No. 17-35105

IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

STATE OF WASHINGTON, et al.,

Plaintiffs-Appellees,

v.

DONALD J. TRUMP, President of the United States, et al.,
Defendants-Appellants.

From the United States District Court, Western District of Washington
The Honorable James L. Robart, Case No. C17-0141JLR

MOTION FOR LEAVE TO FILE BRIEF OF CONSTITUTIONAL SCHOLARS AS *AMICI CURIAE* IN SUPPORT OF APPELLEES

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MOTION FOR LEAVE TO FILE BRIEF OF CONSTITUTIONAL SCHOLARS AS *AMICI CURIAE* IN SUPPORT OF APPELLEES

Kristin Collins, Judith Resnik, Stephen I. Vladeck, and Burt Neuborne (collectively, "*Amici*") respectfully move for leave to file an *amicus curiae* brief in support of Appellees' Response to the Government's Emergency Motion for Stay Pending Appeal. Counsel for all parties have consented to the filing of an *amicus* brief; however, out of an abundance of caution, *Amici* file this motion to request the Court's leave to file an *amicus* brief by 11:00 a.m. on February 6, 2007. *Amici* state as follows:

1. *Amici* are professors of law who are in the course of preparing a brief in a related matter on behalf of a larger group of scholars of federal constitutional law, federal court jurisdiction, immigration and citizenship. *Amici* are concerned about the constitutional implications of the Executive Order issued on January 27, 2017, entitled "Protecting the Nation from Foreign Terrorist Entry into the United States." *Amici* are particularly concerned with the Government's disturbing claim that the Executive Order is effectively beyond the reach of the Constitution and the courts.

2. The proposed *amicus* brief, attached to this motion as Exhibit A, explains how the President's authority to restrict admission to the United States is not unfettered—it is limited by the Constitution.

3. Although it is our understanding that all parties consented to the filing of an *amicus* brief, *amici* file this motion out of an abundance of caution because the filing of an *amicus* brief in connection with a motion for a stay is not clearly authorized under the Federal Rules of Appellate Procedure or this Court's Rules, even when the parties have consented to this filing.

4. Moreover, with respect to *amicus* briefs filed in connection with initial consideration of a case on the merits, Rule 29(a)(6) of the Federal Rules of Appellate Procedure requires that *amicus* briefs be filed no later than 7 days after the principal brief of the party being supported is filed. In light of the expedited briefing schedule on the Government's emergency motion, it is unclear when all *amicus* briefs are due. The Court ordered that Appellees file their opposition by 1:00 a.m. on February 6, 2017, and Appellants file their reply by 3:00 p.m. on February 6, 2017. Out of an abundance of caution, *amici* request leave to file their *amicus* brief within 10 hours after Appellees' brief was filed, by 11:00 a.m. on February 6, 2017.

CONCLUSION

Amici respectfully request that this Court grant them leave to file the *amicus* brief attached hereto as Exhibit A.

Dated: February 6, 2017

Respectfully submitted,

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BRIEF OF CONSTITUTIONAL SCHOLARS AS *AMICI CURIAE* IN SUPPORT OF APPELLEES

(Filed With Consent of All Parties)

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INTERESTS OF *AMICI CURIAE*

Amici curiae are professors of law who are in the course of preparing a brief in another case also challenging the Executive Order, and are working on behalf of scholars of federal constitutional law, federal court jurisdiction, immigration and citizenship.[1] In light of the claims advanced in this case about Executive authority, *Amici* believe that it will be helpful to the parties and the court to provide a brief overview of the governing legal principles.

ARGUMENT

With the consent of the parties, *Amici* bring to the Court's attention that they are in the midst of preparing an amicus brief on behalf of constitutional scholars, including those expert in the law of the jurisdiction of the federal courts and of citizenship and immigration, to be filed under the current schedule on February 13, 2017 in *Darweesh* v. *Trump*, No. 17-480 (E.D.N.Y. 2017). Having learned of the briefing schedule in *Washington* v. *Trump*, No. 17-35105 (9th Cir. 2017), *Amici* believe it proper to provide this Court with a brief overview of the research now underway and of the concerns that have prompted them to provide an amicus brief.

[1] Pursuant to Federal Rule of Appellate Procedure 29(a)(4)(E), *Amici* hereby certify that (a) no party's counsel authored any part of this brief, (b) no party or party's counsel contributed money that was intended to fund the preparation or submission of this brief, and (c) no person other than *Amici* or their counsel contributed money that was intended to fund the preparation or submission of this brief. All parties have consented to the filing of this brief.

Specifically, *Amici* wish to address the contention that the political branches' control over immigration is "plenary" and that the Executive consequently has "unreviewable authority" to suspend the admission of "any class of aliens"—even, apparently, if the Executive's selection of a particular class were to reflect invidious discrimination based on religion, race, or sex. That contention goes too far: While the Executive's actions in this area are indeed entitled to deference, important constitutional obligations remain, as does a critical role for the courts. Moreover, our constitutional history cautions strongly against proceeding with haste, and without careful factual development, in addressing Executive claims that national security requires it to target sets of individuals of particular nationalities. Such haste has more than once resulted in decisions now widely recognized as serious errors and sources of deep regret.

In this case, the unusual selection of seven countries whose nationals are precluded from using the valid visas that they have or from obtaining visas for a period of time, coupled with the apparently extensive evidence that the seven countries were selected because of the religion of their citizens, raises a host of constitutional questions as to the rationality of the Executive Order and as to its discriminatory impact. Further, the Executive Order has caused great disorder through its abrupt and dramatic disruption of the specific federal statutory scheme in place. In addition to dislodging layers of law and regulation, the Executive

Order has had a substantial impact on states, citizens, and on non-citizens, and specifically those who—through the issuance of visas—have entered into a significant relationship with the United States, which has found them eligible for entry. The assertion of unfettered Executive authority, resting in part on congressional legislation from a 1952 statute, is breathtaking in its disruption of the procedures in place, and would authorize even what in the domestic context would be recognized as the most clearly unlawful invidious discrimination.

Amici's effort as scholars is to understand the law and to identify its parameters. Their concern is that the Government's claim of unlimited authority is an inaccurate and incomplete picture of the law. As noted, *Amici* are preparing a more detailed submission for filing next week. Here *Amici* provide a brief overview of multiple ways in which a claim of blanket and unquestionable authority fails under American constitutional law.

1. As a descriptive matter, the federal courts *have* repeatedly reviewed issues related to immigration—from exclusion to detention to deportation. Notwithstanding occasionally overbroad descriptions of legislative and executive authority over immigration—or antiquated precedents embodying limited Nineteenth Century views of constitutional rights—it has long been settled, in a range of contexts, that the political branches of the federal government do not have unlimited power over immigrants and immigration. For example, the Supreme

Court has insisted on constitutional limits on the federal government's power to prevent resident non-citizens from returning to the country after traveling abroad, *see Kwong Hai Chew v. Colding*, 344 U.S. 590 (1953); to detain individuals pending their removal from the country, *see Zadvydas v. Davis*, 533 U.S. 678 (2001); and to deny judicial review to non-citizens held outside the United States as "enemy combatants," *see Boumediene v. Bush*, 553 U.S. 723 (2008).

Indeed, the few long-ago holdings that endorsed discriminatory legislation governing immigration now provide evidence of a profoundly misguided and morally indefensible period in American immigration law. The Chinese Exclusion cases of the late nineteenth century, sustaining the exclusion and removal of Chinese nationals, *Chae Chan Ping v. U.S.,* 130 U.S. 581 (1889) (sustaining exclusion of Chinese nationals); *Fong Yue Ting v. U.S.*, 149 U.S. 698 (1893) (sustaining deportation of Chinese nationals), pre-date the recognition of the central constitutional protections recognized in the Civil Rights era and beyond. *See, e.g.,* Peter Schuck, *The Transformation of Immigration Law,* 84 Colum. L. Rev. 1, 4 (1984) (describing demise of plenary power doctrine in light of emerging equal protection and due process norms); Hiroshi Motomura, *Immigration Law After a Century of Plenary Power: Phantom Constitutional Norms and Statutory Interpretation*, 100 Yale L.J. 545 (1990) (same); T. Alexander Aleinikoff, *Detaining Plenary Power: The Meaning and Impact of*

Zadvydas v. Davis, 16 Geo. Immigr. L.J. 365 (2002) (describing "radical shift" in immigration law to extend due process protections to aliens); Gabriel J. Chin, *Segregation's Last Stronghold: Race Discrimination and the Constitutional Law of Immigration,* 46 UCLA L. Rev. 1, 54-58 (1998) (showing how due process and equal protection norms trump plenary power in recent immigration cases); Stephen H. Legomsky, *Immigration Law and the Principle of Plenary Congressional Power*, 1984 Sup. Ct. Rev. 255 (1984) (identifying departures from plenary power principles as rooted in equality and due process norms). These cases and the racially discriminatory laws they upheld have become the subject of universal condemnation. *See, e.g.,* Louis Henkin, THE AGE OF RIGHTS 137 (1990) ("The Chinese Exclusion Case—its very name an embarrassment—should join the relics of a bygone, unproud era").

Thus, during the last several decades, the breadth of the "plenary power" notion that arose from the Chinese exclusion era cases has come to be understood as located in Nineteenth Century visions of sovereignty that predate the elaboration in the Twentieth Century of the due process and equal protection protections of the constitution. *See generally* Sarah H. Cleveland*, Powers Inherent in Sovereignty: Indians, Aliens, Territories, and the Nineteenth Century Origins of Plenary Power Over Foreign Affairs*, 81 Tex. L. Rev. 1 (2002). The Department of Justice's representation of the President's power under 8 U.S.C. § 1182(f) as unreviewable

by Article III courts reflects an untenably broad view of Executive authority and an equally untenable dismissal of any role for the federal courts in enforcing the Constitution. The Supreme Court has rejected that approach in prior cases and has taken a more measured approach to the plenary power doctrine in the immigration field.

In no case since the Chinese Exclusion cases has the Supreme Court blessed the sort of discriminatory immigration rule at issue there. To be sure, the government observes that every President over the last thirty years has issued at least one Executive Order pursuant to 8 U.S.C. § 1182(f), and that many of those orders excluded aliens on the basis of nationality. However, those orders were targeted restrictions on individuals that had engaged in culpable conduct—not categorical exclusions of broad classes deemed to pose a risk, as here—and, critically, none of the previous executive orders has discriminated on the basis of religion. *See* Congressional Research Service, *Executive Authority to Exclude Aliens: In Brief*, at 6-10 (Jan. 23, 2017) (listing and describing all Executive Orders issued pursuant to Section 1182(f) and observing that "in no case to date, though, has the Executive purported to take certain types of action, such as . . . explicitly distinguishing between categories of aliens based on their religion.").

Further, the courts have steadily retreated from the notion that immigration decisions are intrinsically free from scrutiny. For example, in *Kleindienst v.*

Mandel, 408 U.S. 753 (1972), the Court declined to hold that the Executive may exclude an alien even absent a "facially legitimate and bona fide reason." *Id.* at 770. Similarly, in *Fiallo v. Bell*, 430 U.S. 787 (1977), the Court recognized a "limited judicial responsibility under the Constitution *even with respect to the power of Congress to regulate the admission and exclusion of aliens*…." *Id.* at 793 n.5 (emphasis added). More recently, in *Kerry v. Din*, the Court considered whether the denial of a visa to a non-citizen non-visa holding spouse of a citizen required additional review under the *Kleindienst v. Mandel* principle. 135 S. Ct. 2128, 2139 (2015). The controlling opinion of Justice Kennedy, joined by Justice Alito, held that the reasons provided sufficed only because the "facially legitimate and bona fide" standard of *Kleindienst* was satisfied. *Id.* at 2140.

Kerry is consistent with the Court's modern plenary power jurisprudence. Since *Kleindienst* and *Fiallo* were decided, the Supreme Court has consistently been reluctant to insulate immigration legislation and Executive action from constitutional scrutiny. *See, e.g., Landon v. Plasencia,* 459 U.S. 21, 32-35, 37 (1982) (holding that exclusion procedures for lawful permanent residents returning from brief trips abroad must comply with due process); *INS v. Chadha,* 462 U.S. 919, 940-41 (1983) (invalidating a provision authorizing one house of Congress to veto a decision by the Executive to grant relief from deportation, stating that although "[t]he plenary authority of Congress over aliens . . . is not open to

question," the Court must inquire into "whether Congress has chosen a constitutionally permissible means of implementing that power"); *Zadydas,* 533 U.S. at 690 (rejecting government's argument that the plenary power doctrine justified an expansive construction of statute authorizing immigration detention, emphasizing that a "statute permitting indefinite detention of an alien would raise a serious constitutional problem"); *INS v. St. Cyr,* 533 U.S. 289, 304 (2001) (construing provision of immigration statute to avoid Suspension Clause concerns); *Boumediene,* 553 U.S. at 771 (holding that statute applicable to non-citizens detained at Guantanamo was unconstitutional, stating that "[i]f the privilege of habeas corpus is to be denied to the detainees now before us, Congress must act in accordance with the requirements of the Suspension Clause"). In short, the "border" is an important site in American law, but it is both constructed through legal regimes (shifting authority both on and off shore) and governed by law. *See* Judith Resnik, *"Within its Jurisdiction": Moving Boundaries, People, and the Law of Migration*, 160 Proceedings of the American Philosophical Society 117 (2016).

2. In applying *Kleindienst*, the Supreme Court has never held that an individual's race, religion, or national origin constitutes a sufficiently "facially legitimate and bona reason" for excluding or deporting an alien. Indeed, in *Reno v. Arab-American Anti-Discrimination Committee*, 525 U.S. 471, 492 (1999), the Court suggested that reversal would be appropriate in cases of "outrageous"

discrimination. In *Jean v. Nelson*, 472 U.S. 846 (1985), the Supreme Court exercised review over the denial of parole to Haitian arrivals pursuant to a statute delegating to the Attorney General authority to grant parole to undocumented aliens arriving in the United States "in his discretion." 8 U.S.C. § 1182(d)(5)(A). In that case, plaintiffs argued that the new policy of denying parole to all undocumented aliens violated their equal protection rights because it discriminated against them because they were black and Haitian. Reversing the Eleventh Circuit's conclusion that the plenary power permitted the executive branch to discriminate on the basis of national-origin in making parole decisions, the Supreme Court employed the doctrine of constitutional avoidance to construe the statute and its implementing regulations to preclude such consideration of national origin.

Further, the lower courts have tolerated such national origin classifications only in narrow circumstances. In *Narenji v. Civiletti,* 617 F.2d 745 (D.C. Cir. 1979), during the height of the Iran hostage crisis, the D.C. Circuit sustained a regulation requiring Iranian students to undergo special registration procedures. More recently, in the aftermath of the September 11 terrorist attacks, a number of circuit courts sustained a similar program requiring nationals of various countries to undergo special registration procedures. *See, e.g., Mukasey v. Rajah*, 544 F.3d 427 (2d Cir. 2008). Those cases are a far cry from the present situation in

which individuals who held valid visas, and some of whom had worked and lived in the United States, and have family members here, were abruptly told they were no longer permitted to be here—and also told that coming to the place they understood to be their current home put them at risk of new penalties. In addition to the substantive constitutional prohibitions this implicates, it also raises substantial procedural due process problems by excluding these visa holders without any individualized determination, based solely on gross generalizations based on their nationality and religion.

3. Additional constraints on plenary powers, even when invoked in the context of national security and safety, have come from the structure of "Our Federalism." As is familiar, the Supreme Court recently affirmed the federal government's exclusive authority to criminalize violations of the immigration laws. *See Arizona v. United States*, 132 S. Ct. 2492, 2501 (2012). But the exercise of that authority provides another example of limits on claims of plenary powers and of unfettered discretion when allegations of national security are made. The federal authority over immigration does not translate into the ability to require states to participate in all federal immigration programs, as is reflected in decisions by lower court decisions addressing the interaction between immigration powers and the non-commandeering principle of *Printz v. United States*, 521 U.S. 898 (1997), as well as the impact of the Fourth and the Fourteenth Amendments. An

example comes from the Third Circuit decision in *Galarza v. Szalczyk*, 745 F.3d 634 (3d Cir. 2014), brought by a citizen who had been held pursuant to an immigration detainer on suspicion of being an illegal alien. The county claimed that the detainer was mandatory, but the court held that such an interpretation would violate the Tenth Amendment prohibition against commandeering. As the Third Circuit explained, "Under the Tenth Amendment, immigration officials may not order state and local officials to imprison suspected aliens subject to removal at the request of the federal government. Essentially, the federal government cannot command the government agencies of the states to imprison persons of interest to federal officials." *Id.* at 643. Thus, the court read the relevant federal statute to avoid compelling detention. Congressional statutes likewise invite state participation in programs such as "secure communities" but are respectful of states' role in this federalism.

In short, although the Executive has substantial power to regulate immigration, it is not the unlimited open-ended charter, such as that described in the filings by the Department of Justice in the present case. Constitutional checks, both structural and substantive, restrain its use. The federal courts have repeatedly played a role to ensure that restrictions imposed on immigration are at the very least based on "facially legitimate and bona fide reason."

4. Deployment of the term "national security" has not and cannot stop

appropriate judicial inquiry into the legality of, or the basis for, a particular government action. The role for courts is especially relevant here, as the Executive Order has been explained in the press as animated by views that link together individuals of a particular religion, faith and national origin with blanket allegations of terrorist efforts.

On the record provided thus far, the Executive Order appears to lack a rational basis for such accusations. Rationality is the touchstone of constitutional governance, just as the exercise of arbitrary power is its antithesis. At a minimum, serious questions have been raised about the factual basis for the Executive Order. The religious animus that has been alleged to underlie the order, if proved, would be a sad exemplar of an arbitrary basis for government action.

Moreover, since the terrible events of September 11, courts have repeatedly responded to issues of national security and addressed the merits of claims of individuals subjected to government orders flowing from 9/11. In those cases, the Government regularly argued that the political branches could not be checked by the judiciary where they were responding to "national security" concerns. Despite such arguments—which are echoed in the Department of Justice briefing in this case—the judiciary has several times discharged its constitutional obligation. *See Hamdi v. Rumsfeld*, 542 U.S. 507 (2004). In short, Executive claims based on national security are properly entitled to a significant measure of deference, but

that deference is not a blank check. The courts retain a critical role in ensuring that there is a basis for such claims and that the action so justified does not transgress constitutional requirements.

5. Several of the constitutional questions raised by the Executive Order (and the plaintiffs' legal challenge thereto) are as important as they are unsettled, and thus demand careful and deliberate consideration—rather than a rush to judgment. The district court's TRO quelled the litigation chaos and has now permitted an opportunity for the development of the facts and for the evaluation of the legal principles at stake, restoring a *status quo* that the Government has not shown to pose any imminent risk of harm, or, indeed, to have ever resulted in any of the harms said to justify the Executive Order.

Several times in our history, the Government has pressed for courts to defer to claims of national security and of threats identified with people from particular nationalities, with often tragic results. *Ex Parte Quirin*, 317 U.S. 1 (1942) and *Korematsu v. United States*, 323 U.S. 214 (1944) are examples of undue hasty and tragic approval of government activity justified in the name of national security and focused against individuals based on national origin. *Quirin*—decided in 1942 and addressing the question of the permissibility of a military tribunal to try alleged German saboteurs—has come to stand for an important proposition, much invoked after 9/11: that, despite a president's claim in an executive order to divest

courts of jurisdiction, courts retained habeas jurisdiction. However, as recounted in detail by Carlos Vázquez, when making that decision in a few short days, the Court abandoned its deliberative practices and decided the merits, resulting in executions that came before the Court's opinion was written. *See* Carlos M. Vázquez, *"Not a Happy Precedent": The Story of* Ex parte Quirin, in FEDERAL COURTS STORIES 219, 219-246 (Vicki Jackson and Judith Resnik eds., Foundation Press, 2010). As the title of that book chapter reflects, Justice Frankfurter famously described *Quirin* as "not a happy precedent." *See also* Henry M. Hart, Jr. and Herbert Weschsler, THE FEDERAL COURTS AND THE FEDERAL SYST*em* 336, 1239 n.5 (1953).

Quirin is not the only instance in which courts have failed on the merits to see critical issues of liberty and constitutional commitments to the rule of law. *Korematsu* is another such instance, and one for which Congress has issued formal apologies to those whose internment the Court approved. Such precedents are viewed now as an "anti-canon" – as examples of what U.S. law no longer understands to be constitutional. *See* Jamal Greene, *The Anticanon*, 125 Harv. L. Rev. 380, 396, 456-60 (2011).

The Chinese Exclusion cases are similarly sources of national embarrassment, as is the de-nationalization of U.S. citizen women who married citizens of certain countries. Nancy F. Cott, *Marriage and Women's Citizenship in*

the United States, 1830-1934, 103 Am. Hist. Rev. 1140, 1458 (Dec. 1998). Further, while the Supreme Court's decisions in *Knauff* and *Mezei* are often invoked as the basis for plenary powers, the Supreme Court has long since retreated from such notions of unfettered and unreviewable government power in the immigration sphere. *See also* Charles D. Weisselberg, *The Exclusion and Detention of Aliens: Lessons From the Lives of Ellen Knauff and Ignatz Mezi*, 143 U. Pa. L. Rev. 933, 938 (1995).

* * *

In short, at issue in cases now pending around the United States are questions that go to the heart of American constitutional law and to the respective roles of the branches of the federal government and of the states. Constitutional history demonstrates the importance of deliberation to ensure that rulings respect individual rights and liberties, and appreciate the contributions, concerns, and place in the federal system of state governments. Courts are more than needed to insist on fact-based analysis as they assess whether the legislature or Executive has run afoul of constitutional and statutory commitments that prohibit certain forms of discrimination and have breached the American law of justice.

CONCLUSION

The Court should deny the Appellants' motion for stay pending appeal.

Dated: February 6, 2017

Respectfully submitted,

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List of *Amici* constitutional scholars[2]:

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Judith Resnik, Arthur Liman Professor of Law, Yale Law School

Stephen I. Vladeck, Professor of Law, University of Texas School of Law

Burt Neuborne, Norman Dorsen Professor of Civil Liberties and Founding Legal Director of the Brennan Center for Justice, New York University School of Law

[2] Institutional affiliations are provided for identification purposes only; this brief does not purport to represent the institutional views of any entity with which *Amici* are affiliated.

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 February 6, 2017. 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: February 6, 2017

/s/ Rasha Gerges Shields

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Form 8. Certificate of Compliance Pursuant to 9th Circuit Rules 28-1.1(f), 29-2(c)(2) and (3), 32-1, 32-2 or 32-4 for Case Number 17-35105

Note: This form must be signed by the attorney or unrepresented litigant *and attached to the end of the brief.*

I certify that (*check appropriate option*):

☐ This brief complies with the length limits permitted by Ninth Circuit Rule 28-1.1.
The brief is [ ] words or [ ] pages, excluding the portions exempted by Fed. R. App. P. 32(f), if applicable. The brief's type size and type face comply with Fed. R. App. P. 32(a)(5) and (6).

☒ This brief complies with the length limits permitted by Ninth Circuit Rule 32-1.
The brief is [3,524] words or [ ] pages, excluding the portions exempted by Fed. R. App. P. 32(f), if applicable. The brief's type size and type face comply with Fed. R. App. P. 32(a)(5) and (6).

☐ This brief complies with the length limits permitted by Ninth Circuit Rule 32-2(b).
The brief is [ ] words or [ ] pages, excluding the portions exempted by Fed. R. App. P. 32(f), if applicable, and is filed by (1) ☐ separately represented parties; (2) ☐ a party or parties filing a single brief in response to multiple briefs; or (3) ☐ a party or parties filing a single brief in response to a longer joint brief filed under Rule 32-2(b). The brief's type size and type face comply with Fed. R. App. P. 32(a)(5) and (6).

☐ This brief complies with the longer length limit authorized by court order dated [ ]
The brief's type size and type face comply with Fed. R. App. P. 32(a)(5) and (6). The brief is [ ] words or [ ] pages, excluding the portions exempted by Fed. R. App. P. 32(f), if applicable.

☐ This brief is accompanied by a motion for leave to file a longer brief pursuant to Ninth Circuit Rule 32-2 (a) and is [ ] words or [ ] pages, excluding the portions exempted by Fed. R. App. P. 32 (f), if applicable. The brief's type size and type face comply with Fed. R .App. P. 32(a)(5) and (6).

☐ This brief is accompanied by a motion for leave to file a longer brief pursuant to Ninth Circuit Rule 29-2 (c)(2) or (3) and is [ ] words or [ ] pages, excluding the portions exempted by Fed. R. App. P. 32(f), if applicable. The brief's type size and type face comply with Fed. R. App. P. 32(a)(5) and (6).

☐ This brief complies with the length limits set forth at Ninth Circuit Rule 32-4.
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Signature of Attorney or Unrepresented Litigant: /s/ Rasha Gerges Shields

Date: Feb 6, 2017

("s/" plus typed name is acceptable for electronically-filed documents)