

U.S.C.A. Nos. 15-30311, 15-30312, 15-30313
U.S.D.C. EDWA No. 2:13-CR-00024-TOR

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

RHONDA FIRESTACK-HARVEY,
ROLLAND GREGG, MICHELLE GREGG,

Defendants-Appellants.

Appeal from the United States District Court
for the Eastern District of Washington

MOTION FOR REMAND AND/OR STAY OF
APPELLATE PROCEEDINGS

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INTRODUCTION

Pursuant to the provisions of Fed. R. App. P. 27, the United States submits the instant Motion for Remand and or Stay of the Filing of the United States Appellate Brief. This motion is based upon Congress denying funding to the Department of Justice for the prosecution of medical marijuana patients in states where medical marijuana is lawful. The purpose of this motion is to acknowledge that the United States was not authorized to spend money on the prosecution of the defendants after December of 2014 because the defendants strictly complied with the Washington State medical marijuana laws.

This motion is based upon the facts and law cited in Appellees' brief relating to this issue filed on May 17, 2017.

GROUND AND RELIEF SOUGHT

The United States concurs with the Attorneys for Appellants' statement of the issues presented as it relates to the Department of Justice not having congressional authorization to spend funds to prosecute the defendants based upon their strict compliance with the Washington State medical marijuana laws.

For the purpose of the motion the United States accepts the statement of the case and the facts cited in support of the defendants' strict compliance of the Washington State medical marijuana laws which authorize them to grow 15 plants each for their own personal medical use.

The United States submits that the legal authority and facts cited by Appellants on the above-stated issue clearly shows the United States was not authorized to spend money on the continued prosecution of the defendants after December 2014. This includes spending money on the present appeal.

Beginning in December 2014, and in every budget since that time, Congress has prohibited the Department of Justice (DOJ) from spending money to prosecute medical marijuana patients when it would prevent such states from implementing their own state laws that authorize the use, distribution, possession or cultivation of medical marijuana. In *United States v. McIntosh*, 833 F.3d 1163, 1177 (9th Cir. 2016), this Court determined that § 542 prohibits the Department of Justice from spending funds for the prosecution of individuals who engaged in conduct permitted by the state medical marijuana laws and fully complied with the laws. The § 542 prohibition regarding DOJ expenditure of funds applies even though the prosecution was properly initiated prior to § 542's enactment. *McIntosh*, 833 F.3d 1163, 1179.

In *United States v. Kleinman*, 859 F. 3d 825, 832 this Court held that § 542 applies to DOJ's continued expenditures on appeals if the Defendants are convicted of an offense where they strictly complied with state medical marijuana law. This Court noted that each count is evaluated separately. Also, "The prosecution cannot use a prosecutable charge (for conduct that violates state

medical marijuana law) to bootstrap other charges that rely solely upon conduct that would fully comply with state law.” *Id.*

The United States submits that this case should be remanded to the district court for further proceedings and that this appeal should be stayed pending the outcome of the remand to the district court or until § 542’s prohibition is no longer in effect.

Date: October 16, 2017

JOSEPH H. HARRINGTON
Acting United States Attorney

s/ Earl A. Hicks

Earl A. Hicks
Assistant United States Attorney

STATEMENT OF RELATED CASES

Counsel for the plaintiff-appellee certifies that no cases pending in this Court are deemed related to this issue presented in the instant appeal.

JOSEPH H. HARRINGTON
Acting United States Attorney

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

CERTIFICATE OF SERVICE

It is hereby certified that on October 16, 2017, I electronically filed the foregoing with the Clerk of Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system. Participants who are registered EM/ECF users will be served by the appellate CM/ECF system.

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I further certify that some of the participants in the case are not registered CM/ECF users. I have mailed the forgoing documents by First-Class Mail, postage prepaid, to the following non-CM/ECF participants.

N/A

s/ Earl A. Hicks
Earl A. Hicks
Assistant U.S. Attorney