No. 18-72974

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

[redacted] U[redacted],
Petitioner,

v.

William P. BARR, Attorney General,
Respondent.

ON PETITION FOR REVIEW OF DECISION OF
THE BOARD OF IMMIGRATION APPEALS
Agency No. [redacted]

CONSENTED TO BRIEF OF THE AMERICAN IMMIGRATION COUNCIL AS AMICUS CURIAE IN SUPPORT OF PETITIONER

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CORPORATE DISCLOSURE STATEMENT UNDER FRAP 26.1

I, Kristin Macleod-Ball, attorney for amicus, certify that the American Immigration Council is a non-profit organization that does not have any parent corporations or issue stock and, consequently, there exists no publicly held corporation which owns 10% or more of stock.

DATED: July 29, 2019

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I. INTRODUCTION[1]

Amicus the American Immigration Council (the Council) proffers this brief in support of Petitioner [redacted] U[redacted] (Mr. U[redacted]) to address the special duty of immigration judges (IJs) to fully develop the record in asylum and withholding of removal cases, especially where the individual is unrepresented and held in Department of Homeland Security (DHS) custody.[2] This Court already recognizes an IJ's duty to develop the record and its particular importance in cases involving pro se litigants. *See*, *e.g.*, *Agyeman v. INS*, 296 F.3d 871, 877 (9th Cir. 2002); *Jacinto v. INS*, 208 F.3d 725, 733-34 (9th Cir. 2000). However, further clarity is needed to ensure that IJs fulfill their obligation in cases like Mr. U[redacted]'s, where family members with relevant evidence have been separated through DHS' immigration detention system.

Given the troubling disadvantage pro se, detained individuals face in removal proceedings, IJs must play a more active role in order to ensure those litigants receive a meaningful opportunity to be heard. In this case, the IJ failed to

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[1] No party's counsel authored this brief in whole or in part; no party or party's counsel contributed money that was intended to fund preparing or submitting this brief; and no person other than amicus curiae, its members, and its counsel contributed money that was intended to fund preparing or submitting this brief. Fed. R. App. P. 29(a)(4)(E). All parties have consented to the filing of this brief. Fed. R. App. P. 29(a)(2).

[2] Amicus supports Mr. U[redacted]'s additional arguments in favor of remand for further proceedings for applications for relief, but they are beyond the scope of this brief.

comply with his duty. Despite evidence in the record that Mr. U[redacted]'s stepson could provide testimony directly relevant to his claims and that Mr. U[redacted] lacked the information necessary to directly contact his stepson, the IJ took no steps to facilitate inclusion of this relevant testimony in the record. The Board of Immigration Appeals (BIA) then erred by affirming the IJ's decision. Amicus urges the Court to grant Mr. U[redacted]'s petition for review and remand with instructions to conduct further proceedings on Petitioner's applications for relief from removal that include the additional evidence he could not present at his original hearing.

II. STATEMENT OF AMICUS

The Council is a non-profit organization established to increase public understanding of immigration law and policy, advocate for the just and fair administration of our immigration laws, protect the legal rights of noncitizens, and educate the public about the contributions of America's immigrants. The Council has previously appeared as amicus before this Court on issues relating to the interpretation of federal immigration laws and policies and has a direct interest in ensuring a full and fair removal process for all individuals in removal proceedings, including those without legal representation.

III. BACKGROUND

Mr. U[redacted] entered the United States in October 2017, accompanied by his 13-year-old son, T.U., his adult stepson, [redacted], and [redacted]'s wife, [redacted]. Administrative Record (A.R.) at 303, 356, 363. He told U.S. Customs and Border Protection agents that he intended to apply for asylum because he feared persecution by the government of [redacted] based on [redacted]'s political activities. A.R. 303-10. A few days later, he was forcibly separated from his minor son T.U. and moved into the Otay Detention Facility. A.R. 88-89. Although he had already indicated that their claims for relief were related, Mr. U[redacted] also was incarcerated in a separate detention center from [redacted] and [redacted]. A.R. 96, 303-10, 325. Throughout his eight months of incarceration, he was unable to speak to [redacted] and did not even know where his stepson was being held. A.R. 92, 222-23, 269, 365.

On October 31, 2017, an asylum officer found that Mr. U[redacted] had a credible fear of persecution based on his relationship to [redacted]. A.R. 371. During the interview, Mr. U[redacted] described the importance of his stepson to his case, explaining, "All I told you and all the supporting documentation my son has, but I don't know where he is right now." A.R. 365. Mr. U[redacted] was placed in removal proceedings in the immigration court at Otay Mesa, California, while his minor son was detained for removal proceedings in Chicago, and [redacted] and [redacted]

were detained and put into removal proceedings in Adelanto, California. A.R. 89, 96, 194.

Between December 2017 and April 2018, Mr. U[redacted] struggled to find a lawyer and to complete his asylum application. A.R. 194-204, 212, 216, 313-325. At an initial hearing in February 2018, Mr. U[redacted] stated that he feared return to [redacted]. A.R. 207. While the IJ indicated that Mr. U[redacted] could apply for asylum, the IJ did not say anything about the type of evidence that he could submit in support of his asylum application. A.R. 208 (noting only that, if documents were submitted, they must be translated into English); *see also* A.R. 217 (same). Mr. U[redacted] managed to submit an asylum application that highlighted the centrality of his stepson [redacted] to his case, although it was in a language he did not understand. A.R. 313-25.

The day before he was scheduled for an individual hearing before an IJ, Mr. U[redacted] learned that a lawyer from Catholic Charities was "very likely" to take on his case. A.R. 280. Because the lawyer had another hearing scheduled and could not immediately locate a [redacted] interpreter, Mr. U[redacted] submitted a motion to continue. *Id*. In addition to seeking time to meet with the lawyer, the motion stressed that Mr. U[redacted]'s and [redacted]'s cases "involve many of the same issues" and indicated that he wanted [redacted] to testify in his case. *Id*.

In response to the motion, the IJ asked Mr. U[redacted] where [redacted] was located. A.R. 223. Mr. U[redacted] responded that he believed [redacted] was detained in Oceanside, California. *Id.* Although both the IJ and the DHS attorney at the hearing apparently were aware that there was no detention center in Oceanside, the IJ made no further inquiries about [redacted]'s location in detention. *Id.* Instead, the IJ simply asked DHS counsel if he knew anything about [redacted]'s case, and when DHS counsel stated that he did not, the IJ failed to make further inquiries and denied Mr. U[redacted]'s motion. A.R. 224. Later, it became clear that Mr. U[redacted] had not been able to speak directly with his stepson during the eight months they had been separated in DHS custody. A.R. 269. The IJ required Mr. U[redacted] to go forward with the hearing, finding him not credible and denying his applications for asylum and related relief. A.R. 274-75; A.R. 183-93. On June 22, 2018, a different IJ at a different immigration court granted asylum to [redacted] and [redacted]. A.R. 96-110.

Mr. U[redacted] appealed the IJ's decision to the BIA. Despite the fact that he submitted the IJ decision granting asylum to [redacted] and [redacted], the BIA dismissed the appeal. A.R. 1-6.

IV. ARGUMENT

A. Immigration Judges Have an Affirmative Duty to Develop the Record

It is well-established in this Circuit that "immigration judges are obligated to *fully* develop the record in those circumstances where applicants appear without counsel . . . ." *Jacinto*, 208 F.3d at 734 (emphasis added); *see also Dent v. Holder*, 627 F.3d 365, 373 (9th Cir. 2010) (same); *Agyeman*, 296 F.3d at 877 (same); *Oshodi v. Holder*, 729 F.3d 883, 889 (9th Cir. 2013) (describing the duty as "for the benefit of the applicant" in pro se cases).[3] An IJ must ensure that the relevant facts of a given case are presented to the court as part of this duty. *See, e.g.*, *Jacinto*, 208 F.3d at 733 (noting that in asylum cases, "a full exploration of all the facts is critical to correctly determine whether the [noncitizen] does indeed face persecution in their homeland" and that the IJ "is in a good position to draw out those facts that are relevant to the final determination"); *Pangilinan v. Holder*, 568 F.3d 708, 709 (9th Cir. 2009). The obligation stems from the noncitizen respondent's constitutional and statutory right to a full and fair removal hearing. *See Jacinto*, 208 F.3d at 727-28; *see also* 8 U.S.C. § 1229a(b)(4)(B) (requiring that noncitizens have, inter alia, a reasonable opportunity to present evidence on their own behalf in removal proceedings); Petitioner's Brief (Pet. Br.) at 32-35.

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[3] The BIA similarly recognizes that IJs should develop the record. *See Matter of M-A-M-*, 25 I&N Dec. 474, 482 (BIA 2011).

The duty to develop the record incorporates an IJ's wide ranging statutory and regulatory responsibilities in removal proceedings. *See* 8 U.S.C. § 1229a(b)(1) (requiring IJs to "administer oaths, receive evidence, and interrogate, examine, and cross-examine the [noncitizen] and any witnesses" and authorizing issuance of "subpoenas for the attendance of witnesses and presentation of evidence"); 8 C.F.R. § 1003.10(b) (same and requiring IJs to take other actions that are "appropriate and necessary for the disposition of" an individual case); 8 C.F.R. § 1240.10(a) (requiring IJs to, inter alia, advise noncitizens of certain rights in proceedings and explain factual allegations and charges in non-technical language); 8 C.F.R. § 1240.1(c) (requiring IJs to "receive and consider material and relevant evidence, rule upon objections, and otherwise regulate the course of the hearing"); 8 C.F.R. § 1240.11(a)(2) (requiring IJs to inform noncitizens of "apparent eligibility to apply for any of the benefits enumerated in this chapter"); 8 C.F.R. § 1240.1(a)(1)(iv) (providing "the authority to . . . take any other action consistent with applicable law and regulations as may be appropriate").

This duty is not unique to removal proceedings; it is common in other types of administrative proceedings as well. *See, e.g.*, *Richardson v. Perales*, 402 U.S. 389, 410 (1971) (recognizing that an adjudicator in administrative proceedings "acts as an examiner charged with developing the facts"). However, the unique features of immigration court—and particularly the risk of deportation facing the

noncitizen—heighten the importance of an IJ performing this role in order to ensure fair and accurate adjudications. *Jacinto*, 208 F.3d at 733 (cautioning that an asylum applicant ordered deported "could face a significant threat to his or her life, safety, and well-being").

An IJ's unique record-building role does not interfere with his or her duty to remain an impartial arbiter. The need for an IJ to establish a record and elicit testimony does not alter the burdens of proof applicable in removal proceedings, *see* 8 U.S.C. § 1229a(c)(2)-(4), and does not necessitate the IJ becoming an "advocate" for either party. *See Matter of J-F-F-*, 23 I&N Dec. 912, 922 (AG 2006).

But the reality is that the parties in removal proceedings are often unfairly matched. On the one side is the United States, appearing through an attorney representing DHS. That attorney has access to a rich array of resources to carry out factual and legal research. On the other side is a noncitizen respondent, often unrepresented, untrained in the law generally, and unfamiliar with U.S. immigration law and procedure more specifically. He or she may not speak English or have little ability or opportunity to procure evidence to demonstrate eligibility for relief from removal. Despite these severe disadvantages, noncitizens have the burden to present a detailed and accurate accounting of relevant facts in support of their applications for relief from removal if their claims are to be properly adjudicated. *See* 8 U.S.C. §

1229a(c)(4). The requirement of impartiality does not permit an IJ to ignore this imbalance in legal training and information available to the two parties. Because an IJ is often in the best position to "to draw out those facts that are relevant to the final determination," absent affirmative steps by the IJ, "information crucial to [a noncitizen's] future" will "remain[] undisclosed." *Jacinto*, 208 F.3d at 733.

For this reason, this Court regularly has held that IJs must elicit relevant testimony from witnesses appearing before the court or otherwise draw out facts surrounding relevant issues suggested by the existing record. *See, e.g.*, *Jacinto*, 208 F.3d at 733-34 (IJ failed to explain right to testify and present evidence); *Oshodi*, 729 F.3d at 889 (IJ failed to permit noncitizen's testimony); *Pangilinan*, 568 F.3d at 709-10 (IJ failed to question unrepresented noncitizen); *Larin-Delgado v. Holder*, 327 Fed. Appx. 724, 727 (9th Cir. 2009) (unpublished) (IJ relied on a DHS assertion rather than developing a factual issue).

Similarly, the Court has also faulted IJs for failing to explain the types of evidence a noncitizen should present to support a claim for relief and failing to provide practical information about how to put essential testimony before the immigration court. *See, e.g.*, *Agyeman*, 296 F.3d at 883; *Potoi v. Ashcroft*, 52 Fed. Appx. 385, 386 (9th Cir. 2002) (unpublished) (IJ should have informed a "pro se litigant in custody" what type of evidence he could submit and/or instructed him to arrange for particular testimony). In *Agyeman*, the Court noted that, where a key

witness could not practically attend a hearing, the IJ's duty included explaining that a witness could appear telephonically or suggesting other sources of relevant evidence that could take the place of such testimony. 296 F.3d at 883.

Here, the record reflects that the IJ failed to meet this standard. He did not develop critical facts alluded to by the Petitioner and also failed to facilitate the noncitizen's ability to present evidence on his own behalf—a problem that was exacerbated because Mr. U[redacted] was detained, unrepresented, and seeking asylum.

B. Immigration Judges Must Take Special Care to Develop the Record in Cases of Individuals Who Are Pro Se, Detained, and/or Seeking Asylum

While the duty to develop the record exists in many cases, the presence of certain factors, including whether an individual is represented, detained, and/or seeking asylum, make factual development by IJs especially important.

First, individuals without legal representation enter removal proceedings at a disadvantage. They must navigate an extraordinarily complex area of law which 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, most of which involve legal terminology unfamiliar to a layperson. Furthermore, pro se litigants must face off against trained DHS attorneys arguing for their deportation.

This imbalance in representation is correlated with a serious disadvantage for unrepresented noncitizens in immigration court. According to one study, detained individuals in removal proceedings with attorneys were ten and a half times more likely to be permitted to remain in the United States than those without legal representation. *See* Ingrid Eagly & Stephen Shafter, Am. Imm. Council, *Access to Counsel in Immigration Court* 19 (2016), https://tinyurl.com/y7hbl2rm; *see also* New York Immigrant Representation Study, *Accessing Justice II: A Model for Providing Counsel to New York Immigrants in Removal Proceedings* 1 (2012), https://tinyurl.com/y3moc4g8 (analyzing data from the New York immigration courts and finding represented immigrants were over five times more likely to succeed in their cases).

Second, for detained respondents, the prospect of gathering and presenting evidence is even more daunting. Their problems are compounded by severe restrictions on their ability to communicate with friends and family members who could otherwise help them prepare their cases. *See, e.g.*, Mark Noferi, *Cascading Constitutional Deprivation*, 18 Mich. J. Race & L. 63, 79-80 (2012); *Lyon v. U.S.*

Immigration and Customs Enforcement, 171 F. Supp. 3d 961, 966-970 (N.D. Cal. 2016) (describing obstacles to telephone access for individual in DHS immigration custody). They are often detained far from home, separating them from friends and family and limiting their ability to access documents they need for their cases. *See* Human Rights Watch, *A Costly Move* 13-16 (2011), https://tinyurl.com/y25mgxft.

Finally, the duty to develop the record is especially important for individuals seeking asylum and related humanitarian relief. This Court has cited favorably to the Office of the United Nations High Commissioner for Refugees' (UNHCR) Handbook on Procedures and Criteria for Determining Refugee Status (Handbook), which explains that "'the duty to ascertain and evaluate all the relevant facts is shared between the applicant and the examiner' such that the role of the asylum adjudicator is to 'ensure that the applicant presents his case as fully as possible and with all available evidence.'" *Jacinto*, 208 F.3d at 732-33 (quoting UNHCR, Handbook ¶196 (Geneva 1979)); *see also* UNHCR, Handbook ¶196 ("Indeed, in some cases, it may be for the examiner to use all the means at his disposal to produce the necessary evidence in support of the application."); *id*. at ¶205(b)(i) ("The examiner should . . . ensure that the applicant presents his case as fully as possible and with all available evidence.").[4]

[4] While the Handbook is not binding, the Supreme Court recognized that it "provides significant guidance in construing the [United Nations Protocol Relating to the Status of Refugees], to which Congress sought to conform. It has been

As a result, IJs must play a special role in removal cases of detained, pro se litigants, especially where those individuals face persecution or torture if deported. Absent affirmative intervention by an IJ, pro se litigants frequently cannot meaningfully participate in their removal proceedings. *See, e.g.*, *United States v. Copeland*, 376 F.3d 61, 71 (2d Cir. 2004) ("[O]ur removal system relies on IJs to explain the law accurately to pro se [noncitizens]. Otherwise, [they] would have no way of knowing what information was relevant to their cases and would be practically foreclosed from making a case against removal."). Thus, IJs must be especially rigorous in complying with their duty to develop the record in such cases. *See Agyeman*, 296 F.3d at 883 (recognizing that a noncitizen held in DHS custody "may have limited access to relevant documents and will, therefore, depend even more heavily on the IJ for assistance in identifying appropriate sources of evidence to support his claim"); *Jacinto*, 208 F.3d at 733 (requiring IJs to "scrupulously and conscientiously probe into, inquire of, and explore for all the relevant facts" in pro se cases) (quotation omitted).

Notably, in this case, all of the factors which trigger a heightened duty to develop the record were present.

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widely considered useful in giving content to the obligations that the Protocol establishes." *INS v. Cardoza-Fonseca*, 480 U.S. 421, 439 n.22 (1987).

C. In Order to Adequately Develop the Record in Cases Like Mr. U[redacted]'s, IJs Must Facilitate Access to Testimony by Other Individuals in DHS Custody

This case began with a DHS decision that hobbled Mr. U[redacted]'s chance of success from the start, just as it does for many other asylum-seeking families: although he entered the United States with family members who have very similar claims for relief from removal, DHS prevented the family from pursuing those claims together by detaining them, and initiating removal proceedings against them, separately. While the precise steps required to develop the record will vary by case, IJs must ensure that noncitizens in Mr. U[redacted]'s position have an opportunity to obtain evidence necessary to their claims. Thus, when an unrepresented, detained noncitizen indicates that another person in DHS custody can provide relevant testimony, the IJ's duty must include facilitating access to that witness. IJs can ensure that noncitizens have the opportunity to enter such relevant testimony into the record through a variety of means, but in this case, the IJ did nothing. Therefore, the BIA's failure to remand the case for further proceedings on Mr. U[redacted]'s applications for relief was error.

Here, Mr. U[redacted] indicated that his stepson, who was in DHS custody at another location, had relevant information that could corroborate his own testimony. *See supra* Section III. They had entered the United States together, along with Mr. U[redacted]'s 13-year-old son and his stepson's wife, but DHS

decided to separate them. *Id.* They were placed in three separate sets of removal proceedings, before three separate judges, despite their similar claims for relief from removal. *Id.* Consequently, Mr. U[redacted] did not know how to get in touch with his stepson or how to get relevant evidence from him. *Id.*

This is not a unique experience for families seeking protection in the United States. *See* Leigh Barrick, Am. Imm. Council, *Divided By Detention: Asylum-Seeking Families' Experience of Separation* 9-11, 19-20 (2016), https://tinyurl.com/y8mcbz66 (detailing widespread separation of adult family members based on DHS detention policy and ensuing difficulty obtaining corroborating evidence for family-based asylum claims). Moreover, where DHS separates family members, it also, predictably, initiates separate immigration cases against them, even where those cases involve many of the same facts. This means that different IJs hear the cases of family members with closely related asylum claims, that these family members, if detained, rarely will be available to testify in support of each other, and that relevant evidence may be out of reach for one or more family members. *Id.* at 19-20. Furthermore, separated family members likely face formidable difficulties communicating with each other and, like Mr. U[redacted], may not even know where the other members of their family are detained. Women's Refugee Commission et. al., *Betraying Family Values: How Immigration Policy at the United States Border is Separating Families* 13-14

(2017), https://tinyurl.com/y6sadc5f.

Given these formidable obstacles, it is incumbent upon IJs to take steps to facilitate testimony and/or evidence sharing in the cases of families separately detained. The IJ's failure to do so in this case violated the duty to develop the record in at least two ways.

First, the IJ failed to explain to Mr. U[redacted] the types of evidence that could be helpful to corroborate his testimony in support of his asylum application at a time when it could have meaningfully allowed him to gather such testimony. *See Agyeman*, 296 F.3d at 882-83 (indicating that, when a critical element of an unrepresented individual's claim is in doubt, an IJ must advise that person of "reasonable means of proving" that element, including potential sources of relevant evidence); *cf. Matter of L-A-C-*, 26 I&N Dec. 516, 521 n.3 (BIA 2015) (noting that "it is beneficial for the Immigration Judge to remind the applicant at the master calendar hearing of the general type of evidence needed to corroborate a claim"). At his master calendar hearings, the IJ informed Mr. U[redacted] that he could submit documents in support of his asylum application and that they must be translated into English but provided no further information. *See* A.R. 208, 217. It was not until his individual hearing, when opposing counsel suggested that Mr. U[redacted] should have obtained declarations from his stepson (whose location he did not know) and his wife (who was located in [redacted]), that he learned

this was an option. Moreover, even then, he was provided no opportunity to actually obtain such evidence. A.R. 267-70.

Second, when confronted with evidence that Mr. U[redacted]'s stepson likely had relevant information but that Mr. U[redacted] did not know where his stepson was being detained or how to contact him, the IJ failed to act on his duty to ensure relevant facts and testimony were before the court. *See, e.g.*, *Jacinto*, 208 F.3d at 733 (indicating that IJ should have elicited relevant testimony from a potential witness). The IJ briefly asked the DHS attorney whether he was familiar with the facts of the stepson's case and, after Mr. U[redacted] incorrectly identified the name of a detention center where his stepson might be held, if such a detention center existed. A.R. 224. When the attorney stated that he had no information, the IJ took no further action—not even requesting that DHS use an online detainee locator to identify where Mr. U[redacted]'s stepson was being detained. *Id.* To comply with his duty to develop the record, the IJ should have facilitated obtaining a declaration or testimony to corroborate Mr. U[redacted]'s claims. *See Agyeman*, 296 F.3d at 883 (indicating that an IJ should explain that an individual with relevant testimony could appear telephonically); *see also* 8 U.S.C.

§ 1229a(b)(1), (b)(2)(A) (authorizing immigration judges to subpoena witnesses and conduct hearings by telephone or video conference).[5]

An IJ must be "responsive to the particular circumstances of the case, including what types of evidence the [noncitizen] can and cannot reasonably be expected to produce . . . ." *Agyeman*, 296 F.3d at 884. In failing to facilitate Mr. U[redacted]'s access to his stepson's testimony, despite DHS' role in separating him from his family members who had relevant corroborating evidence, the IJ ignored this obligation entirely. The BIA erred by affirming the IJ's decision that was based on this fatal flaw.

IV. CONCLUSION

Amicus respectfully urges this Court to grant Mr. U[redacted]'s petition for review and remand this case to permit further consideration of his claims for asylum and related relief in light of relevant evidence that the IJ did not originally consider. By failing to provide Mr. U[redacted] with information about the types of evidence he should submit, failing to elicit information about the location of Mr. U[redacted]'s stepson, and failing to facilitate obtaining testimony from the stepson despite indications that such testimony was relevant, the IJ violated his duty to develop the record; the BIA erred by affirming the IJ's decision without

[5] As Mr. U[redacted] explains, the BIA's conclusion that he failed to explain why his stepson's testimony would be relevant is flatly contradicted by the record and cannot overcome the IJ's duty to develop the record. *See* Pet. Br. at 42-43.

correcting these errors.

Respectfully submitted,

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Dated: July 29, 2019

CERTIFICATION OF COMPLIANCE

I certify that this brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7) and 29(a)(5) and Circuit Rule 32-1(a), because it contains 4,237 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f). 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)(6) because this brief has been prepared using Microsoft Word 2016, is proportionately spaced, and has a typeface of 14 point.

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Dated: July 29, 2019

CERTIFICATE OF SERVICE

I hereby certify that on July 29, 2019, 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 CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

s/ Kristin Macleod-Ball
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Dated: July 29, 2019