consistent with the Department's recent guidance, under which actions are not to be taken against seriously ill individuals, their individual caregivers, or dispensaries that adhere to state law. The text of section 538 is best read to prohibit the expenditure of the Department's 2015 appropriations on civil litigation regarding state laws authorizing the medical use of marijuana where the state or state officials are a party, or where the status of a state law is challenged, or where the claim is that a state law or regulatory regime is preempted by the CSA.

2. Legislative History

Section 538's legislative history is sparse. The joint explanatory statement accompanying the conference report for the appropriations bill parrots the language of the amendment itself: "Section 538 prohibits the Department of Justice from preventing certain States from implementing State laws regarding the use of medical marijuana." U.S. Congress Joint Explanatory Statement (to Accompany H.R. 83), Consolidated and Further Continuing Appropriations Act 2015, http://docs.house.gov/billsthisweek/20141208/113-HR83sa-ES-B.pdf; also available at 160 Cong. Rec. H9307, H9351 (daily ed. Dec. 11, 2014), https://www.congress.gov/congressional-record/2014/12/11/house-section/article/H9307-1. Nothing in the statement addresses the CSA or suggests that appropriated funds may not be used to enforce its criminal prohibitions. There is no language about the provision in the reports accompanying the bill. *See Garcia v. United States*, 469 U.S. 70, 76 (1984) ("In surveying legislative history we have repeatedly stated that the authoritative source for finding the Legislature's intent lies in the Committee Reports on the bill . . . .").

Several lawmakers, including amendment sponsors, made floor statements supporting and opposing the amendment, but only in the House. There are no floor statements related to the amendment in the Senate. Some of the House floor statements did address criminal prosecutions. For example, Rep. Sam Farr (D-Calif.), a co-sponsor

of the amendment, said that "if you are following State law, you are a legal resident doing your business under State law, the Feds just can't come in and bust you and bust the doctors and bust the patient." 160 Cong. Rec. at H4984 (statement of Rep. Sam Farr), http://www.gpo.gov/fdsys/pkg/CREC-2014-05-29/pdf/CREC-2014-05-29.pdf Rep. Dana Titus (D-Nev.), another co-sponsor, stated: "Physicians in those States will not be prosecuted for prescribing the substance, and local businesses will not be shut down for dispensing the same." 160 Cong. Rec. at H4984 (statement of Rep. Dana Titus), http://www.gpo.gov/fdsys/pkg/CREC-2014-05-29/pdf/CREC-2014-05-29.pdf And Rep. Barbara Lee (D-Calif.), also a co-sponsor, said: "It is past time for the Justice Department to stop its unwarranted persecution of medical marijuana and put its resources where they are needed." 160 Cong. Rec. at H4984 (statement of Rep. Barbara Lee), http://www.gpo.gov/fdsys/pkg/CREC-2014-05-29/pdf/CREC-2014-05-29.pdf Some opponents of Section 538 observed that it could impede the Department's efforts to enforce the CSA. *See, e.g.*, 160 Cong. Rec. H4914, H4983 (daily ed. May 29, 2014) (statement of Rep. Andy Harris) ("There are two problems with medical marijuana. First, it is the camel's nose under the tent; and second, the amendment as written would tie the DEA's hands beyond medical marijuana."), available at http://www.gpo.gov/fdsys/pkg/CREC-2014-05-29/pdf/CREC-2014-05-29.pdf *id.* (statement of Rep. John Fleming) (arguing that although the amendment "wouldn't

change the law, it would just make it difficult, if not impossible, for the DEA and the Department of Justice to enforce the law").

These floor statements are inconsistent with the text of section 538. The floor statements of a handful of legislators in a single House of Congress are not sufficiently authoritative to overcome the best reading of the text. The isolated statements of the two House members who opposed the bill do not shed light on the meaning of the provision. *See Shell Oil Co. v. Iowa Dept. of Revenue*, 488 U.S. 19, 29 (1988) ("This Court does not usually accord much weight to the statements of a bill's opponents. '[T]he fears and doubts of the opposition are no authoritative guide to the construction of legislation.'") (quoting *Gulf Offshore Co. v. Mobil Oil Corp.*, 453 U.S. 473, 483 (1981)); *NLRB v. Fruit & Vegetable Packers & Warehousemen, Local 760*, 377 U.S. 58, 66 (1964) ("[W]e have often cautioned against the danger, when interpreting a statute, of reliance upon the views of its legislative opponents. In their zeal to defeat a bill, they understandably tend to overstate its reach. The fears and doubts of the opposition are no authoritative guide to the construction of legislation.") (internal quotation marks omitted); *NRDC v. EPA*, 526 F.3d 591, 604-605 (9th Cir. 2008) (same).

3. No Repeal of the CSA

Section 538 does not repeal the CSA's criminal prohibitions on the manufacture, distribution, or possession of marijuana for medicinal purposes.

Congress did not explicitly repeal any provision of the CSA in Section 538. In *Posadas v. National City Bank*, the Supreme Court held that "the intention of the legislature to repeal must be clear and manifest." 296 U.S. 497, 503 (1936). Congress does not mention the CSA in Section 538, and lawmakers did not mention the CSA in their floor statements. *See United States v. Batchelder*, 442 U.S. 114, 120 (1979) (legislative history demonstrated no intention to alter the terms of another statute).

If it is not clear that Congress intended to repeal a statute, it may be impliedly repealed only if the two statutes are irreconcilable. *Morton v. Mancari*, 417 U.S. 535, 550 (1974) ("In the absence of some affirmative showing of an intention to repeal, the only permissible justification for a repeal by implication is when the earlier and later statutes are irreconcilable."). Legislative intent to repeal must be manifest in the "'positive repugnancy between the provisions.'" *United States v. Borden Co.*, 308 U.S. 188, 199 (1939) (quoting *Posada*, 296 U.S. at 504); *see also Posadas*, 296 U.S. at 503 ("repeals by implication are not favored"). Section 538 and the CSA are not irreconcilable. Among other things, the federal government can enforce the CSA under the framework set forth in the 2013 Cole Memorandum, the 2011 Cole Memorandum, and the 2009 Ogden Memorandum without interfering with the states' ability to implement their own medical marijuana laws. The two statutes are "fully capable of coexisting." *Batchelder*, 442 U.S. at 122.

4. Rule of Lenity

The rule of lenity does not apply in construing Section 538. Lenity applies only to statutes that create criminal liability. *See United States v. Santos*, 553 U.S. 507, 514 (2008) ("The rule of lenity requires ambiguous *criminal laws* to be interpreted in favor of the defendants subjected to them.") (emphasis added); *Skilling v. United States*, 561 U.S. 358, 410 (2010) ("ambiguity concerning the ambit of *criminal statutes* should be resolved in favor of lenity") (internal quotation marks omitted) (emphasis added). Section 538 is an appropriations provision, not a criminal statute. Even on the broadest reading, it would not make conduct in violation of the CSA lawful; rather, it would at most bar the Federal Government from prosecuting certain offenses. Thus the principles animating the rule of lenity are inapposite. *See United States v. Gradwell*, 243 U.S. 476, 485 (1917) (lenity is based on principle that "before a man can be punished as a criminal under the federal law his case must be plainly and unmistakably within the provisions of some statute") (internal quotation marks omitted).

III. Even Assuming Section 538 Applies to Criminal Prosecutions or Civil Enforcement or Civil Forfeiture Actions, the Defendant Has Not Carried His Burden of Showing That the Prosecution Will Prevent the State from Implementing Its Medical Marijuana Laws.

If Section 538 bars some criminal prosecutions under the CSA, the defendant bears the burden of showing that his prosecution will prevent the state from implementing its

medical marijuana laws, that is, that his conduct was authorized by state law and important to the implementation of that law.

Section 538 does not alter the elements of a CSA offense or provide for an affirmative defense that negates any particular element. Accordingly, the defendant should bear the burden of proving that he is entitled to relief under Section 538. *See, e.g.*, *Smith v. United States*, 133 S. Ct. 714, 719 (2013) (defendant bears burden of establishing date of his withdrawal from conspiracy, because date goes to statute of limitations and does not negate element of the offense); *id*. at 720 ("A statute-of-limitations defense does not call the criminality of the defendant's conduct into question, but rather reflects a policy judgment by the legislature that the lapse of time may render criminal acts ill suited for prosecution."). Indeed, because Section 538 limits funding but does not prohibit or authorize conduct, it presents no triable issue for the jury. At most, the statute bars the government prospectively from spending appropriated funds on actions that would prevent the state from implementing its medical marijuana laws. Notably, it provides no remedy for the defendant if funds are spent in violation of Section 538. Accordingly, the only remedy a defendant should be able to seek is a stay until the funding bar expires. He cannot seek dismissal unless he can demonstrate that the stay will violate his speedy trial or constitutional rights.

The defendant bears the burden of proof rests on the plain language of the statute, which does not place the burden on the Department of Justice. *Compare Gonzales v. O*

Centro Espirita Beneficente Uniao Do Vegetal, 546 U.S. 418, 424 (2006) (Religious Freedom Restoration Act explicitly places burden on government of demonstrating that prohibiting use of controlled substance in religious ceremony represents the least restrictive means of advancing a compelling government interest); 42 U.S.C. § 2000bb-1. Moreover, the defendant is in the best position to explain why his conduct is authorized by state law, and why his federal prosecution will prevent the implementation of state law. For example, the defendant can produce proof, if any, that he has complied with state licensing requirements, and he can best explain how his cultivation or distribution of marijuana is integral to the state's implementation of its medical marijuana laws. In addition, because the defendant is attempting to thwart a lawful CSA prosecution on a ground unrelated to his guilt or innocence, as the moving party, he should bear the burden of proof. *United States v. Villareal*, 707 F.3d 942, 953 (8th Cir. 2013) (defendant bears burden on motion to dismiss for speedy trial violation); *cf. INS v. Abudu*, 485 U.S. 94 (1988) (movant bears burden on motion to reopen deportation proceeding, just as movant bears burden on new trial motion). Note that because Section 538 refers only to State law, it should not be sufficient that the defendant has complied with a local ordinance unless that compliance, in turn, makes him compliant with State law.

IV. Appeals and Review

Section 538 should not bar the government from participating in post-conviction appeals or collateral review of a conviction and sentence that have already been

memorialized in a judgment. By its terms, Section 538 bars the prospective expenditure of funds to prevent implementation of state medical marijuana laws. It does not purport to unwind past enforcement actions.

Consequently, if a court determines that the Department of Justice may not spend any of its 2015 appropriations on the case, it should stay proceedings until the restriction expires.

Finally, the Department is permitted to use appropriated funds to pay for attorneys to litigate the meaning and effect of Section 538, even if a court ultimately rules that the Department cannot continue to prosecute a case. The Department's litigation efforts in opposition to a Section 538 motion do not prevent implementation of a state law but relate to the meaning of a federal law. The situation is analogous to the principle that a federal court always has jurisdiction to decide whether it has jurisdiction. *United States v. Ruiz*, 536 U.S. 622, 628 (2002) (citing *United States v. United Mine Workers of America*, 330 U.S. 258, 291 (1947)); *Armstrong v. Armstrong*, 350 U.S. 568, 574 (1956).

Conclusion

Based upon the above, the Defendant's Motion should be denied.

DATED February 9, 2015.

MICHAEL C. ORMSBY
UNITED STATES ATTORNEY

s/Earl A. Hicks
Earl A. Hicks
Assistant United States Attorney

CERTIFICATION

I hereby certify that on February 9, 2015, I electronically filed the foregoing with the Clerk of the Court and counsel of record using the CM/ECF System.

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IN THE UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, Plaintiff, v. IANE LOVAN, Defendant.	CASE NO. 1:13 CR 294 LJO-SKO GOVERNMENT'S OPPOSITION TO DEFENDANT LOVAN'S MOTION TO DISMISS THE INDICTMENT Date : March 9, 2015 Time: 8:30 a.m. Courtroom: Hon. Lawrence J. O'Neill

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1. Procedural and Factual Background

The indictment charges defendant Lovan and four co-defendants with conspiring to manufacture marijuana and with a substantive count of manufacturing marijuana. Both counts also allege that 1,000 or more marijuana plants were involved in the charged offense. Defendant Lovan has moved for the dismissal of the indictment on two grounds; first that recently passed legislation bars the Department of Justice from proceeding in this case (2014 Consolidated and Further Continuing Appropriations Act of 2015, Pub. L. No. 113-235, tit. V, div. B, § 538 – subsequently § 538) and second, that marijuana's designation as a Schedule I controlled substance lacks any rational basis, is arbitrary, and violates the due process clause of the Fifth Amendment. The government will address those legal arguments below.

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The government and the defense do not appear to have any fundamental disagreement regarding the facts.[1] At 6:30 a.m., on July 16, 2013, federal and local law enforcement officers executed a federal search warrant at a roughly 60 acre parcel of land in rural Sanger, Ca. Approximately 30,000 marijuana plants were being grown at the property with other crops surrounding the marijuana and concealing it from casual observation. Approximately 21 people were found on the property.

When the officers executed the warrant, defendant Lovan hid behind a car which was parked alongside a field where some of the marijuana was growing. A deputy saw the defendant and called out to him. The defendant then ran into a relatively small area where corn was being grown.

Officers began to search that area for him but could not see any appreciable distance because the corn stalks were tall, very close together, and planted in a haphazard fashion, not in rows. One officer literally stepped on something. That something was a T-shirt, wrapped around a plastic grocery bag which contained a loaded 9mm pistol. The officers then retreated to the dirt road outside the corn patch and shouted to the defendant to surrender. Eventually, after the officers warned that they would release a dog to find the defendant, he stood up in the corn patch. The defendant was roughly ten feet away from the spot where the officer had stopped on the loaded pistol.

Post-Miranda, the defendant admitted that he had traveled form San Diego to Fresno in order to grow marijuana. Defendant Lovan had a California medical recommendation for a maximum of 99 marijuana plants.

2. §538 Does Not Apply to Criminal Prosecutions.

A. Background

On December 16, 2014, President Obama signed the Consolidated and Further Continuing Appropriations Act of 2015, which funds the federal government through September 30, 2015. The legislation includes a rider stating that no funding allocated to the Department of Justice under the Act can be used to prevent certain states from implementing their laws related to medical marijuana. *See*

[1] The government and the defense disagree whether circumstantial evidence establishes that defendant Lovan possessed a loaded 9mm pistol at the marijuana cultivation site. Resolution of that issue does not appear necessary for disposition of this motion to dismiss the indictment.

(2014 Consolidated and Further Continuing Appropriations Act of 2015, Pub. L. No. 113-235, tit. V, div. B, § 538). Section 538 provides that:

None of the funds made available in this Act to the Department of Justice may be used, with respect to the States of Alabama, Alaska, Arizona, California, Colorado, Connecticut, Delaware, District of Columbia, Florida, Hawaii, Illinois, Iowa, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nevada, New Hampshire, New Jersey, New Mexico, Oregon, Rhode Island, South Carolina, Tennessee, Utah, Vermont, Washington, and Wisconsin, to prevent such States from implementing their own State laws that authorize the use, distribution, possession, or cultivation of medical marijuana.

B. The Controlled Substances Act

Enforcement of the federal drug laws is governed by the Controlled Substances Act, 21 U.S.C. § 801 *et seq.* "Enacted in 1970 with the main objectives of combating drug abuse and controlling the legitimate and illegitimate traffic in controlled substances, the CSA creates a comprehensive, closed regulatory regime criminalizing the unauthorized manufacture, distribution, dispensing, and possession of substances classified in any of the Act's five schedules." *Gonzales v. Oregon*, 546 U.S. 243, 250 (2006). The purpose of the CSA was to "consolidate various drug laws on the books into a comprehensive statute, provide meaningful regulation over legitimate sources of drugs to prevent diversion into illegal channels, and strengthen law enforcement tools against the traffic in illicit drugs." *Gonzales v. Raich*, 545 U.S. 1, 10 (2005); *see also id.* at 12-13 (noting that "Congress was particularly concerned with the need to prevent the diversion of drugs from legitimate to illicit channels"). "To effectuate these goals, Congress devised a closed regulatory system making it unlawful to manufacture, distribute, dispense, or possess any controlled substance except in a manner authorized by the CSA." *Id.* at 13.

In *Raich*, the Supreme Court held that the application of the CSA provisions criminalizing the manufacture, distribution, or possession of marijuana to intrastate growers and users of medical marijuana did not violate the Commerce Clause. The Court had "no difficulty concluding that Congress had a rational basis for believing that failure to regulate the intrastate manufacture and possession of marijuana would leave a gaping hole in the CSA." 545 U.S. at 22. The Court rejected the argument that

states could displace federal regulation of marijuana by approving cultivation and possession of the drug in certain circumstances; to the contrary, "[t]he Supremacy Clause unambiguously provides that if there is any conflict between federal and state law, federal law shall prevail." *Id.* at 29. Nor do the drug's medical properties exempt it from the CSA's scope. *Id.* at 28 ("[T]he mere fact that marijuana—like virtually every other controlled substance regulated by the CSA—is used for medicinal purposes cannot possibly serve to distinguish it from the core activities regulated by the CSA."); *see also United States v. Oakland Cannabis Buyers' Cooperative*, 532 U.S. 483, 491 (2001) ("In the case of the Controlled Substances Act, the statute reflects a determination that marijuana has no medical benefits worthy of an exception (outside the confines of a Government-approved research project).").

C. §538

1. Plain Language

By its plain text, Section 538 does not prohibit federal criminal prosecutions of individuals who are in violation of the CSA. *see DePierre v. United States*, 131 S. Ct. 2225 (2011), "[w]e begin with the statutory text"). § 538 only prohibits Justice Department action "to prevent [the listed] States from implementing their own State laws." Although state medical marijuana laws vary, they typically bar criminal penalties for using marijuana and derivative products for medical purposes and provide for access to medical marijuana through licensed dispensaries or regulated home cultivation. *See* http://www.ncsl.org/research/health/state-medical-marijuana-laws.aspx.[2]

The plain language of §538 demonstrates that it is aimed at preventing the Department from interfering with *state* efforts to *implement*, that is, to carry out, laws establishing an authorized system for providing marijuana or marijuana products to ill individuals who have been prescribed the substance by a physician. §538 says nothing about prosecuting individual violators of the CSA, and it therefore does not expressly or implicitly bar the Department from prosecuting individuals who are in violation of federal law. No individual prosecution can be said to interfere with state implementation efforts, and, even taken in the aggregate, individual prosecutions will not nullify state medical marijuana regimes

[2] Two states, Colorado and Washington, also permit recreational use of marijuana. By its terms, Section 538 does not prohibit the use of appropriated funds to prevent the implementation of those laws.

because the Department has indicated (in Deputy Attorney General memorandum[3]) that it does not intend to prosecute seriously ill individuals, their individual caregivers, or dispensaries that adhere to state law. Federal enforcement in the Department's priority areas can co-exist with state efforts to implement laws that authorize the use, distribution, possession, or cultivation of medical marijuana, and thus any particular individual prosecution necessarily does not prevent state implementation efforts.

§538 would likely prohibit civil actions in which states or state officials are a party, where the status of a state law is challenged, or where the claim is that a state law or regulatory regime is preempted by the CSA or violates federal law. The provision may also bar lawsuits aimed at shutting down compliant, state-licensed medical marijuana operations. Because §538 makes no reference to criminal actions, the CSA, or individual defendants, however, it can not be construed to bar the expenditure of appropriated funds on criminal prosecutions.

2. Legislative History

§538's legislative history is sparse. The joint explanatory statement accompanying the conference report for the appropriations bill parrots the language of the amendment itself: "Section 538 prohibits the Department of Justice from preventing certain States from implementing State laws regarding the use of medical marijuana." U.S. Congress Joint Explanatory Statement (to Accompany H.R. 83), Consolidated and Further Continuing Appropriations Act 2015, http://docs.house.gov/billsthisweek/ 20141208/113-HR83sa-ES-B.pdf; also available at 160 Cong. Rec. H9307, H9351 (daily ed. Dec. 11, 2014), https://www.congress.gov/congressional-record/2014/12/11/house-section/article/H9307-1. Nothing in the statement addresses the CSA or suggests that appropriated funds may not be used to enforce its criminal prohibitions. There is no language about the provision in the reports accompanying the bill. *See Garcia v. United States*, 469 U.S. 70, 76 (1984) ("In surveying legislative history we have repeatedly stated that the authoritative source for finding the Legislature's intent lies in the Committee Reports on the bill . . . .").

Several lawmakers, including amendment sponsors, made floor statements supporting the amendment, but only in the House. There are no floor statements related to the amendment in the

[3] Deputy Attorney General Cole's August 2013 marijuana policy memorandum is attached.

Senate. Some of the House floor statements did address criminal prosecutions, although the members appear to have been focused on preventing federal prosecutions of prescribing physicians, their patients, and authorized dispensaries that fill medical marijuana prescriptions—which are already addressed in the Deputy Attorney General memoranda described previously. For example, Rep. Sam Farr (D-Calif.), a co-sponsor of the amendment, said that "if you are following State law, you are a legal resident doing your business under State law, the Feds just can't come in and bust you and bust the doctors and bust the patient." 160 Cong. Rec. at H4984 (statement of Rep. Sam Farr), http://www.gpo.gov/fdsys/pkg/CREC-2014-05-29/pdf/CREC-2014-05-29.pdf. Rep. Dana Titus (D-Nev.), another co-sponsor, stated: "Physicians in those States will not be prosecuted for prescribing the substance, and local businesses will not be shut down for dispensing the same." 160 Cong. Rec. at H4984 (statement of Rep. Dana Titus), http://www.gpo.gov/fdsys/pkg/CREC-2014-05-29/pdf/CREC-2014-05-29.pdf. And Rep. Barbara Lee (D-Calif.), also a co-sponsor, said: "It is past time for the Justice Department to stop its unwarranted persecution of medical marijuana and put its resources where they are needed." 160 Cong. Rec. at H4984 (statement of Rep. Barbara Lee), http://www.gpo.gov/fdsys/pkg/CREC-2014-05-29/pdf/CREC-2014-05-29.pdf.

The floor statements do not address growers, individuals operating outside the bounds of state law, or the distribution of marijuana for recreational use. *See* Addendum (describing floor statements supporting Section 538).

Some opponents of Section 538 observed that it could impede the Department's efforts to enforce the CSA. *See, e.g.*, 160 Cong. Rec. H4914, H4983 (daily ed. May 29, 2014) (statement of Rep. Andy Harris) ("There are two problems with medical marijuana. First, it is the camel's nose under the tent; and second, the amendment as written would tie the DEA's hands beyond medical marijuana."), available at http://www.gpo.gov/fdsys/pkg/CREC-2014-05-29/pdf/CREC-2014-05-29.pdf; *id.* (statement of Rep. John Fleming) (arguing that although the amendment "wouldn't change the law, it would just make it difficult, if not impossible, for the DEA and the Department of Justice to enforce the law"). The Department's position on the construction and scope of Section 538 is inconsistent with these warnings, and we should argue that the isolated statements of two House members do not shed light on the meaning of the provision. *See Shell Oil Co. v. Iowa Dept. of Revenue*, 488 U.S. 19, 29 (1988) ("This

Court does not usually accord much weight to the statements of a bill's opponents. '[T]he fears and doubts of the opposition are no authoritative guide to the construction of legislation.'") (quoting *Gulf Offshore Co. v. Mobil Oil Corp.*, 453 U.S. 473, 483 (1981)); *NLRB v. Fruit & Vegetable Packers & Warehousemen, Local 760*, 377 U.S. 58, 66 (1964) ("[W]e have often cautioned against the danger, when interpreting a statute, of reliance upon the views of its legislative opponents. In their zeal to defeat a bill, they understandably tend to overstate its reach. The fears and doubts of the opposition are no authoritative guide to the construction of legislation.") (internal quotation marks omitted); *NRDC v. EPA*, 526 F.3d 591, 604-605 (9th Cir. 2008) (same).

D. No Repeal of the CSA

The defendant may argue that Section 538 repeals the CSA's criminal prohibitions on the manufacture, distribution, or possession of marijuana for medicinal purposes. It does not.

Congress did not explicitly repeal any provision of the CSA in Section 538. Implied repeals, moreover, are disfavored. *Posadas v. National City Bank*, 296 U.S. 497, 503 (1936). In *Posadas*, the Supreme Court held that "the intention of the legislature to repeal must be clear and manifest." *Id.* Congress does not mention the CSA in Section 538, and lawmakers did not mention the CSA in their floor statements. *See United States v. Batchelder*, 442 U.S. 114, 120 (1979) (legislative history demonstrated no intention to alter the terms of another statute).

If it is not clear that Congress intended to repeal a statute, it may be impliedly repealed only if the two statutes are irreconcilable. *Morton v. Mancari*, 417 U.S. 535, 550 (1974) ("In the absence of some affirmative showing of an intention to repeal, the only permissible justification for a repeal by implication is when the earlier and later statutes are irreconcilable."). Legislative intent to repeal must be manifest in the "'positive repugnancy between the provisions.'" *United States v. Borden Co.*, 308 U.S. 188, 199 (1939) (quoting *Posada*, 296 U.S. at 504). Section 538 and the CSA are not irreconcilable. The federal government can enforce the CSA under the framework set forth in the 2013 Cole Memorandum (see attachment 1) without interfering with the states' ability to implement their own medical marijuana laws. The two statutes are "fully capable of coexisting." *Batchelder*, 442 U.S. at 122.

E. Rule of Lenity

The rule of lenity does not apply in construing §538. Lenity applies only to statutes that create criminal liability. *See United States v. Santos*, 553 U.S. 507, 514 (2008) ("The rule of lenity requires ambiguous *criminal laws* to be interpreted in favor of the defendants subjected to them.") (emphasis added); *Skilling v. United States*, 561 U.S. 358, 410 (2010) ("ambiguity concerning the ambit of *criminal statutes* should be resolved in favor of lenity") (internal quotation marks omitted) (emphasis added). Section 538 is an appropriations provision, not a criminal statute. It does not subject individuals to criminal sanctions, and thus the principles animating the rule of lenity are inapposite. *See United States v. Gradwell*, 243 U.S. 476, 485 (1917) (lenity is based on principle that "before a man can be punished as a criminal under the federal law his case must be plainly and unmistakably within the provisions of some statute") (internal quotation marks omitted).

3. Even Assuming §538 Applies to Criminal Prosecutions, Defendant Lovan Can Not Meet His Burden of Showing That the Prosecution Will Prevent the State from Implementing Its Medical Marijuana Laws.

If §538 bars some criminal prosecutions under the CSA, the defendant bears the burden of showing that his prosecution will prevent the state from implementing its medical marijuana laws, that is, that his conduct was authorized by state law and important to the implementation of that law.

Section 538 does not alter the elements of a CSA offense or provide for an affirmative defense that negates any particular element. Accordingly, the defendant should bear the burden of proving that he is entitled to relief under §538. *See, e.g.*, *Smith v. United States*, 133 S. Ct. 714, 719 (2013) (defendant bears burden of establishing date of his withdrawal from conspiracy, because date goes to statute of limitations and does not negate element of the offense); *id.* at 720 ("A statute-of-limitations defense does not call the criminality of the defendant's conduct into question, but rather reflects a policy judgment by the legislature that the lapse of time may render criminal acts ill suited for prosecution."). Indeed, because Section 538 limits funding but does not prohibit or authorize conduct, it presents no triable issue for the jury. At most, the statute bars the government prospectively from spending appropriated funds on actions that would prevent the state from implementing its medical marijuana laws. Notably, it provides no remedy if funds are spent in violation of §538. Accordingly, the only

remedy a defendant can seek is a stay until the funding bar expires. He cannot seek dismissal unless he can demonstrate that the stay will violate his speedy trial or due process rights.

The conclusion that the defendant bears the burden of proof rests on the plain language of the statute, which does not place the burden on the Department of Justice. *Compare Gonzales v. O Centro Espirita Beneficente Uniao Do Vegetal*, 546 U.S. 418, 424 (2006) (Religious Freedom Restoration Act explicitly places burden on government of demonstrating that prohibiting use of controlled substance in religious ceremony represents the least restrictive means of advancing a compelling government interest); 42 U.S.C. § 2000bb-1. Moreover, the defendant is in the best position to explain why his conduct is authorized by state law, and why his federal prosecution will prevent the implementation of state law. For example, the defendant can produce proof, if any, that he has complied with state licensing requirements, and he can best explain how his cultivation or distribution of marijuana is integral to the state's implementation of its medical marijuana laws. In addition, because the defendant is attempting to thwart a lawful CSA prosecution on a ground unrelated to his guilt or innocence, as the moving party, he should bear the burden of proof. *United States v. Villareal*, 707 F.3d 942, 953 (8th Cir. 2013) (defendant bears burden on motion to dismiss for speedy trial violation); *cf. INS v. Abudu*, 485 U.S. 94 (1988) (movant bears burden on motion to reopen deportation proceeding, just as movant bears burden on new trial motion)

Even assuming his medical recommendation was valid, Defendant Lovan can not demonstrate that his participation in the massive marijuana grow involved in this case was integral to the state's implementation of its medical marijuana law. To the contrary, Fresno County has passed an ordinance banning all marijuana cultivation and that ordinance has withstood challenges in the state court. See Fresno Bee, October 3, 2014; Fresno County's medical marijuana growing ban upheld again; http://www.fresnobee.com/2014/10/03/4159662_fresno-countys-medical-marijuana.html?rh=1

4. This Court Lacks Jurisdiction Over The Claim That Marijuana is Improperly Scheduled and Moreover That Classification Meets The Rational Basis Test

A. Jurisdiction

Defendant claims that there is no rational basis for Congress and the Attorney General, through

his delegatee, the Drug Enforcement Administrator, to treat marijuana as a Schedule I Controlled Substance in light of current scientific and medical research. In essence, the defendant requests that this Court perform a de factor rescheduling of marijuana out of Scheduled I so that they may escape the instant criminal prosecution.

Section 877 of Title 21, United States Code, is a bar the defendant cannot surmount as this Court lacks jurisdiction to grant defendants' motion and reclassify or reschedule marijuana. Section 877 provides, in pertinent part:

> Judicial review
>
> All final determinations, findings, and conclusions of the Attorney General under this subchapter shall be final and conclusive decisions of the matters involved, except that any person aggrieved by a final decision of the Attorney General may obtain review of the decision in the United States Court of Appeals for the District of Columbia or for the circuit in which his principal place of business is located upon petition filed with the court and delivered to the Attorney General within thirty days after notice of the decision. Findings of fact by the Attorney General, if supported by substantial evidence, shall be conclusive.

In *Young v. U.S. Attorney General,* 2013 WL 1934949 (D.D.C. 2013), a federal prisoner sought a writ of mandamus from the district court to compel the Attorney General to respond to the prisoner's petition to reschedule marijuana. Based on § 877, the district court concluded that it lacked subject matter jurisdiction to hear the prisoner's lawsuit. The court reasoned:

> The Attorney General's decision to reclassify marijuana under the Controlled Substances Act ("CSA") is discretionary. See *U.S. v. Wables*, 731 F.2d 440, 450 (7th Cir.1984) (holding "that the proper statutory classification of marijuana is an issue that is reserved to the judgment of Congress and to the discretion of the Attorney General"). Furthermore, judicial review for "any person aggrieved by [the Attorney General's] final decision" is available exclusively in the United States Court of Appeals for the District of Columbia Circuit or other circuit courts. 21 U.S.C. §877; see *Olsen v. Holder*, 610 F.Supp.2d 985, 995 (S.D. Iowa 2009), quoting, *John Doe, Inc., v. Drug Enforcement Admin.*, 484 F.3d 561, 568 (D.C.Cir.2007).

Here, defendant could have petitioned that DEA Administrator to reschedule marijuana, pursuant to 21 U.S.C. § 811(a) (review "on the petition of any interested party'), and, if aggrieved, then sought review from the appropriate court of appeals under § 877. Defendants took no such action. Based on the § 877 and the reasoning in the cases cited in *Young*, this Court lacks jurisdiction to entertain the defendant's motion. Also, the district court for the Eastern District of Washington recently ruled that it had no jurisdiction to address a challenge to the scheduling of marijuana. *United States v. Trujillo*,

F.Supp. 3d – 2014 WL 3728481 (E.D. Wa. 2014).

B. The Classification Is Rational

The defendant's argument in this case adopts and incorporates the defense arguments made in *United States v. Schweder*, E.D.CA. case number 2:11 CCR 449 KJM. Similarly, the government adopts and incorporates the government arguments in that case. For the court's convenience the government has attached two particularly pertinent briefs from that case, document 224 Government's Opposition To Defendants' Motion To Dismiss Indictment, and document 264, Notice of Motion and Motion For Reconsideration [of order granting evidentiary hearing]. The government also notes that two recent district court case have held that the scheduling of marijuana meets the applicable rational basis test. *United States v. Wilde*, - - F.Supp. 3d – 2014 WL 6469024 (N.D. Ca. 2014) (also held that that an evidentiary hearing was not necessary*); United States v. Heyling*, - - F.Supp. 3d – 2014 WL 5286155 (D. Minn. 2014).

Conclusion

The defendant's motion should be denied.

Dated: February 20, 2015

BENJAMIN B. WAGNER
United States Attorney

/s/ Kevin P. Rooney
KEVIN P. ROONEY
Assistant United States Attorney

EXHIBIT G

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA, Plaintiff, v. STEVE MCINTOSH, Defendant.	CASE NO. CR 14-016 MMC **UNITED STATES' OPPOSITION TO DEFENDANT MCINTOSH'S MOTION TO DISMISS INDICTMENT**

BACKGROUND

On September 19, 2012, agents of the Drug Enforcement Administration (DEA), along with state and local law enforcement, executed state search warrants on four marijuana dispensaries (HCC Vermont, HCC Woodley, HCC Fountain, and Happy Days) associated with the charged marijuana conspiracy, in addition to seven indoor marijuana grows, one storage facility, and thirteen residences. The subjects of the warrants had locations in both Los Angeles and San Francisco, California. All three HCC locations (HCC Vermont, HCC Woodley and HCC Fountain) had firearms present at the time of the search warrant. Furthermore, HCC Vermont is located within 1,000 feet of the campus of Bret Harte Preparatory Middle School located at 9301 S Hoover Street, Los Angeles, California 90044. Specifically, Brett Hart Preparatory Middle School is 0.1 miles or 528 feet and 9 inches from HCC Vermont, on the corner of 92nd Street and South Vermont Avenue in Los Angeles, California.

HCC Vermont (the location operated by defendant McIntosh) is in the heart of "Hoover Crip" territory and is covered within the "Figueroa Corridor Safety Zone," as defined by a court judgment granting a permanent injunction against the Hoover Crips. Defendant McIntosh's co-defendant and cousin, Marlin Moore, is a well-documented 59 Hoover Crip gang member and another owner of HCC Vermont. Richard Williams is an HCC Vermont manager and self-admitted 59 Hoover Crip gang member. Two other employees of the dispensary—Reginald Phillips and Donald Wilson—admitted Hoover Crips.

During the execution of the search warrant at HCC Vermont, along with the marijuana and currency, officers seized one Glock 17, 9mm firearm from armed security guard, Alberto Maldonado. Officers also seized a Taurus PT140 .40 caliber handgun from under one of the drawers that contained marijuana. The Brett Hart Preparatory Middle School, which is 0.1 miles or 528 feet and 9 inches from HCC Vermont, was within the effective lethal range of the two types of firearms found on the premises on September 19, 2012.

The two firearms were seized from HCC Vermont, even though several employees, including defendant Moore and Richard Williams, are convicted felons. In addition to the seizure of the guns on the day of the search warrant, officers had previously observed visibly armed customers and security

guards at HCC Vermont on several occasions, including:

- February 10, 2012, officers observed an armed, unknown black male;
- February 15, 2012, officers observed Gemel Moore, an unknown male, and an armed security guard with a badge around his neck sharing what appeared to be a marijuana joint at the rear of HCC Vermont.
- February 17, 2012, officers observed an armed security guard;
- February 29, 2012, officers observed an armed security guard;
- March 6, 2012, officers observed an armed HCC employee with gun visible, but no badge;
- March 7, 2012, officers observed an armed HCC employee with gun visible, but no badge or uniform visible;
- March 8, 2012, officers observed an armed HCC employee with gun visible, but no badge visible;
- March 13, 2012, officers observed Rufus Cobbs with gun visible, but no badge or uniform visible;
- March 21, 2012, officers observed Rufus Cobbs with gun visible, but no badge or uniform visible;
- March 23, 2012, officers observed an armed HCC employee with gun visible, but no badge or uniform visible;
- May 8, 2012, officers observed Alberto Maldonado with gun visible, but no badge visible;
- May 31, 2012, officers observed Alberto Maldonado with gun visible, but no badge or uniform visible;
- June 11, 2012, officers observed an Rufus Cobbs with gun visible and Alberto Maldonado with gun visible walk to the east wall where Alberto Maldonado is seen manipulating the gun in unsafe directions in plain view of 93rd street; and
- September 19, 2012, officers seized a gun from armed security guard, Alberto Maldonado, and officers seized a gun from inside the dispensary.

After having been initially charged via Complaint, Defendants McIntosh, Moore and other

members of the conspiracy were indicted by a federal grand jury on January 9, 2014, for violations of Title 21 U.S.C. § 846 – Conspiracy to Possess with Intent to Distribute a Controlled Substance; Title 21 U.S.C. § 841(a)(1) and 841(b)(1)(A)(vii) – Possession with Intent to Distribute 1,000 or More Marijuana Plants; and Title 21 U.S.C § 860(a) – Possession with Intent to Distribute 1,000 or More Marijuana Plants within 1,000 feet of a School.

Defendant McIntosh now moves to dismiss the indictment, citing to the recent fiscal appropriations bill signed by the President in December 2014. *See* Consolidated and Further Continuing Appropriations Act, 2015, Pub. L. No. 113-235, § 538, 128 Stat. 2130 (2014) (referred to herein as Section 538). He is joined in the motion by defendants Goldberg, Moore and Than. As explained more fully below, Section 538 does not bar the use of funds to enforce the Controlled Substances Act's criminal prohibitions. Specifically, it does not shield defendant McIntosh and his co-conspirators from this federal prosecution.

ARGUMENT

I. Appropriations Bill (Section 538)

On December 16, 2014, President Obama signed the 2015 fiscal year appropriations bill. This legislation included the following rider:

> None of the funds made available in this Act to the Department of Justice may be used, with respect to the States of Alabama, Alaska, Arizona, California, Colorado, Connecticut, Delaware, District of Columbia, Florida, Hawaii, Illinois, Iowa, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nevada, New Hampshire, New Jersey, New Mexico, Oregon, Rhode Island, South Carolina, Tennessee, Utah, Vermont, Washington and Wisconsin, **to prevent such States from implementing their own State laws that authorize the use, distribution, possession, or cultivation of medical marijuana**.

Consolidated and Further Continuing Appropriations Act, 2015, Pub. L. No. 113-235, § 538, 128 Stat. 2130 (2014) (emphasis added).

For purposes of defendant's motion, the language at issue in Section 538 is, of course, "to prevent such States from implementing their own State laws that authorize the use, distribution, possession, or cultivation of medical marijuana." In passing Section 538, Congress did not repeal any portion of the Controlled Substances Act. Nonetheless, defendant claims that this language impliedly

repeals the Controlled Substances Act as it concerns marijuana. As discussed below, this argument is must fail.

II. A Plain Reading of Section 538 Does Not Bar Defendants' Prosecution

The Ninth Circuit has held that in the absence of a statutory definition, a term should be accorded its ordinary meaning. *United States v. Carona*, 660 F.3d 360, 367 (9th Cir. 2011); *United States v. Banks*, 556 F.3d 967, 968 (9th Cir. 2009). To determine a word's plain and ordinary meaning, the court may refer to its standard dictionary definition. *Id.*; *see also Smith v. United States*, 508 U.S. 223, 228 (1993) ("When a word is not defined by statute, we normally construe it in accord with its ordinary or natural meaning."). Unless the statutory language is unclear, courts should not resort to legislative history as an interpretative device.

Moreover, when interpreting statutory language, there is a long standing maxim that: "repeals by implication are not favored." *Tenn. Valley Auth. v. Hill*, 437 U.S. 153, 189 (1978) (*quoting Morton v. Mancari*, 417 U.S. 535, 549 (1974)). In *Posadas v. National City Bank*, the Supreme Court held that "the intention of the legislature to repeal must be clear and manifest." 296 U.S. 497, 503 (1936); *see also United States v. Batchelder*, 442 U.S. 114, 120 (1979) (legislative history demonstrated no intention to alter the terms of another statute). This rule disfavoring repeal by implications "applies with even greater force when the claimed repeal rests solely in an Appropriations Act." *Envtl. Def. Ctr.*, 73 F.3d at 871 (*quoting Tenn. Valley Auth.*, 437 U.S. at 190). There too, "we focus on the language of the rider." *Id.* at 871; *see also DePierre v. United States*, 131 S. Ct. 2225, 2231 (2011)("We begin with the statutory text.").

"In practical terms, this 'cardinal rule' means that 'in the absence of some affirmative showing of an intention to repeal, the only permissible justification for a repeal by implication is when the earlier and later statutes are irreconcilable.'" *Tenn. Valley Auth.* 437 U.S. at 190 (*quoting Mancari*, 417 U.S. at 550). With respect to an appropriations act, "only a 'clear repugnance' between the previous legislation and the appropriations bill warrants a finding that Congress intended to repeal the previous legislation." *Envtl. Def. Ctr.*, 73 F.3d at 871 (*quoting In re Glacier Bay*, 944 F.2d 577, 581 (9th Cir. 1991)).

Here, Congress does not mention the Controlled Substances Act in Section 538, and lawmakers

did not mention the Controlled Substances Act in their floor statements. Furthermore, Section 538 and the Controlled Substances Act are not irreconcilable and there is certainly no clear repugnance. Among other things, the federal government can (and regularly does) enforce the Controlled Substances Act without interfering with the states' ability to implement their own medical marijuana laws. The two statutes are "fully capable of coexisting." *Batchelder*, 442 U.S. at 122.

Section 538 prohibits expenditure of the Department of Justice's 2015 appropriations "to prevent [the listed] states from implementing their own state laws." Several features of this text suggest that it does not bar the government from prosecuting or pursuing civil enforcement or forfeiture actions against individuals or entities that violate the Controlled Substances Act. The text addresses actions directed against states, not individuals. It prohibits the government from preventing the implementation of state laws—that is, from impeding the ability of states to carry out their medical marijuana laws. It does not prohibit the government from taking actions against particular individuals or entities (irrespective of whether they are acting compliant with state law). Moreover, the text does not expressly address the Controlled Substances Act or any federal law, or federal enforcement action. By contrast, when Congress seeks to withhold funding for the enforcement of federal law or regulations it disfavors, it typically uses much more direct language. *See, e.g.*, Pub. L. 100-404, Title I, Aug. 19, 1988, 102 Stat. 1021. In fact, contemporaneous with its passage of Section 538, Congress considered but did not enact a statute that would have clearly barred the enforcement of the Controlled Substances Act against individuals who acted in compliance with State medical marijuana laws. *See* H.R. 1523, 113th Cong.

In *United States v. Firestack-Harvey*, et al., the Eastern District of Washington recently considered and denied an identical motion to dismiss based on Section 538. The Court correctly reasoned as follows:

> Focusing on the plain language of the appropriations rider, the Department of Justice cannot use 2015 fiscal year funds to hinder or impede a state's fulfillment of its laws sanctioning or approving the use, distribution, possession, or cultivation of medical marijuana. Conversely, this rider does not disallow federal use of funds to prosecute persons who are not in compliance with their state's medical marijuana laws because such prosecution does not interfere with sanctioned conduct and otherwise remains illegal under federal law. Moreover, this limitation applies only to the Department's use of 2015 fiscal year funds. **Considering the strong policy against repeal by implication, paired with the plain language of the appropriations rider, federal prosecutorial authority under the CSA remains in effect**.

CR 13-024 (Docket No. 579)(February 12, 2015)(emphasis added.) A copy of that order is attached hereto as Exhibit A.[1]

III. The Defendant Has Not Met His Burden of Showing that this Prosecution Will Prevent the State of California from Implementing its Marijuana Laws

As the movant, defendant McIntosh bears the burden of showing that his conduct was authorized by state law and that his prosecution will prevent the State of California from implementing its medical marijuana laws. *See, e.g.*, *Smith v. United States*, 133 S. Ct. 714, 719 (2013) (defendant bears burden of establishing date of his withdrawal from conspiracy, because date goes to statute of limitations and does not negate element of the offense); *id.* at 720 ("A statute-of-limitations defense does not call the criminality of the defendant's conduct into question, but rather reflects a policy judgment by the legislature that the lapse of time may render criminal acts ill suited for prosecution."); *see also United States v. Villareal*, 707 F.3d 942, 953 (8th Cir. 2013) (defendant bears burden on motion to dismiss for speedy trial violation); *cf. INS v. Abudu*, 485 U.S. 94 (1988) (movant bears burden on motion to reopen deportation proceeding, just as movant bears burden on new trial motion). Moreover, the plain language of Section 538 does not place the burden on the government. *Compare Gonzales v. O Centro Espirita Beneficente Uniao Do Vegetal*, 546 U.S. 418, 424 (2006) (Religious Freedom Restoration Act explicitly

[1] It is noteworthy that the legislative history for Section 538 also does not compel the result the defendant seeks. Section 538's legislative history is sparse. The joint explanatory statement accompanying the conference report for the appropriations bill parrots the language of the amendment itself: "Section 538 prohibits the Department of Justice from preventing certain States from implementing State laws regarding the use of medical marijuana." U.S. Congress Joint Explanatory Statement (to Accompany H.R. 83), Consolidated and Further Continuing Appropriations Act 2015, http://docs.house.gov/billsthisweek/ 20141208/113-HR83sa-ES-B.pdf; also available at 160 Cong. Rec. H9307, H9351 (daily ed. Dec. 11, 2014), https://www.congress.gov/congressional-record/2014/12/11/house-section/article/H9307-1. Nothing in the statement addresses the Controlled Substances Act or suggests that appropriated funds may not be used to enforce its criminal prohibitions. There is no language about the provision in the reports accompanying the bill. *See Garcia v. United States*, 469 U.S. 70, 76 (1984) ("In surveying legislative history we have repeatedly stated that the authoritative source for finding the Legislature's intent lies in the Committee Reports on the bill . . . .").

Several lawmakers, including amendment sponsors, made floor statements supporting and opposing the amendment, but only in the House. There are no floor statements related to the amendment in the Senate. Some of the House floor statements did address criminal prosecutions. *See, e.g.*, 160 Cong. Rec. at H4984 (statement of Rep. Barbara Lee), http://www.gpo.gov/fdsys/pkg/CREC-2014-05-29/pdf/CREC-2014-05-29.pdf. However, a handful of contrary floor statements in House are insufficient to overcome the plain text of the statute.

places burden on government of demonstrating that prohibiting use of controlled substance in religious ceremony represents the least restrictive means of advancing a compelling government interest); 42 U.S.C. § 2000bb-1.

Nowhere in his motion does defendant McIntosh even attempt to explain how this prosecution will prevent the State of California from implementing its medical marijuana laws.

CONCLUSION

Under a plain reading, Section 538 does not bar the instant prosecution. For all of the above reasons, the motion to dismiss should be denied.

Dated: February 27, 2015

Respectfully submitted,

MELINDA HAAG
UNITED STATES ATTORNEY

By: _____/s/_____
Damali Taylor
Assistant United States Attorney

EXHIBIT H

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA, Plaintiff, v. LARRY LESTER HARVEY, Defendants.	)	13-CR-00024-TOR-2 United States' Motion for Extension of Time to File Response Date of Hearing: 02/20/2015 @ 6:30 p.m. Without Oral Argument

Plaintiff, United States of America, by and through Michael C. Ormsby, United States Attorney for the Eastern District of Washington, and Earl A. Hicks and Caitlin A. Baunsgard, Assistant United States Attorneys for the Eastern District of Washington, respectfully submits this Motion for Extension of Time to File Response to Defendant's Motion to Dismiss and/or Enjoin Prosecution and Other Relief. ECF No. 541.

The United States seeks a seven day continuance, until January 29, 2015, based upon a Department of Justice request for additional time to further investigate the legislative history so they can have a unified national response. This request was made

after the Department of Justice became aware of the issues raised after review of the Defendant's Motion to Dismiss and/or Enjoin Prosecution and Other Relief. ECF No. 541.

The United States attempted to contact counsel Robert Fischer but was informed that he was out of the office. The United States believes based on prior conversations with Mr. Fischer that he may be out of the country and is not able to be contacted at this time.

DATED January 22, 2015.

MICHAEL C. ORMSBY
UNITED STATES ATTORNEY

s/Earl A. Hicks
Earl A. Hicks
Assistant United States Attorney

CERTIFICATION

I hereby certify that on January 22, 2015, I electronically filed the foregoing with the Clerk of the Court and counsel of record using the CM/ECF System which will send notification of such filing to the following, and/or I hereby certify that I have mailed by United States Postal Service the document to the following non-CM/ECF participant(s):

Robert R. Fischer, Attorney for Larry Lester Harvey

s/Earl A. Hicks
Earl A. Hicks
Assistant United States Attorney

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA, Plaintiff, vs. LARRY LESTER HARVEY, Defendants.	)))))))))	13-CR-00024-TOR-2 Order Granting United States' Motion for Extension of Time to File Response

THIS MATTER coming before the Court upon motion by the United States for an Order for Extension of Time to File Response to Defendant's Motion to Dismiss and/or Enjoin Prosecution and Other Relief, the Court having considered the motion and the Court being fully advised in the premises,

IT IS HEREBY ORDERED that the United States' Motion for Extension of Time to File Response is granted. The United States response to Defendant's Motion to Dismiss and/or Enjoin Prosecution and Other Relief is now due on or before January 29, 2015.

IT IS SO ORDERED this _____day of January 2015.

_____
Honorable Thomas O. Rice
United States District Judge

EXHIBIT I

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UNITED STATES OF AMERICA

UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, Plaintiff, v. BRUCE ANDREW WATSON, and JOHN MELVIN WALKER, et al., Defendants.	No. SA CR 12-84-JVS No. SA CR 12-240-JVS STIPULATION TO CONTINUE FILING AND HEARING DATES

Plaintiff United States of America, by and through its counsel of record, Assistant United States Attorney Kevin M. Lally, defendant Nicholas Martin Butier, by through his counsel of record, Deputy Federal Public Defender Jesse Gessin, defendant Michael Alan Nixon, by and through his counsel of record, John D. Early, Esq., defendant Alan David Nixon, by and through his counsel of record, Marri B. Derby, Esq., defendant John Eugene Scandalios, by and through his counsel of record, Daniel McCurrie, Esq., and defendant Bruce Andrew Watson, by and through his counsel of record, Charles Spagnola, Esq.,

jointly request an order to continue the filing dates and the motions hearing date for defendant Butier's Motion for Declaratory Judgment (CR 629), which was joined by defendants Michael Nixon (CR 636), Alan Nixon (CR 638), Scandalios[1] (CR 641), and Watson[2] (CR 56), and the Court's Order to Show Cause Re: Section 538 of the Consolidated and Further Continuing Resolution Act ("OSC") (CR 639).

The central issues presented by defendant Butier's motion and the Court's supplemental OSC are: (1) whether the government can continue with its prosecution in the above-referenced cases given the rider to the Consolidated and Further Continuing Appropriations Act of 2015 ("CFCAA"), which states that no funding allocated to the Department of Justice ("DOJ") under the CFCAA can be used to prevent states from implementing their laws related to medical marijuana; and (2) if not, whether the Court can proceed without the government as an active party.

DOJ is in the process of formulating an official policy memorandum addressing these issues. The memorandum is expected to be released in the very near future. To allow for DOJ to finalize its policy and for the government to prepare responses that properly conform with that policy, the parties jointly request the filing and hearing dates on defendant Butier's Motion for Declaratory Judgment and the Court's OSC be continued as follows:

---

[1] Michael Nixon, Alan Nixon, Butier, and Scandalios are defendants in United States v. John Melvin Walker, No. SA CR 12-240-JVS.

[2] Watson is a defendant in the related matter United States v. Bruce Andrew Watson, No. SA CR 12-84-JVS.

(a) The government's position to defendant Butier's Motion for Declaratory Judgment and its response to the Court's OSC shall be filed by no later than Monday, March 9, 2015;

(b) Defendants' responses to the Court's OSC and the government's position on defendant Butier's Motion for Declaratory Judgment shall be filed by no later than March 30, 2015.

(c) The hearing on this motion and the OSC will be held on Monday, April 13, 2015 at 3 p.m.[3]

It is so stipulated.

Respectfully submitted,

STEPHANIE YONEKURA
Acting United States Attorney

ROBERT E. DUGDALE
Assistant United States Attorney
Chief, Criminal Division

Dated: Feb. 12, 2015

/s/
KEVIN M. LALLY[4]
Assistant United States Attorney
OCDETF Section

Attorneys for Plaintiff
United States of America

Dated: Feb. 12, 2015

/s/
JESSE GESSIN
Deputy Federal Public Defender
Attorney for defendant
Nicholas Butier
(per authorization)

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[3] This schedule allows for defendants' sentencing and supervised release hearings to proceed as planned.

[4] Government counsel apologizes for the delay in the filing of this stipulation. The delay was based on the desire to ascertain a definitive release date for the DOJ guidance so that there would only need to be a single stipulation filed.

Dated: Feb. 12, 2015

/s/
MARRI B. DERBY, ESQ.
Attorney for defendant
Alan David Nixon
(per authorization)

Dated: Feb. 12, 2015

/s/
JOHN D. EARLY
Attorney for defendant
Michael Alan Nixon
(per authorization)

Dated: Feb. 12, 2015

/s/
DANIEL McCURRIE
Attorney for defendant
John Eugene Scandalios
(per authorization)

Dated: Feb. 12, 2015

/s/
CHARLES SPAGNOLA
Attorney for defendant
Bruce Andrew Watson
(per authorization)

EXHIBIT J

STEPHANIE YONEKURA
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ROBERT E. DUGDALE
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Attorneys for Plaintiff
UNITED STATES OF AMERICA

UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, Plaintiff, v. JOHN MELVIN WALKER, et al., and BRUCE ANDREW WATSON, Defendants.	No. SA CR 12-240-JVS ORDER SEALING DOCUMENT

For good cause shown, IT IS HEREBY ORDERED THAT:

The government's ex parte application for sealed filing is GRANTED. The document sought to be filed under seal and the government's ex parte application for sealed filing shall both be filed under seal. A public redacted version of the sealed document shall be filed within seven days.

March 19, 2015

DATE

UNITED STATES DISTRICT JUDGE

OR IN CASE OF DENIAL:

The government's application for sealed filing is DENIED. The underlying document and the sealing application shall be returned to the government, without filing of the documents or reflection of the name or nature of the documents on the clerk's public docket.

DATE

UNITED STATES DISTRICT JUDGE

EXHIBIT K

Law Offices of Ronald Richards & Associates, APC
Ronald Richards, Esq. (SBN 176246)
PO Box 11480
Beverly Hills, CA 90213
310-556-1001 Office
310-277-3325 Fax
email: ron@ronaldrichards.com; nick@ronaldrichards.com
Attorneys for the Anthony Pisarski

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA, Plaintiff, v. ANTHONY PISARSKI and SONNY MOORE, Defendants	CASE NO. 3:14-CR-00278-RS NOTICE OF MOTION AND MOTION FOR AN ADJOURNMENT OF ANTHONY PISARSKI'S SENTENCING SENTENCING DATE: MARCH 31, 2015 TIME: 2:30PM

Please take notice of the following motion by the defendant of the adjournment of his sentencing hearing. The motion is based upon the fact that there are five pending legal events that could dramatically change his criminal liability in the case, and/or his sentence. Pisarski is trying to avoid filing a motion to withdraw his plea as intervening legal events may make this moot. Furthermore, DOJ Washington has not issued new guidelines and the appointment of attorney general Loretta Lynch has been stalled thus delaying things at DOJ.

DATED: March 9, 2015

/s/ Ronald Richards
RONALD RICHARDS

Attorney for ANTHONY PISARSKI

CONTENTS

MEMORANDUM IN SUPPORT OF MOTION

I. INTRODUCTION

This Court on December 16, 2014, granted an unopposed motion to continue the defendant's sentencing hearing based upon the imminent enactment of H.R. 83. The impact of that spending bill was uncertain but all parties felt it would affect marijuana prosecutions in some capacity.

President Obama did sign the bill into law. https://www.congress.gov/bill/113th-congress/house-bill/83?q=%7B%22search%22%3A%5B%22hr+83%22%5D%7Don December 16, 2014.

The law is follows:

> *SEC. 538. None of the funds made available in this Act to the Department of Justice may be used, with respect to the States of Alabama, Alaska, Arizona, California, Colorado, Connecticut, Delaware, District of Columbia, Florida, Hawaii, Illinois, Iowa, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nevada, New Hampshire, New Jersey, New Mexico, Oregon, Rhode Island, South Carolina, Tennessee, Utah, Vermont, Washington, and Wisconsin, to prevent such States from implementing their own State laws that authorize the use, distribution, possession, or cultivation of medical marijuana.*

Since this Court continued the sentencing, this case was blogged about and was a front page story in the Daily Journal. It galvanized defense counsel and public defenders across the United States. (See **Exhibit "A"**.)

Since the law's passage the defense world has aggressively sought to get clarification on what the law's impact means. In *United States vs Butier*, #12-240 JVS, the Hon. James Selna is holding hearings on the subject matter. Attached as **Exhibit "B"** are the pleadings and dockets showing the relevant motions. The government has not even filed an opposition yet. Their continued opposition date is now March 31, 2015. A hearing is set for April 13, 2015. The very issue that Pisarski is concerned with is being decided by Judge Selna. (See **Exhibit "C"**.)

Meanwhile, in the Eastern District, the Hon. Kimberly J. Mueller is deciding classification of marijuana being a validly scheduled I drug. The evidentiary hearing ended on February 12, 2015. A status conference with presumably a ruling is March 11, 2015. (See **Exhibit "D"**.)

Moreover, in this District, the 9th Circuit judge finished oral argument on February 3, 2015 in *City of Oakland vs. Holder*, Case Number 13-15391. A ruling is expected shortly on this case as well. (See **Exhibit "E"**.)

Loretta Lynch's appointment has been held up to going to the full Senate. This has caused delays at DOJ as it was expected a new AG would be coming into office shortly. (See **Exhibit "F"**.)

Congress has been busy this session as well. The same people who brought defunding to prosecutions like this have now introduced bills to legalize it and leave the choice up to each state. There is also a bill to stop seizures of assets for lawful marijuana grows like in this case. (See **Exhibit "G"** for both bills and bill track.)

On February 24, 2015, in the 9th Circuit, Charles Lynch moved to remand his case to the Hon. George Wu, in the Central District, or have his case dismissed at the appellate level. (See Case Number 10-50219, **Exhibit "H"**.) No opposition has been filed as of March 8, 2015 by the government.

To say a lot is going on is the legal understatement of the year. However, one things counsel for Pisarki wants to avoid is causing him to become a convicted felon if the political and legal tide is headed towards decriminalizes or protecting the conduct in this case. It is not so farfetched.

For example, prior to 2004, no same sex marriages were recognized. As of March 4, 2015, jurisdictions where *marriage licenses are issued to same-sex couples* include 37 states (Alaska, Arizona, California, Colorado, Connecticut, Delaware, Florida, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Maine, Maryland, Massachusetts, Minnesota, Missouri, Montana, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, Utah,

Vermont, Virginia, Washington, West Virginia, Wisconsin, and Wyoming) and the District of Columbia, except that in Kansas marriage licenses are not available in all counties. All those jurisdictions *recognize the validity of their licenses*, except for Kansas, where the state government refuses to recognize same-sex marriages (except for the Secretary of the Kansas Department of Health and Environment and clerks in two counties who are under federal court order not to enforce the state's same-sex marriage ban). Kansas is also the only one of the above listed jurisdictions that fails to *recognize same-sex marriages from other jurisdictions*. In Missouri, only Jackson County, St. Louis County, and the city of St. Louis issue marriage licenses to same-sex couples. Missouri *does recognize* same-sex marriages established in other jurisdictions.

As for marijuana, as of June 2014, 23 states have legalized cannabis for medical use with three states pending legislation.

In the United States, there are important legal differences between medical cannabis at the federal and state levels. At the federal level, cannabis *per se* has been made criminal by implementation of the Controlled Substances Act, but as of 2009, new federal guidelines were enacted. According to U.S. Attorney General Eric Holder, "It will not be a priority to use federal resources to prosecute patients with serious illnesses or their caregivers who are complying with state laws on medical marijuana, but we will not tolerate drug traffickers who hide behind claims of compliance with state law to mask activities that are clearly illegal."

California passed an initiative to allow medical cannabis in 1996. Simple possession is an infraction. In the intervening years, multiple states have passed similar initiatives. A January 2010 ABC News poll showed that 81 percent of Americans believed that medical cannabis should be legal in the United States. Most recently, in June 2014, New York became the 23rd state to legalize medical marijuana, not including DC, however the marijuana cannot be smoked

A bill by the Washington, D.C. council was not overruled by Congress. Medical cannabis became legal on Jan. 1, 2011. Dispensaries have begun opening and cultivation

centers are in process to be permitted. The DC council has also reduced penalties for possession of 1 oz. of marijuana to a $25 civil fine without jail. This bill was signed by the Mayor and took effect in July 2014.

Meanwhile, in Oregon, Colorado, and Washington, marijuana is taxed, regulated and legal. Only a legal fool would rush Mr. Pisarski to sentencing with all of the above in play. Policy is clearly changing. Every candidate running for President doesn't oppose legalization. (See **Exhibit "I"**.)

Cleary, the overwhelming trend is to end enforcement of marijuana laws and to ease prison over-crowding by ending what many see is a wasted effort and was a horrible policy mistake.

A. STANDARD TO CONTINUE A SENTENCING HEARING

A district court may grant a continuance for a sentencing hearing as long as it is reasonable and not arbitrary. *United States v. Wills*, 88 F.3d 704, 711 (9th Cir.1996) (internal quotation marks omitted). A defendant is required to provide the district court with information suggesting a need for the continuance. *United States v. Bos*, 917 F.2d 1178, 1183 (9th Cir.1990). In this case, the defendant has provide a plethora of evidence and reasoning. *United States v. Weicks*, 472 F. App'x 748, 749 (9th Cir. 2012).

If the government does not assent to the motion or the motion is not granted, counsel is advising the Court that it would move on Mr. Pisarski's behalf to withdraw his plea. However, hopefully, based upon the compelling reasoning provided, that would be unnecessary.

Only one of the five events constitutes pending legislation which Pisarski conceded would be too speculative to continue a sentencing based upon those reasons alone. However, the other issues raised by the Federal Public Defendant's Office for the Central District of California and the issues raised and considered by Judge Selna, pending DOJ guidelines, and the Oakland case pending before the 9th Circuit, all would be asserted on behalf of Pisarski after his motion to withdraw his plea was made, and possibly granted by this Court. The legal defenses and issues for Mr. Pisarski are real and not speculative

based upon the President signing the law and the other pending motions in front of Judge Mueller.

II. CONCLUSION

Mr. Pisarski is requesting a second continuance of his sentencing to July 31, 2015 or as soon thereafter. This will give defense counsel adequate time to flush out the pending cases, pending defenses, and make a competent decision as to whether or not a motion to withdraw Mr. Pisarski's plea should be made.

DATED: March 9, 2015

/s/ Ronald Richards

_____

RONALD RICHARDS
Attorney for ANTHONY PISARSKI

EXHIBIT L

MELINDA HAAG (CABN 132612)
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Attorneys for the United States of America

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA, Plaintiff, v. ANTHONY PISARSKI and SONNY MOORE, Defendants	CASE NO. 3:14-CR-278 RS **GOVERNMENT'S RESPONSE TO DEFENDANTS' MOTION FOR ADJOURNMENT OF SENTENCING**

The United States respectfully files this response to the defendants' motion to postpone sentencing in this matter. (Docket Nos. 92-94.) The United States does not oppose rescheduling sentencing to June 14, 2015. The government believes that an additional two months would allow the parties to determine, and inform the Court, whether any developments may impact sentencing in this matter, or if more time is necessary. Defense counsel is available on the requested date.

DATED: March 18, 2015

Respectfully Submitted,

MELINDA HAAG
United States Attorney

/s/
ADAM WRIGHT
Assistant United States Attorney

EXHIBIT M

E-Filing,RELATE

U.S. District Court
California Northern District (San Francisco)
CRIMINAL DOCKET FOR CASE #: 3:14-cr-00278-RS All Defendants

Case title: USA v. Pisarski et al
Magistrate judge case number: 3:13-mj-70019-WHO

Date Filed: 05/21/2014

Assigned to: Hon. Richard Seeborg

Defendant (1)

Anthony Pisarski

represented by **Ronald Neil Richards**
P.O. Box 11480
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LEAD ATTORNEY
ATTORNEY TO BE NOTICED
Designation: Retained

Pending Counts	**Disposition**
21:846 and 21:841(a)(1) - Conspiracy to Manufacture and Possess with Intent to Distribute Marijuana (1)	

Highest Offense Level (Opening)

Felony

Terminated Counts	**Disposition**
None	

Highest Offense Level (Terminated)

None

Complaints	**Disposition**
21:841(a)(1), (b)(1)(B)(vii) Distribution and Possession with Intent to Distribute a Controlled Substance, to wit 100 or More Marijuana Plants	

Assigned to: Hon. Richard Seeborg

Defendant (2)

Sonny Moore represented by **Ronald Neil Richards**
(See above for address)
TERMINATED: 05/21/2014
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ATTORNEY TO BE NOTICED
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ATTORNEY TO BE NOTICED
Designation: Retained

Pending Counts	**Disposition**
21:846 and 21:841(a)(1) - Conspiracy to Manufacture and Possess with Intent to Distribute Marijuana (1)	

Highest Offense Level (Opening)

Felony

Terminated Counts	**Disposition**
None	

Highest Offense Level (Terminated)

None

Complaints	**Disposition**
21:841(a)(1), (b)(1)(B)(vii) Distribution and Possession with Intent to Distribute a Controlled Substance, to wit 100 or More Marijuana Plants	

Plaintiff

USA represented by **Adam Wright**
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LEAD ATTORNEY
ATTORNEY TO BE NOTICED
Designation: Assistant US Attorney

Date Filed	#	Docket Text
01/10/2013	1	COMPLAINT as to Anthony Pisarski (1), Sonny Moore (2). (rhw, COURT STAFF) (Filed on 1/10/2013) [3:13-mj-70019-WHO] (Entered: 01/10/2013)
01/10/2013		CASE DESIGNATED for Electronic Filing. (rhw, COURT STAFF) (Filed on 1/10/2013) [3:13-mj-70019-WHO] (Entered: 01/10/2013)
01/10/2013		Arrest of Anthony Pisarski, Sonny Moore in Eastern District of California. (mjj2S, COURT STAFF) (Filed on 1/10/2013) [3:13-mj-70019-WHO] (Entered: 01/22/2013)
01/11/2013	2	STIPULATION *to move January 15, 2013 initial appearance to January 17, 2013* by Anthony Pisarski (Richards, Ronald) (Filed on 1/11/2013) [3:13-mj-70019-WHO] (Entered: 01/11/2013)
01/11/2013	3	NOTICE OF ATTORNEY APPEARANCE: Ronald Neil Richards appearing for Anthony Pisarski (Richards, Ronald) (Filed on 1/11/2013) [3:13-mj-70019-WHO] (Entered: 01/11/2013)
01/14/2013	4	ORDER CONTINUING INITIAL APPEARANCE AND DETENTION HEARING TO JANUARY 17, 2013 as to Anthony Pisarski, Sonny Moore: Initial Appearance for Defendant, Anthony Pisarski set for 1/17/2013 at 9:30 A.M. in Courtroom C, 15th Floor, San Francisco before Magistrate Judge Laurel Beeler. Detention Hearing for Defendant, Sonny Moore set for 1/17/2013 at 9:30 a.m. Signed by Magistrate Judge Laurel Beeler on 1/14/2013. (ls, COURT STAFF) (Filed on 1/14/2013) [3:13-mj-70019-WHO] (Entered: 01/15/2013)
01/15/2013	5	MOTION for Leave to Appear in Pro Hac Vice Attorney: T. Louis Palazzo. (Filing fee $ 305, receipt number 0971-7410261.) by Sonny Moore. Motion Hearing set for 1/17/2013 09:30 AM in Courtroom C, 15th Floor, San Francisco before Magistrate Judge Laurel Beeler. (Palazzo, T. Louis) (Filed on 1/15/2013) [3:13-mj-70019-WHO] (Entered: 01/15/2013)
01/16/2013	6	ORDER REASSIGNING CASE. Case reassigned to Judge Magistrate Judge Laurel Beeler for all further proceedings. Magistrate Judge Nandor J. Vadas no longer assigned to case. Case as to Anthony Pisarski, Sonny Moore reassigned to Judge Magistrate Judge Laurel Beeler. Signed by Executive Committee on 1/16/13. (sv, COURT STAFF) (Filed on 1/16/2013) [3:13-mj-70019-WHO] (Entered: 01/16/2013)
01/16/2013	7	NOTICE OF ATTORNEY APPEARANCE Adam Wright appearing for USA. (Wright, Adam) (Filed on 1/16/2013) [3:13-mj-70019-WHO] (Entered:

		01/16/2013)
01/16/2013	16	Rule 5(c)(3)Documents Received as to Anthony Pisarski, Sonny Moore from Eastern District of California. (Acknowledgment of receipt returned) (mjj2S, COURT STAFF) (Filed on 1/16/2013) [3:13-mj-70019-WHO] (Entered: 01/22/2013)
01/17/2013	8	NOTICE *OF REMOVAL OF ATTORNEY FOR THE UNITED STATES* by USA as to Anthony Pisarski, Sonny Moore (Wright, Adam) (Filed on 1/17/2013) [3:13-mj-70019-WHO] (Entered: 01/17/2013)
01/17/2013	9	STIPULATION *AND [PROPOSED] ORDER TO CONTINUE INITIAL APPEARANCE FROM JANUARY 17, 2013 TO JANUARY 30, 2013* by USA as to Anthony Pisarski, Sonny Moore (Wright, Adam) (Filed on 1/17/2013) [3:13-mj-70019-WHO] (Entered: 01/17/2013)
01/17/2013	10	STIPULATION *AND [PROPOSED] ORDER TO DEFENDANTS WAIVER OF PRELIMINARY HEARING AND EXCLUSION OF TIME UNDER THE SPEEDY TRIAL ACT, 18 U.S.C. § 3161(b), FROM JANUARY 10, 2013 TO FEBRUARY 21, 2013* by USA as to Anthony Pisarski, Sonny Moore (Wright, Adam) (Filed on 1/17/2013) [3:13-mj-70019-WHO] (Entered: 01/17/2013)
01/18/2013	11	ORDER GRANTING APPLICATION FOR ADMISSION OF ATTORNEY PRO HAC VICE, T. LOUIS PALAZZO: Granting 5 Motion for Pro Hac Vice as to Sonny Moore (2). Signed by Magistrate Judge Laurel Beeler on 1/18/2013. (ls, COURT STAFF) [3:13-mj-70019-WHO] (Entered: 01/18/2013)
01/18/2013	12	STIPULATION *to modify bond conditions* by Anthony Pisarski (Richards, Ronald) (Filed on 1/18/2013) [3:13-mj-70019-WHO] (Entered: 01/18/2013)
01/18/2013	13	Proposed Order re 12 Stipulation by Anthony Pisarski (Richards, Ronald) (Filed on 1/18/2013) [3:13-mj-70019-WHO] (Entered: 01/18/2013)
01/22/2013	14	STIPULATION AND ORDER TO CONTINUE INITIAL APPEARANCE FROM JANUARY 17, 2013 TO JANUARY 30, 2013 as to Anthony Pisarski, Sonny Moore. Initial Appearance set for 1/30/2013 at 9:30 AM in Courtroom C, 15th Floor, San Francisco before Magistrate Judge Laurel Beeler. Signed by Magistrate Judge Laurel Beeler on 1/22/2013. (ls, COURT STAFF) (Filed on 1/22/2013) [3:13-mj-70019-WHO] (Entered: 01/22/2013)
01/22/2013	15	STIPULATION AND ORDER TO DEFENDANT'S WAIVER OF PRELIMINARY HEARING AND EXCLUSION OF TIME UNDER THE SPEEDY TRIAL ACT, 18 U.S.C. SECTION 3161(h), FROM JANUARY 10, 2013 TO FEBRUARY 21, 2013 as to Anthony Pisarski, Sonny Moore. Signed by Magistrate Judge Laurel Beeler on 1/22/2013. (ls, COURT STAFF) (Filed on 1/22/2013) [3:13-mj-70019-WHO] (Entered: 01/22/2013)
01/22/2013		Set/Reset Hearing: Initial Appearance set for 2/21/2013 at 9:30 AM in Courtroom B, 15th Floor, San Francisco before Magistrate Judge Maria-Elena James. (ls, COURT STAFF) (Filed on 1/22/2013) [3:13-mj-70019-WHO] (Entered: 01/22/2013)
01/23/2013	17	ORDER TO MODIFY BOND CONDITIONS RELATED TO TRAVEL as to Anthony Pisarski, Sonny Moore. Signed by Magistrate Judge Laurel Beeler on

		1/23/2013. (ls, COURT STAFF) (Filed on 1/23/2013) [3:13-mj-70019-WHO] (Entered: 01/23/2013)
02/14/2013	18	STIPULATION *AND [PROPOSED] ORDER TO DEFENDANTS' WAIVER OF PRELIMINARY HEARING AND EXCLUSION OF TIME UNDER THE SPEEDY TRIAL ACT, 18 U.S.C. § 3161(b), FROM FEBRUARY 21, 2013 TO APRIL 11, 2013* by USA as to Anthony Pisarski, Sonny Moore (Wright, Adam) (Filed on 2/14/2013) [3:13-mj-70019-WHO] (Entered: 02/14/2013)
02/19/2013	19	STIPULATION AND ORDER as to Anthony Pisarski, Sonny Moore 18 Stipulation, filed by USA. Signed by Magistrate Judge Maria-Elena James on 2/19/2013. (rmm2S, COURT STAFF) (Filed on 2/19/2013) [3:13-mj-70019-WHO] (Entered: 02/19/2013)
02/19/2013		Set/Reset Hearing re 19 Stipulation and Order Initial Appearance set for 4/11/2013 09:30 AM before Magistrate Judge Elizabeth D. Laporte. (rmm2S, COURT STAFF) (Filed on 2/19/2013) [3:13-mj-70019-WHO] (Entered: 02/19/2013)
03/11/2013		Reset Hearing: Initial Appearance set for 3/12/2013 09:30 AM in Courtroom A, 15th Floor, San Francisco before Magistrate Judge Nathanael M. Cousins. (lmh, COURT STAFF) (Filed on 3/11/2013) [3:13-mj-70019-WHO] (Entered: 03/11/2013)
03/12/2013	20	Minute Entry for proceedings held before Judge Judge Nathanael M. Cousins: Bond Hearing as to Anthony Pisarski held on 3/12/2013; Michael Silveira for Ronald Richards appearing for Defendant; Defendant admonished to comply with his conditions of release. Parties previously stipulated to hearing date. Arraignment and Preliminary Hearing set for 4/11/2013 09:30 AM in Courtroom C, 15th Floor, San Francisco before Magistrate Judge Laurel Beeler. (Recording #FTR: 9:52-9:54.) (mjj2S, COURT STAFF) (Filed on 3/12/2013) [3:13-mj-70019-WHO] (Entered: 03/12/2013)
03/12/2013	21	Pretrial Services Form 8 by Allen Lew as to Anthony Pisarski for Modification of conditions of Pretrial Release. Defendant to participate in mental health and/or substance abuse counseling as deemed appropriate by Pretrial Services. Signed by Judge Magistrate Judge Nathanael M. Cousins on 3/12/2013. (mjj2S, COURT STAFF) (Filed on 3/12/2013) [3:13-mj-70019-WHO] (Entered: 03/12/2013)
03/13/2013		Reset Hearing re 19 Stipulation and Order: Arraignment set for 4/11/2013 09:30 AM in Courtroom C, 15th Floor, San Francisco before Magistrate Judge Laurel Beeler. Preliminary Examination set for 4/11/2013 09:30 AM in Courtroom C, 15th Floor, San Francisco before Magistrate Judge Laurel Beeler. The matter was scheduled incorrectly, previously. (knm, COURT STAFF) (Filed on 3/13/2013) [3:13-mj-70019-WHO] (Entered: 03/13/2013)
04/05/2013	22	STIPULATION *AND [PROPOSED] ORDER TO DEFENDANTS WAIVER OF PRELIMINARY HEARING AND EXCLUSION OF TIME UNDER THE SPEEDY TRIAL ACT, 18 U.S.C. § 3161(b), FROM APRIL 11, 2013 TO MAY 23, 2013* by USA as to Anthony Pisarski, Sonny Moore (Wright, Adam) (Filed on 4/5/2013) [3:13-mj-70019-WHO] (Entered: 04/05/2013)
04/09/2013	23	**STIPULATION AND ORDER TO DEFENDANTS' WAIVER OF PRELIMINARY HEARING AND EXCLUSION OF TIME UNDER THE SPEEDY TRIAL ACT, 18 U.S.C. Section 3161(b), FROM APRIL 11, 2013 TO**

		MAY 23, 2013 as to Anthony Pisarski, Sonny Moore: Re 22 Stipulation, filed by USA. Arraignment set for 5/23/2013 at 9:30 AM in Courtroom G, 15th Floor, San Francisco before Magistrate Judge Joseph C. Spero. Preliminary Examination set for 5/23/2013 at 9:30 AM in Courtroom G, 15th Floor, San Francisco before Magistrate Judge Joseph C. Spero. Signed by Magistrate Judge Laurel Beeler on 4/9/2013. (ls, COURT STAFF) (Filed on 4/9/2013) [3:13-mj-70019-WHO] (Entered: 04/09/2013)
05/20/2013	24	STIPULATION *AND [PROPOSED] ORDER TO DEFENDANTS WAIVER OF PRELIMINARY HEARING AND EXCLUSION OF TIME UNDER THE SPEEDY TRIAL ACT, 18 U.S.C. § 3161(b), FROM MAY 23, 2013 TO JULY 11, 2013* by USA as to Anthony Pisarski, Sonny Moore (Wright, Adam) (Filed on 5/20/2013) [3:13-mj-70019-WHO] (Entered: 05/20/2013)
05/20/2013	25	STIPULATION *AND PROPOSED ORDER REGARDING HOME CONFINEMENT AND ELECTRONIC MONITORING DEVICE* by Sonny Moore (Palazzo, T. Louis) (Filed on 5/20/2013) [3:13-mj-70019-WHO] (Entered: 05/20/2013)
05/21/2013	26	**ORDER as to Anthony Pisarski, Sonny Moore re 24 Stipulation and Order to Defendants' Waiver of Prelim Hearing and Exclusion of Time filed by USA Preliminary Exam or Arraignment set for 7/11/2013 09:30 AM in Courtroom F, 15th Floor, San Francisco before Magistrate Judge Jacqueline Scott Corley. Signed by Judge Magistrate Judge Joseph C. Spero on 5/21/13. (klhS, COURT STAFF) (Filed on 5/21/2013) [3:13-mj-70019-WHO] (Entered: 05/21/2013)**
05/28/2013	27	**STIPULATION AND ORDER REGARDING HOME CONFINEMENT AND ELECTRONIC MONITORING DEVICE as to Sonny Moore. Signed by Magistrate Judge Laurel Beeler on 5/28/2013. (ls, COURT STAFF) (Filed on 5/28/2013) [3:13-mj-70019-WHO] (Entered: 05/28/2013)**
07/08/2013	28	Proposed Order by USA as to Anthony Pisarski, Sonny Moore *STIPULATION AND [PROPOSED] ORDER TO DEFENDANTS WAIVER OF PRELIMINARY HEARING AND EXCLUSION OF TIME UNDER THE SPEEDY TRIAL ACT, 18 U.S.C. § 3161(b), FROM JULY 11, 2013 TO SEPTEMBER 18, 2013* (Wright, Adam) (Filed on 7/8/2013) [3:13-mj-70019-WHO] (Entered: 07/08/2013)
07/09/2013	29	**ORDER as to Anthony Pisarski and Sonny Moore granting 28 STIPULATION TO DEFENDANTS WAIVER OF PRELIMINARY HEARING AND EXCLUSION OF TIME UNDER THE SPEEDY TRIAL ACT, 18 U.S.C. § 3161(b), FROM JULY 11, 2013 TO SEPTEMBER 18, 2013 filed by USA. Preliminary Examination/ Arraignment reset for 9/18/2013 09:30 AM in Courtroom E, 15th Floor, San Francisco before Magistrate Judge Elizabeth D. Laporte. Signed by Magistrate Judge Jacqueline Scott Corley on 7/9/2013. (ahm, COURT STAFF) (Filed on 7/9/2013) [3:13-mj-70019-WHO] (Entered: 07/09/2013)**
07/17/2013	30	Notice of Related Case *(And/Or Administrative Motion to Consider Whether Cases Should Be Related)* by USA as to Anthony Pisarski, Sonny Moore (Hopkins, Kimberly) (Filed on 7/17/2013) [3:13-mj-70019-WHO] (Entered: 07/17/2013)
08/02/2013	31	**RELATED CASE ORDER. Signed by Judge Hon. William H. Orrick on 08/2/2013. (jmdS, COURT STAFF) (Filed on 8/2/2013) [3:13-mj-70019-WHO]**

		(Entered: 08/02/2013)
08/05/2013		Case as to Anthony Pisarski, Sonny Moore Reassigned to Judge Hon. William H. Orrick. Magistrate Judge Laurel Beeler no longer assigned to the case. (as, COURT STAFF) (Filed on 8/5/2013) [3:13-mj-70019-WHO] (Entered: 08/05/2013)
09/11/2013	32	STIPULATION WITH PROPOSED ORDER *TO DEFENDANTS WAIVER OF PRELIMINARY HEARING AND EXCLUSION OF TIME UNDER THE SPEEDY TRIAL ACT, 18 U.S.C. § 3161(b), FROM SEPTEMBER 18, 2013 TO OCTOBER 22, 2013* filed by USA. (Wright, Adam) (Filed on 9/11/2013) [3:13-mj-70019-WHO] (Entered: 09/11/2013)
09/16/2013	33	**STIPULATION AND ORDER as to Anthony Pisarski, Sonny Moore, ORDER TO CONTINUE - Ends of Justice as to Anthony Pisarski, Sonny Moore Time excluded from 9/18/13 until 10/22/13., Terminate Deadlines and Hearings as to Anthony Pisarski, Sonny Moore: 32 STIPULATION WITH PROPOSED ORDER *TO DEFENDANTS WAIVER OF PRELIMINARY HEARING AND EXCLUSION OF TIME UNDER THE SPEEDY TRIAL ACT, 18 U.S.C. § 3161(b), FROM SEPTEMBER 18, 2013 TO OCTOBER 22, 2013* filed by USA. Arraignment set for 10/22/2013 09:30 AM before Magistrate Judge Joseph C. Spero. Preliminary Examination set for 10/22/2013 09:30 AM before Magistrate Judge Joseph C. Spero.. Signed by Judge Magistrate Judge Elizabeth D. Laporte on 9/13/13. (lrc, COURT STAFF) (Filed on 9/16/2013) [3:13-mj-70019-WHO] (Entered: 09/16/2013)**
10/17/2013	34	STIPULATION WITH PROPOSED ORDER *CHANGING PRELIMINARY HEARING DATE FROM OCTOBER 22, 2013 TO DECEMBER 12, 2013* filed by USA. (Wright, Adam) (Filed on 10/17/2013) [3:13-mj-70019-WHO] (Entered: 10/17/2013)
10/21/2013	35	**STIPULATION AND ORDER as to Anthony Pisarski, Sonny Moore re 34 STIPULATION WITH PROPOSED ORDER *CHANGING PRELIMINARY HEARING DATE FROM OCTOBER 22, 2013 TO DECEMBER 12, 2013* filed by USA. Arraignment and Preliminary Examination set for 12/12/2013 09:30 AM in Courtroom B, 15th Floor, San Francisco before Magistrate Judge Maria-Elena James. Signed by Judge Magistrate Judge Joseph C. Spero on 10/18/2013. (mjj2S, COURT STAFF) (Filed on 10/21/2013) [3:13-mj-70019-WHO] (Entered: 10/21/2013)**
12/06/2013	36	STIPULATION WITH PROPOSED ORDER *CHANGING PRELIMINARY HEARING DATE FROM DECEMBER 12, 2013 TO FEBRUARY 11, 2014* filed by USA. (Wright, Adam) (Filed on 12/6/2013) [3:13-mj-70019-WHO] (Entered: 12/06/2013)
12/09/2013	37	**ORDER granting 36 Stipulation Changing Preliminatry Hearing Date From December 12, 2013 to February 11, 2013 as to Anthony Pisarski (1). Signed by Magistrate Judge Maria-Elena James on 12/9/2013. (rmm2S, COURT STAFF) [3:13-mj-70019-WHO] (Entered: 12/09/2013)**
12/09/2013		Set/Reset Hearing re 37 Order on Stipulation Arraignment set for 2/11/2014 09:30 AM in Courtroom B, 15th Floor, San Francisco before Magistrate Judge Maria-Elena James. Preliminary Examination set for 2/11/2014 09:30 AM in Courtroom B, 15th Floor, San Francisco before Magistrate Judge Maria-Elena James. (rmm2S, COURT STAFF) (Filed on 12/9/2013) [3:13-mj-70019-WHO] (Entered:

		12/09/2013)
12/11/2013		Set/Reset Hearing re 36 STIPULATION WITH PROPOSED ORDER *CHANGING PRELIMINARY HEARING DATE FROM DECEMBER 12, 2013 TO FEBRUARY 11, 2014* Arraignment set for 2/11/2014 09:30 AM in Courtroom B, 15th Floor, San Francisco before Magistrate Judge Maria-Elena James. Preliminary Examination set for 2/11/2014 09:30 AM in Courtroom B, 15th Floor, San Francisco before Magistrate Judge Maria-Elena James. (rmm2S, COURT STAFF) (Filed on 12/11/2013) [3:13-mj-70019-WHO] (Entered: 12/11/2013)
12/19/2013	38	STIPULATION WITH PROPOSED ORDER *CHANGING PRELIMINARY HEARING DATE FROM FEBRUARY 11, 2014 TO FEBRUARY 13, 2014* filed by USA. (Wright, Adam) (Filed on 12/19/2013) [3:13-mj-70019-WHO] (Entered: 12/19/2013)
12/23/2013	39	**Order by Magistrate Judge Nandor J. Vadas granting 38 Stipulation as to Anthony Pisarski (1), Sonny Moore (2).(njvlc2, COURT STAFF) (Filed on 12/23/2013) [3:13-mj-70019-WHO] (Entered: 12/23/2013)**
12/23/2013		Set/Reset Hearing re 39 Order on Stipulation Arraignment set for 2/11/2014 continued to 2/13/2014 09:30 AM in Courtroom B, 15th Floor, San Francisco before Magistrate Judge Maria-Elena James. Preliminary Examination set for 2/13/2014 09:30 PM in Courtroom E, 15th Floor, San Francisco before Magistrate Judge Maria-Elena James. (mjj2S, COURT STAFF) (Filed on 12/23/2013) [3:13-mj-70019-WHO] (Entered: 12/23/2013)
02/11/2014	40	STIPULATION WITH PROPOSED ORDER *CHANGING PRELIMINARY HEARING DATE FROM FEBRUARY 13, 2014 TO MARCH 18, 2014* filed by USA. (Wright, Adam) (Filed on 2/11/2014) [3:13-mj-70019-WHO] (Entered: 02/11/2014)
02/11/2014	41	**ORDER granting 40 Stipulation as to Anthony Pisarski (1), Sonny Moore (2). Signed by Magistrate Judge Maria-Elena James on 2/11/2014. (rmm2S, COURT STAFF) [3:13-mj-70019-WHO] (Entered: 02/11/2014)**
02/11/2014		Set/Reset Hearing re 41 Order on Stipulation Arraignment set for 3/18/2014 09:30 AM in Courtroom A, 15th Floor, San Francisco before Magistrate Judge Nathanael M. Cousins. Preliminary Examination set for 3/18/2014 09:30 AM in Courtroom A, 15th Floor, San Francisco before Magistrate Judge Nathanael M. Cousins. (rmm2S, COURT STAFF) (Filed on 2/11/2014) [3:13-mj-70019-WHO] (Entered: 02/11/2014)
03/14/2014	42	STIPULATION WITH PROPOSED ORDER *STIPULATION AND [PROPOSED] ORDER CHANGING PRELIMINARY HEARING DATE FROM MARCH 18, 2014 TO MAY 12, 2014* filed by USA. (Wright, Adam) (Filed on 3/14/2014) [3:13-mj-70019-WHO] (Entered: 03/14/2014)
03/17/2014	43	**ORDER GRANTING STIPULATION CHANGING PRELIMINARY HEARING DATE 42 as to Anthony Pisarski, Sonny Moore.** Preliminary Hearing or Arraignment set for 5/12/2014 09:30 AM in Courtroom F, 15th Floor, San Francisco before Magistrate Judge Jacqueline Scott Corley. Signed by Magistrate Judge Nathanael M. Cousins on 3/17/14. (lmh, COURT STAFF) (Filed on 3/17/2014) [3:13-mj-70019-WHO] (Entered: 03/17/2014)

03/19/2014	44	**Pretrial Services Form 8 by Kenneth Gibson and ORDER as to Anthony Pisarski. Bail Review Hearing set for 3/24/2014 09:30 AM in Courtroom A, 15th Floor, San Francisco.** Signed by Magistrate Judge Nathanael M. Cousins on 3/19/14. (lmh, COURT STAFF) (Filed on 3/19/2014) [3:13-mj-70019-WHO] (Entered: 03/19/2014)
03/21/2014	45	STIPULATION WITH PROPOSED ORDER re 44 Pretrial Services form 8, Set Hearings,, . (Richards, Ronald) (Filed on 3/21/2014) [3:13-mj-70019-WHO] (Entered: 03/21/2014)
03/21/2014	46	**ORDER GRANTING STIPULATION TO CHANGE BAIL REVIEW DATE *AS MODIFIED* as to Anthony Pisarski re 45 .** Bail Review Hearing set for 4/2/2014 11:00 AM in Courtroom A, 15th Floor, San Francisco. Defendant Pisarski may **NOT** travel to State of Minnesota without further court order. Signed by Magistrate Judge Nathanael M. Cousins on 3/21/14. (lmh, COURT STAFF) (Filed on 3/21/2014) [3:13-mj-70019-WHO] (Entered: 03/21/2014)
04/02/2014	47	Minute Entry for proceedings held before Magistrate Judge Nathanael M. Cousins: Bail Review Hearing as to Anthony Pisarski held on 4/2/2014. Court adopts the recommendation of Pretrial Services to modify conditions of release. Preliminary hearing/Arraignment remains scheduled for 5/12/2014 09:30 AM before Magistrate Judge Corley. (FTR: 11:12am - 11:22am.) (lmh, COURT STAFF) (Filed on 4/2/2014) [3:13-mj-70019-WHO] (Entered: 04/02/2014)
04/02/2014	48	**Pretrial Services Form 8 by Kenneth Gibson and ORDER asto Anthony Pisarski for modfication of pretrial release conditions.** Signed by Magistrate Judge Nathanael M. Cousins on 4/2/14. (lmh, COURT STAFF) (Filed on 4/2/2014) [3:13-mj-70019-WHO] (Entered: 04/02/2014)
05/09/2014	49	STIPULATION WITH PROPOSED ORDER *STIPULATION AND [PROPOSED] ORDER CHANGING PRELIMINARY HEARING DATE FROM MAY 12, 2014 TO MAY 21, 2014* filed by USA. (Wright, Adam) (Filed on 5/9/2014) [3:13-mj-70019-WHO] (Entered: 05/09/2014)
05/09/2014	50	**ORDER granting 49 Stipulation CHANGING PRELIMINARY HEARING DATE FROM MAY 12, 2014 TO MAY 21, 2014 as to Anthony Pisarski (1), and Sonny Moore (2). Signed by Magistrate Judge Jacqueline Scott Corley on 5/9/2014. (ahm, COURT STAFF) [3:13-mj-70019-WHO] (Entered: 05/09/2014)**
05/09/2014		Set/Reset Hearing: Preliminary Hearing/ Arraignment reset for 5/21/2014 09:30 AM in Courtroom F, 15th Floor, San Francisco before Magistrate Judge Jacqueline Scott Corley. (ahm, COURT STAFF) (Filed on 5/9/2014) [3:13-mj-70019-WHO] (Entered: 05/09/2014)
05/21/2014	51	INFORMATION as to Anthony Pisarski (1) count(s) 1, Sonny Moore (2) count(s) 1. (mjj2S, COURT STAFF) (Filed on 5/21/2014) (Entered: 05/21/2014)
05/21/2014	52	Minute Entry for proceedings held before Magistrate Judge Jacqueline Scott Corley: Arraignment as to Anthony Pisarski (1) Count 1 held on 5/21/2014; Plea entered by Anthony Pisarski (1): Not Guilty on counts 1. Advised of rights and charges. Change of Plea Hearing set for 7/22/2014 02:30 PM in Courtroom 3, 17th Floor, San Francisco before Hon. Richard Seeborg. (Recording #FTR 9:57-10:06.) (mjj2S, COURT STAFF) (Filed on 5/21/2014) (Entered: 05/21/2014)

05/21/2014	53	WAIVER OF INDICTMENT by Anthony Pisarski (mjj2S, COURT STAFF) (Filed on 5/21/2014) (Entered: 05/21/2014)
05/21/2014	54	Minute Entry for proceedings held before Magistrate Judge Jacqueline Scott Corley: Arraignment as to Sonny Moore (2) Count 1 held on 5/21/2014; The docket should reflect that Louis Palazzo is the only attorney of record for the defendant - Attorney Ronald Neil Richards terminated in case as to Sonny Moore. Advised of rights and charges. Plea entered by Sonny Moore (2): Not Guilty on counts 1. Change of Plea Hearing set for 7/22/2014 02:30 PM in Courtroom 3, 17th Floor, San Francisco before Hon. Richard Seeborg. (Recording #FTR 9:57-10:06.) (mjj2S, COURT STAFF) (Filed on 5/21/2014) (Entered: 05/21/2014)
05/21/2014	55	WAIVER OF INDICTMENT by Sonny Moore (mjj2S, COURT STAFF) (Filed on 5/21/2014) (Entered: 05/21/2014)
06/10/2014	56	STIPULATION WITH PROPOSED ORDER *RE: PREPARATION OF PRE-PLEA CRIMINAL HISTORY CALCULATION REPORT*. (Palazzo, T. Louis) (Filed on 6/10/2014) (Entered: 06/10/2014)
06/13/2014	57	**STIPULATION AND ORDER RE: PREPARATION OF PRE-PLEA CRIMINAL HISTORY CALCULATION REPORT. Signed by Judge Hon. Richard Seeborg on 6/13/14. (cl, COURT STAFF) (Filed on 6/13/2014) (Entered: 06/13/2014)**
07/16/2014	59	**Pretrial Services Form 8 by Kenneth Gibson as to Anthony Pisarski. Court takes judicial notice and does not require action at this time.** Signed by Magistrate Judge Nathanael M. Cousins on 7/16/2014. (lmh, COURT STAFF) (Filed on 7/16/2014) (Entered: 07/16/2014)
07/22/2014	60	PLEA AGREEMENT as to Anthony Pisarski (cl, COURT STAFF) (Filed on 7/22/2014) (Entered: 07/22/2014)
07/22/2014	61	PLEA AGREEMENT as to Sonny Moore (cl, COURT STAFF) (Filed on 7/22/2014) (Entered: 07/22/2014)
07/22/2014	62	Minute Entry for proceedings held before Judge Hon. Richard Seeborg: Change of Plea Hearing as to Anthony Pisarski held on 7/22/2014; Plea entered by Anthony Pisarski (1): Guilty Count 1. Matter referred to the probation office for a PSR. Government not seeking remand. Defendant to maintain current pretrial release conditions. Sentencing set for 11/18/2014 02:30 PM in Courtroom 3, 17th Floor, San Francisco before Hon. Richard Seeborg. (Court Reporter Kelly Polvi.) (mjj2S, COURT STAFF) (Filed on 7/22/2014) (Entered: 07/22/2014)
07/22/2014	63	Minute Entry for proceedings held before Judge Hon. Richard Seeborg: Change of Plea Hearing as to Sonny Moore held on 7/22/2014; Plea entered by Sonny Moore (2): Guilty Count 1. Matter referred to the probation office for a PSR. Government not seeking remand. Defendant to maintain current pretrial release conditions. Sentencing set for 11/4/2014 02:30 PM in Courtroom 3, 17th Floor, San Francisco before Hon. Richard Seeborg. (Court Reporter Kelly Polvi.) (mjj2S, COURT STAFF) (Filed on 7/22/2014) (Entered: 07/22/2014)
08/01/2014	64	CLERKS NOTICE CONTINUING SENTENCING HEARING. Sentencing Hearing previously set for 11/18/14 has been continued to 12/2/2014 02:30 PM in Courtroom 3, 17th Floor, San Francisco before Hon. Richard Seeborg. **This is a**

		text only entry. There is no document associated with this notice. (cl, COURT STAFF) (Filed on 8/1/2014) (Entered: 08/01/2014)
09/30/2014	65	STIPULATION WITH PROPOSED ORDER *RE: CONTINUANCE OF SENTENCING*. (Palazzo, T. Louis) (Filed on 9/30/2014) (Entered: 09/30/2014)
09/30/2014	66	**STIPULATION AND ORDER RE: CONTINUANCE OF SENTENCING. Sentencing previously set for 11/4/14 has been Continued to 12/2/2014 02:30 PM in Courtroom 3, 17th Floor, San Francisco before Hon. Richard Seeborg. Signed by Judge Hon. Richard Seeborg on 9/30/14. (cl, COURT STAFF) (Filed on 9/30/2014) (Entered: 09/30/2014)**
10/06/2014	67	CLERK'S NOTICE CONTINUING SENTENCING HEARING. Sentencing Hearing previously set for 12/2/14 has been Continued to 12/9/2014 02:30 PM in Courtroom 3, 17th Floor, San Francisco before Hon. Richard Seeborg. **This is a text only entry. There is no document associated with this notice. (cl, COURT STAFF) (Filed on 10/6/2014) (Entered: 10/06/2014)**
10/06/2014	68	CLERK'S NOTICE CONTINUING SENTENCING HEARING. Sentencing Hearing previously set for 12/2/14 has been Continued to 12/9/2014 02:30 PM in Courtroom 3, 17th Floor, San Francisco before Hon. Richard Seeborg. **This is a text only entry. There is no document associated with this notice. (cl, COURT STAFF) (Filed on 10/6/2014) (Entered: 10/06/2014)**
10/14/2014	69	CLERK'S NOTICE CONTINUING SENTENCING HEARING AS TO SONNY MOORE. Sentencing Hearing previously set for 12/9/14 has been Rescheduled to 12/16/2014 02:30 PM in Courtroom 3, 17th Floor, San Francisco before Hon. Richard Seeborg. **This is a text only entry. There is no document associated with this notice. (cl, COURT STAFF) (Filed on 10/14/2014) (Entered: 10/14/2014)**
11/18/2014	70	**Pretrial Services Form 8 by Kenneth Gibson and ORDER as to Anthony Pisarski. Bail Review set for 12/9/2014 09:30 AM in Courtroom C, 15th Floor, San Francisco before Magistrate Judge Laurel Beeler.** Signed by Magistrate Judge Nathanael M. Cousins on 11/18/2014. (lmh, COURT STAFF) (Filed on 11/18/2014) (Entered: 11/18/2014)
11/19/2014	71	CLERK'S NOTICE CONTINUING SENTENCING HEARING as to Anthony Pisarski. Sentencing Hearing previously set for 12/9/14 has been Continued to 12/16/2014 02:30 PM in Courtroom 3, 17th Floor, San Francisco before Hon. Richard Seeborg. **This is a text only entry. There is no document associated with this notice. (cl, COURT STAFF) (Filed on 11/19/2014) (Entered: 11/19/2014)**
11/19/2014	72	CLERK'S NOTICE VACATING BOND HEARING on December 9, 2014 before Magistrate Judge Laurel Beeler as to Anthony Pisarski. Bond Hearing reset to 12/16/2014 at 9:30 AM in Courtroom C, 15th Floor, San Francisco before Magistrate Judge Laurel Beeler. (This is a docket text entry only. There is no document associated with this entry.) (lsS, COURT STAFF) (Filed on 11/19/2014) (Entered: 11/19/2014)
12/05/2014	75	**Pretrial Services Form 8 by Kenneth J. Gibson and ORDER as to Anthony Pisarski. Bail Review Hearing set for 12/16/2014 09:30 AM in Courtroom C,**

		15th Floor, San Francisco before Magistrate Judge Laurel Beeler. Signed by Magistrate Judge Nathanael M. Cousins on 12/5/2014. (lmh, COURT STAFF) (Filed on 12/5/2014) (Entered: 12/05/2014)
12/09/2014	76	Letter from friends and family of Anthony Pisarski as to Anthony Pisarski (Attachments: # 1 Letters)(Richards, Ronald) (Filed on 12/9/2014) (Entered: 12/09/2014)
12/09/2014	77	SENTENCING MEMORANDUM by Anthony Pisarski *MOTION FOR VARIANCE; OBJECTIONS TO PSR* (Attachments: # 1 Exhibit "A", # 2 Exhibit "B", # 3 Exhibit "C", # 4 Exhibit "D", # 5 Exhibit "E", # 6 Exhibit "F")(Richards, Ronald) (Filed on 12/9/2014) (Entered: 12/09/2014)
12/09/2014	78	SENTENCING MEMORANDUM by Sonny Moore *Request for Variance, and Objections to Presentence Report* (Palazzo, T. Louis) (Filed on 12/9/2014) (Entered: 12/09/2014)
12/09/2014	79	Certificate of Service by Sonny Moore re 78 Sentencing Memorandum (Palazzo, T. Louis) (Filed on 12/9/2014) (Entered: 12/09/2014)
12/09/2014	80	Exhibits *A- Objections to Presentence Investigation Report* by Sonny Moore re 78 Sentencing Memorandum (Palazzo, T. Louis) (Filed on 12/9/2014) (Entered: 12/09/2014)
12/09/2014	81	Exhibits *B- Letters* by Sonny Moore re 78 Sentencing Memorandum (Palazzo, T. Louis) (Filed on 12/9/2014) (Entered: 12/09/2014)
12/09/2014	82	SENTENCING MEMORANDUM by USA as to Anthony Pisarski (Wright, Adam) (Filed on 12/9/2014) (Entered: 12/09/2014)
12/09/2014	83	SENTENCING MEMORANDUM by USA as to Sonny Moore (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Exhibit D)(Wright, Adam) (Filed on 12/9/2014) (Entered: 12/09/2014)
12/10/2014	84	RESPONSE by Anthony Pisarski *Response To The Governments Sentencing Memorandum* (Attachments: # 1 Declaration Anthony Pisarski)(Richards, Ronald) (Filed on 12/10/2014) (Entered: 12/10/2014)
12/10/2014	85	NOTICE *of lodging of out of district authorities* by Anthony Pisarski re 84 Response (Attachments: # 1 Appendix)(Richards, Ronald) (Filed on 12/10/2014) (Entered: 12/10/2014)
12/15/2014	86	Emergency MOTION to Continue *sentencing hearing* by Anthony Pisarski. Motion Hearing set for 12/16/2014 02:30 PM in Courtroom 3, 17th Floor, San Francisco before Hon. Richard Seeborg. (Attachments: # 1 Exhibit "A", # 2 Exhibit "B", # 3 Envelope "C")(Richards, Ronald) (Filed on 12/15/2014) (Entered: 12/15/2014)
12/16/2014	87	Exhibits *additional lodged in support of motion* by Anthony Pisarski re 86 Emergency MOTION to Continue *sentencing hearing* (Attachments: # 1 Exhibit 1, # 2 Exhibit 2, # 3 Exhibit 3)(Richards, Ronald) (Filed on 12/16/2014) (Entered: 12/16/2014)
12/16/2014	88	RESPONSE by USA as to Anthony Pisarski, Sonny Moore 86 Emergency MOTION to Continue *sentencing hearing* filed by Anthony Pisarski (Wright, Adam) (Filed on 12/16/2014) (Entered: 12/16/2014)

12/16/2014	89	Minute Entry for proceedings held before Magistrate Judge Laurel Beeler: Bond Hearing as to Anthony Pisarski held on 12/16/2014; Court admonished the defendant re being in compliance with pretrial service release conditions. Status Conference set for 12/16/2014 02:30 PM in Courtroom 3, 17th Floor, San Francisco before Hon. Richard Seeborg. (Recording #FTR 10:36-10:41.) (mjj2S, COURT STAFF) (Filed on 12/16/2014) (Entered: 12/16/2014)
12/16/2014	90	Minute Entry for proceedings held before Judge Richard Seeborg:Status Conference as to Anthony Pisarski held on 12/16/2014 Sentencing Continued for 3/31/2015 02:30 PM in Courtroom 3, 17th Floor, San Francisco before Hon. Richard Seeborg. (Court Reporter Kelly Polvi.) (cl, COURT STAFF) (Filed on 12/16/2014) (Entered: 12/16/2014)
12/16/2014	91	Minute Entry for proceedings held before Judge Richard Seeborg:Status Conference as to Sonny Moore held on 12/16/2014. Sentencing Continued for 3/31/2015 02:30 PM in Courtroom 3, 17th Floor, San Francisco before Hon. Richard Seeborg. (Court Reporter Kelly Polvi.) (cl, COURT STAFF) (Filed on 12/16/2014) (Entered: 12/16/2014)
03/09/2015	92	Second MOTION to Continue *sentencing* by Anthony Pisarski. Motion Hearing set for 3/31/2015 02:30 PM in Courtroom 3, 17th Floor, San Francisco before Hon. Richard Seeborg. (Attachments: # 1 Exhibit "A", # 2 Exhibit "B", # 3 Exhibit "C", # 4 Exhibit "D", # 5 Exhibit "E", # 6 Exhibit "F", # 7 Exhibit "G", # 8 Exhibit "H") (Richards, Ronald) (Filed on 3/9/2015) (Entered: 03/09/2015)
03/11/2015	93	NOTICE *of Joinder* by Sonny Moore as to Anthony Pisarski, Sonny Moore re 92 Second MOTION to Continue *sentencing* (Palazzo, T. Louis) (Filed on 3/11/2015) (Entered: 03/11/2015)
03/13/2015	94	NOTICE *of omitted Exhibit "I"* by Anthony Pisarski re 92 Second MOTION to Continue *sentencing* (Attachments: # 1 Exhibit "I")(Richards, Ronald) (Filed on 3/13/2015) (Entered: 03/13/2015)
03/18/2015	95	RESPONSE to Motion by USA as to Anthony Pisarski, Sonny Moore re 92 Second MOTION to Continue *sentencing* (Wright, Adam) (Filed on 3/18/2015) (Entered: 03/18/2015)
03/18/2015	96	CLERK'S NOTICE RESCHEDULING SENTENCING HEARING as to Anthony Pisarski, Sonny Moore. Sentencing Hearing previously set for 3/31/2015 has been Rescheduled to 6/16/2015 at 02:30 PM in Courtroom 3, 17th Floor, San Francisco before Hon. Richard Seeborg. **This is a text only entry. There is no document associated with this notice. (cl, COURT STAFF) (Filed on 3/18/2015) (Entered: 03/18/2015)**

PACER Service Center			
Transaction Receipt			
03/23/2015 10:22:23			
PACER Login:	fpdcac0087:2550647:0	**Client Code:**	
Description:	Docket Report	**Search**	3:14-cr-00278-

		Criteria:	RS
Billable Pages:	10	**Cost:**	1.00

United States Court of Appeals for the Ninth Circuit

Notice of Docket Activity

The following transaction was entered on 03/23/2015 at 4:54:16 PM PDT and filed on 03/23/2015

Case Name:	USA v. Charles Lynch
Case Number:	10-50219
Document(s):	Document(s)

Docket Text:
Filed (ECF) Appellant Charles C. Lynch in 10-50219, Appellee Charles C. Lynch in 10-50264 response opposing motion (motion for miscellaneous relief (to be used only if no other relief applies)). Date of service: 03/23/2015. [9468489] [10-50219, 10-50264] (AWY)

Notice will be electronically mailed to:

Mr. David P. Kowal, Assistant U.S. Attorney
Mr. Joseph David Elford
Mr. Jean-Claude Andre, Assistant U.S. Attorney
Alexandra Wallace Yates, Federal Public Defender
Professor Jenny Elizabeth Carroll

The following document(s) are associated with this transaction:
Document Description: Main Document
Original Filename: Opposition to Govt Motion Delay 538 FINAL.pdf
Electronic Document Stamp:
[STAMP acecfStamp_ID=1106763461 [Date=03/23/2015] [FileNumber=9468489-0]
[9d7fd18d5f625c8625eb01a63038a9e7b3d775fee181490121c8f6dd04eaf7e43b9a7a308ba1782f81c6a017d2b258736a3bdbcaa0e6a05b717cec3a8db2d9df]]

Document Description: Additional Document
Original Filename: Exhibits D - M.pdf
Electronic Document Stamp:
[STAMP acecfStamp_ID=1106763461 [Date=03/23/2015] [FileNumber=9468489-1]
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