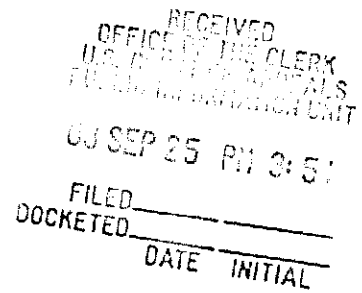


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September 25, 2003

Ms. Cathy Catterson
Clerk, Ninth Circuit Court of Appeals
95 Seventh Street
San Francisco, California 94103

Re: Angel McClary Raich, et al. v. John Ashcroft, et al., No. 03-15481

Dear Ms. Catterson:

Pursuant to Federal Rule of Appellate Procedure 28(j), Appellants hereby respond to the government's letter dated September 2, 2003, concerning a district court case, *County of Santa Cruz v. Ashcroft*, 2003 WL 22024235 (N.D.Cal. 2003).

First, Appellants note that, throughout the opinion, the district court repeatedly professed reliance on what it perceived as "existing" Ninth Circuit authority -- all from cases *not* involving medical cannabis. It is clear that the district court in *Santa Cruz* was not making its own independent assessment of the merits of the plaintiffs' constitutional arguments but was reluctantly following what it deemed to be binding precedent of this Circuit Court.

Second, the activity in *Santa Cruz* concerned the Wo/Men's Alliance for Medical Marijuana, an organization having 250 members, employing an executive director and other employees, and supported by monetary contributions. In contrast, the Appellants in the instant case are simply two individual patients and two individual caregivers who scrupulously engage in absolutely no challenged interstate conduct whatsoever, and whose wholly noneconomic activities categorically have no effect on interstate commerce, substantial or otherwise.

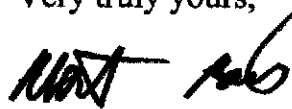
Third, with respect to Appellant Angel McClary Raich ("Angel"), depriving

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her of cannabis treatment would mean denying her the right to treatment at all. The district court in *Santa Cruz* found that cannabis was not the *only* means of avoiding pain and suffering for the patients in that case, *see Santa Cruz* at *8, commenting at note 10 that Marinol was an alternative for those patients. In contradistinction to the situation in *Santa Cruz*, the record before this Court demonstrates that cannabis *is* the only effective treatment for Angel, and Marinol results in unacceptable adverse side effects. *See* Declaration of Frank Henry Lucido, M.D., ¶¶ 7-8, ER 0089-91; Declaration of Angel McClary Raich, ¶ 53, ER 81-82.

Fourth, unlike the patients in *Santa Cruz*, or in *Carnohan v. United States*, 616 F.2d 1120 (9th Cir. 1980), and *Rutherford v. United States*, 616 F.2d 455 (10th Cir. 1980), who wished to procure goods in commerce, the patients in the instant case merely wish to treat themselves with “home remedies of [their] own confection,” an issue *Carnohan* expressly left open. *Carnohan* at 1122.

Very truly yours,



Robert A. Raich

cc: See Service List

SERVICE LIST

Angel McClary Raich, et al. v. John Ashcroft, et al.,
Ninth Circuit Case No. 03-15481

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