

In California, it's U.S. vs. state over marijuana

By Adam Nagourney, New York Times

STOCKTON – Matthew R. Davies graduated from college with a master's degree in business and a taste for enterprise, working in real estate, restaurants and mobile home parks before seizing on what he saw as uncharted territory with a vast potential for profits – medical marijuana.

Federal agents raided two of Davies's dispensaries and this warehouse, where 2,000 marijuana plants were grown, in 2011.

He brought graduate-level business skills to a world decidedly operating in the shadows. He hired accountants, compliance lawyers, managers, a staff of 75 and a payroll firm. He paid California sales tax and filed for state and local business permits.

But in a case that highlights the growing clash between the federal government and those states that have legalized marijuana for medical or recreational use, the United States Justice Department indicted Davies six months ago on charges of cultivating marijuana, after raiding two dispensaries and a warehouse filled with nearly 2,000 marijuana plants.

The United States attorney for the Eastern District of California, Benjamin B. Wagner, a 2009 Obama appointee, wants Davies to agree to a plea that includes a mandatory minimum of five years in prison, calling the case a straightforward prosecution of "one of the most significant commercial marijuana traffickers to be prosecuted in this district."

At the center of this federal-state collision is a round-faced 34-year-old father of two young girls. Displaying a sheaf of legal documents, Davies, who has no criminal record, insisted

in an interview that he had meticulously followed California law in setting up a business in 2009 that generated \$8 million in annual revenues. By all appearances, Davies' dispensaries operated as openly as the local Krispy Kreme, albeit on decidedly more tremulous legal ground.

"To be looking at 15 years of our life, you couldn't pay me enough to give that up," Davies said at the dining room table in his two-story home along the San Joaquin River Delta, referring to the amount of time he could potentially serve in prison. "If I had believed for a minute this would happen, I would never have gotten into this.

"We thought, this is an industry in its infancy, it's a heavy cash business, it's basically being used by people who use it to cloak illegal activity. Nobody was doing it the right way. We thought we could make a model of how this should be done."

His lawyers appealed this month to Attorney General Eric H. Holder Jr. to halt what they suggested was a prosecution at odds with Justice Department policies to avoid prosecutions of medical marijuana users and with President Obama's statement that the government has "bigger fish to fry" than recreational marijuana users.

"Does this mean that the federal government will be prosecuting individuals throughout California, Washington, Colorado and elsewhere who comply with state law permitting marijuana use, or is the Davies case merely a rogue prosecutor out of step with administration and department policy?" asked Elliot R. Peters, one of his lawyers.

"This is not a case of an illicit drug ring under the guise of medical marijuana," Peters wrote. "Here, marijuana was provided to qualified adult patients with a medical recommendation from a licensed physician. Records were kept, proceeds were tracked, payroll and sales taxes were duly paid."

Holder's aides declined to comment, referring a reporter to a letter from Wagner to Davies's lawyers in which he disputed the depiction of the defendant as anything other than a major-league drug trafficker.

"Mr. Davies was not a seriously ill user of marijuana nor was he a medical caregiver – he was the major player in a very significant commercial operation that sought to make large profits from the cultivation and sale of marijuana," the letter said. Wagner said that prosecuting such people "remains a core priority of the department."

The case illustrates the struggle states and the federal government are now facing as they seek to deal with the changing contours of marijuana laws and public attitudes toward the drug. Colorado and Washington legalized marijuana for recreational use last year, and are among the 18 states, and the District of Columbia, that currently allow its medical use.

Two of Davies's co-defendants are pleading guilty, agreeing to five-year minimum terms, to avoid stiffer sentences. Davies, while saying he did not "want to be a martyr," decided to challenge the indictment with a combination of legal and public-relations measures, setting up a Web site devoted to his case and hiring Chris Lehane, a hard-hitting political consultant and former senior aide in Bill Clinton's White House.

Among Davies's advocates here in California are Paul I. Bonell, who was the president of the Premier Credit Union for 21 years before Davies hired him in early 2011 to oversee his businesses' fiscal controls. After the businesses were raided in October that year, Bonell took a position as the head of the Lodi Boys and Girls Club.

"I had some reservations going in," he said of Davies's enterprise. "But the industry was exploding. Matt wanted to

have internal controls in place. And we thought: This was a legitimate business. If the State of California deems it legitimate, we want to be the best at it.”

Davies’s accountant, David M. Silva, said he set up spreadsheets to keep track of inventories, revenues and expenses. “I’ve been a C.P.A. for 30 years,” Silva said. “What I saw was a guy who was trying to run an operation in an up-and-up way.”

The federal authorities said they stumbled across the operation after two men were spotted apparently breaking into Davies’s 30,000-square-foot Stockton warehouse. The police said they smelled marijuana plants. Federal agents conducted a raid and confiscated 1,962 plants and 200 pounds of marijuana.

Davies, who is free on \$100,000 bail, greeted visitors to his gated home by asking them to speak softly while walking through the entryway so as not to awaken his sleeping infant. He called out to his wife when asked when he was indicted: “Hey, Molly – we were indicted on your birthday, right? July 18.”

Davies referred to marijuana as “medicine,” and himself as a turnaround expert.

“We were basically pharmacists for medical marijuana – everything was in full compliance with state law,” he said. “We paid our employees. We paid overtime. We had people going for unemployment if we fired them.”

“Why are they coming after me?” he asked. “If they have such a problem with California, why can’t they sue California?”

Stephanie Horton, 25, who went to work for Davies after going to one of his dispensaries to obtain medical marijuana to help her deal with ovarian and cervical cancer, said she was devastated by the arrest of employers she described as among the best she had ever had – not to mention the loss of her

job.

“I’d go back and work there in a heartbeat,” Horton said. “I totally trusted them. We’re not criminals. I’ve never been arrested my whole life. I need that medication, and so do a whole lot of people.”

But federal prosecutors offered a much less sympathetic view of Davies. The authorities shut down the warehouse and two dispensaries but said that Davies had ties to a total of seven dispensaries in the region, which they said yielded \$500,000 in annual profits. Davies’s lawyers disputed those assertions.

“Mr. Davies is being prosecuted for serious felony offenses,” Wagner wrote to Davies’s lawyers. “I understand he is facing unpleasant alternatives. Neither a meeting with me nor seeking a review in Washington will change that reality.”

This is as much a legal clash as a cultural clash. Recreational marijuana use is common across this state, and without the legal stigma attached to it in much of the country. The federal government is viewed as a distant force.

“It’s mind-boggling that there were hundreds of attorneys advising their clients that it was O.K. to do this, only to be bushwhacked by a federal system that most people in California are not even paying attention to,” said William J. Portanova, a former federal drug prosecutor and a lawyer for one of Davies’s co-defendants. “It’s tragic.”