

1 Phil Telfeyan  
2 Equal Justice Under Law  
3 916 G Street NW, Suite 701  
4 Washington, D.C. 20001  
5 Telephone: (202) 505-2058  
6 E-mail: ptelfeyan@equaljusticeunderlaw.org  
7

8 **UNITED STATES DISTRICT COURT FOR THE**  
9 **EASTERN DISTRICT OF WASHINGTON**

10	<hr/>	
11	<b>UNITED STATES OF AMERICA,</b>	)
12		)
13	Plaintiff,	)
14		)
15	v.	)
16		)
17	<b>LARRY HARVEY, et al.,</b>	)
18		)
19	Defendant.	)
20	<hr/>	)

No. 2:13-CR-24-TOR  
  
MOTION TO DISMISS  
AS REQUIRED BY ACT OF  
CONGRESS  
  
2/12/2015, 10:00am  
With oral argument

21  
22 Defendants<sup>1</sup> respectfully request that this Court dismiss Counts 1, 2, 3, 4,  
23 and 5 of the Superseding Indictment in this matter, *see* ECF Doc. 322, as required  
24 by a recent Act of Congress prohibiting the federal government from prosecuting  
25 medical marijuana patients in states where medical marijuana is legal. The  
26 prosecution’s continued efforts exceed its authority under the Appropriations Act.  
27 More fundamentally, the principle of Due Process enshrined in the Fifth  
28 Amendment of our Constitution prohibits the federal government from seeking to  
29 imprison its own citizens in a situation, such as here, where Congress has explicitly

---

<sup>1</sup> As per this Court’s standing order, all Defendants who have standing are deemed to join in all motions, except for any Defendant who specifically opts out of a particular motion. *See* ECF Doc. 141, ¶2.

1 prohibited such a prosecution. In our democratic system of federalism, the  
2 executive branch cannot exceed the authority granted to it by the legislative  
3 branch, and where the executive branch expends resources on a prosecution  
4 deemed illegal by Congress, the judiciary is empowered to put a stop to it.

## 5 **I. Factual and Legal Background**

6 From 1970 and for 44 years thereafter, Congress has listed marijuana on  
7 Schedule I of the Controlled Substances Act (“CSA”), making no allowance for  
8 marijuana to be lawfully prescribed for medical purposes. *Gonzales v. Raich*, 545  
9 U.S. 1, 24 (2005). Indeed, for that entire 44-year period, federal statutes gave no  
10 recognition to any medical benefit from marijuana, refusing to recognize that  
11 marijuana could be medically prescribed. Despite the federal government’s efforts  
12 to ignore medicinal uses of marijuana, during the same 44-year time span, 32 states  
13 have given legal recognition to marijuana’s medical purposes. Consolidated and  
14 Further Continuing Appropriations Act 2015, Section 538, 113 P.L. 235, 128 Stat.  
15 2130, 2014 Enacted H.R. 83 (enacted December 16, 2014). On December 16,  
16 2014, Congress enacted a sea change in federal policy:

17 Sec. 538. None of the funds made available in this Act to the  
18 Department of Justice may be used, with respect to the States of  
19 Alabama, Alaska, Arizona, California, Colorado, Connecticut,  
20 Delaware, District of Columbia, Florida, Hawaii, Illinois, Iowa,  
21 Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota,  
22 Mississippi, Missouri, Montana, Nevada, New Hampshire, New  
23 Jersey, New Mexico, Oregon, Rhode Island, South Carolina,

1 Tennessee, Utah, Vermont, Washington, and Wisconsin, to prevent  
2 such States from implementing their own State laws that authorize the  
3 use, distribution, possession, or cultivation of medical marijuana.  
4

5 *Id.* Never before had the phrase “medical marijuana” appeared in any federal  
6 statute. Suddenly, not only has Congress recognized the concept of “medical  
7 marijuana,” but it has also explicitly endorsed the medical value of marijuana and  
8 prohibited federal prosecutions in states where medical marijuana is legal.

9 In putting a stop to DOJ prosecution of medical marijuana patients,  
10 Congress made clear that its intent was to protect the health of patients and each  
11 state’s decision on how to tend to the medical needs of its citizens. *See, e.g.,*  
12 H4983 Congressional Record (*available at* [http://www.gpo.gov/fdsys/pkg/CREC-](http://www.gpo.gov/fdsys/pkg/CREC-2014-05-29/pdf/CREC-2014-05-29-pt1-PgH4968-2.pdf#page=16)  
13 [2014-05-29/pdf/CREC-2014-05-29-pt1-PgH4968-2.pdf#page=16](http://www.gpo.gov/fdsys/pkg/CREC-2014-05-29/pdf/CREC-2014-05-29-pt1-PgH4968-2.pdf#page=16)) (“In States with  
14 medical marijuana laws, patients face uncertainty regarding their treatment, and  
15 small business owners who have invested millions creating jobs and revenue have  
16 no assurances for the future. It is past time for the Justice Department to stop its  
17 unwarranted persecution of medical marijuana and put its resources where they are  
18 needed); Congressional Floor Debates, remarks of Rep. Barbara Lee (“In States  
19 with medical marijuana laws, people with multiple sclerosis, glaucoma, cancer,  
20 HIV, and AIDS and other medical issues continue to face uncertainty when it  
21 comes to accessing the medicine that they need to provide some relief.”).

22 At all times throughout this litigation, Defendants have maintained their

1 innocence to all charges. The prosecution, for its part, has insisted that the full  
2 facts of this case (as it sees the facts) would “confuse” jurors and that federal law  
3 makes no mention of “medical marijuana.” *See, e.g.*, ECF Doc. 295, 5:1–2  
4 (insisting that, under federal law, the concept of “medical marijuana” is irrelevant).  
5 Several of this Court’s prior holdings are premised on federal law’s willful  
6 blindness toward any possible medical benefits of marijuana. *See, e.g.*, ECF Doc.  
7 337, p. 9. Every prior motion from the prosecution on the subject, as well as every  
8 prior ruling from this Court on this subject, was based on a dramatically different  
9 statutory landscape. Similarly, all prior case law previously relied upon by the  
10 prosecution is inapplicable; prior decisions issued before Congressional  
11 recognition that marijuana can have a valid medical purpose are inapposite to the  
12 current legal terrain, now that Congress has specifically codified the medical value  
13 of marijuana in 32 states.

14 Whether real or imagined, whatever blindness may have existed before  
15 December 16, 2014, with respect to the medical benefits of marijuana no longer  
16 exists in federal law. Congress has codified the term “medical marijuana” and,  
17 more importantly for the instant motion, has forbidden the executive branch from  
18 prosecuting medical marijuana patients in states where medical marijuana is legal.

## 19 **II. Discussion**

20 Section 538 of the Appropriations Act prohibits DOJ from using any funds

1 to prevent implementation of state medical marijuana laws.<sup>2</sup> Continued  
2 prosecution in this case violates that Act of Congress. The only consistent  
3 resolution is (A) dismissal of the superseding indictment in its entirety because (B)  
4 a proper reading of the statutory language prohibits any continued prosecution.

5 **A. The Superseding Indictment Must Be Dismissed In Its Entirety**  
6 **Because It Interferes with the State of Washington's**  
7 **Implementation of Its Medical Marijuana Laws**  
8

9 In enacting its medical marijuana laws, the State of Washington established  
10 a comprehensive scheme designed to empower local communities and officials,  
11 benefit medical patients suffering from terminal or debilitating conditions,  
12 stimulate the economy, and generate tax revenue. Congress has decided to protect  
13 Washington's comprehensive scheme by preventing the Department of Justice  
14 from spending any money that interferes with Washington's implementation of its  
15 scheme. Because this prosecution dramatically interferes with Washington's  
16 implementation of its medical marijuana laws, the indictment must be dismissed in  
17 its entirety. Any continued prosecution violates (i) independent decision-making  
18 authority by officers of the State of Washington, (ii) the medical health of patients  
19 in the State of Washington, (iii) economic development in the State of Washington,  
20 and (iv) the State of Washington's efforts to collect tax revenue.

---

<sup>2</sup> Because there can be no reasonable dispute that continuing a prosecution is a prohibited use of funds — any DOJ employee's time, including any attorney's time, is a use of funds — this Motion will not belabor the fact that any continued prosecution constitutes a use of funds.

1           **i. The DOJ's Prosecution Prevents Implementation of**  
2           **Washington's Medical Marijuana Laws by Thwarting**  
3           **Decision-making of Local Communities and Officials**  
4

5           The State of Washington's medical marijuana system empowers local  
6 communities to make decisions for themselves, and DOJ's prosecution negates this  
7 independent decision-making. Local families, such as the family being prosecuted  
8 here, seek sustainable, independent ways to further their health and well-being.  
9 Local farmers, including many across the State, seek a natural, homeopathic way to  
10 contribute to the overall health of fellow Washingtonians. Local prosecutors,  
11 including those in Stevens County who did not press charges against these  
12 Defendants, make important decisions about how best to protect the State's  
13 residents from criminal activity. All of these decisions are entirely negated by the  
14 DOJ's prosecution in the instant case.

15           The State of Washington's medical marijuana scheme is implemented by  
16 state government officials. DOJ's attempt to decide which Washington businesses  
17 and citizens violate state law and which do not inserts the federal government into  
18 the business of interpreting state law, resulting in disastrous consequences for the  
19 authority of local communities. Such interpretation of state law by the DOJ is  
20 exactly what Congress has prevented in Section 538 of the Appropriations Act.

21           The decision to prosecute medical marijuana patients lies in the hands of  
22 local prosecutors, not the DOJ. Through Section 538 of the Appropriations Act,

1 Congress requires the DOJ to stand by and let local prosecutors to decide whether  
2 medical marijuana patients should face criminal sanction. Any other decision-  
3 making process robs the State of Washington of its sovereignty, violates  
4 Washington's medical marijuana scheme, and contradicts the will of Congress.

5 By prosecuting a family who, like all families, is motivated by a desire to  
6 ensure their own health and well-being, the DOJ directly harms Washingtonians  
7 and prevents them from implementing the State's medical marijuana scheme, for  
8 Washington's comprehensive system of medical marijuana could not function if  
9 individual patients are not free to decide for themselves how best to pursue the  
10 highest level of medical health and human functioning. Similarly, by prosecuting  
11 such individuals, the DOJ threatens farmers attempting to grow a lawful, medicinal  
12 plant in the way they are best trained to do. And finally, by seeking prosecution  
13 here, the DOJ deprives the local prosecutors from being able to decide which  
14 citizens endanger community safety and which citizens are operating as a  
15 legitimate part of Washington's comprehensive medical marijuana scheme.

16 **ii. The DOJ's Prosecution Harms Implementation of**  
17 **Washington's Medical Marijuana Laws by Disincentivizing**  
18 **Medical Treatment for Patients with Terminal or**  
19 **Debilitating Conditions**  
20

21 Perhaps most devastatingly, by prosecuting patients of medical marijuana,  
22 the DOJ causes direct harm to the health of residents of Washington seeking

1 treatment under the State’s medical marijuana scheme. Although Congress had  
2 turned a blind-eye to the medical benefits of marijuana for 44 years, it has finally  
3 recognized the concept of “medical marijuana” and enshrined the connection  
4 between medicine and marijuana in the Public Laws. “Medical marijuana” is no  
5 longer an oxymoron in the federal code; it is no longer a concept hidden from  
6 students, lawyers, and judges of federal law. On the contrary, it is a legal fact that  
7 marijuana has medical value.

8 Congress has protected medical marijuana patients in 32 states from the anti-  
9 health efforts of the DOJ. Section 538, 113 P.L. 235. In those 32 states, the DOJ  
10 is forbidden from spending *any* funds in contravention of the medical health of  
11 patients across 32 states. Although this Court has previously ruled the medical  
12 benefits of marijuana irrelevant, such medical benefits are not irrelevant to  
13 lawmakers in the State of Washington, they are not irrelevant to lawmakers in 32  
14 states across the country, they are not irrelevant to the medical patients who seek  
15 treatment for their ailments, and — most importantly — they are not irrelevant to  
16 Congress. The only effective recognition of the will of Congress is dismissal of  
17 this prosecution in its entirety.

18 **iii. The DOJ’s Prosecution Frustrates Implementation of**  
19 **Washington’s Medical Marijuana Laws by Discouraging**  
20 **Economic Development**  
21

22 DOJ’s prosecution impedes economic development created by the State of

1 Washington's medical marijuana scheme. Washington's scheme allows buying  
2 and selling of medical marijuana (as long as the proper medical licenses are  
3 present). These transactions — like all lawful economic transactions in  
4 Washington — fuel the local and statewide economy. Every time money changes  
5 hands consensually, economic profit is created: the seller receives additional value  
6 in money she receives while the buyer receives additional value in the medicine  
7 she receives. Such is the nature of free trade; the voluntary exchange of money for  
8 products creates a benefit to both buyer and seller, as both parties part with  
9 something they value less in order to receive something they value more. The  
10 seller, who profits financially, is able to spend the profits back into the local  
11 economy. The buyer, who profits medically, is a healthier citizen, more capable of  
12 contributing productively to the State's economy. This economic boon is seen on a  
13 larger scale in the dispensaries, which sell in larger quantities to many patients.  
14 *See State v. Shupe*, 289 P.3d 741, 747–48 (Wash. Ct. App. 2012).

15 Pumping energy into the State's economy is a necessary feature of  
16 Washington's comprehensive medical marijuana scheme. The DOJ destroys this  
17 economic surge by seeking prison for medical patients who pursue healthier lives  
18 through medical marijuana.

19 **iv. The DOJ's Prosecution Interferes with Implementation of**  
20 **Washington's Medical Marijuana Laws by Impeding Tax**  
21 **Revenue**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20

Due to the enactment of Washington’s medical marijuana laws, countless dispensaries have been established for the lawful sale of medical marijuana. *See, e.g., State v. Shupe*, 289 P.3d 741, 747–48 (Wash. Ct. App. 2012) (recognizing the lawfulness of dispensaries that sell to multiple patients in multiple transactions). The creation of these businesses — like the creation of any businesses in the State of Washington — benefits both local and statewide tax revenue. Where required, businesses must pay taxes on almost all aspects of conducting a business, including the acquisition of land, construction of buildings, personnel and payroll costs, sales tax, property tax, and myriad other forms of taxation. A necessary output of Washington’s medical marijuana scheme is a ubiquitous system of dispensaries which, like any other Washington businesses, contribute to the tax revenue.

By threatening, implementing, and continuing prosecution of medical marijuana patients in Washington, the DOJ thwarts Washington’s ability to collect tax revenue in important aspects of the medical marijuana scheme. Dispensaries would be directly deterred by the threat of prosecution upon seeing other medical marijuana prosecutions. Dispensaries would be indirectly deterred if patients are deterred from seeking medical marijuana, because dispensaries will not be as profitable. Deterring dispensaries, either directly or by deterring patients, will necessarily reduce the number of dispensaries that are established and will

1 therefore disrupt the numerous avenues of tax revenue these businesses support.  
2 Therefore, continued prosecution of Defendants in this case stands as a barrier to  
3 the State of Washington's tax revenue.

4 **B. Any Ambiguity in State Medical Marijuana Laws Falls within the**  
5 **Province of the State to Resolve as Part of Its Implementation of**  
6 **the Medical Marijuana Scheme**  
7

8 Defendant anticipates that the DOJ will immediately dismiss its indictment  
9 on its own volition. As stated above, the only proper approach in this case is  
10 dismissal of all charges. However, if DOJ takes the incorrect position that it can  
11 continue prosecuting charges connected to medical marijuana, Defendant  
12 anticipates that such an illegal action results only from DOJ's confusion about  
13 Washington's efforts to implement its own medical marijuana laws. DOJ may  
14 argue that (i) the concept of "implementation" is up for debate, and DOJ may  
15 further argue that (ii) Washington's medical marijuana laws are ambiguous. Both  
16 contentions are wrong.

17 **i. The Word "Implementation" Must Be Taken to Have Its**  
18 **Natural Meaning**  
19

20 As used in Section 538 of the Appropriations Act, the word  
21 "implementation" takes on its natural meaning, and so Washington's  
22 implementation of its medical marijuana laws includes all of the consequences  
23 outlined in Section A above. *See Perrin v. United States*, 444 U.S. 37, 42 (1979)

1 (explaining that words not defined in statute should be given ordinary or common  
2 meaning). By common usage of the word, DOJ's prosecution in this case prevents  
3 "implementation" of Washington's medical marijuana scheme.

4 In carefully crafting a legal system of medical marijuana, the State of  
5 Washington sought to empower local communities and officials to make decisions  
6 about medical marijuana, benefit medical patients suffering from terminal or  
7 debilitating conditions, stimulate the economy, and generate tax revenue. In order  
8 to fully implement its medical marijuana scheme, the State of Washington must be  
9 able to achieve all of these goals. Interference from the DOJ disrupts every aspect  
10 of Washington's implementation of its medical marijuana scheme. By preventing  
11 the implementation of Washington's medical marijuana system, DOJ violates  
12 Congress's pronouncement.

13 DOJ may argue that it is only "partially" preventing implementation of  
14 Washington's medical marijuana scheme because it chooses to prosecute only the  
15 most dangerous and violent criminals. Such a position misses the point: state  
16 officials make the decision about whom to prosecute and, by prosecuting medical  
17 marijuana patients federally, the DOJ usurps the State's prerogative to implement  
18 its own medical marijuana laws.

19 To ignore DOJ's interference with Washington's implementation of its  
20 medical marijuana laws is to deny the disruption in all of the categories discussed

1 above. Washington simply cannot fully implement its medical marijuana system  
2 while DOJ's prosecutions threaten the decision-making of local officials and  
3 communities, the medical health of suffering patients, the intended stimulation of  
4 the economy, and the tax revenues that come from lawful business transactions.  
5 Barriers to a State's implementation are exactly what Congress has forbidden. In  
6 short, because of the DOJ's prosecution, the State of Washington cannot fully  
7 implement its medical marijuana system, as the prosecution blocks many of the  
8 intended outcomes of the scheme.

9 **ii. Any Alleged Ambiguities in Washington's Medical**  
10 **Marijuana Scheme Are the Province of State Officials, Not**  
11 **DOJ**  
12

13 DOJ may argue that it is unclear which patients are in compliance with state  
14 medical marijuana laws, and that DOJ should be allowed to prosecute patients it  
15 believes are not in compliance. Such prosecution flies in the face of what  
16 Congress has prohibited; by preventing DOJ from spending any money that  
17 interferes with Washington's implementation of its own laws, Congress barred  
18 DOJ from analyzing any alleged ambiguities in the law.

19 The very process of implementation includes the resolution of alleged legal  
20 ambiguities. For example, whether Washington state law permits two, three, four,  
21 or five patients to grow medical marijuana at the same residence is a question for  
22 state officials, not the DOJ. Washington State officials are empowered to

1 implement their own statute and, in doing so, to interpret any alleged ambiguities  
2 that arise in the implementation process. By attempting to insert its own  
3 interpretation of state law, DOJ prevents Washington's implementation process.  
4 Section 538 of the Appropriations Act forbids DOJ from spending any money to  
5 prevent the State of Washington from implementing its medical marijuana laws.  
6 But the entire point of this Act of Congress is that it is up to the State of  
7 Washington — not DOJ — to assess and interpret any ambiguity in its medical  
8 marijuana scheme.

### 9 **III. Conclusion**

10 By enacting Section 538 of the Appropriations Act, Congress has sent a  
11 message to all courts and all offices of DOJ: no money can be spent prosecuting  
12 medical marijuana patients in the 32 states that have taken steps to set up their own  
13 medical marijuana regulatory scheme, because such prosecutions prevent the full  
14 implementation of medical marijuana schemes. This message admittedly comes as  
15 a complete reversal of 44 years of federal policy, which has calmly ignored any  
16 possible medical qualities of marijuana. But enough is enough. Congress now  
17 refuses to pretend that marijuana has no medical benefit. Whether DOJ wants to  
18 admit the medical benefits of marijuana is its own business, but it cannot spend  
19 money prosecuting medical marijuana patients. This Court is empowered to stop  
20 this illegal prosecution through dismissal of all charges. For all the reasons stated

1 above, Defendants respectfully request dismissal of the indictment in its entirety.

2 Respectfully submitted,

3  
4 /s/ Phil Telfeyan  
5 Phil Telfeyan  
6 California State Bar number 258270  
7 Equal Justice Under Law  
8 916 G Street NW, Suite 701  
9 Washington, D.C. 20001  
10 Telephone: (202) 505-2058  
11 E-mail: ptelfeyan@equaljusticeunderlaw.org  
12

13 /s/ James F. Irwin  
14 James F. Irwin  
15 Washington State Bar number 12454  
16 Irwin Law Firm, Inc.  
17 358 E. Birch Avenue, Suite 202  
18 Colville, WA 99114  
19 Telephone: (509) 684-9250  
20 Fax: (509) 684-9252  
21 E-mail: atty\_irwin@plix.com

22 Dated: January 21, 2015

23  
24 **CERTIFICATE OF SERVICE**

25  
26 I certify that on January 21, 2015, I electronically filed the foregoing  
27 document with the Clerk of the Court using the CM/ECF system, which will send  
28 notice of such filing to the following counsel:

29  
30 Earl Hicks  
31 Assistant United States Attorney  
32 920 West Riverside Avenue, #300  
33 Spokane, WA 99201  
34

35 /s/ Phil Telfeyan  
36 Phil Telfeyan