

# COVINGTON & BURLING

1201 PENNSYLVANIA AVENUE NW  
WASHINGTON, DC 20004-2401  
TEL 202.662.6000  
FAX 202.662.6291  
WWW.COV.COM

WASHINGTON  
NEW YORK  
SAN FRANCISCO  
LONDON  
BRUSSELS

JOSHUA D. GREENBERG  
TEL 202.662.5846  
FAX 202.778.5846  
JGREENBERG@COV.COM

April 7, 2006

## BY MESSENGER

Ms. Cathy Catterson  
Clerk, United States Court of Appeals  
for the Ninth Circuit  
95 Seventh Street  
San Francisco, CA 94103-1526

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

Dear Ms. Catterson:

This Rule 28(j) letter addresses three matters.

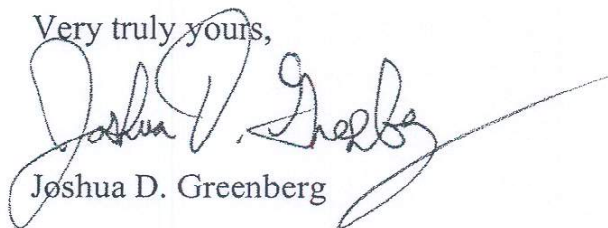
*First*, Appellees' March 29 letter provides no new information about *Carnohan*. Instead, it repeats their assertion (Appellees' Br. at 28) that *Carnohan* involved a terminally ill patient. We see no need to supplement our showing to the contrary. Reply Br. at 18 & n.3.

*Second*, Appellees' letter wrongly cites a media report and the website of a non-party individual. These materials are not subject to judicial notice. The number of medical cannabis recommendations issued by Dr. Lucido number is neither "generally known" nor "capable of accurate and ready determination," Fed. R. Evid. 201(b), because medical records are not public documents.

Regardless, the number of recommendations issued by Dr. Lucido is irrelevant. It is undisputed that Angel cannot tolerate conventional medications and would likely die without cannabis. Appellees do not suggest that *any* of Dr. Lucido's other patients is similarly situated to Angel in *either* of these respects.

*Third*, contrary to Appellees' representations at oral argument, the DEA has consistently maintained that it is "legally mandated" by the CSA to seize medical cannabis from legitimate patients who grow amounts as small as one plant or one ounce for their personal use. Compl. ¶ 30, ER 9 (quoting DEA Administrator's praise for seizure of Diane Monson's six cannabis plants). This policy remains in force. The DEA continues to seize tiny amounts of cannabis from legitimate patients. *E.g.*, *Colorado v. Nord*, 377 F. Supp. 2d 945 (D. Colo. 2005) (patient who held valid medical cannabis registration card under State law sought return of three home-grown cannabis plants seized by DEA). Appellees' assertion that they will not enforce the CSA against Angel deserves no weight because it is a deviation from DEA policy that was "newly minted for oral argument." *United States v. Blueford*, 312 F.3d 962, 971 (9th Cir. 2000). Moreover, it provides "no guarantee" that the DEA "will voluntarily refrain from enforcing the statute according to its plain language." *North Carolina Right to Life, Inc. v. Bartlett*, 168 F.3d 705, 710-11 (4th Cir. 1999) (plaintiffs had standing despite government's "litigation position").

Very truly yours,



Joshua D. Greenberg

cc: See Service List

SERVICE LIST

*Angel Raich, et al. v. Alberto Gonzales, et al.*, No. 03-15481

Alberto Gonzales and Karen Tandy

Mark T. Quinlivan  
Assistant U.S. Attorney  
1 Courthouse Way, Suite 9200  
Boston, Massachusetts 02210

Angel McClary Raich, John Doe Number One, and John Doe Number Two

Prof. Randy E. Barnett  
Boston University School of Law  
765 Commonwealth Avenue  
Boston, Massachusetts 02215

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

*Amici Curiae* California Medical Association and California Nurses Association

Catherine I. Hanson  
California Medical Association  
221 Main Street, Suite 580  
San Francisco, California 94105

Julie M. Carpenter  
Jenner & Block  
601 Thirteenth Street, N.W.  
Washington, D.C. 20005

*Amici Curiae* Marijuana Policy Project and Rick Doblin, Ph.D.

Frederick L. Goss  
1 Kaiser Plaza, Suite 1750  
Oakland, California 94612

Rick Doblin, Ph.D.  
3 Francis Street  
Belmont, Massachusetts 02478

~~ROB KAMPRA~~

Marijuana Policy Project

P.O. Box 77492

Washington, D.C. 20013

Amici Curiae American Civil Liberties Union and Drug Policy Alliance

American Civil Liberties Union Foundation

1101 Pacific Avenue, Suite 333

Daniel N. Abrahamson

~~Office of Legal Affairs~~

819 Bancroft Way

Berkeley, California 94710

Amici Curiae Reason Foundation and Cato Institute

~~ERIC S. JAFFE~~

5101 34th Street, N.W.

Washington, D.C. 20008

Mark Moller

The Cato Institute

Washington, D.C. 20001

~~MANUEL S. KLAUSNER~~

One Bunker Hill Building

~~601 West Fifth Street, Suite 800~~

~~Los Angeles, California 90071~~