

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

**SUPPLEMENTAL EXHIBITS TO MOTION TO ENFORCE SECTION 538
 AND OPPOSITION TO GOVERNMENT’S MOTION TO DELAY**

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, hereby files the attached Supplemental Exhibits N through Q to his previously-filed Motion To Enforce Section 538 of the Consolidated and Further Continuing Appropriations Act, 2015, or in the Alternative for a Limited Remand, filed on February 24, 2015, and Opposition to Government’s Motion To Delay Adjudication of Lynch’s Motion To Enforce Section 538, filed on March 23, 2015.

The attached exhibits include public statements made by the congressional sponsors of Amendment 538. They explain that the Department of Justice’s

interpretation of the amendment is incorrect, and that the amendment was intended to end federal prosecutions of medical marijuana patients and dispensaries. These statements are relevant to this Court's interpretation of the amendment. *See Pac. Gas & Elec. Co. v. State Energy Res. Conserv. & Dev. Comm'n*, 461 U.S. 190, 211 n.23 (1983) (relying on 1965 explanation by "an important figure in the drafting of the 1954 Act"); *North Haven Bd. of Educ. v. Bell*, 456 U.S. 512, 530-32 & n.23 (1982) (citing as relevant legislative history bill summary placed in Congressional Record by bill's sponsor and explanatory remarks made by that sponsor after bill's passage); *id.* at 535 ("Although postenactment developments cannot be accorded the weight of contemporary legislative history, we would be remiss if we ignored these authoritative expressions concerning the scope and purpose of [the law].") (internal quotation marks omitted)).

Exhibits O and Q specifically address Mr. Lynch's case.

Respectfully submitted,

HILARY POTASHNER
Acting Federal Public Defender

DATED: April 9, 2015

By /s/ Alexandra W. Yates
ALEXANDRA W. YATES
Deputy Federal Public Defender

Attorneys for Defendant-Appellant/
Cross-Appellee

CERTIFICATE OF SERVICE

I hereby certify that on April 9, 2015, I electronically filed the foregoing **SUPPLEMENTAL EXHIBITS TO MOTION TO ENFORCE SECTION 538 AND OPPOSITION TO GOVERNMENT’S MOTION TO DELAY** 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 N

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Congressmen Say DOJ's Interpretation Of Their Medical Marijuana Amendment Is 'Emphatically Wrong'

Posted: 04/03/2015 1:58 pm EDT | Updated: 04/03/2015 4:59 pm EDT



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The lawmakers behind a recent [congressional amendment](#) protecting medical marijuana operations in states where the drug is legal strongly rebuked the Department of Justice for trying to continue to crack down on some medical marijuana businesses.

The DOJ believes the law only stops it from "[impeding the ability of states to carry out their medical marijuana laws](#)," department spokesman Patrick Rodenbush said in a statement, portions of which were previously published in the *Los Angeles Times*. "Consistent with the Department's stated enforcement priorities, we don't expect that the amendment will impact our ability to prosecute private individuals or private entities who are violating the Controlled Substances Act."

But Reps. Dana Rohrabacher (R-Calif.) and Sam Farr (D-Calif.), the co-sponsors of the historic amendment that [prohibits the DOJ](#) from using funds to go after state-legal medical marijuana programs, told The Huffington Post that the department is incorrect in its understanding of the law.

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amendment's language is perfectly clear and that the DOJ's self-referential interpretation is emphatically wrong," said Rohrabacher spokesman Ken Grubs.

Farr also had strong words for the DOJ.

"The Justice Department's interpretation of the amendment defies logic," he said. "No reasonable person thinks prosecuting patients

doesn't interfere with a state's medical marijuana laws. Lawyers can try to mince words but Congress was clear: Stop going after patients and dispensaries."

Farr also took to Twitter to criticize the DOJ's view of the law:



Although the DOJ has slowed its crackdown of medical marijuana, it continues to target some dispensaries, including multiple shops in the San Francisco Bay Area.

In February, the congressmen, along with Rep. Barbara Lee (D-Calif.), [wrote a letter](#) publicly condemning the DOJ for "overstepping its bounds" by trying to shut down the Oakland, California-based Harborside Health Center -- widely considered to be the [largest](#) and one of the most well-respected medical marijuana dispensaries in the nation.

"The Justice Department is ignoring the will of the voters, defying Congress, and breaking the law," Bill Piper, director of national affairs for the Drug Policy Alliance, said in a statement Thursday. "President Obama and Attorney General Eric Holder need to rein in this out-of-control agency."

To date, 23 states have legalized marijuana for medical purposes, and an additional 12 have legalized limited medical use of nonpsychoactive cannabis extracts, which are often used to treat children with severe epilepsy. Four states and the District of Columbia have legalized recreational marijuana.

The [\\$1.1 trillion federal spending bill](#) signed by President Barack Obama in December contained the measure that protects medical marijuana operations.

Under the Obama administration, the [Drug Enforcement Administration and several U.S. attorneys](#) have raided marijuana dispensaries and sent people to prison, even though they complied with state laws. According to a 2013 report released by advocacy group Americans for Safe Access, the Obama administration has spent nearly [\\$80 million each year](#) -- more than \$200,000 per day -- cracking down on medical marijuana.

The American public overwhelmingly support the use of medical marijuana: A 2014 CBS News poll found [86 percent of Americans](#) believe doctors should be able to prescribe marijuana to their patients.

Despite the public's support and congressional amendment's protections for medical marijuana, the federal government continues to classify the plant among the most ["dangerous"](#) substances, alongside heroin and LSD, with "no currently accepted medical use."

EXHIBIT O

Congress of the United States
Washington, DC 20515

April 8, 2015

The Honorable Eric Holder
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 20530-0001

Dear Attorney General Holder:

As you know, 35 states have made the production, sale, and use of at least some form of medical marijuana legal under their states' laws, notwithstanding federal law. This number includes twelve states that have enacted measures that permit the use of CBD oils that are illegal under federal law to treat seizure disorders. We write in response to recent statements indicating that the Department of Justice does not believe a spending restriction designed to protect these state medical marijuana laws applies to specific ongoing cases against individuals and businesses engaged in medical marijuana activity, and that the Department will proceed with ongoing litigation that undermines the laws of California and other states that permit medical marijuana.

Specifically, in an *L.A. Times* article titled "Justice Department says it can still prosecute medical marijuana cases," a Department spokesman, Patrick Rodenbush, said that the amendment doesn't apply to cases against individuals or organizations, but merely stops the Department from "impeding the ability of states to carry out their medical marijuana laws."¹

As the authors of the provision in question, we write to inform you that this interpretation of our amendment is emphatically wrong. Rest assured, the purpose of our amendment was to prevent the Department from wasting its limited law enforcement resources on prosecutions and asset forfeiture actions against medical marijuana patients and providers, including businesses that operate legally under state law. In fact, a close look at the Congressional Record of the floor debate of this amendment clearly illustrates the intent of those who sponsored and supported this measure. Even those who argued against the amendment agreed with the proponents' interpretation of their amendment.

Criminal prosecutions, like the recent Kettle Falls Five case in Washington, as well as asset forfeiture actions like those mentioned in the recent *L.A. Times* article against dispensaries in the San Francisco Bay Area, were what motivated us and a majority of our colleagues in the United States House of Representatives to approve this measure and ensure it was codified in the Consolidated and Continuing Appropriations Act late last year. In fact, we can imagine few more efficient and effective ways of "impeding the ability of states to carry out their medical marijuana laws" than prosecuting individuals and organizations acting in accordance with those laws.

¹ "Justice Department says it can still prosecute medical marijuana cases," *L.A. Times*, April 2, 2015. Available at <http://www.latimes.com/nation/nationnow/la-na-nn-medical-marijuana-abusers-20150401-story.html>

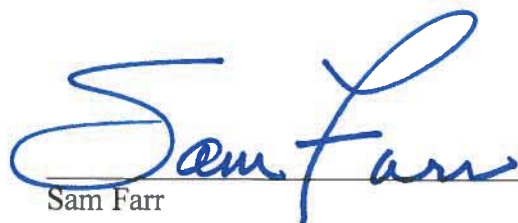
Further, to the extent that there may be questions about whether the facts of these matters or any other specific case constitute violations of state law, we suggest that state law enforcement agencies are best-suited to investigate and determine free from federal interference. As you well know, state authorities handle the vast majority of enforcement of marijuana laws, and states are responsible for implementing and enforcing laws and regulations relating to medical marijuana. The states are therefore in a better position than the Department to resolve these questions.

In closing, we respectfully insist that you bring your Department back into compliance with federal law by ceasing marijuana prosecutions and forfeiture actions against those acting in accordance with state medical marijuana laws.

Sincerely,



Dana Rohrabacher
Member of Congress



Sam Farr
Member of Congress

EXHIBIT P



U.S. | Legal Conflicts on Medical Marijuana Ensnare Hundreds as Courts Del



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U.S.

Legal Conflicts on Medical Marijuana Ensnare Hundreds as Courts Debate a New Provision

By **ERIK ECKHOLM** APRIL 8, 2015



Charles C. Lynch outside the trailer where he lives behind his mother's house in New Mexico.
Mark Holm for The New York Times

Email

BLOOMFIELD, N.M. — Charles C. Lynch seemed to be doing everything right when he opened a [medical](#)



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[marijuana](#) dispensary in the tidy coastal town of Morro Bay, Calif.

The mayor, the city attorney and leaders of the local Chamber of Commerce all came for the ribbon-cutting in 2006. The conditions for his business license, including a ban on customers younger than 18 and compliance with California's [medical marijuana](#) laws, were posted on the wall.

But two years later, Mr. Lynch was convicted of multiple felonies under federal law for selling marijuana. He is one of hundreds of defendants and prisoners caught in the stark conflict between federal law — which puts marijuana in the same class as heroin, with no exception for medical sales — and many states' decisions to allow medical uses.

"I feel so left out of society," Mr. Lynch, 52, who is out on bond and appealing his conviction, said from a battered trailer behind his mother's house here in northwestern New Mexico. He is waiting to see if he must go to prison.

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Mr. Lynch at his medical marijuana dispensary in Morro Bay, Calif., in a photo he provided.

Now, though, a legal wild card has been injected into his case and those of several other defendants in California and Washington State.

In December, in a little-publicized amendment to the 2015 appropriations bill that one legal scholar called a “buried land mine,” Congress barred the Justice Department from spending any money to prevent states from “implementing their own state laws that authorize the use, distribution, possession or cultivation of medical marijuana.”

In the most advanced test of the law yet, Mr. Lynch’s lawyers have asked the Ninth Circuit Court of Appeals to “direct the D.O.J. to cease spending funds on the case.” In a filing last month, they argued that by continuing to work on his prosecution, federal prosecutors “would be committing criminal acts.”

But the Justice Department asserts that the amendment does not undercut its power to enforce federal drug law. It says that the amendment only bars federal agencies from interfering with state efforts to carry out medical marijuana laws, and that it does not preclude criminal prosecutions for violations of the Controlled Substances Act.

With the new challenge raised in several cases, federal judges will have to weigh in soon, opening a new arena in a legal field already rife with contradiction. Currently, 23 states plus the District of Columbia permit

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medical marijuana. Four states allow recreational sales as well.

“If any court, especially the Ninth Circuit, declares that the provision precludes federal prosecution of state-compliant individuals, this will be huge,” said Douglas A. Berman, a law professor at Ohio State University and editor of the [Marijuana Law, Policy & Reform](#) blog.

Such a ruling could put federal courts in the odd position of determining “when a state actor is complying with state law,” said Mr. Berman, who used the metaphor of a buried land mine.

In Mr. Lynch’s case, prosecutors have urged the appeals court to put off considering the issue until the hearing on his criminal appeal and sentence, which is not likely until late this year at the earliest, but also indicated that they would not back down.

In a March brief, Mr. Lynch’s federal public defender, Alexandra W. Yates, wrote that any delay would mean “the Department of Justice’s illegal actions, and their chilling effects on California’s medical marijuana system, would continue unabated.”

Some also call the government’s quest for delay a cynical ploy as officials wait to see whether Congress renews the provision in the next fiscal year.

The California sponsors of the December amendment, including Representatives Sam Farr and Barbara Lee, both Democrats, and Representative Dana Rohrabacher, a Republican, say it was clearly intended to curb individual prosecutions and have accused the Justice Department of violating its spirit and substance.

“If federal prosecutors are engaged in legal action against those involved with medical marijuana in a state that has made it legal, then they are the ones who are the lawbreakers,” Mr. Rohrabacher said.

Mr. Farr said, “For the feds to come in and take this hard-line approach in a state with years of experience in regulating medical marijuana is disruptive and disrespectful.”

The sponsors said they were planning how to renew the spending prohibition next year.

The amendment aside, federal prosecutions of state-approved dispensaries have declined sharply in the last two years, particularly since the Justice Department issued a nonbinding “guidance” to

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prosecutors in 2013. That guidance recommended against pursuing dispensaries, growers and patients who comply with state law, have no links to cartels or interstate smuggling, and do not sell to minors.

New raids on state-approved dispensaries have largely ended, said Steph Sherer, executive director of Americans for Safe Access, a private group that lobbied for the December amendment.

At the same time, she said, federal prosecutors have relentlessly pursued existing cases like Mr. Lynch's and an effort to shut down the large Harborside dispensary in Oakland, Calif. Unbridgeable policy conflicts remain; two of Mr. Lynch's five felony counts were for selling to customers who were over 18, as California permits, but under 21, as federal law forbids.

At Mr. Lynch's 2008 trial, even the term "medical marijuana" was largely forbidden, as was testimony about Mr. Lynch's compliance with California law.

Mr. Lynch opened his business after a decade working in computer software, and he was doing well enough to buy a modest house with an ocean view. He felt excited to be "on the leading edge of a new industry," he recalled the other day. He had a personal interest, too, having discovered that marijuana eased his severe migraines far better than prescription painkillers had.

Janice Peters, who served three terms as mayor of Morro Bay, criticized his prosecution.

"He is such a soft-spoken, nice guy, and to tear his life apart just makes no sense," she said. When the dispensary opened, she gave out her card to neighboring businesses and asked them to report any problems. "There was never any complaint," she said.

Given federal law, Mr. Lynch's 2008 conviction was no surprise. But at his sentencing, Judge George H. Wu of Federal District Court in Los Angeles recounted Mr. Lynch's efforts to obey local law and said there was no evidence he had known of infractions federal agents described: that a worker had made secret sales on the side and that some of his more than 2,000 enrolled customers had received prescriptions on fraudulent pretexts.

"Individuals such as Lynch are caught in the middle of the shifting positions of government authorities," Judge Wu said as he disregarded

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the federal request for a mandatory five-year term but said he felt legally compelled to sentence Mr. Lynch to a year and a day.

Once Mr. Lynch appealed, the federal government revived its demand for a five-year sentence and also asked the appeals court to remove Judge Wu from the case in any future proceedings.

After Mr. Lynch's arrest and the [seizure](#) of his funds, his family mustered resources for a bond, but he spent nine months and 10 days under house arrest with an ankle bracelet. Unable to find work, he lost his house. For the last year and a half, he has been allowed to stay with his family in this rural area next to the Navajo reservation.

"I have no work and no money, and I'm depending on others to survive," he said.

While he waits, he spends his days tinkering on the trailer, repairing fences and practicing oldies on the electric guitar for a one-man band act he developed.

His face came alive as he played "Paint It Black," accompanied by computer-controlled bass, drums and flashing lights.

"I love to play," he said, "but only on days when I feel good about myself."

However, some local bar owners, he said, fearing involvement with a convicted drug felon, have declined his offers to perform.

A version of this article appears in print on April 9, 2015, on page A14 of the New York edition with the headline: Federal Law, State Law and Medical Marijuana Law.
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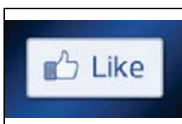
ABOUT

I proudly represent California's Central Coast, the 20th Congressional District and serve as the Ranking Member on the House Agriculture Appropriations...

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<http://www.farr.house.gov/>

APPS



Welcome

PHOTOS



Sam Farr

23 hrs ·

Congress clearly voted to end the federal prosecution of medical marijuana patients when we passed the Rohrabacher-Farr amendment. Lawyers at the Department of Justice interpreted that another way. Congressman Rohrabacher and I sent them the attached letter today to let them know they were emphatically wrong.

Letter to Attorney General Eric Holder

FARR.HOUSE.GOV

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Charles Lynch Thank you Representative Farr. My Medical Marijuana case has dragged on for eight years now and my Federal Public Defenders have made a Sec 538 motion to end the Federal madness. Now it is up to the 9th circuit court of appeals to decide. Also my story is going to be in print on Page A14 of the New York Times today April 9, 2015 and is live on the web now. Thanks again for your work to end the Civil war against the Marijuana community of this nation. <http://www.nytimes.com/.../medical-marijuana-dispensers...>



Legal Conflicts on Medical Marijuana Ensnare Hundreds as Courts Debate a...

New limits on the Justice Department's role in regulating the drug have intensified a long-running debate over federal versus state control.

2 hrs · Edited



Sam Farr ✓ I spoke with that reporter about your case. Very troubling. DOJ is on the wrong side of history here. The public clearly wants these prosecutions to end. Hopefully the 9th Circuit will see that. FYI, I also have carried legislation every year called Truth in Trials that would allow you to at least enter into evidence that you were operating legally under state law. Hang in there, we will keep fighting for you and anyone else needlessly being prosecuted for medical marijuana.

[4](#) · 5 hrs



Charles Lynch Thank you Senator.

5 hrs

James Anderson Merritt Thanks to you and Rep. Rohrabacher for standing up for



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Mr. David P. Kowal, Assistant U.S. Attorney
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Alexandra Wallace Yates, Federal Public Defender
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