



U. S. Department of Justice

Civil Division

Mark T. Quintivan
(202) 514-3346

Washington, D.C. 20530

September 22, 2003

VIA OVERNIGHT DELIVERY

Cathy Catterson
Clerk, United States Court of Appeals
for the Ninth Circuit
P.O. Box 193939
San Francisco, CA 94119-3939

Re: Raich v. Ashcroft, No. 03-15481

Dear Ms. Catterson:

Pursuant to Rule 28(j) of the Federal Rules of Appellate Procedure, enclosed please find the original and four copies of this letter and the attached decisions of this Court in United States v. Adams, — F.3d —, 2003 WL 22087570 (9th Cir. Sept. 10, 2003), and the United States Court of Appeals for the Second Circuit in United States v. Holston, — F.3d —, 2003 WL 22053060 (2d Cir. Sept. 4, 2003), which are submitted as pertinent authorities in the above-captioned appeal, which is scheduled for oral argument on October 7, 2003.

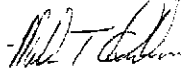
In Adams, this Court upheld the constitutionality of 18 U.S.C. § 2252(a)(4)(B) against a facial Commerce Clause challenge, holding, *inter alia*, that "the possession of commercial child pornography substantially affects the national market for child pornography" because, "[i]n contrast to Lopez, here the statute criminalizing possession is part of a larger congressional scheme to eradicate the market for child pornography" and "[l]aws criminalizing the possession of a good decrease the demand for that good. This decreased demand results in a decrease of supply as production becomes less profitable and therefore less attractive." Adams, 2003 WL 22087570, at ** 6-7.

In Holston, the Second Circuit upheld the constitutionality of 18 U.S.C. § 2251(a) against a Commerce Clause challenge, holding, *inter alia*, that the activity targeted by that statute was economic in nature because, "[p]roducing child pornography, like manufacturing controlled substances -- and unlike the activities targeted in Lopez or Morrison -- concerns 'obviously economic activity,'" and reaffirmed that, in cases under the Controlled Substances Act, "[t]he nexus to interstate commerce * * * is determined by the statute as a whole, not by the simple act for which an individual defendant is

convicted." Holston, 2003 WL 22053060, at ** 4, 6 (quoting Proyect v. United States, 101 F.3d 11, 13 (2d Cir. 1996)).

These decisions are consistent with the United States' argument that the Controlled Substances Act is a valid exercise of Congressional authority under the Commerce Clause. This argument is set forth at pages 17-36 of the Brief for Appellee.

Respectfully submitted,



MARK T. QUINLIVAN

Senior Trial Counsel

Civil Division

Counsel for United States of America

Enclosures

cc: David M. Michael
The DeMartini Historical Landmark Bldg.
294 Page Street
San Francisco, CA 94102
(By Federal Express)

Robert A. Raich
1970 Broadway, Suite 1200
Oakland, CA 94612
(By Federal Express)

Randy E. Barnett
Boston University School of Law
765 Commonwealth Ave.
Boston, MA 02138
(By Federal Express)

Frederick L. Goss
Law Offices of Frederick L. Goss
1 Kaiser Plaza, Suite 1750
Oakland, CA 94612
(By U.S. Mail)

David A. Handro
Julie M. Carpenter
Robin M. Meriweather
Jenner & Block, LLC
601 13th St., N.W.
Washington, D.C. 20005
(By U.S. Mail)