

Nos. 02-16335, 02-16534, 02-16715

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA, Plaintiff-Appellee,

v.

OAKLAND CANNABIS BUYERS' COOPERATIVE and JEFFREY JONES,
Defendants-Appellants.

Appeal from Final Judgment by the United States District Court
for the Northern District of California
Case No. C 98-00088 CRB
entered on July 29, 2002, by Judge Charles R. Breyer.

**APPELLANTS' MOTION FOR AN EXTENSION OF TIME IN WHICH TO
FILE A REPLY BRIEF MADE PURSUANT TO LOCAL RULE 31-2.2**

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Pursuant to Federal Rule of Appellate Procedure 26(b) and Ninth Circuit Local Rule 31-2.2(b), Appellants Oakland Cannabis Buyers' Cooperative and Jeffrey Jones (collectively "Appellants") hereby move this Court for an order extending the time in which to file a reply brief from February 4, 2003 to March 6, 2003, which constitutes **an extension of thirty (30) calendar days**. (Declaration of Annette P. Carnegie in Support of Appellants' Motion to Extend Time in Which to File Their Reply Brief ("Carnegie Decl.") ¶ 2.) The original due date of December 31, 2002 was set pursuant to the Scheduling Order of this Court, issued on August 7, 2002. (Carnegie Decl. ¶ 2.) By further order of this Court, dated December 20, 2002, Appellants' reply brief is due fourteen (14) calendar days after the filing of Appellee's opposition. (Carnegie Decl. ¶ 2.) Appellee filed its opposition brief on January 21, 2003. (Carnegie Decl. ¶ 2.) As a result, the current due date for Appellants' reply brief is February 4, 2003. (Carnegie Decl. ¶ 2.)

Appellants present this motion on three separate grounds. First, on November 25, 2002, Appellants moved jointly with Appellee to consolidate this appeal with two related appeals *United States v. Marin Alliance for Medical Marijuana*, No. 02-16335 and *United States v. Ukiah Cannabis Buyer's Club*, No. 02-16715 (hereinafter collectively "Consolidated Appellants"). (Carnegie Decl. ¶ 3.) This Court granted the motion to consolidate on December 20, 2002. (Carnegie Decl. ¶ 3.) Appellants' briefs in this case serve as the main briefs with

respect to the consolidated appeals. (Carnegie Decl. ¶ 3.) Due to the fact that the parties must go to the additional effort of coordinating a the reply briefing, additional time is required.

Second, this appeal involves numerous and complicated issues of constitutional law requiring extensive briefing by the parties. This case presents important constitutional issues of first impression concerning the authority of the federal government under the Controlled Substances Act to prohibit medical cannabis dispensaries, acting under the authority of state law, from distributing cannabis to seriously ill patients for whom physicians have recommended cannabis as an appropriate medical treatment. (Carnegie Decl. ¶¶ 4-6, 8.) The constitutional issues raised in this case also extend beyond the narrow issue of medical cannabis and implicate the federal government's general authority to regulate in areas traditionally reserved to States. (Carnegie Decl. ¶¶ 4-6, 8.) All of these issues require an extensive analysis of the jurisprudence of the United States Supreme Court and of this Court concerning the scope and limits of that authority. (Carnegie Decl. ¶¶ 4-6, 8.) The briefing of these complicated issues will require additional time.

This appeal is also procedurally complex. The consolidated appeals involve five separate dispositive motions: (a) the district court's refusal to modify or dissolve the preliminary injunction; (b) the district court's grant of summary

judgment in favor of the government; (c) the issuance of a permanent injunction enjoining Appellants from distributing medical cannabis to its patient-members; (d) the district court's denial of Appellants' motion to dismiss for failure to state a claim; and (e) the district court's denial of Appellants' motion to dismiss the action for lack of jurisdiction. (Carnegie Decl. ¶ 7.) Appellants also appeal the district court's rulings on their objections to the government's evidence on summary judgment, and the denial of Appellants' motion for further discovery pursuant to Federal Rule of Civil Procedure 56(f). (Carnegie Decl. ¶ 7.) The sheer number of dispositive motions on appeal necessitates an extension of time for reply.

Moreover, this case is of particular social importance. This is confirmed by the participation of several noteworthy *amici curiae*, including the State of California, the City of Oakland, the County of Alameda, and the California Medical Association. (Carnegie Decl. ¶ 6.) In order to prepare a reply brief that does justice to the social policies at stake, Appellants will need to take extra time to prepare the reply brief.

Due to the complexity of the legal issues involved, the sheer magnitude of dispositive motions on appeal, and the social importance of this case, Appellants' opening brief consisted of 79 pages and Appellee's opposition brief consisted of 99 pages. (Carnegie Decl. ¶ 9.) As a result, Appellants, in conjunction with the Consolidated Appellants, anticipate preparing a reply brief in excess of the 15

pages (or 7,000 words) allotted by Federal Rule of Appellate Procedure 32(a)(7)(B)(ii). (Carnegie Decl. ¶ 9.) This additional briefing on these complicated issues will require an extension of time.

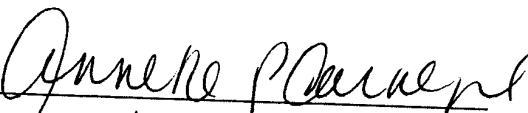
This request is unopposed by Appellee. (Carnegie Decl. ¶ 10.) The Consolidated Appellants, who share the briefing schedule in this case pursuant to the consolidation order issued by this Court on December 20, 2002, are in favor of this request. (Carnegie Decl. ¶ 10.)

Per Ninth Circuit Local Rule 31-2.2(b), Appellants represent that they have exercised diligence and will file their response within the time requested. (Carnegie Decl. ¶ 11.)

For the foregoing reasons, Appellants respectfully request that this Court enter an order extending the date on which the Consolidated Appellants must file their reply brief from February 4, 2003 to March 6, 2003.

Dated: January 22, 2003

MORRISON & FOERSTER_{LLP}

By: 
Annette P. Carnegie

Attorneys for Appellants
OAKLAND CANNABIS BUYERS'
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PROOF OF SERVICE BY OVERNIGHT DELIVERY
(CCP 1013c, 2015.5)

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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DECLARATION OF ANNETTE P. CARNEGIE IN SUPPORT OF APPELLANTS' MOTION FOR AN EXTENSION OF TIME IN WHICH TO FILE A REPLY BRIEF

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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Executed at San Francisco, California, this 23rd day of January, 2003.

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