

**IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

CITY OF OAKLAND,

Plaintiff-Appellant,

v.

ERIC H. HOLDER, Jr., Attorney General of the
United States; MELINDA HAAG, United States
Attorney for the Northern District of California,

Defendants-Appellees.

No. 13-15391

MOTION TO EXPEDITE APPEAL

Defendants-Appellees, Eric H. Holder, Jr., Attorney General of the United States, and Melinda Haag, U.S. Attorney for the Northern District of California, hereby move to expedite consideration of this appeal.

1. This cases involves a collateral challenge under the Administrative Procedure Act to an ongoing civil forfeiture proceeding. Pursuant to 21 U.S.C. § 881(a)(7), the United States initiated a civil forfeiture action against the real property located at 1840 Embarcadero Street, Oakland, California. *See United States v. Real Property and Improvements Located at 1840 Embarcadero, Oakland, California* (“1840 Embarcadero”), No. 12-cv-3567 (N.D. Cal.). The United States alleged that on that property, the “Harborside Health Center” operates a retail facility that sells marijuana in violation of 21 U.S.C. §§ 841 and 856. Complaint, ECF No. 1, *1840 Embarcadero* (July 6, 2012).

Pursuant to a comprehensive statutory scheme, *see* 21 U.S.C. § 881(b)-(l); 18 U.S.C. §§ 981, 983, 984, 985; *see also* Fed. R. Civ. P. G (Forfeiture Actions In Rem), a number of parties have filed claims in the forfeiture action, asserting interests in the property and contesting the forfeiture. *1840 Embarcadero*, ECF Nos. 14, 27, 28, 29, 30, 31, 33.

After the deadline to raise a claim in the civil forfeiture proceeding had passed, the City of Oakland filed suit under the Administrative Procedure Act and Declaratory Judgment Act against the Attorney General of the United States and the U.S. Attorney for the Northern District of California, “to restrain and declare unlawful ongoing and threatened attempts” to forfeit the 1840 Embarcadero property. The district court granted the federal government’s motion to dismiss. The court held that the statutory procedures for challenging property forfeiture must govern, and that the APA does not provide a collateral means of contesting forfeitures. Oakland appealed.

2. Oakland filed motions in both the forfeiture action (No. 12-cv-3567) and the City’s APA action (No. 12-cv-5245), pending before the same magistrate judge, to “stay” the forfeiture action until this Court rules on Oakland’s appeal in the APA case. The district court noted that Oakland’s requested relief could alternatively be classified as an injunction pending appeal. The court granted the motion, ordering that the *1840 Embarcadero* case (No. 12-cv-3567) cannot proceed until this Court resolves the appeal in the APA action (No. 12-cv-5245). The court also observed that pending before it was a second forfeiture action, *United States v. Real Property and Improvements Located at 2106 Ringwood Ave., San Jose, California*, No. 12-cv-3566, in which the City of Oakland

asserts no interest, but those with interests in the property intend to raise defenses similar to the underlying merits claims raised by Oakland in its APA suit. Accordingly, the district court also ordered that the *2106 Ringwood* case be stayed until this Court rules on Oakland's appeal. The court entered conforming orders in both the *1840 Embarcadero* and *2106 Ringwood* cases.

3. Because the district court's orders halt two civil forfeiture actions pending the outcome of this appeal, the federal government respectfully requests that the Court expedite consideration of this appeal. The United States has alleged that both properties are being used for ongoing violations of federal controlled substances laws, and therefore the properties "shall be subject to forfeiture" and "no property right shall exist in them," 21 U.S.C. § 881(a). In both actions, interested parties have filed claims and wish to assert defenses. For the reasons set out in our brief as appellee, the district court properly dismissed Oakland's suit, and no basis exists for orders that enjoin collateral proceedings under the civil forfeiture statute.

The federal government filed its responsive brief on September 6, 2013. Oakland's reply brief is presently due on October 21, 2013. We respectfully request that the Court schedule oral argument on the first appropriate date and expedite its decision.

4. We have contacted counsel for the plaintiff-appellant, who has to date not informed us of plaintiff-appellant's position on this motion.

CONCLUSION

For the foregoing reasons, consideration of this appeal should be expedited.

Respectfully submitted,

MARK B. STERN

s/ Adam Jed

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SEPTEMBER 2013

CERTIFICATE OF SERVICE

I hereby certify that on September 11, 2013, I electronically filed the foregoing document with the Clerk of the Court by using the appellate CM/ECF system. I certify that the participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

/s/ Adam Jed

Adam C. Jed