



# NEWS RELEASE

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## Summary of Cases Accepted During the Week of January 16, 2011

*[This news release is issued to inform the public and the press of cases that the Supreme Court has accepted and of their general subject matter. The statement of the issue or issues in each case set out below does not necessarily reflect the view of the court, or define the specific issues that will be addressed by the court.]*

**#12-03 *City of Riverside v. Inland Empire Patient's Health & Wellness Center, Inc., S198638.*** (E052400; 200 Cal.App.4th 885; Riverside County Superior Court; RIC10009872.) Petition for review after the Court of Appeal affirmed the judgment in a civil action.

**#12-04 *People v. G3 Holistic, Inc., S198395.*** (E051663; nonpublished opinion; San Bernardino County Superior Court; CIVRS1002649.) Petition for review after the Court of Appeal affirmed the judgment in a civil action.

**#12-05 *Pack v. Superior Court, S197169.*** (B228781; 199 Cal.App.4th 1070; Los Angeles County Superior Court; NC055010.) Petition for review after the Court of Appeal granted a petition for peremptory writ of mandate.

**#12-06 *Traudt v. City of Dana Point, S197700.*** (G044130; 199 Cal.App.4th 886; Orange County Superior Court; 30-2010-00373287.) Petition for review after the Court of Appeal dismissed the appeal in a civil action.

These cases present issues concerning preemption, under federal or state law, of local ordinances regulating or banning the operation of medical marijuana dispensaries and related activities, and standing to challenge such ordinances.

**#12-07 *Robey v. Superior Court, S197735.*** (B231019; 200 Cal.App.4th 1; Santa Barbara County Superior Court; 1349412.) Petition for review after the Court of Appeal granted a petition for peremptory writ of mandate. This case presents the following issues: (1) Could police conduct a warrantless search of a package smelling of marijuana under a “plain smell” exception to the warrant requirement? (2) Could police conduct a warrantless search of the package because the mobility of the box created exigent circumstances even after an officer seized the package from a common carrier and held it at the police station?

**#12-08 *In re Gonzalez, S197838.*** (G044464; nonpublished opinion; Orange County Superior Court; 06CF2893, M-13731.) Petition for review after the Court of Appeal granted relief on a petition for writ of habeas corpus. The court ordered briefing deferred pending decision in *People v. Beltran, S192644* (#11-66), which presents the following issues: (1) Was the jury misinstructed with former CALCRIM No. 570 on provocation and heat of passion as a basis for a conviction of voluntary manslaughter? (2) Did the prosecutor misstate the applicable law on the subject in argument? (3) Did the trial court accurately respond to a jury question on the subject? (4) If there was error, was defendant prejudiced?

**#12-09 *In re Rodriguez, S197961.*** (D057997; 199 Cal.App.4th 1158; San Diego County Superior Court; HC17289.) Petition for review after the Court of Appeal denied a petition for writ of habeas corpus. The court ordered briefing deferred pending decision in *In re Vicks, S194129* (#11-86), which presents the following issue: Can Penal Code section 3041.5, as amended by the “Victims’ Bill of Rights Act of 2008: Marsy’s Law,” which decreased the frequency of parole consideration hearings, be applied to life inmates convicted before the effective date of the amendments without violating the ex post facto clauses of the state and federal Constitutions?

**#12-10 *People v. Superior Court (O’Connor), S197705.*** (B232295; 199 Cal.App.4th 441; Los Angeles County Superior Court; ZM017031.) Petition for review after the Court of Appeal granted a petition for peremptory writ of mandate. The court ordered briefing deferred pending decision in *In re Lucas, S181788* (#10-74), and *People v. Superior Court (Sharkey), S182355* (#10-75), which present the following issues: (1) What constitutes “good cause” for the imposition of a 45-day hold and extension of a scheduled parole date under Welfare and Institutions Code section 6601.3 to permit evaluation of the defendant under the Sexually Violent Predator Act? (2) Is California Code of Regulations, title 15, section 2600.1, subdivision (d), which defines the term “good cause” as used in section 6601.3 as “some evidence” that the inmate has a prior qualifying conviction and is likely to engage in predatory criminal behavior, a valid regulation? (3) Does the “good faith mistake of law or fact” exception apply in these cases?

**#12-11 *Zelasko-Barrett v. Brayton-Purcell, LLP, S198438.*** (A131601; nonpublished opinion; Marin County Superior Court; CIV095856.) Petition for review after the Court of

Appeal reversed an order awarding attorney fees in a civil action. The court ordered briefing deferred pending decision in *Kirby v. Immoos Fire Protection, Inc.*, S185827 (#10-132), which presents the following issues: (1) Does Labor Code section 1194 apply to a cause of action alleging meal and rest period violations (Lab. Code, § 226.7) or may attorney's fees be awarded under Labor Code section 218.5? (2) Is our analysis affected by whether the claims for meal and rest periods are brought alone or are accompanied by claims for minimum wage and overtime?

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