

No. 00-16411
(Related Case Nos. 98-16950, 98-17044, 98-17137, 99-15838,
99-15844, and 99-15879)

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellant,

v.

OAKLAND CANNABIS BUYERS'
COOPERATIVE and JEFFREY JONES,

Defendants-Appellees.

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.

**APPELLEES' MOTION FOR LEAVE TO FILE A BRIEF EXCEEDING
THE TYPE VOLUME LIMITATION OF FED.R.APP.P. 32(A)(7)(B)**

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Pursuant to Ninth Circuit Local Rule 32-2, Defendants and Appellees Oakland Cannabis Buyers' Cooperative and Jeffrey Jones (collectively "OCBC") request leave to file the attached brief, which exceeds the type volume limitation in Fed.R.App.P. 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 attached brief contains 14,824 words, counted in accordance with Fed.R.App.P. 32(a)(7)(B)(iii). (Carnegie Decl., ¶ 2.) The brief is due September 19, 2000, pursuant to an order dated August 11, 2000. (*Id.*)

The panel (Schroeder, Reinhardt, and Silverman, Circuit Judges) that decided the earlier appeal in this case, *United States v. Oakland Cannabis Buyers' Cooperative*, 190 F.3d 1109 (9th Cir. 1999) (Nos. 98-16950, 98-17044, and 98-17137), has retained jurisdiction "over any further appeals in this case" (*see id.* at 1115) and that panel has previously ruled on the government's motion for a stay of the district court order challenged in this appeal. (*See* Order, August 11, 2000.) That panel OCBC submits, should decide this motion as well. *See* General Order 6.3(b) ("Except as noted above, all motions in cases that have been calendared for hearing by, or are under submission to, or have otherwise previously been assigned, to a panel shall be submitted to that panel."). (Carnegie Decl., ¶ 3.)

Good cause exists for this motion for the following reasons:

- This case presents several issues of first impression in the Ninth Circuit, including (1) whether the government can use the Controlled Substances Act ("CSA"), 21 U.S.C. § 801 *et seq.*, to block the operation of a medicinal cannabis cooperative wishing to provide medical cannabis to seriously ill patients with a medical necessity; (2) whether Congress intended to abrogate medical necessity as a defense to an alleged violation of the CSA; and (3) whether Congress intended to limit the district court's traditionally broad equitable discretion to fashion


injunctive relief in civil proceedings under the CSA. (Carnegie Decl., ¶ 4.)

- To adequately brief these critical issues of first impression, OCBC determined that it was necessary to (1) discuss the legislative history and Congressional intent underlying the CSA and a related “Sense of Congress” enactment cited by the government; (2) discuss the provisions of the CSA and the law of other states dealing with classification of marijuana as a Schedule I drug, the procedure for reclassifying marijuana to other schedules, and the programs available under federal law and the law of other states for distributing medical marijuana; (3) the purpose and history of the medical necessity defense, which originated seven centuries ago; and (4) the case law governing the scope of the district courts’ discretion to refuse the government’s request to enjoin, in whole or in part, alleged violations of other provisions of federal law. (Carnegie Decl., ¶ 5.)
- This is the second appeal in this case, and, as such, the discussion of the prior history of is longer. (Carnegie Decl., ¶ 6.)
- The importance of this case has been confirmed by the participation of several noteworthy *amici curiae*, including the City of Oakland, the City and County of San Francisco, Alameda County, the California Medical Association, and the California Nurses Association. (Carnegie Decl., ¶ 7.)
- The government has petitioned for certiorari review of the Ninth Circuit’s prior decision, *United States v. Oakland Cannabis Buyers’ Cooperative*, 190 F.3d 1109 (9th Cir. 1999) (Nos. 98-16950, 98-17044, and 98-17137), issued September 13, 1999. That petition remains pending in the Supreme Court. The Supreme Court voted 7 to 1 to stay the district court

decision challenged in this appeal pending further order of the Supreme Court. *United States v. Oakland Cannabis Buyers' Cooperative*, 69 U.S.L.W. 3165, 2000 U.S. LEXIS 4832 (No. 00-A151, Aug. 29, 2000). Given the pendency of the government's petition for writ of certiorari, OCBC felt compelled to brief the matter as fully as possible, so that this Court could reach its decision on the most informed basis possible thereby possibly providing further guidance to the United States Supreme Court regarding the reasons for the determination in *OCBC I*. (Carnegie Decl., ¶ 8.)

Dated: September 19, 2000

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