



Form 6. Civil Appeals Docketing Statement

USCA DOCKET # (IF KNOWN)

**UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT
CIVIL APPEALS DOCKETING STATEMENT**

PLEASE ATTACH ADDITIONAL PAGES IF NECESSARY.

TITLE IN FULL: United States of America v. Oakland Cannabis Buyers' Cooperative and Jeffrey Jones	DISTRICT: N.D. Cal. JUDGE: Charles R. Breyer	
	DISTRICT COURT NUMBER: C 98-0088 CRB	
	DATE NOTICE OF APPEAL FILED: August 1, 2002	IS THIS A CROSS-APPEAL? <input type="checkbox"/> YES
	IF THIS MATTER HAS BEEN BEFORE THIS COURT PREVIOUSLY, PLEASE PROVIDE THE DOCKET NUMBER AND CITATION (IF ANY): Docket Nos. 98-16950, 98-17044, 98-17137; 00-16411 (includes all related actions)	
BRIEF DESCRIPTION OF NATURE OF ACTION AND RESULT BELOW: Please see Attachment.		
PRINCIPAL ISSUES PROPOSED TO BE RAISED ON APPEAL: Please see Attachment.		
PLEASE IDENTIFY ANY OTHER LEGAL PROCEEDING THAT MAY HAVE A BEARING ON THIS CASE (INCLUDE PENDING DISTRICT COURT POST-JUDGMENT MOTIONS(S): Please see Attachment.		
DOES THIS APPEAL INVOLVE ANY OF THE FOLLOWING: <ul style="list-style-type: none"> <input type="checkbox"/> Possibility of settlement <input type="checkbox"/> Likelihood that intervening precedent will control outcome of appeal <input type="checkbox"/> Likelihood of a motion to expedite or to stay the appeal, or other procedural matters (Specify) _____ <input type="checkbox"/> Any other information relevant to the inclusion of this case in the Mediation Program _____ <input type="checkbox"/> Possibility parties would stipulate to binding award by Appellate Commissioner in lieu of submission to judges 		

LOWER COURT INFORMATION

JURISDICTION		DISTRICT COURT DISPOSITION	
FEDERAL	APPELLATE	TYPE OF JUDGMENT/ORDER APPEALED	RELIEF
<input checked="" type="checkbox"/> FEDERAL QUESTION <input type="checkbox"/> DIVERSITY <input type="checkbox"/> OTHER (SPECIFY):	<input checked="" type="checkbox"/> FINAL DECISION OF DISTRICT COURT <input type="checkbox"/> INTERLOCUTORY DECISION APPEALABLE AS OF RIGHT <input type="checkbox"/> INTERLOCUTORY ORDER CERTIFIED BY DISTRICT JUDGE (SPECIFY): <input type="checkbox"/> OTHER (SPECIFY):	<input type="checkbox"/> DEFAULT JUDGMENT <input type="checkbox"/> DISMISSAL/JURISDICTION <input type="checkbox"/> DISMISSAL/MERITS <input checked="" type="checkbox"/> SUMMARY JUDGMENT <input checked="" type="checkbox"/> JUDGMENT/COURT DECISION <input type="checkbox"/> JUDGMENT/JURY VERDICT <input type="checkbox"/> DECLARATORY JUDGMENT <input type="checkbox"/> JUDGMENT AS A MATTER OF LAW <input type="checkbox"/> OTHER (SPECIFY):	<input type="checkbox"/> DAMAGES: SOUGHT \$ _____ AWARDED \$ _____ <input checked="" type="checkbox"/> INJUNCTIONS <input type="checkbox"/> PRELIMINARY <input checked="" type="checkbox"/> PERMANENT <input type="checkbox"/> GRANTED <input type="checkbox"/> DENIED <input type="checkbox"/> ATTORNEY FEES: SOUGHT \$ _____ AWARDED \$ _____ <input type="checkbox"/> PENDING <input type="checkbox"/> COSTS: \$ _____

CERTIFICATE OF COUNSEL

I CERTIFY THAT:

- COPIES OF ORDER/JUDGMENT APPEALED FROM ARE ATTACHED.
- A CURRENT SERVICE LIST OR REPRESENTATION STATEMENT WITH TELEPHONE AND FAX NUMBERS IS ATTACHED (SEE 9TH CIR. RULE 3-2).
- A COPY OF THIS CIVIL APPEALS DOCKETING STATEMENT WAS SERVED IN COMPLIANCE WITH FRAP 25.
- I UNDERSTAND THAT FAILURE TO COMPLY WITH THESE FILING REQUIREMENTS MAY RESULT IN SANCTIONS, INCLUDING DISMISSAL OF THIS APPEAL.



 Signature
 Annette P. Carnegie

August 1, 2002

 Date

COUNSEL WHO COMPLETED THIS FORM

NAME: Heather A. Moser, Esq.

FIRM: Morrison & Foerster LLP

ADDRESS: 425 Market Street, San Francisco, CA 94105-2482

E-MAIL: hmoser@mofo.com

TELEPHONE: 415-268-7000

FAX: 415-268-7522

THIS DOCUMENT SHOULD BE FILED IN THE DISTRICT COURT WITH THE NOTICE OF APPEAL
IF FILED LATE, IT SHOULD BE FILED DIRECTLY WITH THE U.S. COURT OF APPEALS

Attachment to Ninth Circuit Civil Appeals Docketing Statement

United States v. Oakland Cannabis Buyers' Cooperative and Jeffrey Jones,
Northern District of California, Case No. C-98-0088-CRB

I. Brief Description of Nature of Action and Result Below:

In November 1996, California voters enacted an initiative measure entitled the Compassionate Use Act of 1996 (Proposition 215), to permit seriously ill patients and their primary caregivers to possess and cultivate cannabis with the approval or recommendation of a physician. To implement the will of California voters, Defendants organized a Cooperative to provide seriously ill patients with a safe and reliable source of medical cannabis. The Cooperative, a not-for-profit organization, operates in downtown Oakland, in cooperation with the City of Oakland and its police department. On July 28, 1998, the City of Oakland adopted, by ordinance, a Medical Cannabis Distribution Program, and on August 11, 1998, officially designated the Cooperative to administer the City's program.

On January 9, 1998, the United States sued in the United States District Court for the Northern District of California, seeking to enjoin Defendants from distributing cannabis to patient-members. On May 19, 1998, the district court issued a preliminary injunction enjoining Defendants from "engaging in the manufacture or distribution of marijuana, or the possession of marijuana with the intent to manufacture and distribute marijuana, in violation of 21 U.S.C. § 841(a)(1)."

On October 13, 1998, the district court held Defendants in contempt of the preliminary injunction. The district court then modified the injunction to permit the U.S. Marshal to seize Defendants' offices. Defendants informed the district court that they would comply with the injunction. Defendants also requested that the injunction be modified to permit distribution of cannabis to the limited number of patients who could demonstrate necessity under the standard set forth in *United States v. Aguilar*, 883 F.2d 662 (9th Cir. 1989) and submitted numerous declarations in support of this request. The district court denied that motion.

On September 13, 1999, this Court reversed the district court's denial of the motion to modify and remanded the case to the district court, holding that (1) the court could take into account a legally cognizable defense of necessity in considering the proposed modification (*Oakland Cannabis Buyers' Coop.*, 190 F.3d 1109, 1114 (9th Cir. 1999)), (2) in exercising its equitable discretion, the court must expressly consider the public interest in the availability of a doctor-prescribed treatment that would help ameliorate the condition and relieve the pain and suffering of persons with serious or fatal illnesses, and (3) the record before the district court justified the proposed modification. *Id.* at 1114-15.

On remand to the district court on May 30, 2000, Defendants renewed their motion to modify the preliminary injunction, submitting more declarations to establish that patient-members could meet all of the *Aguilar* requirements for a claim of necessity.

On July 25, 2000, the government noticed an appeal from the district court's order modifying the injunction. On November 27, 2000, the Supreme Court granted the government's petition for writ of certiorari to review this Court's September 13, 1999, opinion. This Court suspended proceedings to await the Supreme Court's ruling. On

May 15, 2001, the United States Supreme Court reversed this Court's decision and remanded the case for further proceedings.

On December 4, 2001, the Ninth Circuit remanded the case to the district court for "proceedings consistent with the Supreme Court's opinion." On January 7, 2002, defendants moved after remand to dissolve or modify the preliminary injunction order. On January 25, 2002, the government moved for summary judgment and permanent injunctive relief.

On May 3, 2002, the district court granted the government's motion for summary judgment and requested that defendants file further submissions with the Court "concerning the likelihood of future violations of the Act, and in particular, whether there is a threat that defendants, or any of them, will resume their distribution activity if the Court does not enter a permanent injunction." (Order of May 3, 2002.) On May 22, 2002, defendants filed a submission objecting to the procedure on the grounds of invasion of the attorney-client privilege and the violation of Jeffery Jones's Fifth Amendment privilege against self-incrimination. On June 10, 2002, Judge Breyer permanently enjoined defendants from possessing with intent to distribute, manufacturing or distributing cannabis. Judgment was entered thereon on June 11, 2002. On July 29, 2002 granted Defendants' Motion for Partial Judgment Pursuant to Federal Rule of Civil Procedure 54(b). Defendants now appeal a final judgment under 28 U.S.C. § 1291, as well as all other interlocutory orders.

II. Issues Proposed to be Raised on Appeal:

- A. Did the district court err in denying Defendants' motion to dismiss?
- B. Did the district court err in precluding Defendants' affirmative defenses?
- C. Did the district court err in denying Defendants' motions to modify or dissolve the preliminary injunction?
- D. Did the district court err in granting summary judgment and issuing a permanent injunction?

III. Other Legal Proceedings With a Bearing on This Case:

Defendants are presently unaware of any cases currently pending in the Ninth Circuit that would affect the disposition of this case.