

UNITED STATES COURT OF APPEALS

SEP 18 2017

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

EVELYN SINENENG-SMITH,

Defendant-Appellant.

No. 15-10614

DC No. 5:10 cr-00414 RMW
ND Cal., San Jose

ORDER

Before: REINHARDT, TASHIMA, and BERZON, Circuit Judges.

Defendant was convicted of violations of 8 U.S.C. § 1324(a)(1)(A)(iv). The case has been fully briefed, argued and taken under submission. Subsequent to submission, however, the panel has determined that the decision of the issues raised by this case would be significantly aided by further briefing. The court therefore invites the Federal Defender Organizations of the Ninth Circuit (as a group), and the Immigrant Defense Project and the National Immigration Project of the National Lawyers Guild to file *amicus* briefs on the following issues:

1. Whether the statute of conviction is overbroad or likely overbroad under the First Amendment, and if so, whether any permissible limiting construction would cure the First Amendment problem?

2. Whether the statute of conviction is void for vagueness or likely void for vagueness, either under the First Amendment or the Fifth Amendment, and if so, whether any permissible limiting construction would cure the constitutional vagueness problem?

3. Whether the statute of conviction contains an implicit *mens rea* element which the Court should enunciate. If so: (a) what should that *mens rea* element be; and (b) would such a *mens rea* element cure any serious constitutional problems the Court might determine existed?

Amici are, of course, not restricted to briefing the above-specified topics and may brief such further issues as they, respectively, believe the law and the record calls for.

Any invited *amicus* brief shall be filed within 30 days of the date of this order.

Counsel for the parties may, but are not required to, file supplemental briefs limited to responding to any and all *amicus/amici* briefs. Any supplemental brief shall be filed within 21 days after service of the *amicus/amici* brief(s). Requests by the parties for extensions of time will not be viewed favorably by the Court.

All briefs filed under this order shall comply with the length requirement of Fed. R. App. P. 29(a)(5).

The Clerk shall serve this order on each of the amicus organizations named in this order and shall furnish each organization with a copy of all Excerpts of Record and copies of the parties' Briefs.

This order shall not preclude any other interested organizations or groups from filing amicus or amici briefs on either side. Any such filings shall be subject to the same conditions as applied to the amici specified above.