

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,
Plaintiff,

v.

RHONDA FIRESTACK-HARVEY, LARRY
HARVEY, MICHELLE GREGG, ROLLAND
GREGG, and JASON ZUCKER,
Defendants.

No. CR-13-24-FVS

ORDER DENYING MOTION TO
COMPEL DISCOVERY

THE DEFENDANTS have filed a number of motions. The Court considered their motions at a pretrial conference that was held on April 22 and 23, 2014. This order addresses defendant Jason Zucker's motion to compel discovery.

BACKGROUND

Jason Zucker is concerned he and his codefendants may be victims of selective prosecution in violation of the equal protection component of the Fifth Amendment. He seeks an order compelling the United States to provide discovery that will either validate or invalidate his concerns.

RULING

The test for evaluating selective prosecution claims is well established. The defendants bear the burden of proof. In order to prevail, they must prove both that a "federal prosecutorial policy had

1 a discriminatory effect" and "that it was motivated by a
2 discriminatory purpose." *United States v. Armstrong*, 517 U.S. 456,
3 465, 116 S.Ct. 1480, 134 L.Ed.2d 687 (1996) (internal punctuation and
4 citation omitted). Here, the defendants have made a prima facie
5 showing that federal prosecutors do not employ a uniform standard when
6 deciding whether to charge marijuana growers with violations of
7 federal law. Indeed, it appears that similar fact-patterns are
8 treated very differently depending upon which prosecutor is making the
9 charging decision. Nevertheless, the defendants have failed to
10 present any evidence that the decision to charge them was based upon
11 some improper factor, e.g., race or religion. *Armstrong*, 517 U.S. at
12 464, 116 S.Ct. 1480. Nor is there any reason to think they could make
13 such a showing if they were allowed to conduct discovery.

14 **IT IS HEREBY ORDERED:**

15 Defendant Jason Zucker's "Motion to Compel Discovery" (**ECF No.**
16 **202**) is **denied**.

17 **IT IS SO ORDERED.** The District Court Executive is hereby
18 directed to enter this order and furnish copies to counsel.

19 **DATED** this 29th day of April, 2014.

20
21 s/ Fred Van Sickle
22 Fred Van Sickle
23 Senior United States District Judge
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