

FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA, <i>Plaintiff-Appellee,</i> v. BRYAN JAMES EPIS, <i>Defendant-Appellant.</i>

No. 02-10523
D.C. No.
CR-97-00381-FCD
ORDER AND
AMENDED
ORDER OF
REMAND

Appeal from the United States District Court
for the Eastern District of California
Frank C. Damrell, Jr., District Judge, Presiding

Argued and Submitted
June 16, 2004—San Francisco, California

Filed July 12, 2004
Amended July 22, 2004

Before: Donald P. Lay,* Michael Daly Hawkins, and
Jay S. Bybee, Circuit Judges.

COUNSEL

Brenda Grantland, Mill Valley, California, for the defendant-appellant.

Samuel Wong, Assistant United States Attorney, Sacramento, California, for the plaintiff-appellee.

*The Honorable Donald P. Lay, Senior United States Circuit Judge for the Eighth Circuit, sitting by designation.

ORDER

The Order of Remand filed on July 12, 2004, is amended as follows: on page 9062, line 13, substitute “with the extant law applicable to sentencing” for “with the Supreme Court’s decision in *Blakely v. Washington*, 542 U.S. ____ (2004) 2004 WL 1402697 (June 24, 2004).”

ORDER

This cause came on for hearing before the court on June 16, 2004. The Supreme Court of the United States has now granted certiorari in *Raich v. Ashcroft*, 352 F.3d 1222 (9th Cir. 2003), *cert. granted* (U.S. June 28, 2004) (No. 03-1454), which is a related case dealing with the growing and use of marijuana for medicinal purposes.

This court now remands this case to the district court for reconsideration of the judgment following the decision by the Supreme Court in *Raich*. If, after considering any application of *Raich* to this case, the district court determines that Epis’s conviction should remain in tact, the district court should then proceed to re-sentence Epis in a manner consistent with the extant law applicable to sentencing. The panel of this court retains jurisdiction pending reconsideration by the district court.

IT IS SO ORDERED.

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