

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

ANGEL McCLARY RAICH, <u>et al.</u> ,	)	
	)	No. 03-15481
Plaintiffs-Appellants,	)	
v.	)	
	)	
ALBERTO GONZALES,	)	
Attorney General of the United States;	)	
and KAREN P. TANDY, Administrator	)	
of the Drug Enforcement Administration,	)	
	)	
Defendants-Appellees.	)	
_____	)	

**UNOPPOSED MOTION FOR EXTENSION OF TIME  
IN WHICH TO FILE GOVERNMENT'S ANSWERING BRIEF**

Pursuant to Fed. R. App. P. 26(b) and Circuit Rule 31-2.2(b), Defendants Alberto Gonzales, Attorney General of the United States, and Karen P. Tandy, Administrator of the Drug Enforcement Administration, respectfully move this Court for an order extending the time in which to file the government's answering brief until January 20, 2006. In support of this motion, Defendants say as follows:

1. On September 6, 2005, this Court entered an Order directing the parties to submit briefs regarding plaintiffs' remaining claims for declaratory and injunctive relief on the basis of the Tenth Amendment, the Fifth and Ninth Amendments, and the doctrine of medical necessity. This Court further ordered that plaintiffs' opening brief shall be filed 20 days from the date the Order was entered, and that the

government's answering brief be filed 20 days after the filing of plaintiffs' opening brief.

2. On September 19, 2005, plaintiffs filed an unopposed motion for extension of time from September 26, 2005, to November 23, 2005, in which to file their opening brief. On September 27, 2005, this Court granted plaintiffs' motion.

3. Plaintiffs filed their opening brief on November 23, 2005. In addition to plaintiffs' opening brief, which numbers 58 pages and 13,973 words, Defendants have received briefs of amicus curiae have been filed by the California Medical Association and the California Nurses Association (21 pages and 5,605 words); the American Civil Liberties Union and the Drug Policy Alliance (29 pages, no word count); the Reason Foundation and the Cato Institute (29 pages and 6,671 words); and the Marijuana Policy Project and Rick Doblin, Ph.D. (21 pages and 6,491 words).

4. Defendants respectfully seek an extension of time up to and including January 20, 2006, in which to file the government's answering brief.<sup>1</sup> This request

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<sup>1</sup> Defendants admit to some confusion regarding when the government's answering brief is currently due. To the extent that this Court's Order of September 6, 2005, remains in place, the government's answering brief would be due on December 13, 2005, or 20 days after the filing of plaintiffs' opening brief. If, on the other hand, this Court's granting of plaintiffs' motion for an extension of time abrogated that schedule, the government's answering brief would be on December 23, 2005, or 30 days after the filing of plaintiffs' opening brief. See Fed. R. App. P. 31(a)(1).

is necessary in order to adequately respond to plaintiffs' opening brief, which advances arguments regarding important questions of constitutional and statutory law. In addition, Defendants may deem it necessary and appropriate to respond to some or all of the arguments advanced by the four amici in this case, which in the aggregate total an additional 100 pages and in excess of 20,000 words of additional briefing. Finally, in addition to his regular district court caseload, the undersigned Assistant U.S. Attorney is currently engaged in reviewing the file and drafting the government's brief in United States v. Marcel Henderson, No. 03-1888, in the United States Court of Appeals in the First Circuit, which is due to be filed on December 19, 2005.

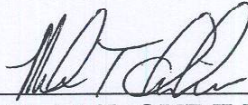
5. The government has not sought a previous extension of time.

6. The undersigned Assistant U.S. Attorney represents that Defendants have exercised diligence and that the government's answering brief will be filed within the time requested.

7. Counsel for the plaintiffs, Robert A. Raich, Esq., has graciously stated that the plaintiffs do not oppose this motion.

WHEREFORE, with good cause having been shown, Defendants respectfully request an order extending the time in which to file the government's answering brief until January 20, 2006.

Respectfully submitted,



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MARK T. QUINLIVAN

Assistant U.S. Attorney

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John Joseph Moakley U.S. Courthouse

Boston, MA 02210

Tel: 617-748-3606

FAX: 617-748-3969

Counsel for Defendants-Appellees

Dated: December 8, 2005

**CERTIFICATE OF SERVICE**

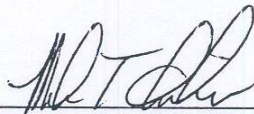
I hereby certify that on this 8th day of December, 2005, I served the foregoing **Unopposed Motion for Extension of Time in Which to File Government's Answering Brief**, by causing a copy to be served on the following counsel by Federal Express overnight:

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

Patrick S. Davies  
Joshua D. Greenberg  
Covington & Burling  
1200 Pennsylvania, Ave., N.W.  
Washington, D.C. 20004

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

Randy Barnett  
Boston University School of Law  
765 Commonwealth Ave.  
Boston, MA 02215



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MARK T. QUINLIVAN  
Assistant U.S. Attorney

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ALBERTO GONZALES,	)	
Attorney General of the United States;	)	
and KAREN P. TANDY, Administrator	)	
of the Drug Enforcement Administration,	)	
	)	
Defendants-Appellees.	)	
_____	)	

**DECLARATION OF MARK T. QUINLIVAN**

I, MARK T. QUINLIVAN, do hereby declare and say:

1. I am an Assistant United States Attorney for the District of Massachusetts, and serve as lead counsel for the United States in this matter.

2. On September 6, 2005, this Court entered an Order directing the parties to submit briefs regarding plaintiffs' remaining claims for declaratory and injunctive relief on the basis of the Tenth Amendment, the Fifth and Ninth Amendments, and the doctrine of medical necessity. This Court further ordered that plaintiffs' opening brief shall be filed 20 days from the date the Order was entered, and that the government's answering brief be filed 20 days after the filing of plaintiffs' opening brief.

3. On September 19, 2005, plaintiffs filed an unopposed motion for extension of time from September 26, 2005, to November 23, 2005, in which to file their opening brief. On September 27, 2005, this Court granted plaintiffs' motion.

4. Plaintiffs filed their opening brief on November 23, 2005. In addition to plaintiffs' opening brief, which numbers 58 pages and 13,973 words, Defendants have received briefs of amicus curiae have been filed by the California Medical Association and the California Nurses Association (21 pages and 5,605 words); the American Civil Liberties Union and the Drug Policy Alliance (29 pages, no word count); the Reason Foundation and the Cato Institute (29 pages and 6,671 words); and the Marijuana Policy Project and Rick Doblin, Ph.D. (21 pages and 6,491 words).

5. Defendants are seeking an extension of time up to and including January 20, 2006, in which to file the government's answering brief, for several reasons. First, this request is necessary in order to adequately respond to plaintiffs' opening brief, which advances arguments regarding important questions of constitutional and statutory law. In addition, Defendants may deem it necessary and appropriate to respond to some or all of the arguments advanced by the four amici in this case, which in the aggregate total an additional 100 pages and in excess of 20,000 words of additional briefing. Finally, in addition to his regular district court caseload, I am currently engaged in reviewing the file and drafting the government's brief in United

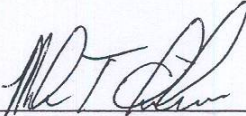
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6. The government has not sought a previous extension of time.

7. I hereby represent that Defendants have exercised diligence and that the government's answering brief will be filed within the time requested.

8. On this date, I spoke by telephone with counsel for the plaintiffs, Robert A. Raich, Esq. Mr. Raich graciously stated that the plaintiffs do not oppose this motion.

I hereby declare under the penalty of perjury that the foregoing is true and correct.

  
\_\_\_\_\_  
MARK T. QUINLIVAN

Dated: December 8, 2005



## CERTIFICATE OF SERVICE

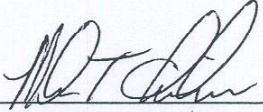
I hereby certify that on this 8th day of December, 2005, I served the foregoing **Declaration of Mark T. Quinlivan**, by causing a copy to be served on the following counsel by Federal Express overnight:

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

Patrick S. Davies  
Joshua D. Greenberg  
Covington & Burling  
1200 Pennsylvania, Ave., N.W.  
Washington, D.C. 20004

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

Randy Barnett  
Boston University School of Law  
765 Commonwealth Ave.  
Boston, MA 02215

  
\_\_\_\_\_  
MARK T. QUINLIVAN  
Assistant U.S. Attorney