

May 26, 2009

Mr. Michael E. Gans
Clerk, United States Court of Appeals
for the Eighth Circuit
Thomas F. Eagleton Court House
Room 24.329
111 S. 10th Street
St. Louis, MO 63102

Re: Carl Olsen v. Drug Enforcement Administration
No. 09-1162

Dear Mr. Gans:

Pursuant to Fed R. App. P. 28(j), Carl Olsen respectfully submits this letter to call the Court's attention to pertinent new authority.

Olsen draws to the Court's attention two instances where federal courts have asked the U.S. Justice Department to articulate its new policy toward state-authorized medical use of marijuana.

The attached court rulings in United States v. Charles Lynch, No. 2:07-cr-00689-GW-1 (C.D. Cal.), dated 3/23/2009, 3/27/2009, and 4/3/2009, ask the Department of Justice to provide the court with the new policy, but the Department of Justice simply said they had reviewed it and it did not apply to Mr. Lynch (response dated 4/17/2009). The Department of Justice did not supply a copy of the new policy to the court as it was requested to do.

The attached court ruling in Santa Cruz v. Eric H. Holder, Jr., No. 03-cv-01802-JF (N.D. Cal.), dated 5/5/2009, grants the Department of Justice until June 12, 2009, to provide the court with a copy of the new policy.

These orders and responses from the Department of Justice support Olsen's interpretation of the Controlled Substances Act, as interpreted by the U.S. Supreme Court in Gonzales v. Oregon, 546 U.S. 243 (2006), that states have the authority to determine accepted medical practice in their states and not the federal government.

Thank you for transmitting this letter to the Court.

Respectfully submitted,



Digitally signed by Carl Olsen
DN: cn=Carl Olsen, o=Iowans for
Medical Marijuana, ou=Paralegal,
email=carl-olsen@mchsi.com, c=US
Date: 2009.05.26 19:55:36 -05'00'

Carl Olsen
130 E Aurora Avenue
Des Moines, Iowa 50313-3654
515-288-5798

cc:

Melissa N. Patterson
U.S. Department of Justice
Civil Division, Appellate Staff
Room 7230
950 Pennsylvania Avenue, N.W.
Washington, DC 20530-0001

Matthew G. Whitaker, U.S. Attorney
U.S. Attorney's Office
110 E. Court Avenue
286 U.S. Courthouse Annex
Des Moines, IA 50309-2053

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CRIMINAL MINUTES - GENERAL

Case No. CR 07-689-GW Date March 23, 2009

Present: The Honorable GEORGE H. WU, UNITED STATES DISTRICT JUDGE

Interpreter None

Javier Gonzalez	Wil Wilcox	David P. Kowal; Rasha Gerges
<i>Deputy Clerk</i>	<i>Court Reporter/Recorder, Tape No.</i>	<i>Assistant U.S. Attorney</i>

<u>U.S.A. v. Defendant(s):</u>	<u>Present</u>	<u>Cust.</u>	<u>Bond</u>	<u>Attorneys for Defendants:</u>	<u>Present</u>	<u>App.</u>	<u>Ret.</u>
1. Charles C. Lynch	✓		✓	1. Reuven L. Cohen; John Littrell;	✓	✓	
				Guy Iverson, Michael Tanaka	✓	✓	

PROCEEDINGS: STATUS CONFERENCE RE SENTENCING

Hearing is held. Court and counsel confer.

For reasons stated on the record, the Sentencing hearing is **continued** to **April 30, 2009 at 10:30 a.m.**

The Government is ordered to submit a response as to whether the Department of Justice’s position has changed regarding criminal cases and medical marijuana dispensaries. A telephonic status conference is set for **March 27, 2009 at 10:00 a.m.** Counsel for the government will be prepared to discuss the timetable of the Department of Justice’s response.

IT IS SO ORDERED.

_____ : _____ 52
Initials of Deputy Clerk JG

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CRIMINAL MINUTES - GENERAL

Case No. CR 07-689-GW Date March 27, 2009

Present: The Honorable **GEORGE H. WU, UNITED STATES DISTRICT JUDGE**

Interpreter None

Javier Gonzalez <i>Deputy Clerk</i>	Wil Wilcox <i>Court Reporter/Recorder, Tape No.</i>	David P. Kowal; Rasha Gerges <i>Assistant U.S. Attorney</i>
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<u>U.S.A. v. Defendant(s):</u>	<u>Present</u>	<u>Cust.</u>	<u>Bond</u>	<u>Attorneys for Defendants:</u>	<u>Present</u>	<u>App.</u>	<u>Ret.</u>
1. Charles C. Lynch	not		✓	1. Reuven L. Cohen; John Littrell;	✓		✓
				Guy Iverson	✓		✓

PROCEEDINGS: TELEPHONIC STATUS CONFERENCE

Hearing is held. Court and counsel confer.

The Government is ordered to submit a response as to Department of Justice's position regarding criminal cases and medical marijuana dispensaries by no later than April 23, 2009. Defendants' response will be due by close of business on April 27, 2009.

The Sentencing hearing remains set for April 30, 2009 at 10:30 a.m.

IT IS SO ORDERED.

Initials of Deputy Clerk JG : _____ 24

1 THOMAS P. O'BRIEN
 United States Attorney
 2 CHRISTINE C. EWELL
 Assistant United States Attorney
 3 Chief, Criminal Division
 DAVID P. KOWAL (Calif. Bar No. 188651)
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 8

9 Attorneys for Plaintiff
 UNITED STATES OF AMERICA
 10

11 UNITED STATES DISTRICT COURT

12 FOR THE CENTRAL DISTRICT OF CALIFORNIA

13 UNITED STATES OF AMERICA,) NO. CR 07-689-GW
)
 14 Plaintiff,)
) ORDER
 15 v.)
)
 16 CHARLES C. LYNCH, and)
 ARMOND TENNYSON TOLLETTE,)
 17 JR.,)
)
 18 Defendants.)
)
 19 _____)

20 ORDER

21 FOR GOOD CAUSE SHOWN, based on the stipulation of the
 22 parties:

23 If the government files its pleading in response to the
 24 Court's recent inquiries regarding marijuana policy by April 17,
 25 2009, then:

26 (a) Defendant shall file any responsive pleading by
 27 April 21, 2009; and

28 (b) The sentencing hearing in this matter will be held

1 on **April 23, 2009 at 10:30 a.m.**

2 However, if (for whatever reason) the government is not able
3 to file the responsive pleading by that date, then the following
4 alternatively schedule will be followed:

5 (a) The government will file its pleading by June 4,
6 2009;

7 (b) Defendant shall file any responsive pleading by
8 June 8, 2009; and

9 (c) The sentencing hearing in this matter will be held
10 on **June 11, 2009 at 10:30 a.m.**

11
12 Date: April 3, 2009



13 HONORABLE GEORGE WU
14 UNITED STATES DISTRICT JUDGE

1 THOMAS P. O'BRIEN
 United States Attorney
 2 CHRISTINE C. EWELL
 Assistant United States Attorney
 3 Chief, Criminal Division
 DAVID P. KOWAL (State Bar No. 188651)
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9 Attorneys for Plaintiff
 10 UNITED STATES OF AMERICA

11 UNITED STATES DISTRICT COURT
 12 FOR THE CENTRAL DISTRICT OF CALIFORNIA

13 UNITED STATES OF AMERICA,)	No. CR 07-689-GW
)	
14 Plaintiff,)	<u>GOVERNMENT'S RESPONSE TO</u>
)	<u>INQUIRY BY THE COURT REGARDING</u>
15 v.)	<u>SENTENCING</u>
)	
16 CHARLES C. LYNCH, et al.,)	
)	
17 Defendants.)	
)	

18
 19 The United States, by and through its counsel of record, the
 20 United States Attorney for the Central District of California,
 21 hereby responds to the Court's order regarding the sentencing of
 22 Charles C. Lynch ("defendant") as set forth during the March 23,
 23 2009 hearing and March 27, 2009 telephone conferences in the
 24 above-captioned case:

25 1. The enforcement policies of the Department of Justice
 26 ("DOJ"), including those expressed by the United States
 27 Attorney's Office ("USAO"), or by Attorney General Holder on this
 28 topic, do not confer any rights or defenses on any person.

1 2. Nevertheless, at the request of the USAO, in response
2 to the Court's inquiries, the Office of the Deputy Attorney
3 General has reviewed the facts of this case and determined that
4 the investigation, prosecution, and conviction of defendant are
5 entirely consistent with the policies of DOJ and with public
6 statements made by the Attorney General with respect to marijuana
7 prosecutions. Accordingly, the USAO has been instructed to
8 proceed with the sentencing recommendations previously filed in
9 this case. A letter from DOJ in Washington D.C. confirming these
10 points is attached hereto.

11 3. In light of this filing, the government notes that, in
12 accord with the Court's Order of April 3, 2009, sentencing in
13 this matter shall proceed on April 23, 2009 at 10:30 a.m.

14 Dated: April 17, 2009

Respectfully submitted,

THOMAS P. O'BRIEN
United States Attorney

CHRISTINE C. EWELL
Assistant United States Attorney
Chief, Criminal Division

/s/

DAVID P. KOWAL
RASHA GERGES
Assistant United States Attorneys
Attorneys for Plaintiff
United States of America



U.S. Department of Justice

Executive Office for United States Attorneys

Office of the Director

Room 2261, RFK Main Justice Building
950 Pennsylvania Avenue, NW
Washington, DC 20530

(202) 514-2121

APR 17 2009

Hon. Thomas P. O'Brien
United States Attorney
Central District of California
United States Courthouse
312 North Spring Street, 12th Floor
Los Angeles, California 90012

Re: United States v. Charles C. Lynch, et al.,
No. CR 07-689-GW

Dear Mr. O'Brien:

This responds to your request for guidance in responding to questions from the court in the above-captioned case as to whether recent public statements by the Attorney General indicate a change in Department of Justice policy that would impact the sentencing of Mr. Lynch.

In response to your request, the Office of the Deputy Attorney General reviewed the facts of this case to determine whether the prosecution of Mr. Lynch comports with the Department of Justice's policies with respect to marijuana prosecutions. Based on the facts of this case, the Office of the Deputy Attorney General concurs with your office that the investigation, prosecution, and conviction of Mr. Lynch are entirely consistent with Department policies as well as public statements made by the Attorney General. Accordingly, you should seek to proceed with the sentencing recommendations which your office has filed with the court.

If you have any questions regarding any of the above, please let me know.

Sincerely,

H. Marshall Jarrett
Director

1 TONY WEST
Assistant Attorney General
2 JOSEPH P. RUSSONIELLO
United States Attorney
3 ARTHUR R. GOLDBERG
Assistant Branch Director
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E-Filed 5/5/09

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13 Attorneys for Defendants

14 **UNITED STATES DISTRICT COURT**
15 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
(SAN JOSE DIVISION)

16 **COUNTY OF SANTA CRUZ, et al.,**)
17 Plaintiffs,)
18 v.)
19 **ERIC H. HOLDER, JR.,**)
Attorney General of the United States;)
20 **MICHELE LEONHART,**)
Acting Administrator of the)
21 Drug Enforcement Administration; and)
22 **EDWARD H. JURITH,**)
Acting Director of the Office of)
23 National Drug Control Policy,)
24 Defendants.)

Civil Action No. 03-1802 JF

**CONSENT ORDER APPROVING
EX PARTE APPLICATION TO
CONTINUE STATUS CONFERENCE**

Date: None Set
Time: None Set

25 Pursuant to Local Rule 7-10, defendants Eric H. Holder, Jr., Attorney General of the United
26 States; Michele Leonhart, Acting Administrator of the Drug Enforcement Administration; and
27 Edward H. Jurith, Acting Director of the Office of National Drug Control Policy, hereby move *ex*
28

1 *parte* to continue the status conference currently scheduled for May 7, 2009, at 9:30 a.m., for 30
2 days, and to a date and time that is convenient for the Court. In support thereof, defendants state as
3 follows:

4 1. On March 23, 2009, this Court conducted a further case management conference and
5 scheduled a status conference for May 7, 2009, at 9:30 a.m., after which time the parties would
6 discuss with the Court in chambers whether this case needs to go forward.

7 2. The Department of Justice is formulating guidance for United States Attorney's offices
8 regarding enforcement policies and practices. That effort is ongoing, but not yet completed.
9 Defendants therefore do not believe a status conference and in-chambers discussion would be
10 productive at this time, and respectfully request that this Court continue the status conference for 30
11 days, at a date and time that is convenient for the Court. In this regard, the undersigned notes that
12 he will be unavailable on June 1, 2009, as he will be presenting oral argument before the United
13 States Court of Appeals for the First Circuit in United States v. Jamont Dubose, No. 08-2382.

14 3. The undersigned consulted on this date with co-counsel for the plaintiffs, Allen Hopper,
15 Litigation Director of the ACLU Drug Law Reform Project, who indicated that plaintiffs do not
16 oppose this request.

17 4. In the alternative, and for the reasons set forth above, defendants respectfully request that
18 the Court convert the status conference to a further case management conference, and allow the
19 undersigned to appear by telephone. The parties are in agreement, however, that a further case
20 management conference is not necessary at this time for the reasons above.

21 WHEREFORE, for the foregoing reasons, and with good cause having been shown,
22 defendants respectfully request that this Court continue the status conference scheduled for May 7,
23 2009, at 9:30 a.m., for 30 days, and to a date and time that is convenient for the Court.
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Respectfully submitted,

TONY WEST
Assistant Attorney General

JOSEPH P. RUSSONIELLO
United States Attorney

ARTHUR R. GOLDBERG
Assistant Branch Director

/s/ Mark T. Quinlivan
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John Joseph Moakley U.S. Courthouse
1 Courthouse Way, Suite 9200
Boston, MA 02210
Tel: 617-748-3606
e-mail: mark.quinlivan@usdoj.gov

Dated: May 1, 2009

CERTIFICATE OF SERVICE


I hereby certify that on May 1, 2009, I electronically filed the foregoing Consent *Ex Parte* Application to Continue Status Conference with the Clerk of the Court, using the CM/ECF system, which will send notification of such filing to the counsel of record in this matter who are registered on the CM/ECF system.

/s/ Mark T. Quinlivan
MARK T. QUINLIVAN
Assistant U.S. Attorney

The status conference is continued to June 12, 2009 at 10:30 a.m.

IT IS SO ORDERED

Dated: 5/5/09


JEREMY FOGEL
United States District Judge