

**IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

UNITED STATES OF AMERICA,)	
)	No. 05-16556
Plaintiff-Appellee,)	
)	
v.)	
)	
UKIAH CANNABIS BUYER'S CLUB,)	
CHERRIE LOVETT, MARVIN)	
LEHRMAN, and MILDRED LEHRMAN,)	
)	
Defendants-Appellants)	
_____)	

**CONSENT MOTION TO CONSOLIDATE
WITH APPEALS NOS. 05-16466 AND 05-16547,
AND TO STAY APPELLATE PROCEEDINGS**

Pursuant to Rule 27(a)(1) of the Federal Rules of Appellate Procedure and Rule 27-1 of this Court, the United States of America, the plaintiff-appellee in this matter, respectfully moves to consolidate this appeal with United States v. Oakland Cannabis Buyers' Cooperative, et al., No. 05-16466, and United States v. Marin Alliance for Medical Marijuana, et al., No. 05-16547, which were ordered consolidated by this Court by Order dated October 6, 2005. The United States also moves, consistent with this Court's Order of October 20, 2005 in the Appeals Nos. 05-16466 and 05-16547, to stay appellate proceedings until April 14, 2006, pending disposition of Raich v. Gonzales, No. 03-15481. The defendants-appellants, through their counsel, Susan B.

Jordan, Esq., consent to and support this motion. In further support thereof, the United States says as follows:

1. This is appeal from an Order dated June 6, 2005, in which the district court (Breyer, J.) declined to reconsider its orders entering summary judgment and permanent injunctions in favor of the United States in three related proceedings, including No. 98-0087 CRB, which involves the defendants-appellants. See United States v. Marin Alliance for Medical Marijuana, et al. and related actions, Nos. 98-0086 CRB; 98-0087 CRB; and 98-0088 CRB (N.D. Cal. June 6, 2006). A copy of the district court's order is attached hereto as Exhibit A.

2. The defendants in the other two related actions in the district court also have taken appeals from the district court's order of June 6, 2005, and those appeals were consolidated by this Court's Order of October 6, 2005, a copy of which is attached hereto as Exhibit B.

3. These three cases were previously consolidated by this Court by Order dated December 20, 2002. See Nos. 02-16335; 02-16534; 02-16715. On June 18, 2004, this Court remanded those consolidated appeals to the district court. See United States v. Marin Alliance for Medical Marijuana, 372 F.3d 1047, 1047-48 (9th Cir. 2004). The district court has now declined to reconsider its earlier decisions in its Order dated June 6, 2005.

4. For all these reasons, and in the interests of justice, the United States moves to consolidate this appeal with Appeals Nos. 05-16446 and 05-16547.

5. The United States also moves to stay appellate proceedings until April 14, 2006, pending disposition of Raich v. Gonzales, No. 03-15481, consistent with this Court's Order of October 20, 2005, in Appeal Nos. 05-16446 and 05-16547. A copy of this Court's Order of October 20, 2005, is attached hereto as Exhibit C.

6. Counsel for the defendants-appellants, Susan B. Jordan, Esq., has consented to and fully supports this motion.

WHEREFORE, with good cause having been shown, the United States respectfully requests that this appeal be consolidated with Appeal Nos. 05-16446 and 05-16547, and that appellate proceedings be stayed until April 14, 2006, pending disposition of Raich v. Gonzales, No. 03-15481.

Respectfully submitted,



MARK T. QUINLIVAN

Assistant U.S. Attorney

John Joseph Moakley U.S. Courthouse

1 Courthouse Way, Suite 9200

Boston, MA 02210

Tel: 617-748-3606

Counsel for United States of America

Dated: November 14, 2005

CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of November, 2005, I served the foregoing Consent Motion to Consolidate With Appeals Nos. 05-16466 and 05-16547, and to Stay Appellate Proceedings, by causing a copy to be served on the following counsel by Federal Express overnight:

Appeal No. 05-16556 (Ukiah Cannabis Buyer's Club, et al.)

Susan B. Jordan
515 South School Street
Ukiah, CA 95482

and by causing a copy to be served on the following counsel by first-class mail, postage prepaid:

Appeal No. 05-16466 (Oakland Cannabis Buyer's Cooperative, et al.)

Annette P. Carnegie
Morrison & Foerster LLP
425 Market Street
San Francisco, CA 94105

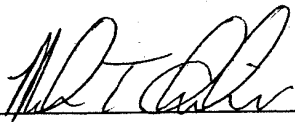
Robert A. Raich
1970 Broadway, Suite 1200
Oakland, CA 94612

Gerald F. Uelmen
Santa Clara University
School of Law
Santa Clara, CA 95053

Randy Barnett
Boston University School of Law
765 Commonwealth Ave.
Boston, MA 02138

Appeal No. 05-2-16547 (Marin Alliance for Medical Marijuana, et al.)

Greg Anton
P.O. Box 299
Lagunitas, CA 94938



MARK T. QUINLIVAN

EXHIBIT A

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

FILED

JUN 06 2005

RICHARD W. WIEKING
CLERK U.S. DISTRICT COURT,
NORTHERN DISTRICT OF CALIFORNIA

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,
Plaintiff,

No. C 98-00086 CRB
No. C 98-00087 CRB
No. C 98-00088 CRB

v.

ORDER

MARIN ALLIANCE FOR MEDICAL
MARIJUANA, and LYNETTE SHAW,
Defendants.

AND RELATED CASES

Before issuing an opinion on the merits of defendants' consolidated appeals, the Ninth Circuit remanded these related actions to this Court for reconsideration after the United States Supreme Court issues its decision in Gonzales v. Raich, cert. granted, 524 U.S. 936 (2004). United States v. Marin Alliance for Medical Marijuana, 372 F.3d 1047 (9th Cir. 2004). Raich is a Commerce Cause challenge to federal regulation of intrastate noncommercial cultivation and use of marijuana. In light of the Supreme Court's opinion issued today, Gonzales v. Raich, __ S.Ct. __, 2005 WL 1321358 (June 6, 2005), the Court declines to reconsider its earlier rulings.

IT IS SO ORDERED.

Dated: June 6, 2005

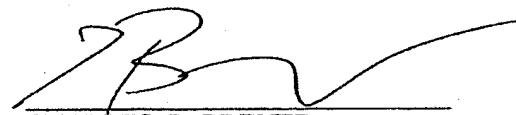

CHARLES R. BREYER
UNITED STATES DISTRICT JUDGE

EXHIBIT B

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

OCT 06 2005

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

OAKLAND CANNABIS CLUB and
MARIN ALLIANCE FOR MEDICAL
MARIJUANA; et al.,

Defendants - Appellants.

Nos. 05-16466
05-16547

D.C. No. CV-98-00086-CRB
Northern District of California,
San Francisco

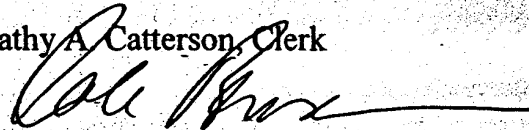
ORDER

The Marin Alliance's motion to consolidate Nos. 05-16466 and 05-16547 is granted. Appellants are reminded of the court's preference for joint briefs. *See* 9th Cir. R. 28-4. However, separate sets of excerpts for each appeal shall be submitted.

The opening brief is due November 21, 2005. The answering brief is due December 21, 2005. The optional reply brief is due 14 days after service of the answering brief.

For the Court:

Cathy A. Catterson, Clerk



Cole Benson, Deputy Clerk
9th Cir. R. 27-7/Note to Rule 27-7/
Rule 27-10

pro 9.26.05

EXHIBIT C

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

OCT 20 2005

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

OAKLAND CANNABIS BUYERS'
COOPERATIVE; et al.,

Defendants - Appellants.

Nos. 05-16466 and 05-16547

D.C. No. CV-98-00088-CRB
Northern District of California,
San Francisco

ORDER

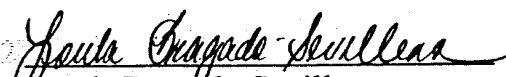
Appellants' motion for an extension of time to file opening brief is construed as a motion stay appellate proceedings pending disposition of *Raich v. Gonzales*, no. 03-15481. So construed, the motion is granted in part.

These cases are stayed until April 14, 2006. On or before the expiration of the stay, appellants may move for further appropriate relief. In the absence of a motion from the appellants, the stay will expire and the opening brief will be due April 14, 2006. If the opening brief is filed, answering brief shall be due May 15, 2006; and the optional reply brief shall be due 14 days after service of the answering brief.

The filing of the opening brief or failure to move for appropriate relief shall terminate the stay.

For the Court:

CATHY A. CATTERSON
Clerk of the Court


Lorela Bragado-Sevillena
Deputy Clerk

Ninth Circuit Rule 27-7/Advisory Note
to Rule 27 and Ninth Circuit Rule 27-10