

1 TONY WEST
Assistant Attorney General

2 DANIEL G. BOGDEN
United States Attorney

3 SANDRA SCHRAIBMAN
4 Assistant Director, Federal Programs Branch

5 ALICIA N. ELLINGTON
6 JOHN K. THEIS
7 Trial Attorneys, Federal Programs Branch
8 United States Department of Justice, Civil Division
9 20 Massachusetts Ave., N.W., Rm. 7226
10 Washington, D.C. 20530
11 Telephone: (202) 305-8550
12 Facsimile: (202) 616-8460
13 John.K.Theis@usdoj.gov
14 Alicia.N.Ellington@usdoj.gov

15 *Attorneys for Defendants the United States of America,*
16 *ATF, U.S. Attorney General Eric Holder,*
17 *Acting ATF Director B. Todd Jones, and*
18 *Assistant ATF Director Arthur Herbert,*
19 *in their official capacities (collectively, the United States)*

20 **UNITED STATES DISTRICT COURT**
21 **DISTRICT OF NEVADA**

22 S. ROWAN WILSON,)
23)
24 Plaintiff,)
25)
26 v.) Case No.: 2:11-CV-1679-GMN-(PAL)
27)
28 ERIC HOLDER, Attorney General of the)
United States et al.,)
Defendants.)

29 **THE UNITED STATES’S STATEMENT OF UNDISPUTED MATERIAL FACTS**

30 Pursuant to Local Civil Rule 56-1, Defendants the United States of America, the Bureau
31 of Alcohol, Tobacco, Firearms and Explosives (“ATF”), and the individual defendants in their

1 official capacities (collectively, the United States), hereby submit the following statement of
2 material facts as to which no genuine issue exists in connection with their Motion for Summary
3 Judgment, which they seek as an alternative to their Motion to Dismiss.

4 1. The Gun Control Act of 1968, as amended, provides that “[i]t shall be unlawful
5 for any person . . . who is an unlawful user of or addicted to any controlled substance (as defined
6 in section 102 of the Controlled Substances Act (21 U.S.C. § 802)) . . . to possess in or affecting
7 commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been
8 shipped or transported in interstate or foreign commerce.” The Gun Control Act of 1968, Pub. L.
9 No. 90-618, § 102, 82 Stat. 1213, 1220, codified as amended at 18 U.S.C. § 922(g)(3).

10 2. Another provision of the Gun Control Act, as amended, makes it “unlawful for
11 any person to sell or otherwise dispose of any firearm or ammunition to any person knowing or
12 having reasonable cause to believe that such person . . . is an unlawful user of or addicted to any
13 controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C.
14 § 802)).” 18 U.S.C. § 922(d)(3).

15 3. By regulation, ATF has defined the term “[u]nlawful user of or addicted to any
16 controlled substance” as follows:

17 A person who uses a controlled substance and has lost the power of self-control
18 with reference to the use of the controlled substance; and any person who is a
19 current user of a controlled substance in a manner other than as prescribed by a
20 licensed physician. Such use is not limited to the use of drugs on a particular day,
21 or within a matter of days or weeks before, but rather that the unlawful use has
22 occurred recently enough to indicate that the individual is actively engaged in
23 such conduct. A person may be an unlawful current user of a controlled
substance even though the substance is not being used at the precise time the
person seeks to acquire a firearm or receives or possesses a firearm. An inference
of current use may be drawn from evidence of a recent use or possession of a
controlled substance or a pattern of use or possession that reasonably covers the
present time

24 27 C.F.R. § 478.11.

25 4. Section 102 of the Controlled Substances Act defines “controlled substance” as “a
26 drug or other substance, or immediate precursor, included in schedule I, II, III, IV, or V of part B
27
28

1 of this subchapter [21 U.S.C. § 812].” 21 U.S.C. § 802(6). Marijuana is classified as a Schedule
2 I drug. 21 U.S.C. § 812(c), Schedule I(c)(10). By classifying marijuana as a Schedule I drug,
3 Congress has determined that marijuana “has a high potential for abuse,” that it “has no currently
4 accepted medical use in treatment in the United States,” and that “[t]here is a lack of accepted
5 safety for use of [marijuana] under medical supervision.” Id. § 812(b)(1). As such, Schedule I
6 drugs, including marijuana, cannot be legally prescribed for medical use, see 21 U.S.C. § 829,
7 and it is unlawful for any person to knowingly or intentionally possess marijuana, unless such
8 possession is for a federally approved research project. See 21 U.S.C. §§ 844(a), 823(f).

9 5. In 2001, Nevada enacted legislation that provides that, subject to certain
10 exceptions, “a person who holds a valid registry identification card . . . is exempt from state
11 prosecution for . . . [a]ny . . . criminal offense in which the possession, delivery or production of
12 marijuana . . . is an element.” Nev. Rev. Stat. § 453A.200(1)(f). This exemption only applies to
13 the extent that the holder of a registry identification card (i) engages in “the medical use of
14 marijuana in accordance with the provisions of this chapter as justified to mitigate the symptoms
15 or effects of the person’s chronic or debilitating medical condition;” and (ii) “[d]o[es] not, at any
16 one time, collectively possess, deliver or produce more than . . . [o]ne ounce of usable
17 marijuana[,] [t]hree mature marijuana plants[,] and [f]our immature marijuana plants.” Id.
18 § 453A.200(3).

19 6. To obtain a registry identification card from the State of Nevada, an applicant
20 must provide, inter alia, “[v]alid, written documentation from the person’s attending physician
21 stating that . . . [t]he person has been diagnosed with a chronic or debilitating medical condition”
22 and that “[t]he medical use of marijuana may mitigate the symptoms or effects of that condition.”
23 Id. § 453A.210(2)(a)(1)–(2).

24 7. On September 21, 2011, ATF issued an “Open Letter” to all federal firearms
25 licensees (“FFLs”) in response to “a number of inquiries regarding the use of marijuana for
26 medicinal purposes and its applicability to Federal firearms laws.” See Compl., Ex. 2-B. After
27
28

1 summarizing the relevant provisions of federal law, the Open Letter states that “any person who
2 uses . . . marijuana, regardless of whether his or her State has passed legislation authorizing
3 marijuana use for medicinal purposes, is an unlawful user of . . . a controlled substance, and is
4 prohibited by Federal law from possessing firearms or ammunition.” Id. The Open Letter
5 further informed FFLs that “if you are aware that the potential transferee is in possession of a
6 card authorizing the possession and use of marijuana under State law, then you have ‘reasonable
7 cause to believe’ that the person is an unlawful user of a controlled substance” and “you may not
8 transfer firearms or ammunition to the person.” Id. (quoting 18 U.S.C. § 922(d)(3)).

9 8. On October 18, 2011, Plaintiff S. Rowan Wilson filed suit against the United
10 States, ATF, U.S. Attorney General Eric Holder, ATF Acting Director B. Todd Jones, and ATF
11 Assistant Director Arthur Herbert. Attached to Plaintiff’s Complaint is a copy of a registry
12 identification card issued to her by the State of Nevada that identifies her as a “medical
13 marijuana patient.” Compl., Ex. 1-B.

14 Dated: February 3, 2012

Respectfully submitted,

15 TONY WEST
16 Assistant Attorney General

17 DANIEL G. BOGDEN
18 United States Attorney

19 SANDRA SCHRAIBMAN
Assistant Director

20 /s/ Alicia N. Ellington
21 ALICIA N. ELLINGTON
22 JOHN K. THEIS
23 Trial Attorneys
24 United States Department of Justice
25 Civil Division, Federal Programs Branch
26 20 Massachusetts Ave., N.W., Rm. 7226
27 Washington, D.C. 20530
28 Telephone: (202) 305-8550
Facsimile: (202) 616-8460
Alicia.N.Ellington@usdoj.gov
John.K.Theis@usdoj.gov