UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

EDGAR LEAL, Petitioner, v. ERIC H. HOLDER, JR., Attorney General, Respondent.	))))))))))	No. 12-73381 Agency No. A-096-312-954

BRIEF OF *AMICI CURIAE* ARIZONA ATTORNEYS FOR CRIMINAL JUSTICE AND PIMA COUNTY PUBLIC DEFENDER IN SUPPORT OF PETITION FOR PANEL REHEARING AND FOR REHEARING *EN BANC*

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Arizona Attorneys for Criminal Justice ("AACJ") and Pima County Public Defender ("PCPD") respectfully file this brief as *amici curiae* in support of the Petitioner's petition for panel and *en banc* rehearing pursuant to Federal Rules of Appellate Procedure 35 and 40.

AMICI CURIAE'S IDENTITIES, INTERESTS, AND AUTHORITY TO FILE BRIEF

AACJ, the Arizona state affiliate of the National Association of Criminal Defense Lawyers, was founded in 1986 in order to give a voice to the rights of the criminally accused and to those attorneys who defend the accused. AACJ is a statewide not-for-profit membership organization of criminal defense lawyers, law students, and associated professionals dedicated to protecting the rights of the accused in the courts and in the legislature, promoting excellence in the practice of criminal law through education, training and mutual assistance, and fostering public awareness of citizens' rights, the criminal justice system, and the role of the defense lawyer.

PCPD is the second largest indigent defense law firm in Arizona with approximately 75 assistant public defenders providing indigent legal services in the Pima County Superior Court and appellate courts. For decades—long before the Supreme Court's decision in *Padilla v. Kentucky*, 559 U.S. 356 (2010)—PCPD has advised noncitizen clients about the immigration consequences of convictions for

various offenses, and PCPD employs several attorneys who specialize in immigration law so that consultations are readily available for clients potentially facing deportation.

AACJ and PCPD offer this brief in support of the petition for panel and *en banc* rehearing because the panel opinion misconstrues the endangerment statute in Arizona and fails to recognize the common practice among prosecutors and defense attorneys in Arizona. PCPD, along with the conflict agency Pima County Legal Defender ("PCLD"), represent more than 80% of the indigent defendants in Pima County. For decades Arizona defense attorneys have been advising their clients that pleading to the offense of endangerment would not result in adverse immigration consequences based on reasonable interpretations of precedent of this Court and the Board of Immigration Appeals ("BIA"). *Amici* provide this brief to assist the Court in understanding the deep-rooted practice in Arizona of pleading to the less serious offense of endangerment instead of facing trial on the charge of aggravated driving under the influence.

AUTHORSHIP AND FUNDING OF BRIEF

No party or party's counsel authored this brief in whole or in part, and no party or party's counsel contributed money that was intended to fund preparing or submitting this brief. Nor did any other third party contribute money to fund the preparation or submission of this brief.

ARGUMENTS

I. Arizona prosecutors who charge class 4 aggravated driving under the influence ("DUI") typically extend a plea offer to one count of felony endangerment and one count of misdemeanor driving under the influence.

In Maricopa and Pima Counties, which combined account for 85% of Arizona's population, prosecutors charging aggravated DUI under A.R.S. §28-1383(A) (1)-(2)[1] typically extend a plea offer whereby the defendant will plead guilty to one count of endangerment and one count of simple DUI, possibly with a minimum number of days in jail as a condition of probation. This plea offer reduces the felony classification from class 4 to class 6, and it removes the four-month mandatory prison sentence that must be imposed with any conviction for aggravated DUI under subsections (1) and (2) even if probation is granted. This plea offer assumes the defendant has no historical prior convictions that may be used for sentence enhancement. If the defendant does have prior convictions, the standard plea offer drops one historical prior conviction in exchange for a guilty plea to one of the counts in the indictment of aggravated DUI. *See generally* A.R.S. §§13-105(22) & 13-703 (sentencing for repetitive offenders).

In 2008, 93% of defendants in Pima County felony prosecutions were

[1] Most of the Arizona Revised Statutes referenced in this brief have not changed over time. Unless other specified, all statutory citations refer to the current version.

determined to be indigent.[2] That number has not changed significantly over the last several years, although some indigent defendants retain counsel with family assistance. According to current Pima County Superior Court statistics, 82% of all defendants in Pima County have appointed counsel. Of those with appointed counsel, 81% are represented by PCPD or PCLD. One year ago, 78% of all defendants in Pima County had appointed counsel, and of those, 81% were represented by PCPD or PCLD. Thus, PCPD and PCLD statistics are representative of the class of criminal defendants charged with felonies in Pima County.

In 2011, Pima County's Indigent Defense Services launched a new case-tracking database that allows reporting on characteristics such as finding all cases with felony endangerment convictions. Maricopa County does not yet have this reporting capability. Of 781 Pima County cases[3] where PCPD or PCLD represented a defendant with a felony endangerment conviction, 701 (89.8%) involved DUI.

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[2] Kim Smith, "If defendants ask, taxpayers foot almost all of their legal bills," *Arizona Daily Star*, April 26, 2009, http://tucson.com/news/local/crime/if-defendants-ask-taxpayers-foot-almost-all-of-their-legal/article_6eb19f8c-e05f-5e4a-b611-3dd4357cfda8.html (last visited January 20, 2015).

[3] This sample includes all cases in which PCPD or PCLD attorneys had any involvement since the database was launched in November 2011, including cases where new counsel was retained or appointed. It includes older cases where the defendant had counsel appointed for probation hearings or the defendant failed to appear originally but was arrested on a bench warrant in the last three years. It includes cases where other reckless felonies were alleged connected to DUI but does not include vehicular homicide cases.

Since the Supreme Court decided *Padilla*, defendants have had a recognized Sixth Amendment right to competent counsel on immigration and other collateral consequences of taking a plea versus going trial. PCPD and PCLD did not wait to be compelled by the Supreme Court to start advising on immigration consequences to their clients. The Maricopa County Public Defender's Office similarly considered such advice critical to ensuring that clients' pleas were knowing, intelligent, and voluntary; that office litigated this question unsuccessfully in *State v. Rosas*, 904 P.2d 1245 (Ariz.Ct.App. 1995), *abrogated by Padilla*.

A plea from aggravated DUI to endangerment is common among undocumented defendants because simple DUI can be elevated to aggravated DUI when the driver has no license. In Arizona, state law prevents undocumented immigrants from obtaining driver's licenses. A.R.S. §28-3153(D). In fact, until December 2014, even people who qualified for Deferred Action for Childhood Arrivals were not eligible to obtain driver's licenses in Arizona. *Arizona Dream Act Coalition v. Brewer*, 757 F.3d 1053 (9th Cir. 2014).[4]

The BIA had previously agreed that endangerment was not a crime involving moral turpitude ("CIMT"), which is why practitioners considered it an

[4] Arizona is still litigating this issue. Daniel González, "It's permanent, 'dreamers' can keep licenses," *Arizona Republic*, January 23, 2015, http://www.azcentral.com/story/news/politics/immigration/2015/01/22/judge-blocks-arizona-driver-license-ban-dreamers-brewer/22190227/ (last accessed January 25, 2015).

"immigration-safe" offense for all this time. The reasoning is clear: aggravated assault is not a CIMT because it requires neither specific intent to do harm nor actual harm, *see, e.g.*, *Ceron v. Holder*, 747 F.3d 773, 783-84 (9th Cir. 2014) (*en banc*), and endangerment is a significantly reduced offense of the same relation that requires nothing more than generalized "risky conduct." After this long-standing practice, the BIA's recent change of opinion, coupled with the panel opinion in this case, will have the effect of upsetting the apple cart. Post-conviction relief petitions will now need to be filed because, under Arizona law, this qualifies as a "significant change in the law." Ariz.R.Crim.P. 32.1(g).

Amici ask this Court to rehear the case and reach the conclusion that, for the reasons contained in this brief, endangerment is not a CIMT.

II. In Arizona, DUI is a strict liability offense. The felony offense of aggravated DUI provides a culpable mental state that applies only to the status of the driver's license of the defendant.

In examining the culpability and moral underpinnings of DUI and endangerment convictions, it is relevant and necessary to consider the evolution of DUI law in Arizona. In short, it has progressed from a crime of driving intoxicated to a lesser crime of potentially driving while impaired to the slightest degree. In the past century, the entire country has seen a trend towards stricter and heavier punishment for DUI. Arizona has seen two major changes in the statutory language.

First, there was the shift from the required element of driving a vehicle to being "in actual physical control" of a vehicle. The older language of Arizona Code §66-402, "Any person under the influence of intoxicating liquor or narcotic drugs, or who is a habitual user of narcotic drugs, who shall drive any vehicle upon any highway within this state," was replaced in 1950 with Arizona Code §66-156(a), stating, "It is unlawful and punishable … for any person who is under the influence of intoxicating liquor to drive or be in actual physical control of any vehicle within this state." This lessened the *mens rea* factor by encompassing drivers sitting in the driver's seat with keys in the ignition but not necessarily driving. *See State ex rel. McDougall v. Superior Court*, 845 P.2d 508 (Ariz.Ct.App. 1992) (defendant in running car to stay warm but not driving).

Second, and perhaps more significantly, A.R.S. §28-692(A)(1) was amended in 1990 to include the phrase "impaired to the slightest degree." A.R.S. §28-1381(A)(1) (Rev. 2014) retains that language. It appears that the phrase "impaired to the slightest degree" originated with the Arizona Supreme Court's interpretation of the phrase, "under the influence of intoxicating liquor" which appeared in the statute at least as early as 1928. In *Hasten v. State*, 280 P. 670, 671 (Ariz. 1929), the Court rejected California's interpretation of "under the influence of liquor" and held that this language meant "even to the slightest extent under the influence of liquor." This was reiterated by the Court in *Noland v. Wootan*, 427 P.2d 143, 144 (Ariz.

1967), which stated, "[In *Hasten*] we adopted the rule that one is guilty of the crime of driving while under the influence of intoxicants if his control of the vehicle is to the slightest degree affected by his consumption of the intoxicant."

The "impaired to the slightest degree" language has indelibly changed the landscape of DUI/impaired driving practice, and has broadened the offense itself to encompass a wide variety of conduct. DUI convictions can now be based on a blood alcohol content ("BAC") of 0.08%, *see* A.R.S. §28-1381(A)(2), so one can commit DUI after consuming as few as two drinks, regardless of actual impairment.

Furthermore, DUI convictions also result from drug metabolites being found in the defendant's body, regardless of impairment. A.R.S. §28-1381(A)(3). Even Defendants who are registered legal users of medical marijuana under the Arizona Medical Marijuana Act can be convicted of driving with marijuana metabolites in the bloodstream. *Darrah v. McClennen ex rel. County of Maricopa*, 337 P.3d 550 (Ariz.Ct.App. 2014). "A driver who tests positive for any amount [in this case marijuana] is legally and irrefutably presumed to be under the influence." *State ex rel. Montgomery v. Harris*, 322 P.3d 160, 164 (Ariz. 2014). A bill has been proposed in the Arizona Legislature, HB 2273, to overrule *Harris* and allow for non-psychoactive drug metabolites to serve as the basis for a DUI conviction.[5] Such strict

[5]http://www.azleg.gov/DocumentsForBill.asp?Bill_Number=hb2273&Session_Id=114 (last accessed January 25, 2015).

interpretations of "impaired to the slightest degree" characterize DUI law in Arizona, creating a framework in which a negligible amount of intoxicating substance that would not result in intoxication could nonetheless result in a conviction.

Notably, DUI does not require a victim, and endangerment "does not require that the person endangered be actually physically injured or even be aware that they were endangered." *State v. Villegas-Rojas*, 296 P.3d 981, 983 (Ariz.Ct.App. 2012). The facts of *Villegas-Rojas* were characteristic of a commonplace DUI case, even if more serious than the average case. The defendant was observed making an unsafe lane change on a roadway where other vehicles were present and was later found to have a BAC exceeding the legal limit. No one was hurt and no collisions resulted. "Although the statute makes it clear the offense of endangerment is reckless behavior placing another person at risk, it does not require or imply that the name or exact identity of the victim is a necessary element of the offense." *Id*.

DUI is a strict liability offense, and a culpable mental state is not a required element of the offense. A.R.S. §28-1381. The Arizona Supreme Court held that a jury instruction referring to the "defendant's purpose in exercising control over the vehicle" created unnecessary ambiguity and incorrectly stated the law by implying some necessary intent by the defendant. *State v. Zaragoza*, 209 P.3d 629 (Ariz. 2009). In regards to a defendant who ingested Ambien before driving who was convicted of aggravated DUI for having a child under 15 in the vehicle, the Arizona

Court of Appeals wrote, "Section 28-1381(A)(1) establishes a strict liability offense, … and the State need only show that the offender took 'any drug' that caused impaired driving, not that the offender knew that the drug would cause impairment." *State v. George*, 313 P.3d 543, 546 (Ariz.Ct.App. 2013) (citing *Zaragoza*, 209 P.3d at 634).

DUI becomes aggravated if the defendant has two prior DUI convictions within 84 months, if the defendant has a suspended or revoked license, if the defendant is driving with a person under fifteen in the vehicle, or if the defendant has been ordered to equip a motor vehicle with a certified ignition interlock device. A.R.S. §28-1383(A)(1)-(4). According to §13-202(B), "If a statute defining an offense does not expressly prescribe a culpable mental state that is sufficient for commission of the offense, no culpable mental state is required for the commission of such offense, and the offense is one of strict liability unless the proscribed conduct necessarily involves a culpable mental state." Neither §28-1381 nor §28-1383 expressly prescribes a culpable mental state sufficient for the offenses, but Arizona courts have held that a defendant's knowledge of the status of his license must be proven to convict under A.R.S. §28-1383(A)(1). *State v. Williams*, 698 P.2d 732, 734 (Ariz. 1985). However, the "knowingly" requirement does not necessarily attach for other sections of the aggravated DUI statute. Furthermore, because the mental state for the license status includes "should have known," it covers negligent conduct

as well. *Marmolejo-Campos v. Holder*, 558 F.3d 903, 912 (9th Cir. 2009) (*en banc*) (citing Arizona cases).

Thus, because the underlying offense is one of strict liability, no mental culpable state can be assigned across the board to the family of offenses that typically plead down to endangerment in Arizona.

III. The panel's focus on whether endangerment qualifies as a lesser-included offense of aggravated assault under Arizona law fails to take account of the fact that Arizona courts have an unusually strict application of lesser-included offenses. Endangerment is more akin to assault than any other Arizona crime.

The panel opinion rejected the argument that endangerment is not related to aggravated assault because it is not a lesser-included offense of aggravated assault. The panel relied on *State v. Morgan*, 625 P.2d 951 (Ariz.Ct.App. 1981), for this finding. In *Morgan*, the Arizona Court of Appeals noted endangerment requires actual substantial risk of death or physical injury, whereas "[a]ggravated assault pursuant to A.R.S. §13-1204(A)(2) may [] be committed by using an unloaded gun, and it is easy to imagine situations in which the assault could be committed without placing the victim in actual risk." 625 P.2d at 956. The panel opinion misapplies Morgan in two ways. First, two "distinct crimes" for lesser-included offense purposes may nevertheless be "related" for CIMT determination purposes. Second, Arizona has a particularly stringent practice for determining whether offenses are

included, and thus Arizona case law is not very helpful to federal courts making CIMT determinations.

Arizona follows the Supreme Court's test in *Blockburger v. United States*, 284 U.S. 299, 304 (1932): "whether each [offense] requires proof of an additional fact which the other does not." The Arizona Supreme Court has laid out the following test for determining whether an offense is a lesser-included offense: "a court may consider two bases: '1) the included offense is by its very nature always a constituent part of the major offense charged; or 2) the terms of the charging document describe the lesser offense even though the lesser offense would not always form a constituent part of the major offense charged.'" *State v. Gooch*, 678 P.2d 946, 947 (Ariz. 1984) (quoting *In re Maricopa County Juv. Act. No. J-75755*, 523 P.2d 1304 (Ariz. 1974)). Despite this rule, Arizona courts use a particularly strict test for determining whether one offense is a lesser-included offense of another.

For example, although Arizona does not require the charging document to specify whether the defendant is a principal or an accomplice, *State v. Tison*, 633 P.2d 335, 347 (Ariz. 1981), a defendant charged with drug sales on an accomplice liability theory is not entitled to a lesser-included offense instruction on facilitation. *State v. Politte*, 664 P.2d 661, 665 (Ariz.Ct.App. 1982). This is because the charging document on its face does not specify that the defendant is charged as an accomplice. *Id*. The same court, in another case where the accomplice liability statute was cited

in the string cite of the information, held the defendant was not entitled to the facilitation instruction because "being an accomplice is not a separately chargeable offense; it is merely a theory that the state may utilize to establish the commission of a substantive offense." *State v. Garcia*, 860 P.2d 500, 501 (Ariz.Ct.App. 1993).

An equally confounding example is the holding that trespass of a residence under A.R.S. §13-1504 is not a lesser-included offense of residential burglary under §13-1507. *State v. Malloy*, 639 P.2d 315 (Ariz. 1981); *State v. Lewis*, __ P.3d __, ¶48, 2014 WL 6982289, *10 (Ariz.Ct.App., Dec. 12, 2014) (citing *State v. Kozan*, 706 P.2d 753, 754-55 (Ariz.Ct.App. 1985)). Another similarly impossible example is a defendant may be convicted of two separate offenses for sexual assault and kidnapping (which, in Arizona, may be satisfied by restraining a victim) even where the only evidence of kidnapping is the restraint necessary to commit sexual assault, because "the sexual assault statute does not require a knowing restraint." *State v. Eagle*, 994 P.2d 395, 399-400 (Ariz. 2000).

Using this logic, a divided panel of the court of appeals held that disorderly conduct by reckless display of a firearm was not a lesser-included offense of aggravated assault with a deadly weapon. *State v. Angle*, 720 P.2d 100, 107 (Ariz.Ct.App. 1985). The court found two distinguishing elements present in A.R.S. §13-2904(A)(6) that were absent in the aggravated assault statute, §13-1204(A)(2): 1) "intent to disturb the peace or quiet of a neighborhood, family or person"; and 2)

handling, display, or discharge of the deadly weapon or dangerous instrument (as opposed to mere use, threatened use, or exhibition). *Id*. Judge Kleinschmidt dissented from that part of the opinion, finding the distinction "highly metaphysical." *Id*. at 108-10 (Kleinschmidt, J., dissenting in part). By a 3-2 vote, the Arizona Supreme Court reversed this part of Angle and adopted Judge Kleinschmidt's dissent as the opinion of the Supreme Court. *State v. Angle*, 720 P.2d 79, 80 (1986). *See also State v. Cheramie*, 171 P.3d 1253 (Ariz.Ct.App. 2007), *overruled*, 189 P.3d 374 (Ariz. 2008) (Court of Appeals held that court-established element of drug possession that drugs be of a "usable quantity" was not present in offense of transportation for sale of a dangerous drug; Supreme Court removed "usable quantity" element).

Thus, in Arizona, the *Blockburger* test is applied in a manner such that what matters is whether the elements match up on paper, regardless of the evidence actually presented at trial or the impossibility of committing the greater offense without also committing the lesser.

The panel opinion's statement that "[e]ndangerment crimes in Arizona, however, are distinct crimes, rather than a form of assault," *Leal v. Holder*, 771 F.3d 1140, 1148 (9th Cir. 2014), fails to take account of the fact that endangerment, A.R.S. §13-1201, is grouped in the Arizona Revised Statutes in Title 13, Chapter 12, which is entitled "Assault and Related Offenses." Courts may refer to a statute's title

and headings in interpreting the statute. *Eagle*, 994 P.2d at 397. The distinction made in *Morgan* between aggravated assault and endangerment is miniscule; Arizona law has always considered endangerment as a species of assault.

IV. The panel opinion improperly focused on a narrow subset of activity classified as "endangerment." The factual basis for the "reckless" culpable mental state is supplied by the fact that the defendant was driving under the influence of alcohol or drugs.

In *State v. Carreon*, 107 P.3d 900, 909 (Ariz. 2005), the Arizona Supreme Court affirmed endangerment convictions based on the defendant's killing of one person and the bullets passing through a nearby bedroom occupied by children. While such evidence is undoubtedly sufficient evidence to sustain endangerment convictions, it is erroneous to rely on a death penalty case to provide the framework for the normal, run-of-the-mill endangerment case. Not every endangerment case looks like *Carreon* or *Morgan*; in fact, few do, as demonstrated by the statistics provided above.

A pleading defendant may strike any bargain with the State that the parties are willing to present to the trial court for acceptance. In Arizona, the reasons why class 4 aggravated DUI pleads down to class 6 endangerment are as follows: 1) the State gets a felony conviction while the defendant gets a reduced offense; 2) any aggravated DUI conviction is considered an historical prior conviction at any time in the future, whereas endangerment is only categorized as such for a five-year

period; and 3) endangerment does not require a named victim, so it is easy to lay a factual basis that there was another driver somewhere on the road; and 4) it can be said for purposes of a factual basis that anyone who drives impaired "consciously disregards a substantial and unjustifiable risk," *see* A.R.S. §13-105(10)(c), and in that manner the scienter requirement is met for endangerment.

DUI, like almost all other crimes, have a rational basis: the community is safer when drivers are alert and sober. That being said, it is a leap in logic to consider DUI a "reprehensible act" – and that is why aggravated DUI under most (if not all) circumstances is not a CIMT.[6] Since aggravated DUI in Arizona commonly pleads

[6] In *Marmolejo-Campos*, 558 F.3d at 913-14, this Court affirmed the BIA's holding that aggravated DUI is a CIMT if the offense involved both actual driving (instead of mere actual physical control) and knowledge of one's license suspension (as opposed to the "should have known" *mens rea* alternatively permitted in Arizona law). Not at issue in *Marmolejo-Campos* was whether "drunk or drugged driving" also includes nonimpairing alcohol or drugs in the bloodstream that could serve as the basis for a violation of A.R.S. §28-1383(A). Central to the reasoning was the application of a modified categorical approach. 558 F.3d at 912 (citing *Fernandez-Ruiz v. Gonzales*, 468 F.3d 1159, 1163 (9th Cir. 2006)).

The Supreme Court held in *Descamps v. United States*, 133 S.Ct. 2276 (2013), that for Armed Career Criminal Act purposes, courts could not apply the "modified categorical approach" and instead had to look at the statute as a whole if the elements of the offense were indivisible. This Court has since held that the *Descamps* analysis applies equally in immigration removal proceedings, *Aguilar-Turcios v. Holder*, 740 F.3d 1294, 1301-02 (9th Cir. 2014), and that the use of the disinjunctive "or" in a statute does not render that statute divisible, *Rendon v. Holder*, 764 F.3d 1077 (9th Cir. 2014). While *Marmolejo-Campos* has not been explicitly overruled, its reasoning has been significantly undercut. Thus, A.R.S. §28-1383(A)(1) is no longer a CIMT.

down to endangerment, the factual basis for endangerment often includes no culpable mental state of any kind, and thus it usually looks like a strict liability crime.

In cases where the defendant was in an accident that caused property damage in an amount greater than $1,000, the defendant is also charged with felony criminal damage which requires "recklessly defacing or damaging property." A.R.S. §13-1604(A)-(B). The pleading defendant can much more easily make a factual basis for criminal damage than for endangerment, and thus in accident cases the defendant is more likely to plead to this charge.

Defendants such as Leal did not commit additional felonies, so the only available class 6 felony for which a factual basis may be given is endangerment. Thus, because of the panel opinion, the noncitizen DUI defendant now has a perverse incentive to cause an accident because criminal damage is not a CIMT. Pleading to a less serious offense (DUI without an accident) should not result in a CIMT if the greater offense (DUI with an accident) is not a CIMT. For all of these reasons, the panel opinion erred in determining that Leal's conduct, which barely satisfied the elements of endangerment, should constitute a CIMT.

CONCLUSION

For these reasons, *amici curiae* requests that this Court grant panel rehearing or rehearing *en banc* and hold that Arizona's crime of felony endangerment is not a CIMT.

RESPECTFULLY SUBMITTED this 30th day of January, 2015.

By /s/ David J. Euchner

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CERTIFICATE OF COMPLIANCE

1. The brief contains 4,182 words;

2. The 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)(6) because this brief has been prepared in a proportionally-spaced typeface using Microsoft Word 2013 with 14-point, Times New Roman font.

DATED: (electronically filed) January 30, 2015.

By /s/
David J. Euchner
Attorney for *Amici Curiae*

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing 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 January 30, 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.

DATED: (electronically filed) January 30, 2015.

By /s/
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