

No. 00-16411

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UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

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UNITED STATES OF AMERICA,  
Plaintiff-Appellant,

v.

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

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Appeal from Order Modifying Injunction by the United States District Court  
for the Northern District of California  
Case No. C 98-00088 CRB  
entered on July 17, 2000, by Judge Charles R. Breyer.

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**APPELLEES' OPPOSITION TO THE UNITED STATES' MOTION FOR A  
7-DAY EXTENSION OF TIME IN WHICH TO FILE ITS REPLY BRIEF**

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The United States requests a seven-day extension of time to file its Reply to the Answering Brief filed by Appellees the Oakland Cannabis Buyer's Cooperative and Jeffrey Jones ("Appellees") on September 19, 2000. As the United States acknowledges, the Reply Brief is currently due on October 3, 2000, pursuant to this Court's August 11, 2000 Order.

The United States requests the extension because: (1) its counsel have other matters which they claim require their attention; (2) the United States needs additional time to respond to Appellees' arguments; and (3) the United States needs additional time to respond to any *amicus curiae* briefs that may be filed in support of Appellees' position.

Regarding the first point, the United States has argued in its pending petition for certiorari review of this Court's prior decision, *United States v. Oakland Cannabis Buyers' Cooperative*, 190 F.3d 1109 (9th Cir. 1999) (*OCBC D*), that this is a critical case, because it tests the federal government's power to use the Controlled Substances Act, 21 U.S.C. § 801 *et seq.*, to enjoin the operation of the medicinal cannabis cooperatives authorized under California's Proposition 215 and similar statutes in other states. If this case is as critical as the United States has urged--and it is--the United States' counsel should give it priority over all of the other matters which they are handling.

Regarding the second and third points, this is the second appeal in this case. The United States and its attorneys should be well aware of the relevant issues by now. It is difficult to imagine that they have been taken unawares by Appellees' brief. Further, as the agency charged with enforcing the United States drug laws, including the Controlled Substances Act, the Department of Justice and its counsel should be intimately familiar with all of the relevant law.

Finally, and most importantly, every day that this appeal remains pending means another day of suffering for the seriously ill and dying patients to whom

Appellees once distributed medicinal cannabis. Both this Court in *OCBC I* and the district court in the July 17, 2000 Order the United States challenges in this appeal have recognized that Appellees' members suffer severe irreparable harm every day they do not receive medicinal cannabis. That is why, on August 11, 2000, this Court denied the United States' request for a stay of the July 17, 2000 Order, and thereby allowed Appellees to continue to distribute medicinal cannabis to those who have a medical necessity.

However, on August 29, 2000, the United States Supreme Court granted the United States' application for a stay of the district court's July 17, 2000 Order, pending this Court's decision in this second appeal. *United States v. Oakland Cannabis Buyers' Club*, \_\_ U.S. \_\_, 2000 U.S. LEXIS 4832 (No. A00-151, August 29, 2000). The Supreme Court's decision effectively reinstated the broad preliminary injunction that was in place before this Court issued its decision in *OCBC I*. Thus, until this second appeal is resolved and the Supreme Court lifts the stay, the seriously ill patients whom Appellees serve will not receive medicinal cannabis, regardless of whether they have a medical necessity.

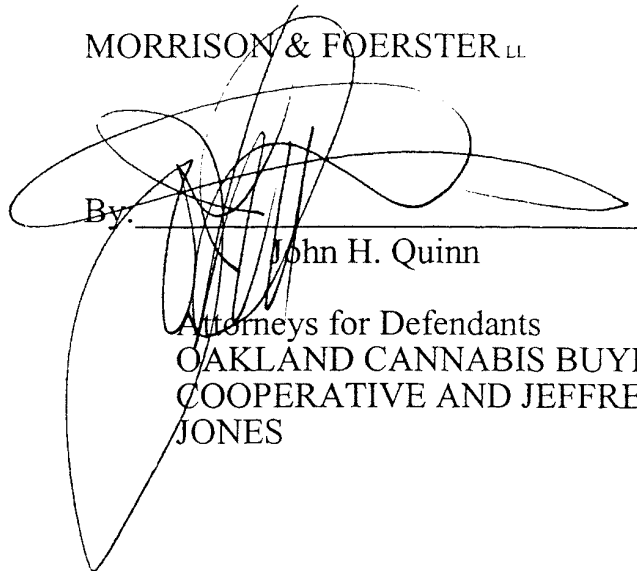
Every day of delay is another day of suffering. The grounds advanced in the United States' motion do not begin to justify an order that would make Appellees'

patients continue to suffer without treatment, not for the seven additional days they request and not even for one additional minute.

Appellees ask this Court to deny the United States' motion for an extension of time.

Dated: September 26, 2000

MORRISON & FOERSTER <sup>LL</sup>

By:  \_\_\_\_\_  
John H. Quinn

Attorneys for Defendants  
OAKLAND CANNABIS BUYERS'  
COOPERATIVE AND JEFFREY  
JONES

IN THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

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UNITED STATES OF AMERICA,	)	
	)	
Plaintiff-Appellant,	)	
	)	
v.	)	No. 00-16411
	)	
OAKLAND CANNABIS BUYERS'	)	
COOPERATIVE and JEFFREY JONES,	)	
	)	
Defendants-Appellees.	)	


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**MOTION OF THE UNITED STATES FOR A 7-DAY  
EXTENSION OF TIME IN WHICH TO FILE APPELLANT'S REPLY BRIEF**

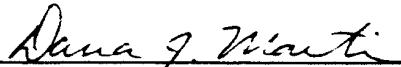
In accordance with Fed. R. App. P. 27 and Circuit Rules 27-1 and 31-2.2(b), Appellant the United States of America hereby respectfully moves for a 7-day extension of time in which to file its Reply Brief in this matter, to and including October 10, 2000. The attached declaration of Dana J. Martin sets forth in detail the bases for this motion, and it is incorporated by reference herein. We have requested no previous extensions in this appeal.

Accordingly, for the reasons set forth in the attached declaration, the United States respectfully requests that its motion be granted and that its time for filing its Reply Brief for Appellant be extended to and including October 10, 2000.

Respectfully submitted,



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Civil Division, Room 9108  
Department of Justice  
601 D Street, NW  
Washington, D.C. 20530-0001

September 25, 2000

IN THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

_____ )	
UNITED STATES OF AMERICA, )	
)	
Plaintiff-Appellant, )	
)	
v. )	No. 00-16411
)	
OAKLAND CANNABIS BUYERS' )	
COOPERATIVE and JEFFREY JONES, )	
)	
Defendants-Appellees. )	
)	
_____ )	

DECLARATION OF DANA J. MARTIN IN SUPPORT OF  
MOTION OF THE UNITED STATES FOR A 7-DAY  
EXTENSION OF TIME TO FILE REPLY BRIEF FOR APPELLANT

I, Dana J. Martin, one of the counsel for the United States in the above-captioned matter, hereby declare as follows:

1. Defendants filed their Brief for Appellee on September 19, 2000. The reply brief of the United States is currently due on October 3, 2000.

2. The United States has not requested any prior extensions of time to file a brief in this appeal. The briefing schedule established by this Court's Order dated August 11, 2000 required the United States to file its opening brief by August 22, 2000, defendants to file their answering brief by September 19, 2000, and the United States to file the reply brief within 14 days of service of the answering brief.

3. The United States respectfully requests a 7-day extension of time, to and including October 10, 2000, to file its reply brief.

4. a. The requested extension is necessary in light of the pendency of other appellate deadlines faced by counsel during the government's briefing time. Mark B. Stern and I are the attorneys on the Appellate Staff of the Civil Division of the Department of Justice who will have primary responsibility for the brief of the United States. On October 4, 2000, I am scheduled to present argument before the Federal Circuit (convening at the University of Minnesota Law School in Minneapolis) in Roedler v. United States, No. 00-1204 (Fed. Cir.). In addition, Mr. Stern is scheduled to file the government's principal brief in the First Circuit in Emmanuel v. United States, No. 00-1618 (1st Cir.) on September 29, 2000, and was responsible for filing two briefs on September 20, 2000 in Gerling Global Reinsurance Corp. v. Kelso, Nos. 00-16163, -16164, -16165, -16182. (9th Cir.) and South Carolina State Ports Authority v. Federal Maritime Commission, No. 00-1481(4th Cir.). Counsel are also responsible for several other appellate matters in this period.

b. Also, the requested extension is necessary to permit the United States adequate time to address the numerous arguments presented by defendants in their lengthy answering brief. Defendants' brief was accompanied by a Motion for Leave to File a Brief Exceeding the Type Volume Limitation of Fed. R. App. P. 32(A)(7)(B), which cited the need to adequately address several



"critical issues of first impression" presented, and the need to brief the matter as fully as possible in light of the petition for writ of certiorari pending before the United States Supreme Court, which seeks review of this Court's prior decision in United States v. Oakland Cannabis Buyers' Cooperative, 190 F.3d 1109 (9th Cir. 1999) (Nos. 98-16950, 98-17044, 98-17137).

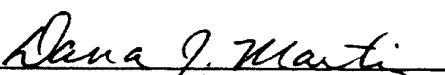
c. In addition, the requested extension is necessary to allow the United States time to address any arguments made in any amicus curiae briefs filed in support of appellees, which would be due on September 26, 2000. See Fed. R. App. P. 29(e). We were notified by Barbara Parker of the Oakland City Attorney's Office that the City of Oakland intends to file an amicus brief in support of appellees.

5. Counsel for the government have exercised diligence in this matter and will file and serve the reply brief on or before October 10, 2000.

6. On September 25, 2000, I spoke by telephone with Annette Carnegie, counsel for defendants, who informed me that defendants do not consent to this motion.

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

Executed this 25th day of September, 2000 in Washington, District of Columbia.

  
Dana J. Martin

CERTIFICATE OF SERVICE

I hereby certify that on this 25th day of September, 2000, I served the foregoing Motion of the United States for a 7-Day Extension of Time to File Reply Brief for Appellant and the Declaration of Dana J. Martin in support thereof by causing the original and four copies to be sent to this Court by Federal Express and one copy to be faxed to the Court at 415-556-8181 (Attention: Jeanine Andrews), and by causing one copy to be served upon the following counsel by fax and by Federal Express:


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and by causing one copy to be served upon the following counsel by Federal Express:

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Dana J. Martin

SUPREME COURT OF THE UNITED STATES  
OFFICE OF THE CLERK  
WASHINGTON, DC 20543-0001

WILLIAM K. SUTER  
CLERK OF THE COURT

September 18, 2000

AREA CODE 202  
479-3011

Ms. Annette P. Carnegie  
Morrison & Foerster  
425 Market Street  
San Francisco, CA 94105-2482

**RE: United States v. Oakland Cannabis Buyers' Cooperative  
and Jeffrey Jones  
No. 00-151**

Dear Ms. Carnegie:

Your request of September 14, 2000 for an extension of time within which to file a response to the petition for a writ of certiorari in the above-entitled case has been granted; the time has been extended further to and including October 30, 2000.

Very truly yours,

WILLIAM K. SUTER, Clerk

By

Francis J. Lorson  
Chief Deputy Clerk

cc: Solicitor General  
Robert A. Raich  
Gerald F. Uelmen