

C.A. No. 22-10000

D. Ct. No. CR-18-00422-PHX-DJH

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

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

MICHAEL LACEY, ET AL.,

Defendants-Appellants.

ON INTERLOCUTORY APPEAL FROM AN ORDER OF THE
UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ARIZONA

BRIEF OF APPELLEE

GARY M. RESTAINO
United States Attorney
District of Arizona

KRISSA M. LANHAM
Appellate Division Chief

PETER S. KOZINETS
Assistant U.S. Attorney
Two Renaissance Square
40 N. Central Avenue, Suite 1800
Phoenix, Arizona 85004-4449
Telephone: (602) 514-7500
Attorneys for Appellee

Date Submitted via ECF: April 14, 2022

I. TABLE OF CONTENTS

	Page
I. Table of Contents.....	i
II. Table of Authorities.....	ii
III. Introduction and Summary of Argument	1
IV. Statement of Jurisdiction	
A. District Court Jurisdiction	4
B. Appellate Court Jurisdiction.....	4
C. Timeliness of Appeal	5
D. Bail Status.....	5
V. Issues Presented	6
VI. Statement of the Case	
A. Nature of the Case; Course of Proceedings.....	7
B. Statement of Facts	8
VII. Arguments	
A. Defendants Cannot Make the Extraordinary Showing Required to Bar Retrial Under <i>Oregon v. Kennedy</i>	33
B. The District Court Properly Exercised Its Discretion to Decide the Motion Without an Evidentiary Hearing.....	49
VIII. Conclusion	54
IX. Statement of Related Cases	55
X. Certificate of Compliance.....	56
XI. Certificate of Service	57

II. TABLE OF AUTHORITIES

<u>CASES</u>	<u>PAGE(S)</u>
<i>Abney v. United States</i> , 431 U.S. 651 (1977)	4
<i>Anderson v. City of Bessemer City, N.C.</i> , 470 U.S. 564 (1985)	33, 53
<i>Barker v. Wingo</i> , 407 U.S. 514 (1972)	48
<i>Cobbledick v. United States</i> , 309 U.S. 323 (1940)	47
<i>Currier v. Virginia</i> , 138 S. Ct. 2144 (2018)	33
<i>Flanagan v. United States</i> , 465 U.S. 259 (1984)	47
<i>Green v. Hall</i> , 8 F.3d 695 (9th Cir. 1993)	53
<i>J.S. v. Village Voice Media Holdings, Inc.</i> , 359 P.3d 714 (Wash. 2015)	20, 23
<i>Morissette v. United States</i> , 342 U.S. 246 (1952)	46
<i>Oregon v. Kennedy</i> , 456 U.S. 667 (1982)	<i>passim</i>
<i>Takahashi v. United States</i> , 143 F.2d 118 (9th Cir. 1944)	46
<i>United States v. Curtis</i> , 683 F.2d 769 (3rd Cir. 1982)	40
<i>United States v. Fowlkes</i> , 804 F.3d 954 (9th Cir. 2015)	35
<i>United States v. Garner</i> , 632 F.2d 758 (9th Cir. 1980)	4

<u>CASES (Continued)</u>	<u>PAGE(S)</u>
<i>United States v. Hagege</i> , 437 F.3d 943 (9th Cir. 2006)	49-50
<i>United States v. Hale</i> , 448 F.3d 971 (7th Cir. 2006)	43
<i>United States v. Henderson</i> , 241 F.3d 638 (9th Cir. 2000)	38
<i>United States v. Hoang</i> , 486 F.3d 1156 (9th Cir. 2007)	51
<i>United States v. Howell</i> , 231 F.3d 615 (9th Cir. 2000)	51
<i>United States v. Lacey</i> , 423 F. Supp. 3d 748 (D. Ariz. 2019)	14, 46
<i>United States v. Lewis</i> , 368 F.3d 1102 (9th Cir. 2004)	4, 32
<i>United States v. Lopez-Avila</i> , 678 F.3d 955 (9th Cir. 2012)	<i>passim</i>
<i>United States v. Lun</i> , 944 F.2d 642 (9th Cir. 1991)	35-36, 40, 47
<i>United States v. Martin</i> , 561 F.2d 135 (8th Cir. 1977)	48
<i>United States v. McCarty</i> , 648 F.3d 820 (9th Cir. 2011)	33
<i>United States v. McKoy</i> , 78 F.3d 446 (9th Cir. 1996)	35
<i>United States v. Padua</i> , 2021 WL 5860653 (W.D.N.Y. Dec. 9, 2021)	48
<i>United States v. Rodriguez</i> , 229 F. App'x 547	51

CASES (Continued)**PAGE(S)**

<i>United States v. Singleterry</i> , 683 F.2d 122 (5th Cir. 1982)	48
<i>United States v. Sterba</i> , 22 F. Supp. 2d 1333 (M.D. Fla. 1998)	48
<i>United States v. Walter-Eze</i> , 869 F.3d 891 (9th Cir. 2017)	33
<i>United States v. Zone</i> , 403 F.3d 1101 (9th Cir. 2005)	51

STATUTES

18 U.S.C. § 371	7
18 U.S.C. § 1952	7
18 U.S.C. § 1956	7
18 U.S.C. § 1957	7
18 U.S.C. § 3231	4
18 U.S.C. § 3771(a)(7)	47

RULES

Fed. R. App. P. 4(b)(1)(A)	5
----------------------------------	---

MISCELLANEOUS

U.S. Senate Permanent Subcommittee on Investigations' January 2017 report, BACKPAGE.COM'S KNOWING FACILITATION OF ONLINE SEX TRAFFICKING, available at https://www.hsgac.senate.gov/imo/media/doc/Backpage%20Report%202017.01.10%20FINAL.pdf and https://www.courthousenews.com/wp-content/uploads/2017/02/Backpage-Report.pdf	8, 11
---	-------

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.