

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**

---

ROBERT A. RAICH (SBN 147515)  
1970 Broadway, Suite 1200  
Oakland, California 94612  
Telephone: (510) 338-0700

GERALD F. UELMEN (SBN 39909)  
Santa Clara University School of Law  
Santa Clara, California 95053  
Telephone: (408) 554-5729

RANDY BARNETT  
Georgetown University Law Center  
600 New Jersey Ave. NW  
Washington, D.C. 20001  
Telephone: (202) 662-9936

ANNETTE P. CARNEGIE (SBN 118624)  
HEATHER A. MOSER (SBN 212686)  
ALEX KREIT (SBN 243574)  
MORRISON & FOERSTER LLP  
425 Market Street  
San Francisco, California 94105-2482  
Telephone: (415) 268-7000

Additional counsel:

GREGORY L. ANTON (SBN 75371)  
359 Meadow Way  
San Geronimo, California 94963  
Telephone: (415) 789-8535

SUSAN B. JORDAN (SBN 49969)  
515 South School Street  
Ukiah, California 95482  
Telephone: (707) 462-2151

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 April 13, 2007, pending this Court's disposition of a related case, *Raich v. Gonzales*, Ninth Circuit Case No. 03-15481 ("*Raich*").<sup>1</sup> (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

---

<sup>1</sup> 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 also provided 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.)

On September 18, 2006, Appellants filed a status report and motion to further stay proceedings, until February 16, 2007, pending disposition of *Raich*. (Carnegie Decl. ¶ 8.) On September 25, 2006, this Court filed an Order (“Third Stay Order”) granting Appellants’ motion in part and staying proceedings until December 15, 2006. The Third Stay Order also provided 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. F.)

On December 4, 2006, Appellants filed a status report and motion to further stay proceedings until February 16, 2007, pending disposition of *Raich*. (Carnegie Decl. ¶ 9.) On December 13, 2006, this Court filed an Order (“Fourth Stay Order”) granting Appellants’ motion in part and staying proceedings until February 13,

2007. The Fourth Stay Order also provided 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. G.)

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. ¶ 10.) 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. ¶ 10, Exs. H-J.) Both of these issues of constitutional interpretation are also raised in *Raich*. (Carnegie Decl. ¶ 11, Ex. K at 1-2.) Finally, this Court previously granted two six-month stays and two two-month stays pending the disposition of *Raich*. (Carnegie Decl. ¶¶ 5, 7, 8, 9.)

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, in less than three weeks, on February 13, 2007. (Carnegie Decl. ¶ 13.) The opinion in *Raich* could affect the determination of the issues in this case. (Carnegie Decl. ¶ 12.) If an opinion is filed in *Raich* before the stay of appellate proceedings expires, the parties will not have sufficient time to address the opinion in their briefing. (Carnegie Decl. ¶ 13.) In the interest of judicial economy and efficiency, Appellants respectfully request that the stay of appellate proceedings be extended until April 13, 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. ¶ 14.) Counsel in all related cases are in favor of this request. (Carnegie Decl. ¶ 14.)

For the foregoing reasons, Appellants respectfully request that this Court enter an order extending the stay of appellate proceedings until April 13, 2007, pending the disposition of the case by the panel in *Raich*.

Dated: January 25 2007

MORRISON & FOERSTER LLP

By: Annette P. Carnegie  
Annette P. Carnegie

Attorneys for Defendants-Appellants  
OAKLAND CANNABIS BUYERS'  
COOPERATIVE and JEFFREY JONES

Dated: January 25, 2007

By: Gregory Anton (by APC)  
Gregory L. Anton

Attorneys for Defendants-Appellants  
MARIN ALLIANCE FOR MEDICAL  
MARIJUANA and LYNETTE SHAW

Dated: January 25 2007

By: Susan B. Jordan (by APC)  
Susan B. Jordan

Attorneys for Defendants-Appellants  
UKIAH CANNABIS BUYER'S CLUB,  
CHERRIE LOVETT and MARVIN AND  
MILDRED LEHRMAN



**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.

I further declare that on the date hereof I served a copy of:

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:

**SEE ATTACHED SERVICE LIST**

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 25<sup>th</sup> day of January, 2007.

\_\_\_\_\_  
Carol J. Peplinski  
(typed)

\_\_\_\_\_  
(signature)

## SERVICE LIST

### United States of America

Mark T. Quinlivan  
United States Attorneys' Office  
John Joseph Moakley Courthouse  
One Courthouse Way  
Suite 9200  
Boston, MA 02210

### Oakland Cannabis Buyers' Cooperative and Jeffrey Jones

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

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

Randy Barnett  
Georgetown University Law Center  
600 New Jersey Ave. NW  
Washington, DC 20001

### Marin Alliance for Medical Marijuana and Lynette Shaw

Gregory Anton  
359 Meadow Way  
San Geronimo, CA 94963

### Amicus Curiae California Medical Association

Alice P. Mead  
California Medical Association  
221 Main Street, Third Floor  
San Francisco, CA 94120-7690

Julie M. Carpenter  
Jenner & Block  
601 13th Street, N.W.  
Washington, D.C. 20005

### Ukiah Cannabis Buyer's Club, Cherrie Lovett, Marvin and Mildred Lehrman

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

### Amicus Curiae County of Alameda

Richard E. Winnie  
Alameda County Counsel  
1221 Oak Street, #450  
Oakland, CA 94612

*Amicus Curiae City of Oakland*

John A. Russo, City Attorney  
Barbara J. Parker, Chief Asst. City Atty.  
City Hall  
One Frank Ogawa Plaza, 6th Floor  
Oakland, CA 94612

*Amicus Curiae State of California*

Bill Lockyer, Atty. General of California  
Peter Siggins, Chief Deputy Atty. General  
Taylor S. Carey, Special Asst. Atty. General  
1300 I Street  
Sacramento, CA 95814

*Amicus Curiae American Civil Liberties Union*

Graham A. Boyd  
American Civil Liberties Union Foundation  
1101 Pacific Avenue, Suite 333  
Santa Cruz, CA 95060

Ann Brick  
American Civil Liberties Union  
Foundation of Northern California, Inc.  
39 Drumm Street  
San Francisco, CA 94111

Jordan C. Budd  
American Civil Liberties Union Foundation  
of San Diego & Imperial Counties, Inc.  
450 B Street, Suite 1420  
San Diego, CA 92101