

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

**FILED**

SEP 06 2005

CATHY A. CATTERSON, CLERK  
U.S. COURT OF APPEALS

ANGEL MCCLARY RAICH; DIANE  
MONSON; JOHN DOE, Number One;  
JOHN DOE, Number Two,

Plaintiffs - Appellants,

v.

ALBERTO R. GONZALES, Attorney  
General, as United States Attorney  
General; ASA HUTCHINSON, as  
Administrator of the Drug Enforcement  
Administration,

Defendants - Appellees.

Nos. 03-15481, 04-16296

D.C. No. CV-02-04872-MJJ  
Northern District of California,  
San Francisco

ORDER

Before: PREGERSON, BEAM,\* and PAEZ, Circuit Judges.

Plaintiffs' motion to consolidate proceedings in case numbers 03-15481 and 04-16296 is DENIED.

Pursuant to the Supreme Court's decision in Gonzalez v. Raich, 125 S. Ct. 2195, 2215 (2005), the Defendants' motion for summary reversal and vacatur of the preliminary injunction entered by the district court is GRANTED.

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<sup>1</sup> The Honorable Arlen C. Beam, Senior United States Circuit Judge for the Eighth Circuit, sitting by designation.

The Supreme Court's decision in Gonzalez v. Raich concerned only plaintiffs' claims for relief under the Commerce Clause. Neither the Supreme Court, nor this court, have ruled on plaintiffs' remaining claims for declaratory and injunctive relief. See Gonzalez v. Raich, 125 S. Ct. 2195, 2215 (2005) ("Respondents also raise a substantive due process claim and seek to avail themselves of the medical necessity defense. These theories of relief were set forth in their complaint but were not reached by the Court of Appeals. We therefore do not address the question whether judicial relief is available to respondents on these alternative bases."); Raich v. Ashcroft, 352 F.3d 1222, 1227 (9th Cir. 2003), rev'd 125 S. Ct. at 2215 ("We decline to reach the appellants' other arguments, which are based on the principles of federalism embodied in the Tenth Amendment, the appellants' alleged fundamental rights under the Fifth and Ninth Amendments, and the doctrine of medical necessity.").

The parties are therefore directed to submit briefs in case number 03-15481 regarding plaintiffs' remaining claims for declaratory and injunctive relief on the basis of the Tenth Amendment, the Fifth and Ninth Amendments, and the doctrine of medical necessity, as set forth in their complaint.

Plaintiffs' opening brief shall be filed twenty days from the date this order is entered. Defendants' answering brief shall be due twenty days after Plaintiff's

opening brief is filed. Plaintiffs' reply brief shall be filed ten days after Defendants' answering brief is filed. The parties' briefs shall conform to the requirements of Fed. R. App. P. 32.