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UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA, Plaintiff, v. **RHONDA FIRESTACK-HARVEY, MICHELLE GREGG, and ROLLAND GREGG,** Defendants.	No. 2:13-CR-24-TOR MOTION FOR LEAVE TO FILE OPPOSITION TO MOTION FOR DETENTION 4/3/2015 Without oral argument

Defendants Rhonda Firestack-Harvey, Michelle Gregg, and Rolland Gregg respectfully request permission for leave to file the attached brief opposing the prosecution's Motion for Detention (ECF Doc. 635). The attached opposition brief is 20 pages in length (not including signature pages). Defense counsel is mindful of this Court's page limitation and has made every effort to be concise. Defense counsel has coordinated the response so that all three Defendants' responses are consolidated into a single document, rather than burdening this Court with three separate responses. Additionally, the issues raised by the prosecution require a

comprehensive response so as not to waive any arguments on appeal. To fully cover all the issues for all three Defendants, it was necessary for counsel to go beyond the normal 10-page limit.

Respectfully submitted,

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Dated: March 10, 2015

1 **CERTIFICATE OF SERVICE**
2
3 I certify that on March 10, 2015, I electronically filed the foregoing
4 document with the Clerk of the Court using the CM/ECF system, which will send
5 notice of such filing to the following counsel:
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UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA, Plaintiff, v. **RHONDA FIRESTACK-HARVEY, MICHELLE GREGG, and ROLLAND GREGG,** Defendants.	No. 2:13-CR-24-TOR OPPOSITION TO MOTION FOR DETENTION (ECF 635) 4/3/2015 Without oral argument

Defendants Rhonda Firestack-Harvey, Michelle Gregg, and Rolland Gregg hereby submit this Opposition to the prosecution's Motion for Detention (ECF Doc. 635). The prosecution's Motion fails to address the exception laid out in 18 U.S.C. § 3145(c) for Defendants who can show "exceptional reasons" justifying release pending sentencing. Defendants in this case meet section 3145(c)'s exception and also meet the conditions for release set forth in 18 U.S.C. § 3143.

I. Defendants Qualify for Release Pending Sentencing under the Exception Laid Out in 18 U.S.C. § 3145(c)

The exception provided in 18 U.S.C. § 3145(c) applies in full force to

Defendants in this case. The exception provides that:

> A person subject to detention pursuant to section 3143(a)(2) or (b)(2), and who meets the conditions of release set forth in section 3143(a)(1) or (b)(1), may be ordered released, under appropriate conditions, by the judicial officer, if it is clearly shown that there are exceptional reasons why such person's detention would not be appropriate.

18 U.S.C. § 3145(c). This exception focuses the analysis on whether detention "would not be appropriate"; numerous exceptional reasons in this case (highlighted below) clearly illustrate that detention pending sentencing is inappropriate.

In the leading Ninth Circuit precedent interpreting section 3145(c)'s exception, the appellate court held that this Court has "broad discretion" to allow post-verdict release and that this Court is empowered "to consider *all* the particular circumstances" that might warrant release. *United States v. Garcia*, 340 F.3d 1013, 1018 (9th Cir. 2003) (emphasis added). In stressing the high level of deference entrusted to this Court's discretion, the Ninth Circuit added that "we place no limit on the range of matters the district court may consider" in determining whether to permit Defendants' continued release. *Id.* at 1018–1019. In interpreting the legal standard for this Court to apply under section 3145(c)'s exception, the Ninth Circuit added that whether detention is "unreasonable" counsels heavily in favor of release. *See id.* at 1021 ("[A] district judge, after examining all the circumstances, may well find cause to conclude that it would be unreasonable for the defendant to be incarcerated pending appeal.").

1 **A. Defendants Continue to Contribute Positively to Society through**
2 **Employment and Palliative Care**
3
4 All three Defendants are contributing positively to society, either through
5 their employment or through assistance with essential family medical care. As this
6 Court heard at trial, Defendant Rolland Gregg is a co-founder and partner at Native
7 Clean Energy, a non-profit dedicated to finding sustainable energy sources for
8 indigenous communities. The critical work Mr. Gregg performs was described by
9 his colleagues at trial, including the many long hours he works both on the
10 technical side and in building business relationships. Mr. Gregg's continued
11 employment serves an important public interest in helping the economic vitality of
12 Native American communities that may be struggling with energy resources.
13 Defendant Michelle Gregg is an equally integral asset to her community.
14 Working full-time at Microsoft for over four years, Ms. Gregg's employment is an
15 exemplary contribution to the economic progress and technological advancement
16 from which we all benefit.
17 Defendant Rhonda Firestack Harvey, though retired, plays a vital role in her
18 community. She is the only full-time caregiver for Larry Harvey. Unfortunately,
19 Mr. Harvey's medical prognosis is dire, and Ms. Harvey's continued assistance is
20 life-sustaining. During what may be the last few months of his life, Mr. Harvey is
21 literally dependent on his family for getting him to hospital appointments,
22 administering medicine, feeding him, and other basic necessities that accompany

the late stage of life.

The essential role all three Defendants play in their communities and in their employment is exceptional. Some drug traffickers may very well have no employment whatsoever; others may make an illegal living off of drug trafficking. In contrast to such illicit behavior, Defendants in this case are exceptional citizens. They have never sold any drug in their life, never before been convicted of any crime, and have all spent decades as working, contributing members of our society.

B. All Three Defendants Have Fully Complied with Their Pre-Trial Conditions of Release

For over two years, every Defendant has shown strict compliance with the conditions of pre-trial release. The unusually lengthy time between the indictment on February 6, 2013, and the verdict on March 2, 2015, highlights each Defendant's streak of perfect compliance. None of the Defendants has ever broken any law or even seen so much as a speeding ticket during the two-plus years before trial. None of the Defendants has ever consumed any drug, nor has any Defendant used medicinal marijuana, because each Defendant understands the importance of abiding by the conditions of release. All three Defendants tested negative on every drug test they ever took.

Defense counsel has contacted the pre-trial probation officers for each Defendant and confirmed that all three remaining Defendants are in "good standing" and have never violated their pre-trial terms of release.

1 Pre-trial probation Officer Tom Fitzgerald oversees both Rolland and
2 Michelle Gregg out of the Seattle office. Mr. Fitzgerald confirmed that Mr. and
3 Ms. Gregg are in "good standing" as far as their history of compliance with their
4 conditions of release. Mr. Fitzgerald's office does not oppose continued release
5 and informed counsel that the office does not take any position on the matter.
6 Pre-trial probation Officer Matt Thompson oversees Rhonda Firestack
7 Harvey. Mr. Thompson confirmed that Ms. Harvey has never violated her terms of
8 release. Mr. Thompson added that Ms. Harvey is on the office's "low risk list."
9 Mr. Thompson's office does not oppose continued release and informed counsel
10 that the office does not take any position on the matter.
11 Without any support or citation, the prosecution states that Ms. Harvey
12 contacted Jason Zucker and claims that Ms. Harvey admitted to the conduct in
13 question. In fact, Ms. Harvey did not contact Mr. Zucker and has not admitted to
14 violating her terms of release. To counsel's understanding, Ms. Harvey only
15 contacted Ms. Zucker (who is not a defendant in this case), not Mr. Zucker.
16 Additionally, as this Court clarified at the Pre-Trial Hearing on February 12, 2015,
17 Defendants have been free to speak with one another, but can only discuss the case
18 if their attorneys are present. An e-mail from Ms. Harvey to Ms. Zucker is not a
19 violation of this order, especially absent any evidence that Ms. Harvey ever spoke
20 to Ms. or Mr. Zucker about the case.

1 **C. Defendants Pose an Exceptionally Low Risk of Flight**

2 Defendants' strong ties to their communities, long-term employment
3 commitments, and familial responsibilities all highlight their exceptionally low risk
4 of flight. Equally demonstrative of Defendants' guaranteed appearance is their
5 perfect attendance streak of over two years. None of the Defendants has had a
6 single failure-to-appear for any reason for any proceeding. In fact, none of the
7 Defendants has ever had a failure-to-appear for any proceeding in their entire life.

8 Defendants' flight risk is as low as could be conceived, and it is even lower
9 now than it had been for more than two years. Ever since charges were first
10 brought in February 2013, all three Defendants were facing a mandatory minimum
11 sentence of 10 years to life. Now, all three Defendants have been exonerated of all
12 of the most serious charges. Having received "not guilty" verdicts on 4 out of 5
13 charges, and only having been convicted of a lesser-included offense on the
14 manufacture charge, Defendants pose no risk of flight. The sole charge of
15 conviction carries no minimum sentence at all (due to the jury's acquittal of the
16 100 or more charge). This Court had adjudged Defendants not to be a flight risk
17 pending trial, when they were facing five extremely serious felony drug charges
18 with multiple mandatory minimum sentences. Now, after nearly total exoneration
19 from the jury and only a conviction on a lesser-included offense, Defendants'
20 already minimal risk of flight has dropped even lower.

1 Notably, with this Court's permission, all three Defendants have left the
2 jurisdiction for both work and family obligations during the pendency of this case,
3 and every time each Defendant has returned as required and properly reported to
4 pre-trial services. No Defendant has abused this Court's discretion for limited
5 travel when necessary, and every Defendant has ensured that any permitted travel
6 was consistent with all other conditions of release. Such conduct is indicative of
7 an exceptionally low risk of flight.
8 Further illustrative of Defendants' commitment to appear is the fact that two
9 Defendants — Mr. and Ms. Gregg — live over 250 miles from Spokane and
10 completely outside the Eastern District of Washington. The fact that two
11 Defendants have lived and worked outside of the jurisdiction for two years and yet
12 still have no failures to appear further underscores that these Defendants pose an
13 exceptionally low risk of flight.
14 As the Ninth Circuit has held, an exceptionally low risk of flight is a factor
15 tending in favor of release under section 3145(c)'s exception. *Garcia*, 340 F.3d at
16 1021 ("[T]he district court may also consider . . . whether because of particular
17 circumstances the defendant is exceptionally unlikely to flee . . . if he is permitted
18 to remain free pending his appeal."). Defendants' strong community ties,
19 employment history, and family commitments — combined with perfect
20 attendance before receiving acquittals on all the most serious charges — all

1 demonstrate that Defendants are exceptionally unlikely to flee. Indeed, Defendants
2 pose no risk of flight at all.

3 **D. Defendants Pose an Exceptionally Low Risk of Danger**

4 As this Court heard during trial, Defendants are all highly respected and
5 beloved members of their communities. They are known by their neighbors and
6 peers as law abiding citizens. In fact, none of the three remaining Defendants had
7 ever been convicted of any crime in their entire lives.

8 The Ninth Circuit has held that "the primary purpose of the Mandatory
9 Detention Act [is] to incapacitate violent people." *Id.* at 1019. Suffice it to say,
10 Defendants are the furthest thing from violent. As the testimony at trial confirmed,
11 they are salt of the earth, compassionate, law abiding people. They have all
12 demonstrated the great lengths they will go to in support of neighbors, family,
13 friends, Native American communities, and strangers. None has ever hurt another
14 human being; none has ever been convicted of or even charged with a violent
15 crime; none shows any possible risk of violence to others.

16 Defendants understand that this nation's drug laws are important laws and
17 violations of them are serious. Unlike perhaps other cases, Defendants in this case
18 have no prior record of violating the drug laws. They are not drug addicts or
19 people who show a high likelihood of recidivism. Defendants are committed to
20 following federal law for the rest of their lives, including the federal drug laws.

As the Ninth Circuit has held, an exceptionally low danger to others is a factor tending in favor of release under section 3145(c)'s exception. *Id.* at 1021 ("[T]he district court may also consider . . . whether because of particular circumstances the defendant is exceptionally unlikely . . . to constitute a danger to the community if he is permitted to remain free pending his appeal."). Defendants in this case show the lowest possible risk of danger to others: no danger at all.

E. Defendants Have Strong Arguments for No Period of Incarceration

Another exceptional circumstance in this case is that Defendants will present compelling arguments for no period of incarceration. As mentioned, the jury acquitted Defendants on 4 of the 5 counts against them — including all of the most serious offenses and all charges that carry any mandatory minimum sentence. The only conviction Defendants received was a lesser-included offense on the manufacture count.

Based on Defense counsel's initial review, the appropriate sentencing guidelines range will be 0–6 months. As this Court knows, probation is an acceptable sentence in such a scenario. But even independent of the guidelines range this Court may calculate, Defense counsel will be arguing that the factors outlined in 18 U.S.C. § 3553(a) militate in favor of a sentence that includes no period of incarceration. Especially in light of many unique factors this case presents — including a state law that authorizes individuals with medical

1 authorization to grow 15 marijuana plants each, the medical needs of each
2 Defendant, and several others — Defendants will argue at sentencing that
3 exceptional circumstances differentiate this case from other drug trafficking cases.
4 Thus, although Defense counsel's calculations indicate a guidelines
5 recommendation of 0–6 months, even irrespective of the guidelines, Defendants
6 have very strong arguments under section 3553(a) for no prison time.
7 Given the strength of Defendants' arguments at sentencing and the potential
8 for no period of incarceration, Defendants would be irreparably harmed by
9 detention pending sentencing. The Ninth Circuit has highlighted that, where
10 Defendants may be unlikely to face lengthy prison sentences, release can be
11 particularly appropriate under section 3145(c). *Id.* at 1019 ("[T]he primary
12 purpose of the Mandatory Detention Act — to incapacitate violent people — is
13 only weakly implicated where the sentence imposed is very short, because
14 regardless of whether the defendant is released pending appeal, he will soon be
15 free."); *see also id.* at 1020 (explaining that, if a Defendant is likely to avoid prison
16 altogether through a reversal, "he may be able to demonstrate exceptional reasons
17 for delaying the commencement of his sentence"). The prosecution's request for
18 detention at this stage effectively deprives Defendants from even the opportunity to
19 argue for a sentence with no prison time. Equally important, the prosecution's
20 request for detention effectively deprives this Court the discretion it has to impose

no prison time at sentencing. If Defendants are detained now, they may very well be detained longer than the time this Court eventually deems appropriate under the circumstances. *Cf id.* at 1019 (explaining that release is appropriate under 3145(c) where a short sentence is likely because "the defendant could be forced to serve most or all of his sentence before his appeal has been decided").

F. Defendants Have No Prior Criminal History and No Risk of Recidivism

Although Defendants' lack of prior criminal history has already been noted in relation to other factors, the Ninth Circuit has held that lack of criminal history, in and of itself, can qualify as an exceptional reason to release Defendants pending sentencing and appeal. *Id.* at 1019 ("[I]f the district court finds that the defendant led an exemplary life prior to his offense and would be likely to continue to contribute to society significantly if allowed to remain free on bail, these factors would militate in favor of finding exceptional reasons."). The Ninth Circuit's connection between lack of criminal history and positive contributions to society are perfectly exemplified by these Defendants; all three have dedicated their lives to helping others, being productive and working members of society, and being law abiding citizens. Defendants in this case present the exact "exceptional reasons" the Ninth Circuit has recognized as justifying section 3145(c)'s exception.

The Ninth Circuit has also drawn attention to whether Defendants' conduct was aberrational. *Id.* ("[O]ne exceptional circumstance that might justify release

under § 3145(c) would be that the defendant's criminal conduct was aberrational. A defendant with no prior history of violence may have acted violently, but uncharacteristically, . . . and yet may not be the type of violent person for whom Congress intended the mandatory detention rule."). Defendants' conduct in this case is the prototype of aberrational behavior; they are not drug addicts or people who have shown a history of violating federal law. They have never acted violently, never hurt another human being, and never been convicted of any crime before (violent or non-violent). In a state where medical marijuana has been legal for 17 years and with admittedly confusing conflicts between state and federal law, these Defendants present an exceptional case of individuals whose violation was aberrational. They are the furthest thing from hardened criminals or recidivist offenders.

G. Defendants' Family Is Suffering from Larry Harvey's Medical Prognosis

All three Defendants in this matter are in the immediate family of Larry Harvey. As this Court knows, Mr. Harvey's health condition is quite dire. Each Defendant is doing what they can to assist and spend time with their beloved husband/step-father. The Ninth Circuit has recognized that personal and familial hardships can qualify as exceptional reasons warranting release under 3145(c). *See id.* at 1019 ("The district court might also consider circumstances that would render the hardships of prison unusually harsh for a particular defendant. Chief

1 among such circumstances is a sufficiently serious illness or injury."); *see also id.*
2 at 1020 ("Although a defendant may ultimately be forced to serve a prison
3 sentence regardless of his health, it may be unreasonable to force him to begin his
4 sentence prior to the resolution of his appeal.").

5 **H. Similarly Situated Defendants Have Been Released under Section**
6 **3145(c)'s Exception with Circumstances Less Exceptional than**
7 **Defendants Present Here**
8
9 As further proof of the reasonableness and appropriateness of Defendants'
10 release pending sentencing, Defendants note that many other defendants in this
11 District have been released pending sentencing in circumstances less compelling.
12 Of particular note is Jason Zucker who, on February 24, 2015, pleaded guilty to
13 drug trafficking offenses *more serious* than what these three Defendants were
14 found guilty of. Mr. Zucker's guilty plea includes a mandatory five-year minimum
15 sentence; Mr. Zucker has prior drug trafficking convictions; Mr. Zucker has
16 admitted under oath that he has also violated federal law in three other locations
17 (he testified at trial to manufacturing marijuana in Trinity County, California;
18 Prosser, Washington; and at his home in Seattle, Washington) — thus, Mr. Zucker
19 is even more likely a recidivist than these Defendants.

20 Defendants have submitted a *Brady* request to the prosecution for other
21 instances in which defendants have been released pending sentencing, and
22 Defendants have reminded the prosecution that its *Brady* obligation covers any

exculpatory information relevant to guilt as well as punishment. Defendants have not yet heard back from the prosecution but have been able to gather the following examples of defendants who have been convicted of more serious offenses in this District and who were nonetheless released pending sentencing: Princeton Perry (2:13-CR-08-WFN-32, Conspiracy to Distribute Oxycodone); Brandon Chavez (2:13-CR-08-WFN-11, Conspiracy to Distribute Oxycodone); Nacrissa Ulmer (2:13-CR-08-WFN-33, Conspiracy to Distribute Oxycodone); (Defendant Ceja (2:12-CR-2093-EFS, Manufacturing Marijuana); Defendant Almaguer (1:14-CR-2019-SAB, Possession of 50 Grams or More of Actual Meth with Intent to Distribute); Defendant Moctezuma (2:11-CR-2124-LRS, Felon in Possession); Bradley Marvin (2:12-CR-2038-RMP-1, Manufacture 100 or More Marijuana Plants); Todd Lutz (2:14-CR-0036-JLQ-1); Robert Pettie (2:12-CR-6056); Travis Bowman (4:14-CR-6015). This list is just a sampling of individuals Defense counsel has uncovered who were released pending sentencing and appeal; the prosecution will likely produce examples of many others. The frequency of release pending sentencing and appeal further illustrates that the many exceptional reasons presented by Defendants in this case militate in favor of release.

I. Defendants' Only Conviction Is for Conduct Consistent with Medical Authorizations Possessed by Each Defendant

Last but not least, it must be highlighted that the offense for which Defendants have been convicted captures conduct consistent with medical

1 authorizations possessed by each Defendant. Although Defendants will not repeat
2 here arguments that are more appropriate in other contexts, it is worth highlighting
3 that the state-sanctioned medical authorizations possessed by Defendants explicitly
4 authorize each patient to grow 15 marijuana plants. *See* Exhibit A (medical
5 authorizations stating allowance of 15 marijuana plants per patient). These
6 authorizations make no mention of a limit for a family or group of people who
7 grow marijuana in the same area. *See id.*

8 The jury acquitted Defendants not only on 4 out of 5 counts, but also on the
9 charge that they manufactured over 100 marijuana plants. Thus, the only
10 conviction — for a lesser-included offense — was for growing 74 marijuana
11 plants. This conviction is consistent with 5 people who each possess state-
12 sanctioned medical authorization growing 15 plants each.

13 To be clear, Defendants are not here asserting that their state-sanctioned
14 medical authorizations serve in any way as a defense to federal law. However,
15 when it comes to identifying "exceptional reasons," it is clear that this case
16 presents unique factual circumstances and issues not contemplated by the
17 Mandatory Detention Act. Indeed, the Mandatory Detention Act was passed well
18 before any state had legalized medical marijuana, so Defendants' conduct certainly
19 is not the sort envisioned when the act was passed.

20 State law authorization of medical marijuana in Washington helps illustrate

1 the uniqueness of Defendants' conduct. Unlike those who manufacture massive
2 amounts of a drug, or those who sell drugs to children or across state lines,
3 Defendants in this case grew marijuana plants consistent with 15 per patient. They
4 did not sell to anyone. They did not use violence or guns in any way (other than
5 Larry Harvey's legal hunting). The fact that Defendants' conduct is consistent
6 with their state-sanctioned medical authorizations heavily counsels against
7 detention at this stage.

8 The Ninth Circuit has highlighted that there may be unusual cases that fall
9 outside the intent of the Mandatory Detention Act, and this case is exactly such an
10 exception. *Garcia*, 340 F.3d at 1019 ("Under appropriate circumstances, for
11 example, if the act was violent, but did not involve any specific intent — or if it did
12 not involve any threat or injury to persons — the district court might find that in
13 some cases the general rule in favor of detention is less likely to be applicable.").
14 The Ninth Circuit has even recognized the possibility that unforeseen federalism
15 concerns — including unforeseen conflicts between state and federal law such as
16 has been implicated in this case — can qualify as exceptions under section 3145(c)
17 to justify release. *Id.* at 1021 n.7 ("We do not suggest, however, that federalism
18 could never be a concern. We do not address, for example, a circumstance in
19 which state law or policy affirmatively authorized or directed the acts for which the
20 defendants were convicted under federal law."). Though contrary to federal law,

1 Washington state law appears to authorize each patient to grow 15 marijuana
2 plants. *See* Exhibit A. Such apparent authorization presents both sympathetic and
3 exceptional circumstances — circumstances not intended for mandatory detention.

4 **II. Defendants Qualify for Release Pending Sentencing under the**
5 **Provisions of 18 U.S.C. § 3143(a)(1)**
6
7 By operation of section 3145(c)'s exception, because Defendants show
8 exceptional reasons justifying their continued release, Defendants need only meet
9 the conditions set forth in section 3143(a)(1). Those conditions essentially amount
10 to demonstrating a low risk of flight and a low risk of danger to others. *See* 18
11 U.S.C. § 3143(a)(1). For brevity, Defendants will not repeat the arguments made
12 above, but simply reiterate that Defendants pose no risk of flight and no risk of
13 danger to others. *See supra* Sections I.C., I.D.

14 **III. Defendants Qualify for Release Pending Sentencing under the**
15 **Provisions of 18 U.S.C. § 3143(a)(2)**
16
17 Even if this Court does not apply section 3145(c)'s exception, Defendants
18 still qualify for release under section 3143(a)(2). As relevant here, section
19 3143(a)(2) requires two findings: (1) a substantial likelihood that a motion for
20 acquittal or new trial will be granted, *see* 18 U.S.C. § 3143(a)(2)(A)(i), and (2) low
21 risks of flight and danger. Regarding the latter finding, Defendants pose absolutely
22 no risk of flight or danger to others. *See supra* Sections I.C., I.D. Regarding the
23 former finding, Defendants present several substantial and novel legal issues.

1 Although the deadlines for motion for acquittal, motion for new trial, and
2 notice of appeal have not yet passed, Defendants anticipate several substantial
3 issues not yet addressed by Ninth Circuit precedent. First, Defendants now have a
4 strong argument under Section 538 of the Appropriations Act that, because their
5 conduct falls within a state's medical marijuana laws, they are not properly subject
6 to prosecution and thus are entitled to a judgment of acquittal. The jury in this case
7 fully exonerated Defendants on all conspiracy, distribution, gun, and drug-house
8 charges, leaving only a lesser-included conviction for manufacturing 74 marijuana
9 plants. The charges that may have initially justified prosecution in this case —
10 namely, the distribution and gun charges — are no longer relevant. Furthermore,
11 the jury's verdict is consistent with 5 patients growing 15 marijuana plants each.
12 To Defendants' knowledge, no Court of Appeals has yet addressed the
13 applicability of Section 538 of the Appropriations Act at all. Especially given the
14 facts of the case, Section 538 is substantially likely to apply. Defendants note that
15 this issue is a question of first impression in the Ninth Circuit.

16 Second, the sole count of conviction in this case raises a substantial question
17 of duplicity. As Defendants have argued in both pre-trial motions and during trial
18 via Rule 29, the manufacture charge may have improperly combined two separate
19 growing seasons as one criminal act. Especially with total exoneration on the
20 conspiracy charge, two separate acts of manufacturing cannot be combined into

1 one charge. Although the jury's verdict appears to have exonerated all conduct
2 other than manufacturing 74 marijuana plants in 2012, the indicted charge still runs
3 afoul of duplicity concerns. Defendants note that this question is one of first
4 impression in the Ninth Circuit. Defendants further note that analogous precedent
5 indicates a high likelihood of success. For example, the Ninth Circuit has held
6 that, absent a conspiracy conviction, multiple acts of distribution cannot be
7 combined into a single count. *United States v. Mancuso*, 718 F.3d 780, 793 (9th
8 Cir. 2013). Additionally, every other circuit to consider the duplicity concern with
9 respect to manufacture has held in favor of Defendants. *See, e.g.*, *United States v.*
10 *Rettelle*, 165 F.3d 489, 492 (6th Cir. 1999) (holding that, absent a conspiracy
11 conviction, separate growing seasons cannot be combined into a single count of
12 manufacturing marijuana).
13 Third, Defendants anticipate renewing their motions regarding the Equal
14 Protection and Due Process problems with scheduling marijuana as a Schedule I
15 substance under the Controlled Substances Act. Although this Court has already
16 rejected these arguments, another District within the Ninth Circuit is giving the
17 question serious scrutiny, and both parties in that matter appear likely to rapidly
18 push the issue before the Ninth Circuit. *See United States v. Schweder, et. al.*, No.
19 2:11-CR-0449-KJM (E.D. Cal.). The issue has been addressed in previous
20 decades, but given the evolving landscape of state laws authorizing medical

marijuana and federal protection for marijuana patients, this question is effectively one of first impression for the Ninth Circuit.

Interpreting an analogous — albeit separate — section of the Mandatory Detention Act, the Ninth Circuit has noted that release can be appropriate even without a high likelihood of success obtaining a reversal, as long as Defendants raise non-frivolous arguments. *Garcia*, 340 F.3d at 1020 n.5 ("In *Handy* we held that an issue is substantial if it is 'fairly debatable' or 'fairly doubtful,' that is, 'of more substance than would be necessary to a finding that it was not frivolous.' . . . The defendant, in other words, need not, under *Handy*, present an appeal that will likely be successful, only a non-frivolous issue that, if decided in the defendant's favor, would likely result in reversal."). Defendants in this case raise numerous substantial and novel legal issues of first impression in the Ninth Circuit. In addition to meeting the requirements of section 3143(a)(2), Defendants' legal arguments can be considered in favor of section 3145(c)'s exception. *Id.* at 1020 ("The nature of the defendant's arguments on appeal may also be considered by the district court in determining whether exceptional reasons exist."). The fact that Defendants are raising numerous issues of first impression also militates in favor of release under section 3145(c)'s exception. *Id.* at 1021 ("[I]f the appellate issues are highly unusual in other respects, a district court may consider that factor when evaluating all of the circumstances [for release under section 3145(c)].").

IV. Conclusion

For all of the reasons discussed above, Defendants qualify for continued release under section 3145(c)'s exception and also meet the requirements of sections 3143(a)(1) and (a)(2).

Respectfully submitted,

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Green Wellness
3302 E. Sprague Ave.
Spokane, WA 99202
www.greenwellness.org/verify
Phone: (888)885-9949

Documentation of Health Care Professional's Authorization to Engage in the Medical Use of Marijuana in Washington State

Patient Name: **Rhonda L. Harvey** Date of Birth: [redacted]

I, Ron Whitten-Bailey, am an Advanced Registered Nurse Practitioner in the State of Washington under RCW 18.36A. I have diagnosed the above named patient as having a terminal or debilitating medical condition as defined in RCW 69.51A.010.

I have advised the above named patient about the potential risks and benefits of the medical use of marijuana. I have assessed the above named patients medical history and medical condition. It is my professional, medical opinion that this patient may benefit from the medical use of marijuana.

Signature of Health Care Professional [signature] Date **05-29-2012**

Printed Name of Health Care Professional – Ron Whitten-Bailey, ARNP

WA License#: AP30006881

This document is valid through **05-28-2013**

Risks and Benefits of Medical Use of Marijuana

Under Washington state law, the medical use of marijuana is permissible for some patients with terminal or debilitating medical conditions. The law regulating this (RCW 69.51A) requires health care professionals to advise patients about the risks and benefits of the medical use of marijuana before authorizing them to engage in the medical use of marijuana.

The medical and scientific evidence supporting the medical use of marijuana remains controversial in the medical community. Not all health care providers believe that marijuana is safe or effective for medical use, and some providers feel that it is a dangerous drug.

According to the Washington State law, the medical use of marijuana may benefit patients diagnosed with the following medical conditions: Cancer, human immunodeficiency virus (HIV), multiple sclerosis, epilepsy or other seizure or spasticity disorders; some types of intractable pain; glaucoma, either acute or chronic; Crohn's disease; hepatitis C with debilitating nausea or intractable pain; or diseases, including anorexia, which result in nausea, vomiting, wasting, appetite loss, cramping, seizures, muscle spasms, or spasticity.

Medical Recommendation

As this patient's "60 day supply." As stipulated by (RCW 69.51A.040 (3) (b). According to Washington state senate bill 5073 effective July 22nd 2011, the presumptive 60 day supply is 24 ounces of dried, cured marijuana and up to 15 plants to maintain this 60 day supply. This presumption may be overcome by a Doctors statement showing a necessity for more.

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Documentation of Health Care Professional's Authorization to Engage in the Medical Use of Marijuana in Washington State

Patient Name: **Larry L. Harvey** Date of Birth: ███3

I, Ron Whitten-Bailey, am an Advanced Registered Nurse Practitioner in the State of Washington under RCW 18.36A. I have diagnosed the above named patient as having a terminal or debilitating medical condition as defined in RCW 69.51A.010.

I have advised the above named patient about the potential risks and benefits of the medical use of marijuana. I have assessed the above named patients medical history and medical condition. It is my professional, medical opinion that this patient may benefit from the medical use of marijuana.

Signature of Health Care Professional [signature] Date **05-29-2012**

Printed Name of Health Care Professional – Ron Whitten-Bailey, ARNP

WA License#: AP30006881

This document is valid through **05-28-2013**

Risks and Benefits of Medical Use of Marijuana

Under Washington state law, the medical use of marijuana is permissible for some patients with terminal or debilitating medical conditions. The law regulating this (RCW 69.51A) requires health care professionals to advise patients about the risks and benefits of the medical use of marijuana before authorizing them to engage in the medical use of marijuana.

The medical and scientific evidence supporting the medical use of marijuana remains controversial in the medical community. Not all health care providers believe that marijuana is safe or effective for medical use, and some providers feel that it is a dangerous drug.

According to the Washington State law, the medical use of marijuana may benefit patients diagnosed with the following medical conditions: Cancer, human immunodeficiency virus (HIV), multiple sclerosis, epilepsy or other seizure or spasticity disorders; some types of intractable pain; glaucoma, either acute or chronic; Crohn's disease; hepatitis C with debilitating nausea or intractable pain; or diseases, including anorexia, which result in nausea, vomiting, wasting, appetite loss, cramping, seizures, muscle spasms, or spasticity.

Medical Recommendation

As this patient's "60 day supply." As stipulated by (RCW 69.51A.040 (3) (b). According to Washington state senate bill 5073 effective July 22nd 2011, the presumptive 60 day supply is 24 ounces of dried, cured marijuana and up to 15 plants to maintain this 60 day supply. This presumption may be overcome by a Doctors statement showing a necessity for more.

Alternative Care Professionals

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DOCUMENTATION OF MEDICAL AUTHORIZATION TO POSSESS CANNABIS FOR MEDICAL PURPOSES IN WASHINGTON STATE

Patient Name: JASON ZUCKER DOB [redacted]-1975

Pt. ID# JZ115078

I, Jeffery Moore am a licensed ND in Washington State and I am treating the above Patient for a terminal illness or a debilitating condition as defined by the RCW 69.51A.005 I have advised the above named patient about the potential risks and benefits of the medical use of cannabis. I have assessed the above patient's medical history and condition. It is my medical opinion that the potential benefits of the medical use of cannabis may outweigh the health risks for the patient.

ND Name: Jeffery Moore Wa. License # NT 60211604

ND Signature [signature] Date: 04-25-2012

This recommendation Expires on: 04-25-2013

Risks and benefits of medical use of cannabis

Under Washington state law the use of medical cannabis is now permissible for some patients with terminal or debilitating medical conditions. The law regulating this (RCW 69.51A) requires health care professionals to advise patients about the risks and benefits of the medical use of cannabis before authorizing them to engage in the medical use of cannabis.

The medical and scientific evidence supporting the use of medical cannabis remains controversial in the medical community. Not all health care providers believe that medical cannabis is safe or effective and some providers feel that it is a dangerous drug.

According to the Wa. State law the benefits of medical cannabis may include treating nausea and vomiting from chemotherapy, AIDS wasting syndrome, severe muscle spasms for multiple sclerosis or other spasticity disorders, glaucoma, and some types of intractable pain..

Some of the risks of medical cannabis may include possible long-term effects of the brain in the areas of memory, coordination and cognition: impairment of the ability to drive or operate heavy machinery, respiratory damage, possible lung cancer, and physical or psychological dependence.

Recommendation:

As stipulated by RCW69.51A, I recommend up to 24 ounces of usable cannabis and up to 15 cannabis plants.

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Spokane Washington 99202-4835
www.WAMM-Medical.com
1-877-430-0420/509-533-1002

Documentation of Health Care Professional's Authorization to Engage in the Medical Use of Marijuana in Washington State

Patient Name: **Rolland M. Gregg** Date of Birth: [redacted]

I am a health care professional licensed in the State of Washington under RCW 18.79 as an advanced registered nurse practitioner. I have diagnosed the above named patient as having a terminal or debilitating medical condition as defined in RCW 69.51A.010(6).

I have advised the above named patient about the potential risks and benefits of the medical use of marijuana. I have assessed the above named patients medical history and medical condition. It is my professional, medical opinion that this patient may benefit from the medical use of marijuana.

Signature of Health Care Professional *Ruth Oman, ARNP* Date **09-15-2011**

Printed Name of Health Care Professional – Ruth Oman, ARNP

Washington Department of Health Credential Number – AP60147816

This document is valid through **09-14-2012**

Risks and Benefits of Medical Use of Marijuana

Under Washington state law, the medical use of marijuana is permissible for some patients with terminal or debilitating medical conditions. The law regulating this (RCW 69.51A) requires health care professionals to advise patients about the risks and benefits of the medical use of marijuana before authorizing them to engage in the medical use of marijuana.

The medical and scientific evidence supporting the medical use of marijuana remains controversial in the medical community. Not all health care providers believe that marijuana is safe or effective for medical use, and some providers feel that it is a dangerous drug.

According to the Washington State law, the medical use of marijuana may benefit patients diagnosed with the following medical conditions: Cancer, human immunodeficiency virus (HIV), multiple sclerosis, epilepsy or other seizure or spasticity disorders; some types of intractable pain; glaucoma, either acute or chronic; Crohn's disease; hepatitis C with debilitating nausea or intractable pain; or diseases, including anorexia, which result in nausea, vomiting, wasting, appetite loss, cramping, seizures, muscle spasms, or spasticity.

Medical Recommendation

As this patient's "60 day supply." As stipulated by (RCW 69.51A.040 (3) (b). I recommend 24 ounces of dried, cured marijuana and as many plants as the patient believes necessary to maintain this 60 day supply.

Ahh! Advanced Holistic Health, PLLC (888) 508-5428

www.AdvancedHolisticHealth.org **Notice to Police: Verification is Available 24/7 at the above number**
(Please keep our patients safe and out of the criminal justice system)

Authorization to Possess, Cultivate, and Use Cannabis for Medicinal Purposes (Washington State RCW 69.51A)

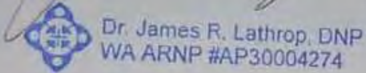
Patient Name Michelle L Gregg **DOB** [redacted]

Patient clinic ID# MG635516

I am treating the above patient for a medical condition as defined by RCW 69.51A. I have advised the above named patient about the potential risks and benefits of the appropriate use of cannabis as medicine. It is my professional opinion that the benefit of the medicinal use of cannabis outweighs potential health risks to this patient. This patient has the medical-legal option to use cannabis as a reasonable and appropriate therapy for the improvement of their health and wellness. This is *not* an authorization for non-medicinal or recreational cannabis use.

Signature:

Date: 7-15-2012



Expiration Date: 7-15-2013

Risks and benefits of cannabis use for medicinal purposes:

Under Washington State law the use, cultivation, and possession of cannabis is permissible for patients with this authorization. RCW 69.51A allows licensed clinicians to advise about the risks and benefits of the use of cannabis and provides a safe use and access option to cannabis as a reasonable medical therapy.

Some of the risks of cannabis use include acute intoxication and the impairment of the ability to drive or operate machinery; respiratory irritation and chronic respiratory changes such as potential emphysema after many years of smoked cannabis use; and mild physical and sometimes significant psychological dependence.

According to the Washington State law, the benefits of cannabis use includes treating nausea and vomiting; loss of appetite; HIV infection; wasting syndrome; reduction in the size of cancer tumors such as breast cancer, brain tumors, and head and neck cancers; muscle spasms and any other spasticity disorder including seizures; glaucoma; renal failure; hepatitis C; and various pain syndromes unresponsive to more traditional therapy.

The medical and scientific evidence supporting the use of cannabis remains controversial in the medical community. However the overwhelming medical evidence is that cannabis is a safe and reasonable alternative for many patients.

Specific Recommendation:

A patient's "60-day supply" (as stipulated in RCW 69.51A) is the possession of up to 24-ounces of dried cured cannabis *and* up to 15 active plants to maintain a "60-day supply".

Washington State Board of Pharmacy Tamper-Resistant Paper