Nos. 10-50219, 10-50264

IN THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee/Cross-Appellant,

v.

CHARLES C. LYNCH,

Defendant-Appellant/Cross-Appellee.

On Appeal From The United States District Court
For the Central District of California
D.C. No. CR 07-689-GW

BRIEF OF MEMBERS OF CONGRESS ROHRABACHER (R-CA) AND FARR (D-CA) AS *AMICI* IN SUPPORT OF CHARLES C. LYNCH'S MOTION FOR REHEARING *EN BANC*

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I. STATEMENT OF CONSENT

All parties have consented to the filing of this brief.

II. STATEMENT OF AUTHORSHIP AND FUNDING

No party's counsel authored this brief in whole or in part. No party, party's counsel, or person, other than *amici* or its counsel, contributed money to fund the preparing or submission of this brief.

III. STATEMENT OF INTEREST OF AMICI CURIAE

Amici are current Members of Congress who co-authored Section 538 of the Consolidated and Further Continuing Appropriations Act, 2015, a federal appropriations bill signed into law in December 2014. Section 538, also known as the Rohrabacher-Farr Amendment, prohibits the Department of Justice (DOJ) from spending Fiscal Year 2015 funds to prosecute cases against medical marijuana patients and providers, including businesses, in states where medical marijuana use is legal.

Members of Congress have an interest in seeing that federal courts properly interpret and implement federal statutes. As co-authors of Section 538, *amici* have a particular interest in ensuring that this Court construes the provision in accord with its text and purpose. Because this case implicates Congress's intent in enacting the Rohrabacher-Farr Amendment, the views of *amici* are particularly relevant.

As the text and legislative history of Section 538 make clear, its fundamental purpose is to prevent the DOJ from (i) wasting any more of its limited resources prosecuting medical marijuana cases where a state's law permits its use and (ii) impeding the ability of those states to carry out their medical marijuana laws. The DOJ has recently and publicly stated that it does not believe the Rohrabacher-Farr Amendment applies to criminal cases and is pursuing prosecutions that undermine the laws of California and other states that permit medical marijuana, thwarting the will of Congress.

Amici submit this brief to make clear that the DOJ's interpretation of Section 538 is emphatically wrong. The Rohrabacher-Farr Amendment *prohibits* the DOJ from pursuing criminal prosecutions, like the one pending before this Court against Charles Lynch. The question for which *en banc* rehearing is sought is thus critically important to the effective operation of our government, which relies on the judicial branch to interpret the laws Congress passes and ensure that they are enforced.

IV. ARGUMENT

Thirty-six states and the District of Columbia have enacted laws that permit patients access to medical marijuana and its derivatives. Through the bi-partisan leadership of twelve U.S. Representatives, Congress spoke clearly when it passed the Rohrabacher-Farr Amendment, issuing a statutory directive instructing the DOJ to stop interfering with state medical marijuana

laws.[1] On December 16, 2014, President Obama signed the bill into law, at which time the DOJ was to cease using federal taxpayer dollars to prosecute medical marijuana cases in the specified states, including this case against Charles Lynch. Despite Congress's mandate that the DOJ permit states like California to implement and enforce their own state laws *without* interference by the federal government, the DOJ continues to spend federal funds unlawfully prosecuting this case and others like it, in violation of Section 538.

Congress is empowered to prioritize and allocate public funds and to ensure that those funds are properly applied to the prescribed use. Once Congress exercises its delegated powers and determines funding priorities, the courts are duty-bound to interpret and enforce those laws. This Court should immediately review *en banc* the pending motion to enforce Section 538 because by permitting the DOJ to continue prosecuting this appeal in violation of federal law, this Court is failing to carry out its duty to see that the laws Congress enacts and the President signs into law are enforced, and is effectively stripping Congress of its ability to use its power of the purse to defund or limit the actions of the DOJ, as well as other Executive Agencies. Deferring this question to the merits panel is not necessary because the question is purely a legal one, *to wit*: does Section 538 prohibit the DOJ from pursuing its criminal prosecution against Lynch?

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[1] The amendment was sponsored by six Republicans and six Democrats: co-authors Dana Rohrabacher (R-CA) and Sam Farr (D-CA); and, Don Young (R-AK); Earl Blumenauer (D-OR); Tom McClintock (R-CA); Steve Cohen (D-TN); Paul Broun (R-GA); Jared Polis (D-CO); Steve Stockman (R-TX); Barbara Lee (D-CA); Justin Amash (R-MI); and Dina Titus (D-NV). 160 Cong. Rec. H4983 (daily ed. May 29, 2014).

As the debate surrounding the Rohrbacher-Farr Amendment on the House floor illustrates, federal prosecution of medical marijuana cases where state law permits its use is a tremendous waste of federal resources and is *precisely* what prompted Congress to approve the measure. California—which has regulated medical marijuana use under its Compassionate Use Act since 1996—has demonstrated over the last two decades that it is competent to enforce its own medical marijuana laws. Spending federal funds so the DOJ can continue looking over the shoulder of California, and other medical marijuana states, second guessing those states' law enforcement and charging decisions, and stepping in to bring federal criminal prosecutions against law-abiding citizens like Lynch, tramples on state sovereignty, is a waste of federal tax dollars, and is *exactly* what Section 538 prohibits.

The DOJ's feigned confusion over the meaning of Section 538 and its patently absurd interpretation of the prohibition on the expenditure of federal funds therein cannot be credited as it would render the provision meaningless, which in turn upsets the entire balance of government. Moreover, there are few more effective ways for the DOJ to impede "the ability of states to carry out their medical marijuana laws" than prosecuting individuals and organizations acting in accordance with those laws.

The DOJ's unlawful expenditure of federal funds to obtain these convictions is also problematic because, without immediate *en banc* review, defendants like Charles Lynch could lose the ability to challenge their convictions on the ground that they were obtained by the DOJ's unlawful use of federal funds, since Congress could decide not to renew the Rohrabacher-

Farr Amendment in the 2016 appropriations bill. Should the amendment expire, this Court could determine that the funding prohibition issue in this and similar cases is *moot* since the DOJ will have already spent the federal funds, albeit *unlawfully*.

This Court's immediate consideration of the enforceability of Section 538 will not prejudice the DOJ because the Department can seek review of any decision this Court renders *en banc*, if it so chooses. By contrast, delaying review of this question undoubtedly causes prejudice not only to those subject to current and future federal prosecution, but also to California's ability to implement its medical marijuana laws without federal interference, and to Congress's ability to effectuate federal policy changes through its power over the purse.

When this Court's motions panel deferred the question of Section 538's enforceability to a merits panel hearing that is many months away, this Court effectively gave an imprimatur of legitimacy to the DOJ's position that it is entitled to ignore Congress's explicit prohibition on the use of federal funds to continue prosecuting this case. Permitting the DOJ to spend more federal funds to prosecute one of the very cases Congress intended for the DOJ to *cease* prosecuting defeats the purpose of the Rohrabacher-Farr Amendment *entirely*.

A. The Rohrabacher-Farr Amendment Prohibits The DOJ From Using Federal Funds To Prosecute This Case And Other Medical Marijuana Cases In States Permitting Its Use

Congress is empowered to legislate by including provisions in an appropriations bill that restrict the use of funds for a particular purpose or program. *United States v. Will*, 449 U.S. 200, 222 (1980) ("when Congress desires to suspend or repeal a statute in force, '[t]here can be no doubt that … it could accomplish its purpose by an amendment to an appropriation bill, or otherwise'") (quoting *United States v. Dickerson*, 310 U.S. 554, 555 (1940)).

Limitations in an appropriations bill allow Congress effectively to amend authorizing legislation for budgetary or policy reasons.[2] The Supreme Court has recognized such limitations as a valid application of Congress's spending power. *See, e.g., Will*, 449 U.S. at 222 & n.23 (upholding appropriations measures to curtail federal employee salary increases); *see also, Atl. Fish Spotters Ass'n v. Evans*, 321 F.3d 220, 229 (1st Cir. 2003) (upholding Congress's one-year ban on the use of airborne fish spotters to

[2] *See,e.g.,* Ed O'Keefe, *What's in the spending bill? We skim it so you don't have to*, The Washington Post, Dec. 10, 2014, available at: http://www.washingtonpost.com/blogs/post-politics/wp/2014/12/09/whats-in-the-spending-bill-we-skim-it-so-you-dont-have-to/ (reporting that the appropriations bill for FY 2015, among other things, "bans using federal funding to perform most abortions," "blocks the [EPA] from applying the [Clean Water Act] to certain farm ponds and irrigation ditches," "ban[s] [the transfer of] terrorism detainees to the United States from the U.S. military facility in Cuba," and "ban[s] [the IRS] from targeting organizations seeking tax-exempt status based on their ideological beliefs.").

locate Atlantic Bluefin tuna, effectuated through an appropriations bill for FY 2001, because "[d]eciding what funds shall be appropriated from the public fisc and how that money is to be spent is a task that the Constitution places in the congressional domain").

Section 538 of the Consolidated and Further Continuing Appropriations Act, 2015 ("2015 Appropriations Act") provides that "[n]one of the funds made available in [it] to the Department of Justice may be used … to prevent … States [such as California, which have enacted laws permitting patients to access medical marijuana] from implementing their own State laws that authorize the use, distribution, possession, or cultivation of medical marijuana."[3] Pub. L. No. 113-235, § 538, 128 Stat. 2130, 2217 (2014). In addition, the Anti-Deficiency Act instructs that "[a]n officer or employee of the United States Government … may not … make or authorize an expenditure or obligation exceeding an amount available in an appropriation or fund for the expenditure or obligation." 31 U.S.C. § 1341(a)(1)(A).

This Court "interpret[s] a federal statute by ascertaining the intent of Congress and by giving effect to its legislative will." *Ariz. Appetito's Stores, Inc. v. Paradise Vill. Inv. Co.*, 893 F.2d 216, 219 (9th Cir. 1990). The Court

[3] Section 538 lists the following states as having legalized medical marijuana: "Alabama, Alaska, Arizona, California, Colorado, Connecticut, Delaware, District of Columbia, Florida, Hawaii, Illinois, Iowa, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nevada, New Hampshire, New Jersey, New Mexico, Oregon, Rhode Island, South Carolina, Tennessee, Utah, Vermont, Washington, and Wisconsin."

first examines the statute's text. *Siripongs v. Davis*, 282 F.3d 755, 758 (9th Cir. 2002). If the text of the statute makes Congress's intent clear, the Court looks no further. *United States v. Romo–Romo*, 246 F.3d 1272, 1275 (9th Cir. 2001). "Where the language is not dispositive, [the Court] look[s] to the congressional intent revealed in the history and purposes of the statutory scheme." *United States v. Buckland*, 289 F.3d 558, 565 (9th Cir. 2002) (*en banc*) (citation and internal quotation marks omitted).

Despite the statute's clearly stated purpose, the DOJ has taken the position that it is entitled to continue using federal funds to pursue criminal prosecutions in states that permit medical marijuana because Section 538 merely prohibits it from "impeding the ability of states to carry out their medical marijuana laws."[4] The Department's strained reading of Section 538 is untenable—indeed it is absurd—in view of the plain language of the statute. It goes without saying that the DOJ is *interfering* with a state's *implementation* of its medical marijuana laws when it uses federal funds to criminally prosecute patients, who are forced to "live in fear" of prosecution, even "when following the laws of their States and the recommendations of their doctors," physicians, who also face prosecution for prescribing the substance, and individuals operating local businesses, which can "be shut down for dispensing the same." *See* 160 Cong. Rec. H4984 (daily ed. May 29, 2014) (Statement of Rep. Titus).

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[4] Timothy M. Phelps, *Justice Department says it can still prosecute medical marijuana cases*, L.A. Times, Apr. 2, 2015. Available at http://www.latimes.com/nation/nationnow/la-na-nn-medical-marijuana-abusers-20150401-story.html.

The DOJ's reading of Section 538 is also patently unreasonable as a matter of statutory interpretation. "It is 'a cardinal principle of statutory construction' that 'a statute ought, upon the whole, to be so construed that, if it can be prevented, no clause, sentence, or word shall be superfluous, void, or insignificant.'" *TRW Inc. v. Andrews,* 534 U.S. 19, 30 (2001) (quoting *Duncan v. Walker*, 533 U.S. 167, 174 (2001)); *see also United States v. Menasche*, 348 U.S. 528, 538–539 (1955) ("It is [the Court's] duty 'to give effect, if possible, to every clause and word of a statute....'" (quoting *Montclair v. Ramsdell*, 107 U.S. 147, 152 (1883))).

The DOJ's construction of the statute renders Section 538 "insignificant, if not wholly superfluous," *Duncan*, 533 U.S. at 174, because continuing to prosecute individuals in medical marijuana cases for violating federal law, in states where medical marijuana use is legal, *by definition* prevents those states "from implementing their own State laws that authorize the use, distribution, possession, or cultivation of medical marijuana." Pub. L. No. 113-235, § 538, 128 Stat. 2130, 2217 (2014); *Duncan*, 533 U.S. at 174.

The Department contends in its opposition to Lynch's original motion to enforce Section 538 that the statute does not apply to criminal prosecutions because those words do not appear in the statute. But that interpretation is not supported by the legal authorities and the Supreme Court has held the opposite, *to wit*: that a broadly drafted appropriations measure reflects Congress's intent to issue a broad directive. *See, e.g, Rust v. Sullivan*, 500

U.S. 173 (1991). In *Rust*, the Supreme Court considered whether language in Title X, which broadly prohibits the use of federal funds "'in programs where abortion is a method of family planning," also prohibits the expenditure of federal funds to "provide counseling concerning the use of abortion as a method of family planning or provide referral for abortion as a method of family planning." *Id.* at 179-84 (quoting 42 CFR § 59.8(a)(1) (1989)). Title X grantees and doctors who supervised Title X funds challenged the ban on counseling and referral as "not authorized by Title X." *Id.* at 180.

The district court rejected the challenge and the Second Circuit affirmed. *State of N.Y. v. Sullivan*, 889 F.2d 401 (2d Cir. 1989). Applying *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984), the Second Circuit held that "the regulations were a permissible construction of the statute that legitimately effectuated congressional intent," and rejected petitioners' "highly strained" contention that the plain language of the statute *only* forbids funding projects where abortions are *performed*. *Rust,* 500 U.S. at 181 (citing 889 F.2d at 407).

The Supreme Court agreed. It held that while the statute's plain language that "[n]one of the funds appropriated … shall be used in programs where abortion is a method of family planning" is "ambiguous" and "does not speak directly to the issues of counseling, referral, advocacy, or program integrity," the language plainly allows the ban on counseling, referral, and advocacy under "the broad directives provided by Congress in Title X in general and [in the funding section] in particular." *Id.* at 184.

The same reasoning applies here, but even more so, because the plain language in Congress's broad directive to the DOJ that it cease using federal funds to prosecute cases like this one is *not* ambiguous. The DOJ's interpretation of Section 538 is "highly strained," without any support in the authorities, and it renders the statute meaningless. This Court should reject it and enforce Section 538 in this case.

B. The Legislative Record Makes Clear That Section 538 Was Intended To Bring An Immediate End To Federal Criminal Prosecutions In States Where Medical Marijuana Use Is Permitted

To the extent the Department maintains Section 538 is unclear on its face and its meaning needs to be "litigated," (*see* Dkt. 94 n.1), the debate on the House floor of the Rohrabacher-Farr Amendment makes clear that Congress's intent was for the DOJ to cease medical marijuana prosecutions and forfeiture actions immediately in states that permit the use of medical marijuana.

1. Rep. Rohrabacher: Section 538 Is Needed Because "The Federal Government Continues Its Hard-Line Oppression Against Medical Marijuana"

When Rep. Rohrabacher introduced the Rohrabacher-Farr Amendment on the House floor, he explained that it had broad bi-partisan support, with six Democrats and six Republicans sponsoring the amendment. *See* 160

Cong. Rec. H4982-83 (Statement of Rep. Rohrabacher). He stated that as of May 2014, twenty-nine states had already enacted laws that permit patients access to medical marijuana and their derivatives. *Id.* at H4983. And he cited to a recent Pew Research Center survey reporting that 61 percent of Republicans, 76 percent of Independents, and 80 percent of Democrats favor making medical marijuana legal and available to their patients who need it. *Id.*

Rep. Rohrabacher explained that the amendment was needed because "[d]espite this overwhelming shift in public opinion, ***the Federal Government continues its hard-line oppression against medical marijuana***." *Id.* (emphasis added). He argued that this hard-line approach does not respect states' rights or the Tenth Amendment. *Id.* In closing, he stated that "people are suffering and if a doctor feels that he needs to prescribe something to alleviate that suffering, ***it is immoral for this government to get in the way***, and that is what is happening. The State governments have recognized that a doctor has a right to treat his patient any way he sees fit, and so did our Founding Fathers." *Id.* at H4985 (emphasis added).

2. Rep. Farr: This Amendment Prevents The Federal Government From Arresting And Prosecuting People For Using Medical Marijuana In States Where It is Legal

Co-author of Section 538, Rep. Farr, also emphasized that the amendment had broad bi-partisan support. *Id.* at H4984 (Statement of Rep.

Farr). He explained that the amendment essentially says, "if you are following State law, you are a legal resident doing your business under State law, the Feds just can't come in and bust you and bust the doctors and bust the patient," and it says, "Federal Government, in those States, in those places, you can't bust people." *Id.*

3. Rep. Massie: "The Federal Government Should Not Countermand State Law"

Rep. Massie supported the Rorhabacher-Farr Amendment because it concerns "a serious medical issue" and "[r]esearch has shown very promising results in children with epilepsy, autism, and other neurological disorders. CBD [cannabidiol] oil is also showing promising results in adults with Alzheimer's, Parkinson's, and PTSD." *Id.* at H4983 (Statement of Rep. Massie). He urged Congress "to remove the roadblocks to these potential medical breakthroughs" and stated that "[t]his amendment would do that. The Federal Government should not countermand State law." *Id.*

4. Rep. Blumenauer: "This Amendment Is Important To Get The Federal Government Out Of The Way"

Rep. Blumenauer pointed out that the State of California has permitted medical marijuana for eighteen years and that more than twenty states have now legalized it. *Id.* at H4984 (Statement of Rep. Blumenauer). He noted that "there are a million Americans now with the legal right to medical

marijuana as prescribed by a physician [and that the] problem is that the Federal Government is getting in the way." *Id.* He urged his colleagues to support the amendment because it "is important to get the Federal Government out of the way." *Id.*

5. Rep. Titus: This Amendment Ensures That Patients, Physicians, And Local Businesses Do Not Have To Fear Federal Prosecution

Rep. Titus described Section 538 as a "commonsense amendment [that] simply ensures that patients do not have to live in fear when following the laws of their States and the recommendations of their doctors." *Id.* (Statement of Rep. Titus). "Physicians in those States will not be prosecuted for prescribing the substance, and local businesses will not be shut down for dispensing the same." *Id.*

6. Rep. Lee: "It Is Past Time For The Justice Department To Stop Its Unwarranted Persecution Of Medical Marijuana And Put Its Resources Where They Are Needed … Enough Is Enough"

Rep. Lee's comments made it very clear that the purpose of the amendment was to bring about the *immediate cessation* of federal prosecutions in medical marijuana cases in California. *Id.* (Statement of Rep. Lee). "***It is past time for the Justice Department to stop its unwarranted***

persecution of medical marijuana and put its resources where they are needed." *Id.* (emphasis added). She continued:

> In States with medical marijuana laws, people with multiple sclerosis, glaucoma, cancer, HIV, and AIDS and other medical issues continue to face uncertainty when it comes to accessing the medicine that they need to provide some relief. So it is time to pass this. It is time to give these patients the relief that they need.
>
> This is the humanitarian thing to do, it is the democratic thing to do, and I hope this body will vote for it and pass it on a bipartisan basis. It is long overdue. Enough is enough.

Id.

7. Rep. Fleming: "[T]his Amendment Would ... Make It Difficult, If Not Impossible, For The ... [DOJ] To Enforce The Law"

Even those opposed to Section 538 agreed that the amendment would prevent the federal government from enforcing laws against individuals who are acting in compliance with state law. For example, during floor debate, Rep. Fleming, who opposed the amendment, stated that "[w]hat this amendment would do is, it wouldn't change the law, it would just make it difficult, if not impossible, for the DEA and the Department of Justice to

enforce the law." *Id.* H4985 (Statement of Rep. Fleming); *see also* H4984 (Statement of Rep. Harris) ("So how is the DEA going to enforce anything when, under this amendment, they are prohibited from going into that person's house growing as many plants as they want, because that is legal under the medical marijuana part of the law, not under the new law?").

8. The Rohrabacher-Farr Amendment Sponsors' Post-Enactment Statements Make Clear That The Law Applies To Criminal Prosecutions

The Supreme Court has acknowledged that while post-enactment remarks by legislators concerning the intended scope and purpose of legislation do not carry the same weight as legislative history, "[the court] would be remiss if [it] ignored these authoritative expressions concerning the scope and purpose of [the legislation]." *Cannon v. Univ. of Chicago*, 441 U.S. 677, 686 n.7 (1979). *Amici* have publically admonished the Department for failing to comply with Section 538, to no avail. On February 13, 2015, Rep. Lee joined *amici* in issuing a public response to the DOJ's continuing prosecution against Harborside Health Center in this Court, stating that the "DOJ is not acting within the spirit or the letter of the law nor in the best interests of the people who depend on Harborside for reliable, safe medical marijuana."[5]

[5] *See* https://www.harborsidehealthcenter.com/pdf/Harborside_Statement.pdf.

Amici also contacted Attorney General Holder directly to refute the DOJ's reading of Section 538, explaining that "the purpose of our amendment was to prevent the Department from wasting its limited law enforcement resources on prosecutions and asset forfeiture actions against medical marijuana patients and providers, including businesses that operate legally under state law." *See* Letter from Dana Rohrabacher and Sam Farr, U.S. House of Representatives, to Eric Holder, Attorney General (Apr. 8, 2015).[6] The Department, however, continues to ignore Congress and to spend federal funds unlawfully prosecuting these cases.

Where Congress has chosen to advance a law enforcement policy objective through appropriations legislation, the DOJ is not empowered to misread the law simply because the Department disagrees with the policy objective. Nor does the Department's disagreement with a given piece of legislation in any way immunize federal prosecutors from their sworn oath to uphold the law. Indeed, the Anti-Deficiency Act makes the DOJ's failure to comply with Section 538 *unlawful*. 31 U.S.C. § 1341(a)(1)(A). But the Department is brazenly forging ahead, *with this Court's permission*, spending federal funds to pursue the very prosecutions Congress has prohibited.

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[6] *See* http://farr.house.gov/images/pdf/RohrabacherFarrDOJletter.pdf. *See also* Erik Eckholm, *Legal Conflicts on Medical Marijuana Ensnare Hundreds as Courts Debate a New Provision*, N.Y. Times, Apr. 8, 2015, available at http://www.nytimes.com/2015/04/09/us/medical-marijuana-dispensers-trapped-by-conflicting-laws.html?_r=0.

C. The Court Should Ensure That Lynch Is Afforded An Opportunity To Appeal This Issue

More importantly, and providing another sound basis for *en banc* review, the DOJ's continued unlawful expenditure of federal funds in pursuit these convictions may deprive defendants like Charles Lynch of *any* opportunity to challenge their convictions on the ground that they were obtained by the DOJ's unlawful use of federal funds. If Congress does not renew the Rohrabacher-Farr Amendment in the 2016 appropriations bill, the merits panel in this case—which will *not* be presented with this issue during fiscal year 2015—could determine that the funding prohibition issue in Section 538 is *moot*, given that the Department will have already spent the funds necessary to obtain an affirmance. Such an outcome would effectively eviscerate the legislative branch's ability to place limits on the DOJ's expenditure of federal funds, and worse, upset the balance of governmental power that is essential to our democracy.

V. CONCLUSION

The issue before this Court concerns a critically important question regarding the separation of governmental power. Congress has directed the Executive branch to cease federal prosecutions in medical marijuana cases in states where its use is legal, but the DOJ has refused to comply. *Amici* respectfully request that the judicial branch fulfill its duty in our tripartite system of government and review this issue *en banc* so that Section 538 can be enforced as Congress intended. *Marbury v. Madison*, 1

Cranch 137, 177 (1803) (it is the "duty of the judicial department"—in a separation-of-powers case as in any other—"to say what the law is").

DATED this the 5th day of May, 2015.

Respectfully submitted,

REED SMITH LLP

s/ *Paula M. Mitchell*
Paula M. Mitchell

Counsel for Amici Curiae Rep. Dana Rohrabacher and Rep. Sam Farr

VI. STATEMENT OF RELATED CASES

Amici Curiae Rep. Dana Rohrabacher and Rep. Sam Farr know of the following case that is pending before this Court, which concerns federal prosecution of individuals or businesses charged with crimes relating to medical marijuana in California, a state that has legalized its use: *City of Oakland v. Holder*, Case No. 13-15391. Additionally, *amici* are aware that defendants charged by the DOJ in the following criminal cases currently pending in federal district courts have filed interlocutory appeals to this Court seeking immediate review of Section 538 rulings: *United States v. Iane Lovan*, Case No. 15-10122; *United States v. Steve McIntosh*, Care No. 15-10117; *United States v. Sinyo Silkeutsabay*, Case No. 15-30045.

DATED this the 5th day of May, 2015.

Respectfully submitted,

REED SMITH LLP

s/ *Paula M. Mitchell*
Paula M. Mitchell
Counsel for Amici Curiae Rep. Dana Rohrabacher and Rep. Sam Farr

CERTIFICATE OF COMPLIANCE

I certify as follows:

1. This *Amici Curiae* Brief in Support of Motion for Rehearing *En Banc* complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because it contains 4,191 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii).

2. This *Amici Curiae* Brief in Support of Motion for Rehearing *En Banc* complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Office Word 2010 in 14 point CG Times.

In preparing this Certificate, I have relied on the word count of Microsoft Office Word 2010, the word-processing system used to prepare this *Amici Curiae* Brief in Support of Motion for Rehearing *En Banc*.

DATED this the 5th day of May, 2015.

Respectfully submitted,

REED SMITH LLP

s/ *Paula M. Mitchell*
Paula M. Mitchell
Counsel for Amici Curiae Rep. Dana Rohrabacher and Rep. Sam Farr

CERTIFICATE OF SERVICE

I hereby certify that, on May 5, 2015, I electronically filed this Amici Curiae Brief in Support of Motion for Rehearing *En Banc* with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the Appellate CM/ECF System. All participants in the case are registered CM/ECF users and will be served by the appellate CM/ECF system.

DATED this the 5th day of May, 2015.

Respectfully submitted,

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s/ *Paula M. Mitchell*
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