No. 13-71801, 13-73289

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

JUAN CARLOS ROMERO-ESCOBAR,
Petitioner,

v.

ERIC H. HOLDER, Jr., U.S. Attorney General,
Respondent

ON PETITION FOR REVIEW OF A FINAL ORDER OF REMOVAL AND DENIAL OF A MOTION TO REOPEN AND RECONSIDER FROM THE BOARD OF IMMIGRATION APPEALS

BRIEF OF THE AMERICAN IMMIGRATION COUNCIL AND THE NATIONAL IMMIGRATION PROJECT OF THE NATIONAL LAWYERS GUILD AS *AMICI CURIAE* IN SUPPORT OF PETITION FOR REHEARING AND/OR FOR REHEARING *EN BANC*

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CORPORATE DISCLOSURE STATEMENT

I, Mary Kenney, attorney for *Amicus Curiae*, American Immigration Council, certify that the American Immigration Council is a non-profit organization which does not have any parent corporations or issue stock and consequently there exists no publicly held corporations which own 10% or more of its stock.

Dated: April 16, 2015 s/ Mary Kenney

I, Trina Realmuto, attorney for *Amicus Curiae*, National Immigration Project of the National Lawyers Guild, certify that the National Immigration Project of the National Lawyers Guild is a non-profit organization which does not have any parent corporations or issue stock and consequently there exists no publicly held corporations which own 10% or more of its stock.

Dated: April 16, 2015 s/ Trina Realmuto

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I. INTRODUCTION AND STATEMENT OF INTEREST OF *AMICI CURIAE*[1]

Pursuant to Federal Rules of Appellate Procedure 29, 35, and 40, *amici curiae* the American Immigration Council ("Council") and the National Immigration Project of the National Lawyers Guild ("NIPNLG") respectfully urge the Court to rehear this case *en banc* because it raises a question of exceptional importance and because review is necessary to maintain uniformity of this Court's decisions. At issue is the duty of immigration judges (IJs) to, first, fully inform *pro se* litigants of the consequences of their legal decisions and, second, ensure that any waivers of appeal are knowing and intelligent. The panel decision conflicts with this Court's prior decisions holding that, for *pro se* litigants to validly waive appeal, IJs must adequately inform them of the bases upon which they can appeal and, additionally, must take special care to develop the record in *pro se* cases. *See, e.g.*, *Agyeman v. INS*, 296 F.3d 871, 877 (9th Cir. 2002); *United States v. Pallares-Galan*, 359 F.3d 1088, 1096-98 (9th Cir. 2004). The case also presents the question of what information IJs must provide to *pro se* litigants regarding technical legal

[1] Pursuant to Fed. R. App. P. 29(c)(5), *Amici* states that no party's counsel authored this brief in whole or in part; that no party or party's counsel contributed money that was intended to fund preparing or submitting the brief; and that no person other than the *Amici Curiae*, their members, or their counsel contributed money that was intended to fund preparing or submitting the brief.

and procedural decisions they must make during the course of immigration proceedings.

The Council is a non-profit organization established to increase public understanding of immigration law and policy, advocate for the fair and just administration of our immigration laws, protect the legal rights of noncitizens, and educate the public about the enduring contributions of America's immigrants. NIPNLG is a non-profit membership organization of immigration attorneys, legal workers, grassroots advocates, and others working to defend immigrants' rights and to secure a fair administration of the immigration and nationality laws. Both organizations have a direct interest in ensuring a full and fair removal process for all individuals in removal proceedings, including those without legal representation. Both also have previously appeared as *amici* before this Court on issues relating to the interpretation of federal immigration law.

Below, *Amici* focus only on selected issues that justify rehearing, although *Amici* agree that the additional issues raised by Petitioner also warrant rehearing.

II. RELEVANT FACTUAL AND PROCEDURAL BACKGROUND

Petitioner Juan Carlos Romero-Escobar appeared before an immigration judge in a group hearing. With seven other *pro se* litigants, he sat through a lengthy pre-recorded statement describing the removal process and his rights, including pleading to the allegations and charges against him and his right to appeal.

Administrative Record ("A.R.") at 190-95. Importantly, this recording did not explain that, should he contest the charges against him, the Department of Homeland Security ("DHS") would have the burden of proving that he was removable. Nor did it clearly explain that any waiver of an appeal of the IJ's decision to the Board of Immigration Appeals ("BIA") would be irrevocable. After the recording was played, an IJ began individual hearings. A.R. at 195.

During his individual hearing, the IJ informed Mr. Romero-Escobar that he was charged as an individual convicted of a crime of child abuse. Although this Court's case law indicates he was not deportable as charged, *see* Petition for Rehearing at 16-17 (citing *United States v. Gomez*, 757 F.3d 885 (9th Cir. 2014)), he conceded deportability without having received any advisal that, were he to contest the charges, DHS would be required to prove them. A.R. at 201. Had he not conceded removability, DHS would have had to demonstrate that a conviction under the state statute listed on Mr. Romero-Escobar's charging document qualified as a deportable offense under 8 U.S.C. § 1227(a)(2)(E)(i) as a crime of child abuse.

One month later, at the next hearing, DHS submitted an amended filing because the original charges—those to which Mr. Romero-Escobar had conceded—were based upon a factually erroneous allegation as to the date of his conviction. A.R. at 210. Although the IJ realized that "perhaps [DHS was] wrong

on the first [charging document]," *id*., and thus must necessarily have realized that Mr. Romero-Escobar had admitted an untrue allegation, the IJ accepted his concessions a second time without further explanation of the process. A.R. at 212.

Two months later, at his final hearing, the IJ denied Mr. Romero-Escobar's requests for cancellation of removal, asylum, and withholding of removal or deferral of removal under the Convention Against Torture. A.R. at 289-91. The IJ then asked Mr. Romero-Escobar if he wanted to waive his right to appeal, without explaining the irrevocable nature of that decision or that he could challenge his removability on appeal. A.R. at 291. Although Mr. Romero-Escobar initially indicated that he would waive appeal, almost immediately he changed course and stated that he *did* want to appeal. A.R. at 292 ("No. I want to appeal your decision."). Rather than taking him at his word or exploring whether he was confused, the IJ repeatedly asked him leading questions suggesting that he should waive appeal. *Id*. Mr. Romero-Escobar consented to waive appeal even though he did not understand the IJ's questions. A.R. at 57 ("[The IJ] kept asking me if I wanted to 'waive appeal,' but I didn't know what it meant . . . and he didn't explain it to me. I didn't want to get on the bad side of the judge so I answered 'yes.'").

Shortly afterwards, unaware that he had allegedly waived his right to an appeal and still *pro se*, Mr. Romero-Escobar timely filed a Notice of Appeal with the BIA. The BIA dismissed his appeal, claiming that it lacked jurisdiction

because of his alleged waiver and because he had not challenged the validity of the waiver in his previously-filed Notice of Appeal. A.R. at 61.

Finally represented by an attorney, Mr. Romero-Escobar subsequently moved for reopening or reconsideration of the BIA's decision, arguing that he had not validly waived appeal. However, his motion was denied because the BIA claimed his appeal waiver was "knowing[] and intelligent[]." A.R. at 3-4. Through counsel, he filed petitions for review to this Court of both the BIA's appeal decision and its decision denying reopening or reconsideration. The panel denied both appeals, finding that it lacked jurisdiction over the first and affirming the BIA's denial of the motion to reopen or reconsider. *Romero-Escobar v. Holder*, Nos. 13-71801, 13-73289, 2015 U.S. App. LEXIS 2910 (9th Cir. Feb. 6, 2015). Mr. Romero-Escobar now seeks rehearing on both appeals, arguing that the panel's decision conflicts with binding precedent of this Court and is in tension with Supreme Court case law, and maintaining that he is not removable as charged.

III. ARGUMENT

Individuals without legal representation enter removal proceedings at a disadvantage. They must navigate an extraordinarily complex area of law and face off against trained DHS attorneys arguing for their deportation. Their removal cases almost always involve legal terminology unfamiliar to a layperson. According to one study, individuals in removal proceedings with attorneys were

500% more likely to be permitted to remain in the U.S. than those without legal representation. *See* New York Immigrant Representation Study, Accessing Justice II: A Model for Providing Counsel to New York Immigrants in Removal Proceedings 1 (2012) (analyzing data from the New York immigration courts), http://www.cardozolawreview.com/content/denovo/NYIRS_ReportII.pdf. For individuals who are detained during removal proceedings, the situation is even more difficult; on top of complicated laws, they also have limited access to legal resources and severe restrictions placed on their ability to communicate with friends and family members who could help them prepare their cases. *See, e.g.*, Mark Noferi, *Cascading Constitutional Deprivation*, 18 Mich. J. Race & L. 63, 78-80 (2012).

Pro se litigants regularly are required to make technical legal decisions with serious consequences that they are ill-equipped to evaluate and often must make them within a short time span. The case of Mr. Romero-Escobar, a long-time permanent resident, exemplifies the difficulties faced by *pro se* litigants. He was doubly handicapped in his removal proceeding, being both detained and *pro se* throughout the proceedings before the IJ and the appeal to the BIA.

The panel's decision upheld a removal order issued after the IJ accepted a concession of removability from a pro se litigant who was unaware he could challenge removability or the bases on which he could do so, and who did not

validly waive appeal. The panel's decision conflicts with this Court's binding precedent recognizing the disadvantages faced by pro se litigants. *See*, *e.g.*, *Agyeman*, 296 F.3d at 877; *Pallares-Galan*, 359 F.3d at 1097. The Court should grant rehearing given the need for guidance to ensure that *pro se* individuals are not unlawfully deprived of their right to contest the allegations and examine the evidence against them, *see* 8 U.S.C. §§ 1229a(b)(4)(B), (c)(3)(A); 8 C.F.R. § 1240.8(a), or their right to file an administrative appeal, *see* 8 U.S.C. §§ 1101(a)(47)(B), 1229a(c)(5); 8 C.F.R. §§ 1003.1(b), 1240.15—which, in turn, would effectively deprive them of their right to judicial review. *See* 8 U.S.C . §§ 1252(a), (b)(6).

A. The panel's decision is in tension with regulations and this Court's decisions requiring IJs to inform litigants of their rights and to take special care in in pro se cases.

Immigration law is unusually complex and can be unintelligible to those without legal training. *Castro-O'Ryan v. INS*, 847 F.2d 1307, 1312 (9th Cir. 1988) ("With only a small degree of hyperbole, the immigration laws have been termed second only to the Internal Revenue Code in complexity. A lawyer is often the only person who could thread the labyrinth.") (citation omitted). Successfully navigating a removal proceeding requires an understanding of statutes, regulations, and years of sometimes conflicting federal court and administrative decisions interpreting those laws. As a result, *pro se* litigants in immigration court face

unique difficulties. This Court has previously held that IJs must take special care to ensure that these individuals understand the technical legal and procedural decisions they are asked to make.

By regulation, IJs are obligated to provide respondents with information about their rights and the hearing process. *See* 8 C.F.R. § 1240.10(a) (requiring, *inter alia*, IJs to explain the factual allegations and charges in "non-technical" language); *see also* 8 C.F.R. § 1003.10(b) (requiring IJs to take actions that are "appropriate and necessary for the disposition of" individual cases). The duty to ensure that individuals appearing in immigration court are informed and that relevant information is in the record is especially strong in *pro se* cases. As this Court has held:

> [b]ecause [noncitizens] appearing pro se often lack the legal knowledge to navigate their way successfully through the morass of immigration law, and because their failure to do so successfully might result in their expulsion from this country, it is critical that the IJ "scrupulously and conscientiously probe into, inquire of, and explore for all the relevant facts."

Agyeman, 296 F.3d at 877 (quoting *Jacinto v. INS*, 208 F.3d 725, 733 (9th Cir. 2000)). Judges "'must be especially diligent in ensuring that favorable as well as unfavorable facts and circumstances are elicited'" in the cases of *pro se* litigants. *Jacinto*, 208 F.3d at 733 (quoting *Key v. Heckler*, 754 F.2d 1545, 1551 (9th Cir. 1985)).

The IJ failed to comply with his duties to *pro se* litigants by ensuring that Mr. Romero-Escobar was adequately informed of his rights and of the possible bases for an appeal of the IJ's decision. *See infra* Sections III.B-C. Nonetheless, contrary to the above-mentioned precedents, the panel found that Mr. Romero-Escobar had validly waived appeal.

B. This case presents the question of whether IJs must inform *pro se* litigants of DHS's burden of proving deportability.

The case presents a question of exceptional importance, namely whether IJs must inform *pro se* litigants that DHS bears the burden of proving deportability "by clear and convincing evidence." 8 U.S.C. § 1229a(c)(3)(A); *see also Al Mutarreb v. Holder*, 561 F.3d 1023, 1029-31 (9th Cir. 2009).

DHS is relieved of this burden if a noncitizen concedes deportability. *See* 8 C.F.R. § 1240.10(c). This Court previously has held that if a noncitizen, while pleading, "makes admissions of fact or concedes removability, and the IJ accepts them, they are binding and no further evidence concerning the issues of fact admitted or law conceded is necessary." *Perez-Mejia v. Holder*, 641 F.3d 1143, 1153 (9th Cir. 2011).[2] Although IJs require all respondents, not just those who have legal representation, to plead to the factual allegations and charges contained in the Notice to Appear, 8 C.F.R. § 1240.10(c), only an individual with legal

[2] *Amici* respectfully disagree with this holding, especially as applied to pro se litigants, for many of the reasons explained in this brief.

training will know, without guidance, the importance of these concessions, including that they relieve DHS of its burden to prove deportability.

The panel failed to take into account that factual allegations and, especially, charges of removability may be difficult for *pro se* litigants to understand and may require further explanation than was provided in this case. Both may include what appear to be easily recognizable terms, but in fact are legal terms of art. For *pro se* litigants to have a fair chance to decide whether they wish to concede removability and relieve DHS of its burden of proof, IJs must clearly explain not just the terms used, but also what those terms mean in the context of the individuals' removal proceeding and the impact a concession will have. Failure to provide such an explanation is contrary to the requirement that IJs explain the factual allegations and the charges to respondents in "non-technical language." 8 C.F.R. § 1240.10(a)(6). As in this case, absent a proper explanation, individuals appearing *pro se* may make concessions that they do not understand without realizing their impact—including concessions that are incorrect.[3]

The panel also did not consider the IJ's failure to inform Mr. Romero-Escobar of relevant case law indicating that he may not be removable, despite the IJ's apparent reference to it while discussing with the DHS attorney whether Mr.

[3] Litigants who remain *pro se* throughout their proceedings may never learn of the error or may, as occurred here, discover it at a point in the proceedings where it becomes difficult, if not impossible, to remedy.

Romero-Escobar's conviction might be an aggravated felony. *See* A.R. at 87 (noting "a recent Ninth Circuit case" which he thought "addressed the statute"). This failure is in tension with this Court's decisions recognizing that a concession to charges that are, as a matter of law, incorrect cannot be a sufficient basis for an order of removal. *See, e.g.*, *Mandujano-Real v. Mukasey*, 526 F.3d 585, 588 (9th Cir. 2008).

Pro se litigants are unlikely to be aware of BIA or federal court case law that provides a basis to challenge charges of removability. Therefore, they face a far greater risk of erroneously conceding removability than represented individuals. When an IJ is—or should be—aware of relevant case law suggesting that a noncitizen appearing *pro se* is not removable, the IJ should inform the individual that DHS may not be able to meet its burden and should do so *before* asking the individual to concede removability. Such an advisal is consistent with IJs' duty to develop the record in *pro se* cases, see *supra* Section III.A, and regulations which only permit IJs to accept concessions of removability as sufficient to meet the government's burden if they are "satisfied that no issues of law or fact remain." 8 C.F.R. § 1240.10(c); *cf. Perez-Mejia*, 641 F.3d. at 1151 n.7 (noting Second Circuit case law providing that IJs need not "accept a concession of removability if there is cause to believe that the concession is erroneous") (citation omitted). IJs' failure to provide this information could mislead *pro se* litigants into believing there is no

reason to contest removability, especially when contrasted with the fact that IJs will have actively informed litigants of their ability to seek relief from removal and the types of relief for which they may be eligible.

The panel failed to take into account the IJ's insufficient explanation of the applicable legal terms and potentially relevant law. Mr. Romero-Escobar was charged with deportability under 8 U.S.C. § 1227(a)(2)(E)(i). Significantly, the IJ did not inform Mr. Romero-Escobar that relevant category of conviction under the statute, "crime of child abuse," had a specific legal meaning defined by case law, *see*, *e.g.*, *Matter of Velazquez-Herrera*, 24 I&N Dec. 503, 512 (BIA 2008), that the legal definition might be different from a common understanding of the term, or that, if he did not concede deportability, DHS would have had to prove that his alleged conviction fell within this legal definition. Nor did the IJ mention that this Court's case law might indicate that the conviction was not categorically covered under § 1227(a)(2)(E)(i), *see* Petition for Rehearing at 16-17, even though he was aware that this Court had issued a decision addressing the state statute under which Mr. Romero-Escobar is alleged to have been convicted. *See* A.R. at 87.

Previous decisions of this Court similarly demonstrate the importance of evaluating whether *pro se* litigants are provided with adequate explanations of the charges against them. For example, in *Dent v. Holder*, 627 F.3d 365, 368 (9th Cir. 2010), the *pro se* individual admitted the allegation that he was not a U.S. citizen.

Fortunately, because immigration courts lack jurisdiction over U.S. citizens, the petitioner subsequently was permitted to raise a citizenship claim, despite that concession. Few pro se litigants are as fortunate. Too often such erroneous and unknowing concessions lead to removal orders. In *Mandujano-Real v. Mukasey*, 526 F.3d 585, 587, 591 (9th Cir. 2008), for example, this Court remanded to the BIA to consider eligibility for relief where a petitioner who had conceded removability due to an aggravated felony while *pro se* had not actually been convicted of an aggravated felony.

C. The panel's decision conflicts with precedent of the Supreme Court and this Court requiring IJs to obtain "considered and intelligent" waivers of appeal.

An individual in immigration proceedings may appeal the IJ's decision to the BIA, and the IJ must notify him of his right to do so. 8 U.S.C. § 1229a(c)(5). However, if he waives his right to appeal at the conclusion of proceedings before the IJ, the decision becomes final immediately and no appeal will be available. 8 C.F.R. § 1241.1(b); *see also Matter of Rodriguez-Diaz*, 22 I&N Dec. 1320, 1322 (BIA 2000). Any waiver of appeal rights must be "considered" and "intelligent," *United States v. Mendoza-Lopez*, 481 U.S. 828, 840 (1987); *Pallares-Galan*, 359 F.3d at 1096; *Biwot v. Gonzales*, 403 F.3d 1094, 1098 (9th Cir. 2005), and this Court has recognized that "'[c]ourts should indulge every reasonable presumption against waiver, and they should not presume acquiescence in the loss of

fundamental rights," *see United States v. Lopez-Vasquez*, 1 F.3d 751, 754 (9th Cir 1993) (citation omitted). Yet, in this case, the panel affirmed Mr. Romero-Escobar's waiver of appeal, even though this Court's case law demonstrates that for a *pro se* litigant to make a considered and intelligent waiver, a fuller explanation of the process, in non-technical language and given at the time that he was asked to waive his right to appeal, was required.

Pro se individuals without legal training like Mr. Romero-Escobar are less likely to understand the terminology that IJs typically use to determine whether they will waive or reserve appeal; as a result, *pro se* litigants are less likely to understand the consequences of waiving appeal. *See, e.g.*, *Rodriguez-Diaz*, 22 I&N Dec. at 1322 (holding that *pro se* individual had not validly waived appeal where the IJ merely asked if "he accepted the decision as 'final'"). Even the term "waiver" was unfamiliar Mr. Romero-Escobar. A.R. at 57 (attesting that he did not understand what "waive appeal" meant). To counter this information imbalance, an IJ must make sure that *pro se* litigants understand both that an appeal is possible and that, if they decide to waive appeal, they are giving up that right forever and will not be permitted to change their minds. Yet, as in this case, IJs' explanations too often lack at least one of these elements. *See*, *e.g.*, A.R. at 291-92 (IJ did not explain that the waiver decision was irrevocable); *Biwot*, 403 F.3d at 1098 (waiver was not valid where *pro se* litigant believed "he had no choice but to waive his

appeal"); *Rodriguez-Diaz*, 22 I&N Dec. at 1322-23 (waiver was not valid where individual likely did not understand his waiver was irrevocable).

Regardless of the language that IJs use, the structure of immigration hearings also makes the appeal waiver process difficult for *pro se* litigants like Mr. Romero-Escobar to understand. In his case, first, the initial explanation of the right to appeal was provided to a group of *pro se* litigants, *see also Lopez-Vasquez*, 1 F.3d at 754, and in a pre-recorded statement. *See* A.R. at 190-95. This explanation occurred months before he was confronted with the decision about whether to waive appeal. A.R. at 190-94, 291-92 (pre-recorded statement regarding appeal right, which did not clearly explain that waiver was irrevocable, occurred 3 months prior to alleged waiver).

Second, Mr. Romero-Escobar had to decide whether to waive appeal only seconds after learning that he was unsuccessful in obtaining relief from removal and thus had been ordered removed. A.R. at 291, 57 ("After the judge read his decision, I was crying in the court. I was in shock that I was going to be deported and all I could think about was my family."); *see also Pallares-Galan*, 359 F.3d at 1098 (waiver invalid where "the IJ[] fail[ed] to offer [the noncitizen] even a few moments to *actually* 'consider' his right to appeal").

Compounding these problems, the IJ failed to respond appropriately to Mr. Romero-Escobar, who gave indications that he was confused about the waiver of

appeal process. Instead of providing Mr. Romero-Escobar with an opportunity to explain himself, the IJ instead pushed him to waive appeal. A.R. at 291-92 (repeatedly asking Mr. Romero-Escobar to confirm that he had waived appeal after he had stated that he wanted to appeal); *see also Pallares-Galan*, 359 F.3d at 1098 (waiver invalid where IJ accepted it despite responses that "convey[ed] significant confusion about what the appeals process would have entailed").[4]

Furthermore, Mr. Romero-Escobar's waiver of appeal could not have been considered or intelligent, because the IJ did not ensure that he understood what issues he could appeal. This Court has recognized that an IJ must inform a *pro se* litigant about the availability of relief from removal:

> Where the record contains an inference that the petitioner is eligible for relief from deportation, but the IJ fails to advise the [noncitizen] of this possibility and give him the opportunity to develop the issue, we do not consider [a noncitizen's] waiver of his right to appeal his deportation order to be considered and intelligent.

Pallares-Galan, 359 F.3d at 1096 (citation omitted); *see also* 8 C.F.R. § 1240.11(a)(2). While the IJ in this case informed Mr. Romero-Escobar about possible forms of relief, he failed to make clear the possibility of appealing a finding of removability. In fact, when announcing his decision, the IJ failed to

[4] Doubt about *pro se* litigants' waivers should be resolved by seeking more information. *Cf. Matter of C-B-*, 25 I&N Dec. 888, 890 (BIA 2012) (holding that "since the respondent did express a change of heart [regarding his waiver of the right to counsel], the Immigration Judge should have asked for further clarification or explanation from the respondent").

mention that Mr. Romero-Escobar had been found to be removable or the basis for removability. *See* A.R. at 289-91. This error, compounded by the fact that he had received insufficient information about the charges against him and the burdens of proof in immigration hearings, *see supra* Section III.B, was fatal to Mr. Romero-Escobar's understanding of his right to appeal—just as an IJ's failure to inform a *pro se* litigant of the availability of relief was fatal in the immigration proceeding underlying *Pallares-Galan*.

Nonetheless, the panel decision did not even consider the argument that the IJ's failure to provide accurate information regarding Mr. Romero-Escobar's removability invalidated the alleged waiver of appeal. *See* Petition for Rehearing at 16-17. Nor did the panel's evaluation of Mr. Romero-Escobar's alleged waiver consider whether the IJ explained in non-technical language that waivers of appeal are irrevocable. As a result and in conflict with case law requiring waivers of appeal to be "considered and intelligent," Mr. Romero-Escobar gave up his right to appeal without understanding the decision that he was asked to make.

III. CONCLUSION

Amici respectfully urge this Court to grant Petitioner's rehearing petition to maintain uniformity in its decisions and to ensure that *pro se* litigants are adequately informed before conceding removability or waiving appeal and are not inappropriately barred from obtaining judicial review.

Respectfully submitted,

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Dated: April 16, 2015

CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(6) and 29(d) and 29-2(c)(2) because this brief contains 4,171 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii). This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(b) because this brief has been prepared using Microsoft Word 2010, is proportionately spaced, and has a typeface of 14 point.

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing Brief of *Amici Curiae* with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on April 16, 2015. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

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