

Nos. 05-16466, 05-16547, 05-16556

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

OAKLAND CANNABIS BUYERS' COOPERATIVE; et. al.,
Defendants-Appellants.

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

MARIN ALLIANCE FOR MEDICAL MARIJUANA; et. al.,
Defendants-Appellants.

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

UKIAH CANNABIS BUYER'S CLUB; et. al.,
Defendants-Appellants.

Appeal from Entry of Final Judgment by the United States District Court
for the Northern District of California
Nos. CV-98-00086, 98-00087, 98-00088 CRB
entered on June 6, 2005, by Judge Charles R. Breyer

**APPELLANTS' STATUS REPORT AND UNOPPOSED MOTION TO
STAY PROCEEDINGS PENDING DISPOSITION OF *RAICH V.*
GONZALES, NO. 03-15481**

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Pursuant to Federal Rule of Appellate Procedure 27, consolidated Appellants Oakland Cannabis Buyers' Cooperative, Jeffrey Jones ("OCBC Appellants"), Marin Alliance for Medical Marijuana, Lynette Shaw ("Marin Appellants"), Ukiah Cannabis Buyer's Club, Cherrie Lovett, Marvin Lehrman, and Mildred Lehrman ("Ukiah Appellants") (collectively "Appellants") hereby move this Court for an order extending the stay of appellate proceedings until February 16, 2007, pending this Court's disposition of a related case, *Raich v. Gonzales*, Ninth Circuit Case No. 03-15481 ("*Raich*").¹ (Declaration of Annette P. Carnegie in Support of Appellants' Unopposed Motion to Stay Proceedings Pending Disposition of *Raich v. Gonzales*, No. 03-15481 ("Carnegie Decl.") ¶ 2.)

By the Time Schedule Order of this Court, dated August 2, 2005, the OCBC Appellants' opening brief and excerpts of record were originally due on November 14, 2005. (Carnegie Decl. ¶ 3, Ex. A.) Prior to the deadline for the opening brief, the OCBC Appellants filed a motion for an extension of briefing schedule pursuant to Circuit Rule 31-2.2. (Carnegie Decl. ¶ 3.)

On September 29, 2005, Marin Appellants moved this Court to consolidate their appeal with that of the OCBC Appellants. (Carnegie Decl. ¶ 4.) In an order

¹ Two separate cases are pending in this Court entitled *Raich v. Gonzales*. Per an order of this Court dated September 16, 2005, the second *Raich* case, No. 04-16296, is in abeyance pending the Court's disposition in this first *Raich* case, No. 03-15481. All references to *Raich* are limited to the first *Raich* case, No. 03-15481.

dated October 6, 2005, this Court granted the Marin Appellants' motion, ordering the two appeals consolidated, and set November 21, 2005 as the date for filing of the opening brief and excerpts of record. (Carnegie Decl. ¶ 4, Ex. B.)

On October 20, 2005, this Court issued an Order ("First Stay Order") in which it construed the OCBC Appellants' motion for an extension of briefing schedule as a motion to stay appellate proceedings pending disposition of *Raich*, granted the motion in part, and stayed the proceedings with respect to the OCBC and Marin Appellants until April 14, 2006. (Carnegie Decl. ¶ 5, Ex. C.) The First Stay Order further provided that Appellee's brief and supplemental excerpts of record would be due on May 15, 2006, and Appellants' reply brief would be due fourteen (14) calendar days after the filing of Appellee's brief. (Carnegie Decl. ¶ 5, Ex. C.)

After the First Stay Order was entered with respect to the OCBC and Marin Appellants, on November 15, 2005, the United States moved to consolidate the Ukiah Appellants with the previously consolidated *OCBC* and *Marin* appeals. In an order dated November 18, 2005, this Court granted Appellee's motion and consolidated the Appellants' appeals. (Carnegie Decl. ¶ 6, Ex. D.) The November 18 Order further provided that the briefing schedule set forth in the First Stay Order "shall govern these consolidated appeals." (Carnegie Decl., Ex. D.)

In addition to staying the three consolidated appeals until April 14, 2006, the First Stay Order provided that, “[o]n or before the expiration of the stay, appellants may move for further appropriate relief.” (Carnegie Decl., Ex. C.) On March 24, 2006, Appellants filed a motion to further stay appellate proceedings pending disposition of *Raich*. (Carnegie Decl. ¶ 7.) On April 18, 2006, this Court filed an Order (“Second Stay Order”) granting Appellants motion and staying proceedings until October 16, 2006. The Second Stay Order provides that “[o]n or before the expiration of the stay, appellants shall file the opening brief or file a status report and an appropriate motion.” (Carnegie Decl., Ex. E.)

Appellants respectfully submit that a substantial need exists for extending the stay of appellate proceedings pending the disposition by this Court in *Raich*. Several of the central issues in *Raich* are similar to those in the consolidated appeals. (Carnegie Decl. ¶ 8.) Two of the primary issues to be decided in the consolidated appeals are: (1) whether, pursuant to its police powers under the Tenth Amendment, the State of California has the power to enact laws to protect the health and safety of its citizens by permitting the intrastate possession and cultivation of medical cannabis; and (2) whether the Ninth Amendment and the Due Process Clause of the United States Constitution confer a fundamental right on seriously ill patients to an effective means to ameliorate their debilitating pain, blindness, starvation and possible death. (Carnegie Decl. ¶ 8, Exs. F-H.) Both of

these issues of constitutional interpretation are also raised in *Raich*. (Carnegie Decl. ¶ 9, Ex. I at 1-2.) Finally, this Court previously granted two six-month stays pending the disposition of *Raich*. (Carnegie Decl. ¶¶ 5, 7.)

Oral argument was held in *Raich* before this Court on March 27, 2006 and an opinion has not yet been filed in *Raich*. It is possible that an opinion will not be filed in *Raich* before the stay of appellate proceedings expires on October 16, 2006. (Carnegie Decl. ¶ 11.) If an opinion is filed in *Raich* before the stay of appellate proceedings expires on October 16, 2006, it is likely that the parties will not have sufficient time fully to address the opinion in their briefing. (Carnegie Decl. ¶ 11.) In the interest of judicial economy and efficiency, Appellants respectfully request that the stay of appellate proceedings be extended until February 16, 2007, pending the disposition by this Court in *Raich*.

Counsel for Appellee has indicated that the United States is not opposed to Appellants' motion to extend the stay. (Carnegie Decl. ¶ 12.) Counsel in all related cases are in favor of this request. (Carnegie Decl. ¶ 12.)

For the foregoing reasons, Appellants respectfully request that this Court enter an order extending the stay of appellate proceedings until February 16, 2007, pending the disposition of the case by the panel in *Raich*.

Dated: September 18, 2006

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PROOF OF SERVICE BY OVERNIGHT DELIVERY
(FRAP 25(d))

I declare that I am employed with the law firm of Morrison & Foerster LLP, whose address is 425 Market Street, San Francisco, California, 94105; I am not a party to the within cause; I am over the age of eighteen years and I am readily familiar with Morrison & Foerster's practice for collection and processing of correspondence for overnight delivery and know that in the ordinary course of Morrison & Foerster's business practice the document described below will be deposited in a box or other facility regularly maintained by United Parcel Service or delivered to an authorized courier or driver authorized by United Parcel Service to receive documents on the same date that it is placed at Morrison & Foerster for collection.

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APPELLANTS' STATUS REPORT AND UNOPPOSED MOTION TO STAY PROCEEDINGS PENDING DISPOSITION OF *RAICH V. GONZALES*, NO. 03-15481

DECLARATION OF ANNETTE P. CARNEGIE IN SUPPORT OF APPELLANTS' STATUS REPORT AND UNOPPOSED MOTION TO STAY PROCEEDINGS PENDING DISPOSITION OF *RAICH V. GONZALES*, NO. 03-15481

on the following by placing a true copy thereof enclosed in a sealed envelope with delivery fees provided for, addressed as follows for collection by United Parcel Service at Morrison & Foerster LLP, 425 Market Street, San Francisco, California, 94105, in accordance with Morrison & Foerster's ordinary business practices:

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I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed at San Francisco, California, this 18th day of September, 2006.

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