



U.S. Department of Justice

United States Attorney
District of Massachusetts

Main Reception: (617) 748-3100

John Joseph Moakley United States Courthouse
1 Courthouse Way
Suite 9200
Boston, Massachusetts 02210

March 29, 2006

By Overnight Delivery

Cathy Catterson
Clerk, United States Court of Appeals
for the Ninth Circuit
P.O. Box 193939
San Francisco, CA 94119-3939

Re: **Raich v. Gonzales**, No. 03-15481

Dear Ms. Catterson:

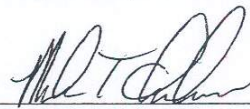
I write pursuant to FRAP 28(j) to address two issues raised during oral argument in this case, which was heard on March 27, 2006, before a panel of Judges Pregerson, Beam, and Paez. Kindly bring this letter to the attention of the panel.

First, during rebuttal, plaintiffs challenged the government's representation that the plaintiff in Carnohan v. United States, 616 F.2d 1120 (9th Cir. 1980), was a terminally ill cancer patient. Although Mr. Carnohan's status as a terminally ill cancer patient was not specifically addressed in this Court's opinion, it has been reflected elsewhere. See People v. Privitera, 23 Cal.3d 697, 734-35, 591 P.2d 919, 942, 153 Cal.Rptr. 431, 454 (1979) (Bird, C.J., dissenting); Comment, Laetrile: Statutory and Constitutional Limitations on the Regulation of Ineffective Drugs, 127 U. Pa. L. Rev. 233, 234 n.10 (1978). Regardless, as noted at pages 17-18 of the Supplemental Brief of the Appellees, this Court in Carnohan cited with approval Rutherford v. United States, 616 F.2d 455 (10th Cir. 1980), in which the Tenth Circuit, in a case involving a class of terminally ill cancer patients who sought to obtain laetrile, held that "the decision by the patient whether to have a treatment or not is a protected right, but his selection of a particular treatment, or at least a medication, is within the area of governmental interest in protecting public health." 616 F.2d at 457.

Second, a question was raised during argument about the number of medical marijuana recommendations that have been issued in the State of California. While there does not appear to

be any State entity that tracks such statistics, we note that plaintiff's physician, Frank H. Lucido, M.D., has stated to the press that he alone has recommended marijuana for some 3,000 patients. See David Kravets, *Renewed bid for medical marijuana back in court*, Associated Press, March 25, 2006; see also <http://www.drLucido.com> ("Since passage of the 1996 Compassionate Use Act ("Prop 215"), Dr. Lucido has also been performing Medical Cannabis Consultations.").

Respectfully submitted,

By: 
MARK T. QUINLIVAN
Assistant U.S. Attorney
John Joseph Moakley U.S. Courthouse
1 Courthouse Way, Suite 9200
Boston, MA 02210
(617) 748-3606

cc:

Counsel for Plaintiffs-Appellants

Robert A. Raich
1970 Broadway, Suite 1200
Oakland, CA 94612

Patrick S. Davies
Joshua D. Greenberg
Covington & Burling
1200 Pennsylvania, Ave., N.W.
Washington, D.C. 20004

Randy Barnett
Boston University School of Law
765 Commonwealth Ave.
Boston, MA 02215

Counsel for Amicus Curiae Reason Foundation and the Cato Institute

Erik S. Jaffe
Erik S. Jaffe, P.C.
5101 34th Street, N.W.
Washington, D.C. 20008

Counsel for Amicus Curiae ACLU Foundation and Drug Policy Alliance

Graham A. Boyd
M. Allen Hopper
American Civil Liberties Union
Foundation
1101 Pacific Avenue, Ste. 333
Santa Cruz, CA 95060

Daniel N. Abrahamson
Drug Policy Alliance
Office of Legal Affairs
717 Washington Street
Oakland, CA 94607

Counsel for Amicus Curiae California Medical Ass'n and California Nurses Ass'n

David A. Handzo
Julie M. Carpenter
Jenner & Block
601 13th Street, N.W.
Washington, D.C. 20005

Counsel for Amicus Curiae Marijuana Policy Project and Rick Doblin, Ph.D.

Frederick L. Goss
Law Office of Frederick L. Goss
1 Kaiser Plaza, Suite 1750
Oakland, CA 94612