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9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA
11 SAN FRANCISCO DIVISION

12 UNITED STATES OF AMERICA,) CASE NO. 3:14-CR-00278-RS
13 Plaintiff,)
14 v.) NOTICE OF MOTION AND MOTION FOR AN
15 ANTHONY PISARSKI and) EMERGENCY ADJOURNMENT OF
16 SONNY MOORE,) ANTHONY PISARSKI'S SENTENCING DUE
17 Defendants) TO AN ACT OF CONGRESS
18) SENTENCING DATE: DECEMBER 16, 2014
19) TIME: 2:30PM
20)

21 Please take notice of the following motion by the defendant of the adjournment of his
22 sentencing hearing. The emergency motion is made on the grounds presently H.R. 83 was
23 passed by both the Senate and the House on December 13, 2014, 09:50 PM. Sonny Moore joins
24 in this motion.
25

26 DATED: December 15, 2014

27 /s/ Ronald Richards
28 RONALD RICHARDS
Attorney for ANTHONY PISARSKI

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4 RARELY IN ANY COUNSEL’S CAREER HAS HE OR SHE HAD TO FILE AN
5 EMERGENCY MOTION. HOWEVER, IN THE WORLD OF MARIJUANA LAWS, THE
6 LANDSCAPE KEEPS CHANGING; THIS TIME, ON A HISTORIC LEVEL. ON
7 SATURDAY NIGHT, THE UNITED STATES SENATE VOTED TO APPROVE H.R. 83.
8 THIS IS A 1696 PAGE SPENDING BILL. IN THE BILL, SECTION 538 FORBIDS THE
9 USE OF MONEY BY THE DEPARTMENT OF JUSTICE FOR INTERFERING WITH
10 STATE LAWS THAT ALLOW CULTIVATION OF MARIJUANA.....1

11 II. SECTION 538 OF THE SPENDING BILL IF SIGNED BY THE PRESIDENT
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1 **MEMORANDUM IN SUPPORT OF MOTION**

2 **I. INTRODUCTION**

3 Rarely in any counsel's career has he or she had to file an emergency motion. However,
4 in the world of marijuana laws, the landscape keeps changing; this time, on a historic level. On
5 Saturday night, the United States Senate voted to approve H.R. 83. This is a 1696 page
6 spending bill. In the bill, section 538 forbids the use of money by the Department of Justice for
7 interfering with State laws that allow cultivation of marijuana.

8 Since the standard for withdrawing a plea changes dramatically after sentencing, on
9 defense counsel's own initiative, he advised his client to move to adjourn the sentencing set for
10 tomorrow. Mr. Pisarski has paid the required \$200,000.00 under the plea agreement and would
11 go forward with the sentencing but for counsel's direct legal advice. Therefore, based upon the
12 attached documents, in good conscience, counsel is requesting an adjournment. The reasons for
13 this are that instead of becoming another felon on the federal books, the executive branch, in
14 response to Congressional mandate, will be dramatically changing its enforcement procedures.
15 If federal marijuana policy changes to stop prosecutions for all legal cultivations under state law,
16 Mr. Pisarski should get the benefit of this *sea change* in policy. He would withdraw his plea
17 and ask that the charges be dismissed by the USAO for the Northern District of California.

18 As the Court knows, the standard is far more relaxed prior to sentencing. The fair and
19 just standard is generous and must be applied liberally. *United States v. Bonilla*, 637 F.3d 980,
20 983 (9th Cir. 2011); *United States v. McTiernan*, 546 F.3d 1160, 1167 (9th Cir.2008). A
21 defendant who moves to withdraw a guilty plea before a sentence is imposed and is not required
22 to show that he would not have pled, but only that the proper legal advice of which he was
23 deprived "could have at least plausibly motivated a reasonable person in [the defendant's]
24 position not to have pled guilty...." *United States v. Garcia*, 401 F.3d 1008, 1011-12 (9th
25 Cir.2005). A pre-sentence motion to withdraw a plea should be freely allowed if a defendant can
26 show a "fair and just reason" for requesting the withdrawal. See *United States v. Davis*, 428 F.3d
27 802, 808 (9th Cir.2005). "Erroneous or inadequate legal advice may ... constitute a fair and just
28 reason for plea withdrawal." *McTiernan*, 546 F.3d at 1167.

1 In *United States v. Ortega-Ascanio*, 376 F.3d 879 (9th Cir.2004), the Ninth Circuit
2 considered a claim of “intervening circumstances” based on a change in the law. In *Ortega-*
3 *Ascanio*, the defendant pled guilty to illegally reentering the United States following removal in
4 violation of 8 U.S.C. § 1326(a). *Id.* at 882. After his guilty plea, but before sentencing, the
5 Supreme Court decided *INS v. St. Cyr*, 533 U.S. 289, 121 S.Ct. 2271, 150 L.Ed.2d 347 (2001),
6 which held that discretionary relief under § 212(c) of the Immigration and Nationality Act of
7 1952 remained available to aliens otherwise eligible for such relief at the time they pled guilty to
8 the offense, notwithstanding the effective date of the Antiterrorism and Effective Death Penalty
9 Act and the Illegal Immigration Reform and Immigrant Responsibility Act. *Id.* at 326, 121 S.Ct.
10 2271. Significantly, *St. Cyr* overruled binding Ninth Circuit precedent to the contrary. *Ortega-*
11 *Ascanio*, 376 F.3d at 886 (“At the time Ortega-Ascanio pled guilty ... Ninth Circuit law
12 precluded Ortega-Ascanio's *St. Cyr*-type argument.”).

13 The defendant filed a motion to withdraw his guilty plea so that he could move to dismiss
14 his indictment on the ground that his prior order of deportation was invalid under *St. Cyr*. The
15 district court denied the motion, finding that, irrespective of the material change in law, the
16 defendant's plea was nonetheless voluntary and valid. *Id.* at 882-83.

17 On appeal, the 9th Circuit held that the district court, by rigidly “limit[ing] ‘a fair and just
18 reason’ to only those cases in which the plea is invalid,” applied the wrong legal standard to the
19 defendant's motion and thus abused its discretion. *Id.* at 884-85. The Court concluded that the
20 defendant had satisfactorily demonstrated a fair and just reason for withdrawing his plea-
21 “namely, an intervening Supreme Court decision that overruled Circuit precedent and gave him
22 a plausible ground for dismissal of his indictment.” *Id.* at 887.

23 A marked shift in governing law that gives traction to a previously foreclosed or
24 unavailable argument may operate as a fair and just reason to withdraw a guilty plea. *United*
25 *States v. Ensminger*, 567 F.3d 587, 592 (9th Cir. 2009); *United States v. Presley*, 478 F.2d 163,
26 167-68 (5th Cir.1973) (holding that defendants should have been permitted to withdraw guilty
27 pleas where an intervening Supreme Court decision interpreted the statute of conviction in a
28 manner that gave defendants a plausible factual defense).

1 In this case, if the Department of Justice is mandated to not spend any money on
 2 interfering with lawful marijuana cultivations implementing state law, the raids, the seizures,
 3 and the federal prosecution will come to a halt in California. In addition, if the scheduling is
 4 attacked by the litigation in the Eastern District and changed, there are just too many signals that
 5 the 77 years of marijuana prohibition may be coming to an end. At least, there is not a direct
 6 policy mandate from Congress. It is no different than a highway withholding funding to keep
 7 speeds under 80 MPH or at 55 MPH during the energy crisis.

8 A copy of the bill track showing the bill is in the final stage of reconciling the two
 9 versions is attached as Exhibit "A". The actual section 538 is attached as Exhibit "B". The
 10 Congressional Record showing the bill's passage in the Senate Saturday night is attached as
 11 Exhibit "C".

12 **II. SECTION 538 OF THE SPENDING BILL IF SIGNED BY THE PRESIDENT**
 13 **WILL BRING FEDERAL MARIJUANA PROSECUTIONS OF LEGAL**
 14 **CULTIVATORS TO A HALT**

15 The Congress had now passed H.R. 83. It is in the final committee resolving the
 16 differences, then going to the President. The proposed text is as follows:

17 *SEC. 538. None of the funds made available in this Act to the Department of*
 18 *Justice may be used, with respect to the States of Alabama, Alaska, Arizona, California,*
 19 *Colorado, Connecticut, Delaware, District of Columbia, Florida, Hawaii, Illinois, Iowa,*
 20 *Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri,*
 21 *Montana, Nevada, New Hampshire, New Jersey, New Mexico, Oregon, Rhode Island,*
 22 *South Carolina, Tennessee, Utah, Vermont, Washington, and Wisconsin, to prevent*
 23 *such States from implementing their own State laws that authorize the use,*
 24 *distribution, possession, or cultivation of medical marijuana.*

25 If this bill is signed by the President, which all indications are that he will sign it or the
 26 government will shut down, it will become law and policy. The Department of Justice could not
 27 in either the spirit or the letter of the law allocate any further staff, investigation, or budget to
 28 continue to prosecute this case. Furthermore, all future prosecutions of legal California
 cultivators would cease to exist.

1 **III. CONCLUSION**

2 Based upon the historic passage by the House and the Senate of H.R. 83, the defendant
3 requests a 90 day adjournment of his sentence. If the bill becomes law, he will move to
4 withdraw his plea or file a stipulation to that effect with the government. It would be unfair for
5 him to be burdened with a felony conviction and incarceration when in just two weeks, all the
6 current cultivators in this State would enjoy the new found relief provided by the Congressional
7 mandate.

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9 DATED: December 15, 2014

/s/ Ronald Richards

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12 RONALD RICHARDS
13 Attorney for ANTHONY PISARSKI
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