

No. 02-16534

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 LEAVE TO FILE A BRIEF
EXCEEDING THE TYPE-VOLUME LIMITATION OF
FEDERAL RULE OF APPELLATE PROCEDURE 32(A)(7)(B)**

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Pursuant to Ninth Circuit Local Rule 32-2, Appellants Oakland Cannabis Buyers' Cooperative and Jeffrey Jones (collectively "Appellants") request leave to file the attached brief, which exceeds the type volume limitation in Federal Rule of Appellate Procedure 32(a)(7)(B). That limitation states that a principal brief may exceed 30 pages, provided that it does not exceed 14,000 words. The brief contains 24,627 words, counted in accordance with Federal Rule of Appellate Procedure 32(a)(7)(B)(iii). (Carnegie Decl., ¶ 2.) The brief is due November 18, 2002, pursuant to an order dated August 7, 2002. (Carnegie Decl., ¶ 2.) Appellants seek an extension of 10,627 words. (Carnegie Decl., ¶ 9.)

Good cause exists for this motion for the following reasons:

- There are two related cases *United States v. Marin Alliance for Medical Marijuana*, No. 02-16335 and *United States v. Ukiah Cannabis Buyers' Club*, No. 02-16715, pending in this Court. The parties have agreed to consolidate the cases and a motion will be filed jointly. It is anticipated that Appellants' brief in this case will serve as the main brief with respect to the consolidated appeals. (Carnegie Decl., ¶ 3.)
- 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. These issues are of concern to the State of California, to the United States government, and to States that have passed laws allowing the limited use of cannabis for medical purposes by their citizens. 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. 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.)

- This case was appealed to this Court and to the Supreme Court. Both Courts issued opinions and remanded the case for further proceedings in the district court. *See United States v. Oakland Cannabis Buyers' Coop.*, 190 F.3d 1109 (9th Cir. 1999); *United States v. Oakland Cannabis Buyers' Coop.*, 532 U.S. 483 (2001). All of the constitutional issues raised by Appellants in their present brief were expressly left open by the United States Supreme Court for decision by this Court. (Carnegie Decl., ¶ 5.)
- The case is procedurally complex. This appeal involves five separate dispositive motions raising legal and factual issues: (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. 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.)
- To address the issues raised by the orders appealed from, it is necessary to brief the significant constitutional arguments raised in the trial court,

including: (a) an “as applied” challenge to the Controlled Substances Act under the Commerce Clause; (b) the constraints that the Necessary and Proper Clause imposes on Congressional power to enact federal legislation pursuant to its powers under the Commerce Clause; (c) state sovereignty and the breadth, scope, and applicability of the Tenth Amendment; and (d) fundamental rights under the Fifth and Ninth Amendments. Appellants also must address the legal defenses to the injunction raised and rejected below, including statutory immunity under 21 U.S.C. § 885(d). Finally, Appellants must address the procedural and evidentiary errors committed by the district court in granting summary judgment and issuing a permanent injunction. (Carnegie Decl., ¶ 8.)

In the event that this Court does not grant the requested relief or grants it only in part, Appellants respectfully request an extension of time to file a revised brief in compliance with the Court’s order per Circuit Advisory Committee Note to Circuit Rule 32-2.

Dated: November 18, 2002

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