

### INCLINATIONS

It is Judge Mollway's practice, whenever possible, to notify attorneys and pro se parties scheduled to argue motions before her of her inclinations on the motions and the reasons for the inclinations. This is part of Judge Mollway's normal practice, rather than a procedure unique to a particular case, and is designed to help the advocates prepare for oral argument. It is the judge's hope that the advance notice of her inclination and the accompanying reasons will focus the oral argument and permit the advocates to use the hearing to show the judge why she is mistaken or why she is correct. The judge is not bound by the inclination and sometimes departs from the inclination in light of oral argument.

Judge Mollway attempts to communicate her inclinations no later than one working day before a hearing. The court's preference is to distribute the inclinations to the parties via the court's electronic filing system ("CM/ECF"). Accordingly, parties are encouraged to participate in the court's CM/ECF system.

The inclination is intended to be only a summary of the court's thinking before the hearing and not a complete legal discussion. The court will issue a written order with a detailed analysis after the hearing.

The parties are reminded that, under Local Rule 7.4, they may not submit supplemental briefs (such as briefs addressing the inclination) unless authorized by the court. Supplemental declarations, affidavits, and/or other evidence in response to the court's inclinations are prohibited unless authorized by the court. The parties are also reminded that they must comply with Local Rule 7.8 if they intend to rely on uncited authorities at the hearing.

Occasionally, Judge Mollway does not announce an inclination, especially if materials are submitted to her right before the hearing. Because briefing on criminal motions closes just a few days before the hearing, it is not uncommon for her to be unable to announce an inclination on a criminal motion until the start of the hearing itself. Certainly if an evidentiary hearing is scheduled on matters necessary to a decision on either a civil or criminal motion, no inclination will be announced.

Judge Mollway's inclinations may not be cited as authority for any proposition. However, the inclinations will be electronically filed for the convenience of the parties.

Judge Mollway announces the following inclinations:

Oklevueha Native American Church of Hawaii, Inc., et al. v. Eric H. Holder, et al., Civ. No. 09-00336 SOM/BMK

Plaintiff Michael Rex "Raging Bear" Mooney and the Oklevueha Native American Church of Hawaii, Inc., seek a declaration that they can grow, use, possess, and distribute cannabis. Plaintiffs allege that cannabis is used in their religion and assert that their right to religious freedom is being infringed on by United States drug laws, specifically 21 U.S.C. § 841. Defendants have moved for dismissal of the Complaint, arguing that the claims it asserts are not ripe, that Oklevueha lacks standing to assert claims on behalf of its members, and that Plaintiffs fail to allege sufficient claims in any event. The court expresses no inclination at this time as to Defendants' motion to dismiss.

Instead, the court requests that Michael Rex "Raging Bear" Mooney be present at the scheduled hearing on the Government's motion to dismiss. The court would like to discuss with Mooney the court's concern about incriminating statements in his affidavit and incriminating statements that he may be required to make in pursuing this action. The court would like to ensure that Mooney understands his rights regarding self-incrimination.

The court would also like to have a discussion with Mooney and his counsel about a potential conflict of interest. In a previous case before this judge, this judge learned that Mooney's counsel may be a minister in and/or an attorney for a church that advocates the legalization of cannabis. Under Rule 1.7(b) of the Hawaii Rules of Professional Conduct, Mooney's counsel has a duty of loyalty to Mooney. Given the affidavit that essentially admits to a prima facie case of a drug crime, this court wants to ensure that Mooney's counsel is zealously representing Mooney and, if necessary, has obtained the appropriate waivers.

The court would also like the parties to come to the hearing prepared to discuss the following:

1) Plaintiffs allege that, in June 2009, Defendants seized a package containing cannabis. How much cannabis was seized? Where was it seized? Who seized the package?

2) The parties should come to the hearing prepared to discuss how this case satisfies the constitutional and prudential ripeness concerns discussed in Thomas v. Anchorage Equal Rights Comm'n, 220 F.3d 1134 (9<sup>th</sup> Cir. 2000) (en banc). The court is

concerned that the Complaint may not sufficiently allege facts demonstrating a ripe controversy, especially given the extremely broad declaratory relief that the Complaint appears to be seeking.

3) Plaintiffs assert a claim under the Religious Land Use and Institutionalized Persons Act, 42 U.S.C. § 2000cc. Given the Ninth Circuit's ruling in Navajo Nation v. United States Forest Serv., 535 F.3d 1058, 1077 (9<sup>th</sup> Cir. 2008) (holding that the act does not apply to the federal government except in limited circumstances), Plaintiffs should be prepared to discuss how a valid claim can be maintained for a violation of § 2000cc.