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6 IN THE UNITED STATES DISTRICT COURT  
7 FOR THE DISTRICT OF ARIZONA  
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9 United States of America,  
10 Plaintiff,

11 vs.

12 Robert F. Smith,  
13 Defendant.  
14

No. CV10-2358-PHX-DGC

**ORDER**

15 Defendant seeks the right to pursue an interlocutory appeal under 28 U.S.C.  
16 § 1292(b). Doc. 51. A district court may certify an issue for interlocutory appeal under  
17 § 1292(b) only when (1) there is a “controlling question of law,” (2) on which there are  
18 “substantial grounds for difference of opinion,” and (3) “an immediate appeal may  
19 materially advance the ultimate termination of the litigation.” *In re Cement Antitrust*  
20 *Litig.*, 673 F.2d 1020, 1026 (9th Cir. 1982)). “All three requirements must be met for  
21 certification to issue under that statute.” *Best Western Int’l, Inc. v. Govan*, No. CIV 05-  
22 3247-PHX-RCB, 2007 WL 1545776, at \*3 (D. Ariz. May 29, 2007) (citation, quotation  
23 marks, and brackets omitted).

24 Defendant has not explained why there are substantial grounds for a difference of  
25 opinion on the Court’s Fifth Amendment ruling. Plaintiff addressed this issue in its  
26 response (Doc. 54), and Defendant has filed no reply.

27 Because § 1292(b) is a departure from the normal rule that only final judgments  
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1 are appealable, the statute “must be construed narrowly,” *James v. Price Stern Sloan,*  
2 *Inc.*, 283 F.3d 1064, 1067 n.6 (9th Cir. 2002), and “applied sparingly and only in  
3 exceptional cases,” *United States v. Woodbury*, 263 F.2d 784, 788 n.11 (9th Cir. 1959).  
4 Defendant has not shown that this is one of the rare cases appropriate for interlocutory  
5 appeal under § 1292(b).

6 Defendant has also filed a motion for enlargement of time to respond to Plaintiff’s  
7 discovery until the Court has ruled on Defendant’s request for leave to file an  
8 interlocutory appeal. Doc. 55. The motion will be granted. Defendant shall respond to  
9 Plaintiff’s written discovery by January 18, 2012.

10 **IT IS ORDERED:**

- 11 1. Defendant’s Motion for Leave to Take Interlocutory Appeal (Doc. 51) is  
12 **denied.**
- 13 2. Defendant’s motion for enlargement of time (Doc. 55) is **granted.** Mr.  
14 Smith shall comply with the Court’s order of August 12, 2011 (Doc. 35)  
15 and provide Plaintiff with the information required by the order no later  
16 than **January 18, 2011.** The Court reminds Mr. Smith that failure to  
17 provide the information required by the order will result in sanctions under  
18 Rule 37(b) of the Federal Rules of Civil Procedure, including some or all of  
19 the sanctions listed in Rule 37(b)(2)(A).

20 Dated this 4th day of January, 2012.

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David G. Campbell  
United States District Judge