

No. 19315-2-III

SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, Respondent

v.

ARTHUR CAMEL SHEPERD, aka  
OCEAN ISRAEL SHEPERD, Petitioner

PETITION FOR DISCRETIONARY REVIEW

Stiley, Madel & Cikutovich, PLLC  
Patrick K. Stiley,  
1408 West Broadway  
Spokane, WA 99201  
(509) 323-9000  
WSBA #00679

Steinborn & Holcomb, PLLC  
Jeffrey J. Steinborn,  
157 Yesler Way, Suite #400  
Seattle, WA 98104  
(206) 622-5117  
WSBA #09138

Attorneys for Arthur Camel Sheperd, aka  
Ocean Israel Sheperd, Petitioner

## TABLE OF AUTHORITIES

### Table of Cases

<i>Concrete Pipe and Products of California, Inc. v. Construction Laborers Pension Trust for Southern California</i> , 508, U.S. 602 (1993)	13
<i>Ellerman v. Centerpoint Prepress, Inc.</i> 143 Wn.2d 514, 519, 22 P.3d 795, 798 (2001)	10
<i>Fritz v. Gorton</i> , 83 Wn.2d 275, 279-281, 517 P.2d 911, 914-16 (1974)	6
<i>Hubbard v. Department of Labor &amp; Industries of State of Washington</i> , 140 Wn.2d 35, 43, 992 P.2d 1002, 1006(2000.) ...	10
<i>Huntington v. Attrill</i> , 146 U.S. 657, 13 S.Ct. 224, 36 L.Ed. 1123 (1892) ...	6
<i>In re Winship</i> , 397 U.S. 358, 364, 90 S.Ct. 1068, 1073, 25 L.Ed.2d 368 (1970) ...	15
<i>Janovich v. Herron</i> , 91 Wn.2d 767,771-72, 592 P.2d 1096, 1098-99 (1979) ...	7
<i>Merseal v. State Dept. of Licensing</i> , 99 Wash. App. 414 (Div. III 2000) ...	6
<i>Metropolitan Stevedore Co. v. Rambo</i> , 521 U.S. 121, 137, (1997) ...	13
<i>Peninsula School Dist. No. 401 v. Public School Employees of Peninsula</i> , 130 Wn.2d 401,407, 924 P.2d 13, 16 (1996) ...	6
<i>State v. Coria</i> , 105 Wn. App. 51, 60, 17 P.3d 1278, 1283 (Div. II, 2001) ...	7
<i>State v. Crediford</i> , 130 Wn.2d 747, 927 P.2d 1129, [13] (1996) ...	15
<i>State v. Janes</i> , 121 Wn.2d 220, 850 P.2d 495, (1993) ...	13
<i>State v. LeFaber</i> , 128 Wn.2d 896, 913 P.2d 369 (1996) ...	15-16
<i>State v. Robbins</i> , 138 Wn.2d 486, 495, 980 P.2d 725, 731 (1999) ....	13
<i>State v. Roberts</i> , 117 Wn.2d 576, 586, 817 P.2d. 855, 860(1991) ...	7
<i>State v. Walden</i> , 131 Wn.2d 469, 473-74, 932 P.2d 1237, 1239 (1997) ...	13
<i>Weyerhaeuser Co. v. Tri</i> , 117 Wn.2d 128, 134, 814 P.2d. 629, 631 (1991) ...	10

## Constitutional Provisions

Fourteenth Amendment to the United State Constitution	15
Article I, § 1 of the Washington State Constitution	15
Article I, § 3 of the Washington State Constitution	15
Article II, § 1(a). of the Washington State Constitution	15

## Statutes

RCW 6.27.340	9
RCW 11.96A.250	9
Uniform Controlled Substances Act, RCW 69.50	12
RCW 69.51A, Initiative 692, The Medical Use of Marijuana Act	5

## Regulations and Rules

RAP 13.4(b)(1)	5
RAP 13.4(b)(3)	5
RAP 13.4(b)(4)	5

## Other Authorities

Oakland City Council Public Safety Committee Status Report on City's Implementation of Medical Marijuana Low Priority Policy	11
--	----

## I. IDENTITY OF PETITIONER

Arthur Camel Shepard, Jr., aka Ocean Israel Sheperd is the appellant in the case State v. Arthur Camel Sheperd, Jr., aka Ocean Israel Sheperd, Stevens County Superior Court Cause Number 99-1-00200-2. Mr. Sheperd asks this Court to accept review of the decision designated in Part II of this Motion.

## II. COURT OF APPEALS DECISION

On March 12, 2002, a panel of the Court of Appeals for Division III, affirmed Appellant's conviction. [Ct. App. at 10] a copy of that decision is attached as Exhibit A.

## III. ISSUES PRESENTED FOR REVIEW

1. Whether the defendant caregiver should be found to have met his burden of proof in setting out an affirmative defense pursuant to RCW 69.51A, the Medical Use of Marijuana Act where he sought and reasonably relied on guidance regarding compliance with the Act from law enforcement, the judiciary, the state medical association, the physician sponsor of the Act and the prosecution in this proceeding prior to the imposition of criminal charges.

2 Whether, in setting out an affirmative defense, defendant caregiver met the statutory requirements of RCW 69.51A, the Medical Use of Marijuana Act, by presenting a copy of the qualifying patient's valid documentation as provided by the authorizing physician to law enforcement.

3. Whether the documentation provided by the authorizing physician substantially complied with the “valid documentation” requirements of RCW 69.51A, the Medical Use of Marijuana Act, and therefore satisfied the documentation requirement for the defendant caregiver raising an affirmative defense.

4. Whether the defendant caregiver met his burden of proof to show that he was in possession of no more than a 60-day supply of medicinal marijuana - while raising an affirmative defense pursuant to RCW 69.51A, the Medical Use of Marijuana Act.

#### IV. STATEMENT OF THE CASE

Arthur Camel Shepard Jr, aka Ocean Israel Shepard is statutory caregiver for Mr. John Wilson, a qualified medical marijuana patient. Mr. Sheperd was growing marijuana for medicinal purposes for Mr. Wilson. Mr. Wilson suffers from a variety of medical conditions including a debilitating spine condition which disables him from growing and maintaining his own marijuana supply. [F of F 6 and 11].

Mr. Wilson is treated by Dr. Gregg Sharp. Dr. Sharp provided Mr. Wilson with an “Authorization to Possess Marijuana for Medical Purposes in Washington State”. [Defendant’s Ex. 17]. Mr. Wilson designated the defendant as a primary caregiver under the terms and conditions of RCW 69.51A, the Medical Use of Marijuana Act. [Defendant’s Ex. 16].

On October 12, 1999, during the course of the defendant's care of Mr. Wilson, defendant was charged with manufacturing marijuana. [CP 1].

On March 20, 2000, in a bench trial based on facts stipulated to by the parties, this case came before Stevens County Superior Court Judge Rebecca Baker [CP 2] in which Judge Baker found the Defendant guilty of Felony Possession of a Controlled Substance (marijuana), a violation of RCW 69.50.401(d). [CP 15, C of L 18].

This case was then reviewed by the Court of Appeals of the State of Washington, Division III, which issued its decision on March 12, 2002. In an opinion written by Judge Dennis Sweeney, the Court concluded the physician's statement that "the potential benefits of the medical use of marijuana may outweigh the health risks for this patient" was not sufficient to satisfy the requirement that caregivers seeking to raise an affirmative defense present "valid documentation" pursuant to RCW 69.51A.010(5)(a).

The majority in the Court of Appeals concluded that Mr. Sheperd failed to meet his burden to show that he "[p]ossess[ed], in combination with and as an agent for the qualifying patient, no more marijuana than is necessary for the patient's personal, medical use, not exceeding the amount necessary for a sixty-day supply[.]" RCW 69.51A.040(4)(b). Based on its reading of the Medical Use of Marijuana Act, the Court affirmed Mr. Sheperd's conviction.

Judge Kenneth Kato, dissenting in part and concurring in part, with the majority's application of the documentation requirements of the Act, wrote - "there is no dispute that under the Medical Use of Marijuana Act (the Act), Mr. Sheperd was a 'primary caregiver' who provided marijuana to a 'qualifying patient.'" Judge Kato stated that he would have applied the rule of lenity to find that Mr. Sheperd complied with "valid documentation" for the purpose of raising an affirmative defense. However, he concurred in the result finding that Mr. Sheperd failed to make a sufficient showing that he had no more than a 60-day supply of marijuana for Mr. Wilson's personal, medical use.

This case now comes before the Supreme Court of Washington State for review of the aforementioned issues.

## V. ARGUMENT FOR ACCEPTING REVIEW

The Court of Appeals has established a standard for the State that effectively repeals the Washington State Medical Use of Marijuana Act, hereafter "the Act". In the only published decision addressing its provisions, the Court of Appeals effectively guts the Act and frustrates the purpose and intent of the voters to (1) provide relief to patients with terminal or debilitating illnesses, and (2) to ensure that physicians and caregivers would be protected and therefore willing to assist those seriously ill individuals. By allowing criminal punishment of a person who consulted every reasonably available resource in a determined good faith effort to comply with the statute, the Court

of Appeals has interpreted the Act in such a way as to make it nearly impossible to comply, and too dangerous for doctor, patient and caregiver alike to try.

The Court should accept discretionary review because: implementation of the Act involves an issue of substantial public interest, RAP 13.4(b)(4); the decision of the Court of Appeals interpreting the Act is in conflict with decisions of the Supreme Court, RAP 13.4(b)(1); and the implementation and interpretation of the Act in this case raises a significant question of law under the Constitution of the State of Washington or of the United States, RAP 13.4(b)(3).

**A. The Lower Courts' Failure to Implement the Remedial Purpose of the Medical Use of Marijuana Act Involves an Issue of Substantial Public Interest that Should be Determined by the Supreme Court.**

Enacting the Medical Use of Marijuana Act in 1998, the People of Washington found that:

[H]umanitarian compassion necessitates that the decision to authorize the medical use of marijuana by patients with terminal or debilitating illnesses is a personal, individual decision, based upon their physician's professional medical judgment and discretion.

Medical Use of Marijuana Act, Section 2 (Initiative 692, codified at RCW 69.51A.005) The People explicitly stated their intention that seriously ill qualified patients and their physicians be protected from criminal prosecution *and* that:

Persons who act as *primary caregivers* to such patients shall also not be found guilty of a crime under state law for assisting with the medical use of marijuana.

*Id* (emphasis added). This matter involves an Act directly legislated by the People to relieve the suffering of their friends, neighbors and relatives who are affected by terminal or debilitating illnesses. It is difficult to imagine a case that would involve issues of greater public interest that should be determined by this Court. *See Fritz v. Gorton*, 83 Wn.2d 275, 279-281, 517 P.2d 911, 914-16 (1974).

In reviewing the trial court's decision, the Court of Appeals, Division III, imposed an inappropriately rigid statutory construction on portions of the Act rather than give this remedial statute an appropriately broad interpretation. *See, e.g., Peninsula School Dist. No. 401 v. Public School Employees of Peninsula*, 130 Wn.2d 401, 407, 924 P.2d 13, 16 (1996) (As a remedial statute, the Act should have been given "a liberal construction to effect its purpose."); *Huntington v. Attrill*, 146 U.S. 657, 13 S.Ct. 224, 36 L.Ed. 1123 (1892) (distinguishing remedial statutes from those with a penal purpose). Under the substantial compliance doctrine the remedial provisions providing patients, physicians and caregivers with protections from criminal liability should have been given a broad interpretation. *See Peninsula School District*, *supra*; *see also Merseal v. State Dept. of Licensing*, 99 Wash. App. 414 (Div. III 2000) ("Under the 'substantial compliance doctrine' we will not reverse for a merely technical error that does not result in prejudice." Judge Sweeney, author of the majority decision in this case). The lower court likewise reviewed narrow

passages of the Act in isolation and failed to give appropriate effect to the Act as a whole.

*See e.g., Janovich v. Herron*, 91 Wn.2d 767,771-72, 592 P.2d 1096, 1098-99 (1979).

Additionally, the rule of lenity should have been applied where there were perceived statutory ambiguities, with all questions of legal interpretation resolved in favor of the defendant caregiver, as argued in the dissenting opinion at the Court of Appeals. *See, e.g., State v. Roberts*, 117 Wn.2d 576, 586, 817 P.2d. 855, 860 (1991); *State v. Coria*, 105 Wn. App. 51, 60, 17 P.3d. 1278, 1283 (Div. II, 2001).

To make out an affirmative defense under the Act, a designated caregiver is required to take certain actions and refrain from certain activities. These are:

- (a) *Meet* all criteria for status as a primary caregiver to a qualifying patient;
- (b) *Possess*, in combination with and as an agent for the qualifying patient, no more marijuana than is necessary for the patient's personal, medical use, not exceeding the amount necessary for a sixty-day supply;
- (c) *Present* a copy of the qualifying patient's valid documentation required by this chapter, as well as evidence of designation to act as primary caregiver by the patient, *to any law enforcement official requesting such information*;
- d) *Be prohibited from* consuming marijuana obtained for the personal, medical use of the patient for whom the individual is acting as primary caregiver; and
- (e) *Be* the primary caregiver to only one patient at any one time.

RCW 69.51A.040(4)(a)-(e) (emphasis added).

**1. The Lower Courts Imposed Evidentiary Standards and Criteria Relating to Defendant Caregiver's Presentation of the Patient's Valid Documentation That Are Not Required by the Medical Use of Marijuana Act.**

Pursuant to RCW 69.51A.040(4)(c) caregivers must "*present* a copy of the

qualifying patient's valid documentation required by this chapter . . . “*to any law enforcement official requesting such information*”. Emphasis added. The Court of Appeals looked beyond this requirement - stating that the defendant caregiver not only present the document provided to him by the patient, but also to ensure that the authorizing physician used the precise language of the statute. This latter condition not only (1) imposes an evidentiary burden that cannot reasonably be read into the statute, but also (2) creates an inappropriate standard for valid documentation under the chapter, given its remedial purpose.

First, nothing in the statute can reasonably be read to require a statutory caregiver to make a determination whether the "patient's valid documentation" is technically correct. The voters obviously intended that qualified patients, authorizing physicians and primary caregivers have reasonably broad access to the remedies available under the Act. As a balance to the broad protection afforded to individuals covered by the Act, the voter's enacted safeguards within the Act itself. *See* RCW 69.51A.060(5) (Use of fraudulent documentation a class C felony).

The Court of Appeals statement that "[t]he required proof [in the patient's valid documentation] is tantamount to the level of certainty required of expert opinions in courts" is clearly erroneous<sup>1</sup>. [Crt. App. At 8.].

---

<sup>1</sup> The Court appears to be wrongly equating the statute's affirmative defense with the evidentiary requirements for setting out a common law necessity defense. e.g. “[t]he statute requires a stronger showing on necessity than simply ‘may.’” [Ct. App. At 9.] But compare RCW 69.51A.010(3)(e) requiring that qualifying patients be “advised by that physician that they *may* benefit from the medical use of marijuana.” Emphasis added.

The physician's letter or the patient's medical records are intended to provide notice to law enforcement of the physician's authorization. *See* RCW 69.51A.040(2)(c), 69.51A.040(3) and 69.51A.040(4)(c) (which state the purposes for which the patient's valid documentation are intended to be used pursuant to the Act). The caregiver's possession and presentation of the patient's valid documentation is only intended to show that the caregiver has complied with his or her *own* obligations under the statute. Judge Kato, in his dissenting opinion, was correct that caregivers were not intended to be afforded less protection than physicians. [Ct. App. Dissent at 2]

Second, even if ensuring the proper format of the patient's documentation were a caregiver's responsibility, the Act itself does not require specific language to be included by the authorizing physician. Where formulaic language is required by statute, such text is ordinarily prescribed explicitly. *See, e.g.*, RCW 6.27.340 ("Continuing lien on earnings - Captions"); RCW 11.96A.250 ("Special representative"). Moreover, the People clearly intended there to be some flexibility, since valid documentation

can either be in the form of a letter from the physician or "a copy of the qualifying patient's pertinent medical records." RCW 69.51A.010(5)(a). Neither forms of documentation is required to recite specific language-and given that physicians and patients are not ordinarily lawyers or others accustomed to formulaic legal writing, it would be unreasonable to interpret the provision that rigidly.

This Court has consistently ruled that legislation must be construed in a manner that gives meaning to the statute as a whole. *See, e.g., Ellerman v. Centerpoint Prepress, Inc.* 143 Wn.2d 514, 519, 22 P.3d 795, 798 (2001); *Hubbard v. Department of Labor & Industries of State of Washington*, 140 Wn.2d 35, 43, 992 P.2d 1002, 1006 (2000). ("We read each provision of a statute in relation to the other provisions and construe a statute as a whole," citing *Weyerhaeuser Co. v. Tri*, 117 Wn.2d 128, 134, 814 P.2d 629, 631 (1991)). Throughout the Act, patients are authorized to use medicinal marijuana based on a threshold determination by a physician that the patient "*may benefit* from the medical use of marijuana." RCW 69.51A.005 (Purpose and intent), 69.51A.010(3)(e) (definition of "qualifying patient"), 69.51A.030(1) (physicians excepted from state's "criminal laws"). Even if caregivers were somehow responsible for the physician's specific choice of wording in the authorizing document, the Court of Appeals' extremely narrow construction of RCW 69.51A.010(5)(a) would make no sense in relation to the

other sections and overall purpose the Act.

The lower court has found that, even where the patient is qualified and the physician has made the required medical evaluation, a caregiver can nevertheless be convicted of a felony based on the physician's choice of words in providing the patient with valid documentation. The likely outcome of such a narrowing of the Act's affirmative defense would be that few, if any, physicians or potential caregivers would be willing to risk their personal liberty and property to assist gravely ill individuals who are qualified patients under the Act. This is clearly contrary to the purpose and intent of the voters in passing the Medical Use of Marijuana Act and raises issues of substantial public interest that should be determined by this Court.

**2. The Lower Courts Imposed Evidentiary Standards and Criteria relating to Defendant Caregiver's Possession of the Patient's 60-day Supply that are Inappropriate under the Provisions of the Medical Use of Marijuana Act.**

As proof of the amount necessary for the patient's 60-day supply, the defense submitted, and the prosecution stipulated to the admissibility of, a formulary established by the Public Safety Committee of the Oakland City Council (hereafter "the Oakland formulary") and findings of fact that the plants at issue were not mature and that the patient ingests marijuana, which requires a relatively larger amount than smoking to have an equivalent pharmacological effect.

Unusable marijuana in the form of immature plants is not properly

included in calculating a patient's 60-day supply under the Act. By contrast, for the purpose of prosecutions under the Uniform Controlled Substances Act, RCW 69.50, immature plants are considered because the purpose of the penal law is to prohibit the unlawful manufacture and possession of marijuana. However, the remedial provisions of RCW 69.51 are intended to *permit* qualified patients to retain sufficient amounts of usable marijuana for medicinal purposes. This not only ensures that qualified patients and their caregivers will be able to plan for the patient's medicinal needs, but also protects them from having to seek marijuana from illegal sources. The lower court acknowledged that the stipulated facts establish that the marijuana plants seized from the defendant caregiver were at that time in an immature, unusable state. In fact, there is nothing in the record that indicates that *any* usable marijuana was at issue in this case, which is relevant to the defendant caregiver's burden in setting out his affirmative defense.

Likewise, the lower courts erred in ruling that the defendant caregiver had not met his burden under the Act based on their finding that no evidence was submitted concerning the patient's 60-day supply. The Oakland formulary *itself* was introduced for the purpose, and there was no evidentiary rebuttal by the prosecution.<sup>2</sup> Once the defense had submitted its evidence, the burden of

---

<sup>2</sup> The Court of Appeals found that “the formula set out in Oakland City Council’s report might well lead to a reasonably accurate statement of the amount of marijuana required.: [Ct. App. At 9]. However, even though the prosecution offered no rebuttal evidence, the lower court went beyond the Act to require professional medical proof of need and dosage.

rebuttal shifted to the prosecution. *See State v. Walden*, 131 Wn.2d 469, 473-74, 932 P.2d 1237, 1239 (1997); *State v. Robbins*, 138 Wn.2d 486, 495, 980 P.2d 725, 731 (1999); *State v. Janes*, 121 Wn.2d 220, 850 P.2d 495, (1993). “[T]he preponderance standard goes to how convincing the evidence in favor of a fact must be in comparison with the evidence against it before that fact may be found, but does not determine what facts must be proven as a substantive part of a claim or defense” *Metropolitan Stevedore Co. v. Rambo*, 521 U.S. 121, 137, (1997) (emphasis added). *See also Concrete Pipe and Products of California, Inc. v. Construction Laborers Pension Trust for Southern California*, 508, U.S. 602, 113 S.Ct. 2264, 124 L.Ed. 539 (1993). The prosecution presented no evidence to rebut the defendant caregiver’s proof of the patient's 60-day amount.

The Court of Appeals also erred in holding that the physician must make "some statement as to how much [the patient] needs." [*Ct. App. At 9-10*]. Nothing in Act permits, much less requires, a physician to prescribe marijuana or establish a dosage. The Act limits physicians to making a medical determination of potential benefits and providing documentation; doctors are

not protected by the Act if they go beyond this limited involvement. *See* RCW 59.51A.030. Pursuant to the Act, dosage and rate of medical marijuana use is left solely to the patient.<sup>3</sup>

Given the un rebutted proof submitted by the defense and the broad construction properly afforded remedial laws, the lower courts erred in ruling that the defendant caregiver failed to show his compliance with the 60-day supply rule of the Act.

#### **B. The Court of Appeals' Decision Conflicts With the Decisions of the Supreme Court.**

The Court of Appeals' decision conflicts with prior decisions of the Court requiring that a remedial law be given an appropriately broad interpretation to effect its purpose. *See, e.g., Peninsula School Dist., supra*. Similarly, the Court of Appeals failed to follow this Court's guidance that the appropriate burden in setting out an affirmative defense is a preponderance of the evidence. *State v. Walden, supra*, at 473-74 (1997). *See also State v. Robbins* and *State v. Janes, supra*. As pointed out in the dissenting opinion below, the Court of Appeals also failed to apply the rule of lenity in favor of the defendant caregiver once the lower court found that some degree of ambiguity

---

<sup>3</sup> RCW 69.51A.040(3) explicitly provides for minor patients' dosage and frequency of use to be determined by their parent or legal guardian—not their physician. Clearly, adult patients are also intended to determine their own dosage and frequency of use. Moreover, physicians are not empowered to prescribe a dosage and would not be protected from liability by the statute if they did.

was created by the use of the terms "may benefit" and "would likely outweigh" in separate but related portions of the Act. *See, e.g., Roberts and Coria, supra.* For these reasons and those set out above, the decision of the Court of Appeals conflicts with prior decisions of the Supreme Court and appellant's petition for discretionary review should be granted.

**C. Significant Questions of Law Under the Constitutions of the State of Washington and the United States.**

Article I, § 1 of the Washington States Constitution states, "All political power is inherent in the people, and governments derive their just powers from the consent of the governed, and are established to protect and maintain individual rights. *See also* Article II, § 1(a) ("The first power reserved by the people is the initiative."). By construing the Act in a manner that substantially defeats its underlying purpose, the lower courts impermissibly encroached in an area of political decision-making that is reserved to the voters and their elected legislative officials. *See Fritz, supra.* Establishing the proper burden of proof and shifting of the burden raises due process protections guaranteed by the Fourteenth Amendment to the United States Constitution and Article I, § 3 of the Washington State Constitution. *See, e.g., In re Winship*, 397 U.S. 358, 364, 90 S.Ct. 1068, 1073, 25 L.Ed.2d 368 (1970); *State v. Crediford*, 130 Wn.2d 747, 927 P.2d. 1129, [13] (1996). Likewise, restricting the application of the defendant caregiver's affirmative defense provided for by the Act was a violation of caregiver defendant's constitutional

rights. *See, e.g., State v. LeFaber*, 128 Wn.2d 896, 913 P.2d 369 (1996). For these reasons and those set out above, the decision of the Court of Appeals raises significant questions of law under the Constitutions of the State of Washington and of the United States, and appellant's petition for discretionary review should be granted.

## VI. CONCLUSION

For the reasons set out above, Mr. Sheperd asks this Court to reverse the Court of Appeals decision affirming the trial court's decision convicting Mr. Sheperd of Felony Possession of a Controlled Substance (marijuana), find that Mr. Sheperd is protected from prosecution by RCW 69.51A, the Medical Use of Marijuana Act, and dismiss the State's case with prejudice.

Respectfully submitted this 11<sup>th</sup> day of April, 2002.

Patrick K. Stiley, WSBA #00679

Jeffrey J. Steinborn, WSBA #01938

By \_\_\_\_\_

By \_\_\_\_\_

Attorneys for Arthur Camel Sheperd, aka  
Ocean Israel Sheperd, Petitioner