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ENDORSED FILED
Clerk of the Superior Court

JAN - 5 2009

By A. GARCIA
DEPUTY CLERK

7 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
8
9 COUNTY OF SOLANO

11 AMERICANS FOR SAFE ACCESS,
12 LINDA JIMENEZ, and JOHN DOE,

13 Petitioners,

14 v.

15 SOLANO COUNTY BOARD OF
16 SUPERVISORS and SOLANO COUNTY
17 HEALTH AND SOCIAL SERVICES
DEPARTMENT,

18 Respondents.
19

Case No. FC5032692

**PETITION FOR WRIT OF MANDAMUS,
PROHIBITION, OR OTHER
APPROPRIATE RELIEF
(C.C.P. §§ 1085, 1094)**

**ASSIGNED TO
JUDGE PAUL L. BEEMAN
FOR ALL PURPOSES**

20
21 **INTRODUCTION**

22 More than five years ago, the California Legislature mandated that each county
23 department of health implement a medical marijuana identification card program to protect
24 patients from unnecessary arrest and from other uncertainties in the Compassionate Use Act that
25 have impeded the ability of law enforcement to enforce the Act's provisions as the voters
26 intended. Despite this express mandate, as well as a series of judicial opinions affirming the
27 validity of California's medical marijuana laws in the face of various attacks, the County of
28

1 Solano has refused to abide the commands of the Legislature and implement a medical marijuana
2 identification card program. California law requires that the county do this in a timely manner,
3 which it has not done. This action is brought to require the County of Solano to comply with
4 California law.
5

6 **PETITION**

7 TO THE SUPERIOR COURT FOR THE STATE OF CALIFORNIA IN AND FOR THE
8 COUNTY OF SOLANO:

9 Petitioners Americans for Safe Access (“ASA”), Linda Jimenez (“Jimenez”) and John
10 Doe (“Doe”) respectfully petition this Court for a writ of mandamus, prohibition, or other
11 appropriate relief directed to the Solano County Board of Supervisors (“Board”) and the Solano
12 County Health and Social Services Department (“Health Department”), and allege by this
13 verified petition as follows:
14

15 1. Petitioner AMERICANS FOR SAFE ACCESS (“ASA”) is the largest grassroots
16 organization working solely to protect the rights of patients who use marijuana for medical
17 purposes, as well as the doctors who recommend marijuana to them. ASA’s goal is to ensure
18 safe and legal access to medical marijuana to the seriously ill who need it. ASA is a membership
19 organization whose membership includes thousands of medical marijuana patients, caregivers
20 and physicians residing in California, including hundreds of patients in Solano County who are
21 adversely affected by the refusal of the County Board and Health Department to issue medical
22 marijuana identification cards, as required by California law.
23

24 2. Petitioner LINDA JIMENEZ (“Jimenez”) is a resident of Solano County who
25 uses marijuana upon the recommendation of her physician to treat headaches and pain associated
26 with temporomandibular joint disorder. Ms. Jimenez fears arrest by law enforcement in Solano
27 County due to her use of medical marijuana and desires a medical marijuana identification card
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1 to reduce her fear of arrest and other adverse consequences from law enforcement encounters in
2 Solano County. Ms. Jimenez is a member of ASA.

3 3. Petitioner JOHN DOE (“Doe”) is a resident of Solano County whose physician
4 recommended that he use marijuana to treat pain associated with degenerative disc disorder and
5 faucet joint arthritis in his lower back. In approximately March of 2006, Doe was detained by
6 law enforcement in Solano County and was charged with marijuana possession and his
7 marijuana was seized. Doe would have sought to obtain a medical marijuana identification card
8 from Solano County, if the program had been available. Doe is a member of ASA who uses this
9 fictitious name because he is afraid of reprisal from prospective employers.
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12 4. In 1996, the California electorate enacted the Compassionate Use Act (Health &
13 Safety Code § 11362.5) [hereinafter “the CUA”] to “ensure that seriously ill Californians have
14 the right to obtain and use marijuana for medical purposes. . . .” (Health & Saf. Code § 11362.5,
15 subd. (b)(1).) To this end, the CUA exempts qualified patients from criminal liability for
16 cultivation and possession of marijuana. (Health & Saf. Code § 11362.5, subd. (d).) A
17 “qualified patient” is a seriously ill person who has received a physician's oral or written
18 recommendation or approval to use marijuana medicinally. (Health & Saf. Code § 11362.5,
19 subd. (d).)
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22 5. Due to “reports from across the state have revealed problems and uncertainties in
23 the [CUA] that have impeded the ability of law enforcement officers to enforce its provisions as
24 the voters intended and, therefore, have prevented qualified patients and designated primary
25 caregivers from obtaining the protections afforded by the act,” the California Legislature enacted
26 the Medical Marijuana Program Act [hereinafter “MMPA”] in 2003. (Health & Saf. Code §
27 11362.7 *et seq.*) Among its other provisions, the MMPA requires counties to implement a
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1 voluntary identification card program that protects against the arrest and prosecution of qualified
2 patients for marijuana offenses. (Health & Saf. Code § 11362.71 *et seq.*)

3 6. In particular, subdivision (b) of Health and Safety Code section 11362.71
4 mandates that: “Every county health department, or the county's designee, shall do all of the
5 following:
6

7 (1) Provide applications upon request to individuals seeking to join the identification
8 card program.

9 (2) Receive and process completed applications in accordance with Section
10 11362.72.
11

12 (3) Maintain records of identification card programs.

13 (4) Utilize protocols developed by the department pursuant to paragraph (1) of
14 subdivision (d).

15 (5) Issue identification cards developed by the department to approved applicants and
16 designated primary caregivers.
17

18 7. Subdivision (e) of Health and Safety Code section 11362.71, in turn, provides as
19 follows: “No person or designated primary caregiver in possession of a valid identification card
20 shall be subject to arrest for possession, transportation, delivery, or cultivation of medical
21 marijuana in an amount established pursuant to this article, unless there is reasonable cause to
22 believe that the information contained in the card is false or falsified, the card has been obtained
23 by means of fraud, or the person is otherwise in violation of the provisions of this article.”
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25 8. Notwithstanding this clear mandate by the California Legislature that county
26 health departments implement a medical marijuana identification card program for the benefit of
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1 qualified patients, the Solano County Health Department, at the direction of the Solano County
2 Board of Supervisors, has refused to do this.

3 9. On September 26, 2006, the Board met and discussed whether to implement the
4 medical marijuana identification card program. Although several patients spoke at this meeting
5 in favor of implementing the program, the Board voted not to do so. Petitioners are informed
6 and believe that this refusal to implement the medical marijuana identification card program was
7 based on a contention that it is preempted by federal law.
8

9 10. Meanwhile, on February 1, 2006, the County of San Diego filed suit in the San
10 Diego County Superior Court, which was later joined by the County of San Bernardino,
11 contesting the validity of the medical marijuana identification card program under federal law.
12 On December 6, 2006, the Superior Court ruled against these counties and upheld the validity of
13 the MMPA under federal law.
14

15 11. On February 23, 2007, the County of San Diego filed its Notice of Appeal. After
16 briefing and oral argument, the Court of Appeal issued a published decision rejecting the
17 counties' contentions on July 31, 2008.
18

19 12. On October 16, 2008, the Supreme Court of California denied the counties'
20 petition for review, rendering the case final under California law.
21

22 13. On August 11, 2008, and, again, on October 28, 2008, ASA sent letters to the
23 Solano County Board of Supervisors demanding compliance with the MMPA medical marijuana
24 identification card program mandate. Neither the Board nor the Solano County Health
25 Department complied.
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1 14. Under California law, "An administrative agency has no discretion to engage in
2 unjustified, unreasonable delay in the implementation of statutory commands." (*California*
3 *Trout, Inc. v. Superior Court* (1990) 218 Cal.App.3d 187, 203.)
4

5 15. Furthermore, under section 3.5 of Article III of the California Constitution,
6 administrative agency "has no power . . . to refuse to enforce a statute on the basis that federal
7 law or federal regulations prohibit the enforcement of such statute unless an appellate court has
8 made a determination that the enforcement of such statute is prohibited by federal law or federal
9 regulations."
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11 16. Petitioners, and others represented by ASA, have been and continue to be injured
12 by the failure of respondents to implement the medical marijuana identification card program in
13 that, among other ways, qualified patients fear arrest and prosecution for possession of marijuana
14 that would be prevented if they had the identification cards that the County refuses to implement.
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16 17. Petitioners have exhausted all known administrative remedies and any additional
17 efforts to exhaust administrative remedies would be futile.

18 18. Petitioners do not have a speedy and adequate remedy at law and their only
19 method of relief is by writ of mandamus, prohibition, or other appropriate relief in this Court.
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21 Wherefore, petitioners pray that:

22 1. This Court issue a writ of mandamus commanding respondents to implement the
23 medical marijuana identification card program required by Health and Safety Code section
24 11362.71 within 30 days.


25 2. This Court issue a declaration that respondents violated Health and Safety Code
26 section 11362.71 and section 3.5 of Article III of the California Constitution by refusing to
27 implement the medical marijuana identification card program in a timely manner.
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3. Petitioners be granted costs, attorney's fees, and such other and further relief as
may be appropriate.

DATED: January 5, 2009

Respectfully submitted,



JOSEPH D. ELFORD
Counsel for Petitioners

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VERIFICATION

I represent petitioners in this action. All facts alleged in the above Petition, not otherwise supported by citations to the record, exhibits or other documents, are true of my own personal knowledge or investigation, unless otherwise so stated.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 5th day of January, 2009, in Oakland, California.



JOSEPH D. ELFORD