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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

CHARLES C. LYNCH,

Defendant.

Case No. CR 07-0689-GW

SENTENCING MEMORANDUM

I. INTRODUCTION

On August 5, 2008, defendant Charles C. Lynch was convicted by a jury of five counts of violating the federal Controlled Substance Act ("CSA"), 21 U.S.C. §§ 801 et seq. The charges arose out of his establishing and operating a medical marijuana facility - i.e. the Central Coast Compassionate Caregivers in Morro Bay, California.

In reaching the sentence in this matter, this Court has reviewed and considered inter alia the following: 1) the Indictment (Doc. No. 1)¹ and the "redacted" Indictment provided to the jury (Doc. No. 161); 2) the evidence admitted during the trial which began on July 23, 2008; 3) "Government's Sentencing Position for Defendant Charles

¹ Reference to the documents filed in this criminal case in the United States District Court, Central District of California's Case Management/Electronic Case Filing ("CM/ECF") will be to the "Document number" ("Doc. No.") indicated in the CM/ECF.

1 C. Lynch” (Doc. No. 232); 4) “Declaration of Special Agent Rachel Burkdoll in
2 Support of Government’s Sentencing Position; Exhibits” (Doc. No. 236); 5) “Govern-
3 ment’s Position Re: Applicability of Mandatory Minimum Sentence to Defendant
4 Charles C. Lynch” (Doc. No. 238); 6) Notice of Lodging of Mr. Lynch’s Initial
5 Position re: Applicability of the Mandatory Minimum Sentence; Exhibits” (Doc. No.
6 244); 7) “Charles Lynch’s Position re: Sentencing Factors; Exhibits” (Doc. No. 245);
7 8) “Declaration in Support of Charles Lynch’s Position re: Applicability of the Man-
8 datory Minimum Sentence” (Doc. No. 246); 9) “Government’s Amended Position on
9 Applicability of Safety Valve Provision to Defendant Charles C. Lynch” (Doc. No.
10 249); 10) “Government’s Amended Position on Applicability of Mandatory Minimum
11 Sentences to Defendant Charles C. Lynch” (Doc. No. 250); 11) “Government’s
12 Amended Response to Presentence Report for Defendant Charles C. Lynch” (Doc.
13 No. 251); 12) “Government’s Amended Sentencing Recommendation for Defendant
14 Charles C. Lynch” (Doc. No. 252); 13) “Statement of Sergeant Zachary Stotz in
15 Support of Charles C. Lynch’s Position re: Sentencing Factors (Doc. No. 253); 14)
16 “Defendant’s Reply to Government’s Position re: Applicability of the Mandatory
17 Minimum Sentences (Doc. No. 254); 15) “Defendant’s Reply to Government’s
18 Position re: Sentencing Factors; Declaration of Charles C. Lynch” (Doc. No. 255);
19 16) Letters of Jurors and Prospective Jurors (Doc. Nos. 257, 258 and 262); 17) United
20 States Probation Office (“USPO”) Presentence Investigation Report (Doc. No. 259)
21 and Addendum to the Presentence Report (Doc. No. 260); 18) USPO Recommen-
22 dation Letter initially dated November 24, 2008 (Doc. No. 314); 19) “Letters in
23 Support of Defendant’s Position re: Sentencing Factors” (Doc. No. 264); 20) “Charles
24 Lynch’s Amended Initial Position re: Applicability of the Mandatory Minimum
25 Sentence” (Doc. No. 265); 21) “Statement in Support of Defendant’s Position re:
26 Sentencing” (Doc. No. 266); 22) “Government’s Notice re Defendant Charles C.
27 Lynch” (Doc. No. 267); 23) “Government’s Response to Inquiry by the Court
28 Regarding Sentencing” (Doc. No. 276); 24) Abram Baxter’s Video-Taped “Statement

1 in Support of Defendant's Position re: Sentencing" (Doc. No. 277); 25) "Declaration
2 of Joseph D. Elford in Support of Charles C. Lynch's Position re: Sentencing" (Doc.
3 No. 279); 26) "Supplemental Letters in Support of Charles C. Lynch's Position re:
4 Sentencing" (Doc. No. 280); 27) "Charles Lynch's Supplemental Memorandum of
5 Points and Authorities re: Sentencing; Exhibits" (Doc. No. 285); 28) Government's
6 Response to the Court's Inquiries During April 23, 2009 Hearing; Exhibits" (Doc.
7 No. 286); 29) "Government's Filing re Defendant Charles C. Lynch" (Doc. No. 287);
8 30) "Government's Response to Defendant's Supplemental Memo of Points and
9 Authorities re Sentencing" (Doc. No. 290); 31) "Charlie Lynch's Reply to Govern-
10 ment's Response to Court's Inquiries During April 23, 2009 Hearing" (Doc. No.
11 289); 32) "Charlie Lynch's Reply to Government's Response to Supplemental
12 Memorandum of Points and Authorities re: Sentencing" (Doc. No. 296); 33)
13 "Supplemental Exhibit in Support of Charles Lynch's Position re Sentencing" (Doc.
14 No. 297); 34) the other materials contained in the Court's file including previously
15 submitted evidentiary material; 35) statements made on behalf of Lynch at the
16 sentencing hearings on March 23, April 23 and June 11, 2009; and 36) the argument
17 of counsel on said dates. Pursuant to 18 U.S.C. § 3553(c), this Court issues this
18 Sentencing Memorandum which incorporates its prior positions as stated at the
19 sentencing hearings but also more fully delineates the bases for its imposition of the
20 sentence on Defendant Lynch.

21 **II. BACKGROUND**

22 **A. The Conviction**

23 Lynch was convicted of the following five counts: 1) conspiracy - (a) to
24 possess and distribute "at least" 100 kilograms of marijuana, "at least" 100 marijuana
25 plants, and items containing tetrahydrocannabinol ("THC"), (b) to maintain a
26 premises for the distribution of such controlled substances, and (c) to distribute
27 marijuana to persons under the age of 21 years - in violation of 21 U.S.C. §§ 846,
28 841(a)(1) and (b)(1)(B), 856 and 859; 2 and 3) sales of more than 5 grams of

1 marijuana to J.S., a person under the age of 21, on June 10 and August 27, 2006 in
2 violation of 21 U.S.C. §§ 841(a)(1) and 859(a); 4) on March 29, 2007, possession
3 with the intent to distribute approximately 14 kilograms of material containing a
4 detectable amount of marijuana and approximately 104 marijuana plants in violation
5 of 21 U.S.C. § 841(a)(6) and (b)(1)(B); and 5) between about February 22, 2006 and
6 March 29, 2007, maintaining a premises at 780 Monterey Avenue, Suite B, Morro
7 Bay, California under the name “Central Coast Compassionate Caregivers” (“CCCC”)
8 for the purpose of growing and distributing marijuana and THC. See the Verdict
9 (Doc. No. 175); the redacted Indictment (Doc. No. 161).

10 **B. The Legality of Medical Marijuana Dispensaries Under California and**
11 **Federal Laws**

12 The CSA establishes five schedules of controlled substances. 21 U.S.C. §
13 812(a). To fall within Schedule I, it must be found that:

- 14 (A) The drug or other substance has a high potential for
15 abuse.
16 (B) The drug or other substance has no currently accepted
17 medical use in treatment in the United States.
18 (C) There is a lack of accepted safety for use of the drug
19 or other substance under medical supervision.

20 21 U.S.C. § 812(b)(1). Congress has designated both marijuana and THC as
21 Schedule I controlled substances.² 21 U.S.C. § 812(c) - (Schedule I)(c)(10) and (17).
22 As noted in Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal, 546 U.S.
23 418, 425 (2006):

24 Substances listed in Schedule I of the Act are subject to the
25 most comprehensive restrictions, including an outright ban
26 on all importation and use, except pursuant to strictly regu-
27 lated research projects. See [21 U.S.C.] §§ 823, 960(a)(1).
28 The Act authorizes the imposition of a criminal sentence
for simple possession of Schedule I substances, see §

² The CSA allows the United States Attorney General to transfer a controlled substance designation from one schedule to another or to remove it from the schedules entirely if it no longer meets the requirements for such inclusion. 21 U.S.C. § 811(a). However, attempts to move marijuana from Schedule I (which began in 1972) have proved unsuccessful both on the administrative level, see, e.g., 66 Fed.Reg. 20038 (2001), and in the courts, see, e.g., Alliance for Cannabis Therapeutics v. DEA, 15 F.3d 1131, 1133 (D.C. Cir. 1994). See Gonzales v. Raich, 545 U.S. 1, 15 n.23 (2005).

1 844(a), and mandates the imposition of a criminal sentence
2 for possession “with intent to manufacture, distribute, or
dispense” such substances, see §§ 841(a), (b).

3 Thus, federal law prohibits the manufacture (i.e. cultivation), distribution, sale or
4 possession (with intent to distribute) of marijuana. 21 U.S.C. § 841(a)(1).

5 In 1996, California voters passed Proposition 215, known as the “Compassionate Use Act of 1996” (“CUA”), which is codified in California Health & Safety
6 Code (“Cal. H & S Code”) § 11362.5. See Gonzales v. Raich, 545 U.S. 1, 5-6 (2005).

7 The purpose of Proposition 215 was to “ensure that seriously ill Californians have the
8 right to obtain and use marijuana for medical purposes where that medical use is
9 deemed appropriate and has been recommended by a physician who has determined
10 that the person’s health would benefit from the use of marijuana in the treatment” of
11 certain conditions such as cancer, glaucoma, “or any other illness for which marijuana
12 provides relief.” Cal. H & S Code § 11362.5(b)(1)(A). A goal of Proposition 215
13 (which has not been achieved to date) is to “encourage the federal and state
14 governments to implement a plan to provide for the safe and affordable distribution
15 of marijuana to all patients in medical need of marijuana.”³ Id. at § 11362.5(b)(1)(C).

16 The operative sections of the CUA provide that: 1) “no physician in this state shall
17 be punished, or denied any right or privilege, for having recommended marijuana to
18 a patient for medical purposes,” and 2) “[Cal. H & S Code] Section 11357, relating
19 to the possession of marijuana, and Section 11358, relating to the cultivation of
20 marijuana, shall not apply to a patient, or to a patient’s primary caregiver, who
21 possesses or cultivates marijuana for the personal medical purposes of the patient
22 upon the written or oral recommendation or approval of a physician.” Id. at §
23 11362.5(c) and (d). The term “primary caregiver” is defined in the CUA as “the
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25

26 ³ Not to be critical of Proposition 215 or the efforts of California legislators after its passage, it would
27 appear rather obvious that, as a matter of federal law, - until such time as marijuana is removed or
28 downgraded from the CSA’s list of Schedule I controlled substances - there could never be any coordination
or consistency between the federal and state governments in regards to allowing the use of marijuana for
medicinal purposes. See infra; see also Raich, 545 U.S. at 33.

1 individual designated by the person exempted under this section who has consistently
2 assumed responsibility for the housing, health, or safety of that person.” Id. at §
3 11362.5(e).

4 After the passage of the CUA, the California courts recognized that, “except
5 as specifically provided in the [CUA], neither relaxation much less evisceration of the
6 state’s marijuana laws was envisioned.” People v. Trippet, 56 Cal. App. 4th 1532,
7 1546 (1997) (“We accordingly have no hesitation in declining appellant’s rather
8 candid invitation to interpret the statute as a sort of ‘open sesame’ regarding the
9 possession, transportation and sale of marijuana in this state.”). The issue of medical
10 marijuana dispensaries under California law following the enactment of CUA was
11 first considered in People ex rel Lungren v. Peron, 59 Cal. App. 4th 1383 (1997).
12 Therein, just before the passage of the CUA, the trial court granted a preliminary
13 injunction enjoining defendants from selling or furnishing marijuana at a premises
14 known as the “Cannabis Buyers’ Club.” After the enactment of § 11362.5, the trial
15 court modified the injunction to allow the defendants to possess and cultivate medical
16 marijuana for their personal use on the recommendation of a physician or for the
17 personal medical use of persons with medical authorization who designated the
18 defendants as their primary caregivers, so long as their sales did not produce a profit.
19 The court of appeal vacated the modification of the preliminary injunction finding
20 that the CUA did not sanction the sale of marijuana even if it was on a non-profit
21 basis and for medicinal purposes, and that marijuana providers such as the Cannabis
22 Buyers’ Club could not be designated as “primary caregivers” because they do not
23 “consistently assume[] responsibility for the housing, health or safety” of their
24 customers. Id. at 1395-97. See also People v. Galambos, 104 Cal. App. 4th 1147,
25 1165-69 (2002) (holding that Proposition 215 cannot be construed to extend
26 immunity from prosecution to persons who supply marijuana to medical cannabis
27 cooperatives).

28 In United States v. Oakland Cannabis Buyers’ Cooperative, 532 U.S. 483

1 (2001), federal authorities brought an action to enjoin (and subsequently a contempt
2 motion against) a non-profit medical marijuana cooperative that had been distributing
3 marijuana to persons with physician's authorizations under the CUA. The
4 cooperative raised a defense of medical necessity that was rejected by the district
5 court but accepted by the Ninth Circuit. The Supreme Court reversed the Ninth
6 Circuit's decision because "in the Controlled Substances Act, the balance already has
7 been struck against a medical necessity exception." Id. at 499. As explained by the
8 Court:

9 Under any conception of legal necessity, one principle is
10 clear: The defense cannot succeed when the legislature
11 itself has made a "determination of values." . . . In the
12 case of the Controlled Substances Act, the statute reflects
13 a determination that marijuana has no medical benefits
14 worthy of an exception (outside the confines of a
15 Government-approved research project). Whereas some
16 other drugs can be dispensed and prescribed for medical
17 use, see 21 U.S.C. § 829, the same is not true for
18 marijuana. Indeed, for purposes of the Controlled
19 Substance Act, marijuana has "no currently accepted
20 medical use" at all. § 811.

21 Id. at 491.

22 In 2003, the California Legislature enacted the Medical Marijuana Program Act
23 ("MMPA") (Cal. H & S Code §§ 11362.7 to 11362.9) wherein it sought to:

24 (1) Clarify the scope of the application of the
25 [Compassionate Use Act] and facilitate the prompt
26 identification of qualified patients and their designated
27 primary caregivers in order to avoid unnecessary arrest and
28 prosecution of these individuals and provide needed
guidance to law enforcement officers. (2) Promote uniform
and consistent application of the [Compassionate Use Act]
among the counties within the state. (3) Enhance the access
of patients and caregivers to medical marijuana through
collective, cooperative cultivation projects.

California Stats. 2003, ch. 875, § 1, subd. (B); see also People v. Urziceanu, 132 Cal.
App. 4th 747, 783 (2005). Among the provisions of the MMPA are: 1) the
establishment through the California Department of Health Services of a voluntary
program for the issuance of identification cards to qualified patients who satisfy the
requirements of the MMPA, see Cal. H & S Code § 11362.71(a); 2) a bar under

1 California law providing that “No person or designated primary caregiver in
2 possession of a valid identification card shall be subject to arrest for possession,
3 transportation, delivery, or cultivation of medical marijuana in an amount established
4 [in the MMPA], unless there is reasonable cause to believe that the information
5 contained in the card is false or falsified, [or] the card has been obtained by means of
6 fraud,” see id. at § 11362.71(e); and 3) the setting of a maximum of eight ounces of
7 dried marijuana and “no more than six mature or 12 immature marijuana plants per
8 qualified patient,” see id. at § 11362.77(a).⁴ “Primary caregiver” is given substantially
9 the same meaning in the MMPA as it has in the CUA. Compare Cal. H & S Code §
10 11362.5(e) with § 11362.7(d). The MMPA envisioned collective and/or cooperative
11 cultivation of marijuana for medical purposes. See Cal. H & S Code § 11362.775
12 which states:

13 Qualified patients, persons with valid identification cards,
14 and the designated primary caregivers of qualified patients
15 and persons with identification cards, who associate within
16 the State of California in order collectively or coopera-
 tively to cultivate marijuana for medical purposes, shall not
 solely on the basis of that fact be subject to state criminal
 sanctions

17 However, Cal. H & S Code § 11362.765(a) provides that: “nothing in this section shall
18 . . . authorize any individual or group to cultivate or distribute marijuana for profit.”
19 Nevertheless, a primary caregiver can receive “compensation for actual expenses,
20

21 ⁴ As observed in Raich, 545 U.S. at 32 n.41, “the quantity limitations [in § 11362.77(a)] serve only
22 as a floor . . . and cities and counties are given *carte blanche* to establish more generous limits. Indeed,
23 several cities and counties have done just that. For example, patients residing in the cities of Oakland and
24 Santa Cruz and in the counties of Sonoma and Tehama are permitted to possess up to 3 pounds of processed
marijuana.”

25 Moreover, in People v. Kelly, 47 Cal. 4th 1008 (2010), the California Supreme Court held that the
26 MMPA (enacted by the California legislature at Cal. H & S Code § 11362.77(a)) - insofar as it set amount
27 limitations which would burden the defense to a criminal charge of possessing or cultivating marijuana under
the CUA (which was enacted pursuant to the California initiative process) - impermissibly amended the CUA
and, in that respect, is invalid under the California Constitution, Article II, Section 10(c). Id. at 1049.
28 Consequently, under California law, a patient or primary caregiver may assert as a defense in state court that
he or she possessed or cultivated “an amount of marijuana reasonably related to meet his or her current
medical needs . . . without reference to the specific quantitative limitations specified by the MMP[A].” Id.

1 including reasonable compensation incurred for services provided to an eligible
2 qualified patient or person with an identification card to enable that person to use
3 marijuana under [the MMPA]” Id. at § 11362.765(c).

4 The MMPA was observed to be “a dramatic change in the prohibitions on the
5 use, distribution, and cultivation of marijuana for persons who are qualified patients
6 or primary caregivers” Urziceanu, 132 Cal. App. 4th at 785. It was viewed as
7 contemplating “the formation and operation of medicinal marijuana cooperatives that
8 would receive reimbursement for marijuana and the services provided in conjunction
9 with the provision of that marijuana.” Id.

10 In Raich, the Supreme Court addressed the issue of “whether the power vested
11 in Congress by Article 1, § 8 of the Constitution ‘[t]o make all Laws which shall be
12 necessary and proper for carrying into Execution’ its authority to ‘regulate Commerce
13 with foreign Nations, and among the several States’ includes the power to prohibit the
14 local cultivation and use of marijuana in compliance with California law.” 545 U.S.
15 at 5. Its answer was yes. The Court vacated the Ninth Circuit’s decision ordering
16 preliminary injunctive relief which was based on a finding that the plaintiffs therein
17 had “demonstrated a strong likelihood of success on their claim that, as applied to
18 them, the CSA is an unconstitutional exercise of Congress’ Commerce Clause
19 authority.” Id. at 8-9. The Court did not address certain other claims raised by the
20 plaintiffs, but not adopted by the Ninth Circuit, and remanded the case. On remand,
21 in Raich v. Gonzales, 500 F.3d 850 (9th Cir. 2007) (“Raich II”), the Ninth Circuit did
22 address those remaining claims and held that: 1) while the plaintiffs might have a
23 viable necessity defense, that defense would only protect against liability in the
24 context of an actual criminal prosecution and would not empower a court to enjoin the
25 “enforcement of the Controlled Substance Act as to one defendant,” id. at 861; 2) there
26 was no substantive due process violation under the Fifth or Ninth Amendments
27 because “federal law does not recognize a fundamental right to use medical marijuana
28 prescribed by a licensed physician to alleviate excruciating pain and human suffering,”

1 id. at 866; and 3) the Supreme Court’s decision in Raich had foreclosed plaintiffs’
2 Tenth Amendment claim, id. at 867.

3 On August 25, 2008, pursuant to Cal. H & S Code § 11362.81(d), the California
4 Attorney General issued “Guidelines for the Security and Non-Diversion of Marijuana
5 Grown for Medical Use” (“Cal. AG Guidelines”). See Exhibit 15 to Declaration of
6 Special Agent Rachel Burkdoll (“Burkdoll Decl.”) (Doc. No. 236); see also People v.
7 Hochanadel, 176 Cal. App. 4th 997, 1009-11 (2009). Those guidelines recognize that
8 “a properly organized and operated collective or cooperation that dispenses medical
9 marijuana through a storefront may be lawful under California law” provided that it
10 complies with the restrictions set forth in the statutes and the guidelines. See Cal. AG
11 Guidelines at page 11, Exhibit 15 to Burkdoll Decl. The Cal. AG Guidelines also state
12 that:

13 The incongruity between federal and state law has
14 given rise to understandable confusion, but no legal
15 conflict exists merely because state law and federal law
16 treat marijuana differently. Indeed, California's medical
17 marijuana laws have been challenged unsuccessfully in
18 court on the ground that they are preempted by the CSA.
19 (*County of San Diego v. San Diego NORML* (July 31,
20 2008) --- Cal.Rptr.3d ---,2008 WL 2930117.) Congress
21 has provided that states are free to regulate in the area of
22 controlled substances, including marijuana, provided that
23 state law does not positively conflict with the CSA. (21
24 U.S.C. § 903.) Neither Proposition 215, nor the MMP,
25 conflict with the CSA because, in adopting these laws,
26 California did not “legalize” medical marijuana, but instead
27 exercised the state’s reserved powers to not punish certain
28 marijuana offenses under state law when a physician has
recommended its use to treat a serious medical condition.

In light of California’s decision to remove the use
and cultivation of physician-recommended marijuana from
the scope of the state’s drug laws, this Office recommends
that state and local law enforcement officers not arrest
individuals or seize marijuana under federal law when the
officer determines from the facts available that the
cultivation, possession, or transportation is permitted under
California’s medical marijuana laws.

1 Id. at page 3.⁵

2 In November 2008, the California Supreme Court in People v. Mentch, 45 Cal.
3 4th 274 (2008), addressed the issue of who may qualify as a “primary caregiver” under
4 the CUA and the MMPA. Defendant Mentch grew marijuana for his own use and for
5 five other persons. Both he and the other five had authorizations from physicians for
6 medical marijuana. He testified that he sold the marijuana “for less than street value”
7 and did not make a profit from the sales. At his trial, Mentch sought to argue that he
8 was a primary caregiver when he provided medical marijuana to the other five persons
9 who had a doctor’s recommendation. The California Supreme Court rejected that
10 argument observing that the statutory definition of a “primary caregiver” was
11 delineated as an individual “who has consistently assumed responsibility for the
12 housing, health or safety” of that patient. Id. at 283; see also Cal. H & S Code §
13 11362.5(d). Therefore, the mere fact that an individual supplies a patient with medical
14 marijuana pursuant to a physician’s authorization does not transform that individual
15 into a primary caregiver because he or she will not have necessarily and previously
16 and consistently assumed responsibility for the patient’s housing, health and/or safety.
17 Id. at 284-85. The fact that the individual is the “consistent” or exclusive source of
18 the medical marijuana for the patient makes no difference. Id. at 284-86. Likewise,
19 “[a] person purchasing marijuana for medicinal purposes cannot simply designate
20 seriatim, and on an ad hoc basis, . . . sales centers such as the Cannabis Buyers’ Club
21 as the patient’s ‘primary caregiver.’” Id. at 284 (quoting Peron, 59 Cal. App. 4th at
22 1396).

23 During a press conference on February 24, 2009, in response to a question
24 whether raids on medical marijuana clubs established under state law represented
25

26
27 ⁵ The Cal. AG Guidelines’ language that “no legal conflict exists” is somewhat misleading. While
28 no such conflict existed as to California law vis-a-vis “physician recommended marijuana,” there certainly
remained a definite conflict between federal and California laws as to the legality and enforcement of
criminal statutes concerning the cultivation, possession and distribution of marijuana for medicinal purposes.

