IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	CRIMINAL NO. 06-538 JCH
	)	
DANUEL DEAN QUAINTANCE and MARY HELEN QUAINTANCE,	)	
	)	
Defendants.	)	

GOVERNMENT'S RESPONSE TO DEFENDANTS' JOINT MOTION TO DISMISS FOR FAILURE TO STATE A VALID CAUSE OF ACTION

The United States of America files this Response to Defendants' Joint Motion to Dismiss for Failure to State a Valid Cause of Action, filed on August 8, 2008.

1.
Defendants' Motion Is Based on an Erroneous Legal Assumption; 21 U.S.C. § 841 Has Not Been Rendered a Nullity and the Indictment Is Not Facially or Otherwise Invalid.

Despite their disclaimer that "(t)he points above are not and should not be construed simply as an argument that marijuana has 'accepted medical use in the United States'" (Doc. 364 at p. 5, ¶13), the same is the crux of their argument.

The defendants state that marijuana has accepted medical use in the United States and is, therefore, incorrectly and illegally placed in 22 C.F.R. § 1308.11, Schedule I. (Doc. 364 at p. 6, ¶13.) The defendants' cite, "(b)ased upon marijuana's correct" accepted medical use in the United States, "the Controlled Substances Act's preemption provision as contained in 21 U.S.C. 903 precludes the Drug Enforcement Administration from including marijuana in Schedule I, 21 C.F.R. § 1308.11." (Doc. at p. 2, ¶2.) The defendants' logic is circular.

The defendants have attached a series of exhibits to their joint motion which do not rise to the level of *stare decisis* upon this Honorable Court or the Tenth Circuit. One such exhibit is defendants' Exhibit 4 (Doc. 364-6), a seemingly incomplete *Opinion and Recommended Ruling, Findings of Fact, Conclusions of Law and Decision of Administrative Law Judge*. This decision by Francis L. Young, Administrative Law Judge, like all of defendants' exhibits, is hardly binding on this Honorable Court.

2.
Gonzales v. Raich: A Supreme Court Decision

It should be noted *Gonzales v. Raich*, 545 U.S. 1 (2005), involves the Commerce Clause and, of course, is factually rooted in the medical marijuana controversy pursuant to the California Compassionate Use Act.

The defendants seem to imply that *Raich* stands for the proposition that marijuana is not, or should not be, a Schedule I controlled substance. This is clearly not the case.

The Controlled Substances Act ("CSA") provides for the periodic updating of schedules and delegates authority to the Attorney General, after consultation with the Secretary of Health and Human Services, to add, remove, or transfer substances to, from, or between schedules, § 811. Despite considerable efforts to reschedule marijuana, it remains a Schedule I drug. *Gonzales v. Raich*, 545 U.S. 1, 14-15 (2005).

Defendants also rely on *United States v. Oakland Cannabis Buyers' Cooperative*, 532 U.S. 483 (2001), to support their circular "medical use" argument and attempt to argue that marijuana should not be a Schedule I controlled substance. This reliance is misplaced. Turning once again to the teachings of *Raich*, we see that the defendant's position is unsupported. ". . . [T]he fact that marijuana is used for personal medical purposes on

advice of a physician" cannot itself serve as a distinguishing factor. The CSA designates marijuana as contraband for any purpose; in fact, by characterizing marijuana as a Schedule I drug, Congress expressly found that the drug has no acceptable medical uses." *Id.* at 27.

It is curious that the defendants cite a case which is diametrically opposed to their position. A desperate situation leads to desperate acts. The defendants' trial looms near, hence their fears of possible incarceration has lead them to file this legally unsound motion which is now before the court.

CONCLUSION

The defendants view the world as they wish it to be, not as it is. The indictment is not facially invalid; marijuana is a Schedule I controlled substance and defendants' dilatory tactics cannot change the current state of the law. Therefore, the relief sought by the defendants should be denied.

Respectfully submitted,

GREGORY J. FOURATT
United States Attorney
Electronically filed on 8/14/08
LUIS A. MARTINEZ
Assistant United States Attorney
555 S. Telshor Blvd., Suite 300
Las Cruces, NM 88011
(575) 522-2304 - Tel.
(575) 522-2391 - Fax

I HEREBY CERTIFY that I have electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will notify opposing counsel of record on this date.

Electronically filed
LUIS A. MARTINEZ
Assistant United States Attorney
N:\ERivera\ATTORNEYS\LUIS\QUAINTANCE TRIAL\resp_mtd failure st valid cause of act.wpd