

**In The United States Court of Appeals
for the Ninth Circuit**

CARLOS ALBERTO BRINGAS-RODRIGUEZ,
AKA Patricio Iron-Rodriguez,
Petitioner,

v.

LORETTA E. LYNCH,
ATTORNEY GENERAL,
Respondent.

ON A PETITION FOR REVIEW OF AN ORDER OF
THE BOARD OF IMMIGRATION APPEALS

**THE UNITED NATIONS HIGH COMMISSIONER
FOR REFUGEES' *AMICUS CURIAE* BRIEF IN SUPPORT OF
PETITIONER'S PETITION FOR PANEL REHEARING OR
REHEARING *EN BANC***

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INTEREST OF *AMICUS CURIAE*

The Office of the United Nations High Commissioner for Refugees (“UNHCR”)¹ has a direct interest in this matter as the organization entrusted by the United Nations General Assembly with responsibility for providing international protection to refugees and others of concern, and together with national governments, for seeking permanent solutions for refugees’ problems. Statute of the Office of the UNHCR ¶ 1, U.N. Doc. A/RES/428(v) (Dec. 14, 1950). UNHCR fulfills its mandate by, *inter alia*, “[p]romoting the conclusion and ratification of international conventions for the protection of refugees, supervising their application and proposing amendments thereto.” *Id.*, ¶ 8(a). UNHCR’s supervisory responsibility is also reflected in the Preamble and Article 35 of the *Convention Relating to the Status of Refugees*, July 28, 1951, 189 U.N.T.S. 137 (“1951 Convention”)² and Article 2 of the *Protocol Relating to the Status of Refugees*, Jan. 31, 1967, 606 U.N.T.S. 267 (“1967 Protocol”),³ obligating States to cooperate with UNHCR in the exercise of its mandate and to facilitate its supervisory role.

¹ UNHCR represents that Petitioner consents to this filing, while Respondent takes no position. Further, no person or entity other than UNHCR and its outside counsel authored this brief or provided any funding related to it.

² <<http://www.unhcr.org/3b66c2aa10.html>>

³ <<http://www.unhcr.org/3b66c2aa10.html>>

UNHCR, which has won two Nobel Peace Prizes for its work, currently cares for 54.9 million people affected by forced displacement in some 125 countries. The views of UNHCR are informed by its more than six decades of experience supervising the treaty-based system of refugee protection. UNHCR’s interpretation of the provisions of the *1951 Convention* and its *1967 Protocol* are both authoritative and integral to promoting consistency in the global regime for the international protection of refugees. Accordingly, “[the] Supreme Court has consistently turned [to UNHCR] for assistance in interpreting [U.S.] obligations under the Refugee Convention.” *N-A-M v. Holder*, 587 F.3d 1052, 1061–62 (10th Cir. 2009) (Henry, J., concurring) (per curiam) (collecting cases).

UNHCR’s supervisory responsibility is exercised in part by the issuance of interpretative guidelines on the meaning of international refugee instruments, in particular the *1951 Convention* and its *1967 Protocol*. The UNHCR *Handbook on Procedures and Criteria for Determining Refugee Status*, U.N. Doc. HCR/IP/4/Eng/REV.1 (1979, re-edited Jan. 1992; reissued Dec. 2011) (“*Handbook*”)⁴ represents the first comprehensive such guidance. At the request of States, including the United States, the *Handbook* has subsequently been complemented by a number of UNHCR *Guidelines on International Protection*.

⁴ <<http://www.unhcr.org/3d58e13b4.html>>

UNHCR has a specific interest in this matter because it has recently issued guidelines on claims based on sexual orientation and/or gender identity, which would include the claim at issue here. See UNHCR *Guidelines on International Protection No. 9: Claims to Refugee Status based on Sexual Orientation and/or Gender Identity within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol Relating to the Status of Refugees*, U.N. Doc. HCR/GIP/12/09 (Oct. 23, 2012) (“*Sexual Orientation Guidelines*” or “*Guidelines*”).⁵ That guidance is relevant to the interpretation of the *1951 Convention* and its *1967 Protocol*, as implemented in U.S. law at section 101(a)(42) of the Immigration and Nationality Act (INA), 8 U.S.C. § 1101(a)(42) (2006).

UNHCR also has a specific interest in this matter because the panel majority in the case under review relied in part on statements by the United Nations, including one by UNHCR, in denying Petitioner’s claim. See slip op. at 14 n.5. UNHCR respectfully seeks to assist the Court by correcting any misunderstanding or lack of clarity with respect to UNHCR’s assessment of the experiences of lesbian, gay, bisexual, transgender, and intersex (“LGBTI”) individuals in Mexico and by providing a more comprehensive account of the conditions presently facing LGBTI individuals in Mexico.

⁵ <<http://www.unhcr.org/509136ca9.pdf>>

Consistent with its approach in other cases, UNHCR takes no position directly on the merits of Petitioner’s claim.

SUMMARY OF ARGUMENT

This case presents the question of how to weigh evidence of improving conditions in an LGBTI asylum seeker’s country of origin. This Court should answer that question in a manner consistent with the United States’ binding obligations under the *1951 Convention* and its *1967 Protocol*, as implemented in U.S. law.

Although LGBTI individuals the world over continue to suffer from serious human rights abuses, some countries, including Mexico, have taken steps toward positive change. But under the *1951 Convention* and the *1967 Protocol*, the question is not whether some progress is being made or whether some protections exist. Rather, the question is whether the State is either unable or unwilling in law and in practice to provide effective protection against persecution and serious harm to LGBTI individuals. And the answer reveals, regrettably, that too often a State’s *de jure* commitments to LGBTI protection do not align with the *de facto* reality of whether the State is able and willing to provide protection from those who persecute LGBTI individuals within its borders. Previous decisions of this Court recognize as much. *See, e.g., Vitug v. Holder*, 723 F.3d 1056, 1066 (9th Cir. 2013); *Avendano-Hernandez v. Lynch*, 800 F.3d 1072, 1081–82 (9th Cir. 2015).

To reconcile a State's legal obligations concerning refugee protection with the realities faced by LGBTI individuals, it is incumbent on adjudicators tasked with making refugee status determinations to take a comprehensive view of multiple independent and reliable sources to understand the situation in an applicant's country of origin. As is relevant here, UNHCR has not taken the position that LGBTI individuals fleeing Mexico cannot have a well-founded fear of persecution. *See slip op.* at 14 n.5. Nor do the other sources cited in that footnote, if interpreted consistently with international standards, support such a conclusion.

ARGUMENT

I. THE UNITED STATES IS BOUND BY THE *1951 CONVENTION* AND ITS *1967 PROTOCOL* RELATING TO THE STATUS OF REFUGEES.

The *1951 Convention* and its *1967 Protocol* are the key international instruments governing the protection of refugees and address who is a refugee, his or her rights and responsibilities, and the legal obligations of States. The *1967 Protocol* binds parties to comply with the substantive provisions of Articles 2 through 34 of the *1951 Convention* with respect to “refugees” as defined in Article 1A(2) of the *1951 Convention*. *1967 Protocol* Art. 1 ¶¶ 1–2. The *1967 Protocol* removes the geographical and temporal limitations from the *1951 Convention* definition, thus universalizing the refugee definition. *Id.* ¶¶ 2–3. The core of both the *1951 Convention* and its *1967 Protocol* is the obligation to provide effective protection to refugees and to safeguard the principle of non-refoulement, which is the obligation on States not to return a refugee to any country where he or she would face persecution or a real risk of serious harm. In 1968, the United States acceded to the *1967 Protocol*,⁶ thereby binding itself to the international refugee protection regime and the definition of a refugee in the *1951 Convention*.

⁶ H.R. Conf. Rep. No. 96-781, at 19 (1980), reprinted in 1980 U.S.C.C.A.N. 160; H.R. Rep. No. 96-608, at 9 (1979); S. Exec. Rep. No. 14, 90th Cong., 2d Sess., 4 (1968).

Congress enacted the Refugee Act of 1980, 94 Stat. 102, expressly to “bring United States refugee law into conformance with the 1967 United Nations Protocol Relating to the Status of Refugees,” *INS v. Cardoza-Fonseca*, 480 U.S. 421, 436–37 (1987) (citing H.R. Rep. No. 96-608 at 9 (1979)). As the Supreme Court has recognized, “one of Congress’ primary purposes’ in passing the Refugee Act was to implement the principles agreed to in the 1967 [Protocol]” *INS v. Aguirre-Aguirre*, 526 U.S. 415, 427 (1999) (quoting *Cardoza-Fonseca*, 480 U.S. at 436–37). The Refugee Act thus serves to bring the United States into compliance with its international obligations under the *1967 Protocol*, and through this Protocol the *1951 Convention*, and should be interpreted and applied in a manner consistent with those instruments.

II. UNHCR’S AUTHORITATIVE GUIDANCE ADDRESSES REFUGEE CLAIMS BROUGHT BY LGBTI INDIVIDUALS, INCLUDING EVIDENCE OF IMPROVING COUNTRY CONDITIONS.

A. *The Handbook and Sexual Orientation Guidelines Recognize that LGBTI Individuals Are Entitled to Protection Under the 1951 Convention and its 1967 Protocol.*

Over the 60 years of its existence, UNHCR has issued guidance on the interpretation of the refugee definition. The first of these is the UNHCR *Handbook*, which is internationally recognized as an important source of interpretation of international refugee law. It was prepared in 1979 at the request of certain member States, including the United States, to provide guidance to governments in applying the terms of the

1951 Convention and its *1967 Protocol*. The Supreme Court has determined that, although the *Handbook* is not legally binding on U.S. officials, it nevertheless provides “significant guidance” in construing the *1967 Protocol* and in giving content to the obligations established therein. *See Cardoza-Fonseca*, 480 U.S. at 439 n.22; *see also Matter of S-P-*, 21 I. & N. Dec. 486, 492 (B.I.A. 1996).

In 2002, UNHCR began issuing *Guidelines on International Protection* to complement the interpretative guidance in the *Handbook*. This Court, among others, has expressly relied on these interpretations as “provid[ing] significant guidance for issues of refugee law.” *Mohammed v. Gonzales*, 400 F.3d 785, 798 (9th Cir. 2005). As relevant here, in 2010, UNHCR convened experts to address claims to refugee status based on sexual orientation and/or gender identity. This work resulted in the *Sexual Orientation Guidelines*, which provide guidance on the determination of the refugee status of individuals on the basis of their sexual orientation and/or gender identity, with a view to ensuring a proper and harmonized interpretation of the refugee definition through this lens. *See Sexual Orientation Guidelines*, ¶ 4.

As the *Sexual Orientation Guidelines* make clear, a proper analysis of whether an LGBTI applicant is a refugee must begin from the premise that LGBTI individuals deserve—and are entitled under international law—to live free of persecution as who they are. *See id.*, ¶ 12. Thus, the *Guidelines* recognize that people fleeing persecution for

reasons of their sexual orientation and/or gender identity can qualify as refugees under the *1951 Convention* and its *1967 Protocol*. See *id.*, ¶ 1. More specifically, the *Guidelines* explain that “[a]n applicant’s sexual orientation and/or gender identity can be relevant to a refugee claim where he or she fears persecutory harm on account of his or her actual or perceived sexual orientation and/or gender identity, which does not, or is seen not to, conform to prevailing political, cultural or social norms.” *Id.*, ¶ 13.

Regrettably, the ability to live as oneself without fear of persecution remains a distant aspiration for too many LGBTI individuals in too many countries. As stated in the *Guidelines*, “[i]t is widely documented that LGBTI individuals are the targets of killings, sexual and gender-based violence, physical attacks, torture, arbitrary detention, accusations of immoral or deviant behaviour, denial of the rights to assembly, expression and information, and discrimination in employment, health and education in all regions around the world.” *Id.*, ¶ 2. Persecution may be compounded by “sex, age, nationality, ethnicity/race, social or economic status and HIV status.” *Id.*, ¶ 3. And “[d]ue to these multiple layers of discrimination, LGBTI individuals are often highly marginalized in society and isolated from their communities and families.” *Id.*

B. The *Sexual Orientation Guidelines* Make Clear that Evidence of Improved Country Conditions for LGBTI Individuals Does Not Suffice To Reject an Asylum Claim.

The alarming conditions faced by LGBTI individuals the world over stand side-by-side with welcome and necessary change in some countries. But under the *1951 Convention* and the *1967 Protocol*, the question is not whether some progress is being made or whether some protections exist. See *Sexual Orientation Guidelines*, ¶ 35. Rather, because the *1951 Convention* and its *1967 Protocol*, as well as the 1980 Refugee Act,⁷ recognize that persecution can emanate from both State and non-State actors,⁸ the question is whether the State is either unable or unwilling to provide effective protection against harm to LGBTI individuals. *Id.*

UNHCR has explained that “State protection would normally neither be considered available nor effective . . . where the police fail to respond to requests for protection or the authorities refuse to investigate, prosecute or punish (non-State) perpetrators of violence against LGBTI individuals with due diligence.” *Id.*, ¶ 36; accord *Handbook*, ¶ 65 (noting acts may constitute persecution “if they are knowingly tolerated by the authorities, or if the authorities refuse, or

⁷ The 1980 Refugee Act is codified in the Immigration & Nationality Act (INA) §§ 101(a)(42) & 208, 8 U.S.C. §§ 1101(a)(42) & 1158 (2006).

⁸ The Real ID Act of 2005, Pub. L. No. 109-13, Title I, 119 Stat. 231, 302 amended certain provisions of the INA not applicable here.

prove unable, to offer *effective protection*”) (emphasis added). It is important to recognize in this regard that, “[a]s in other types of claims, a claimant does not need to show that he or she approached the authorities for protection before flight. Rather he or she has to establish that the protection was not or unlikely to be available or effective upon return.” *Sexual Orientation Guidelines*, ¶ 36.

Unfortunately, the answer to the question of whether a State has begun to pass laws to protect LGBTI individuals is not always—and, indeed, is not typically—the same as the answer to the question of whether a State is in fact able and willing to protect LGBTI individuals from persecution. Here, the *Guidelines* are particularly informative:

Where the legal and socio-economic situation of LGBTI people is improving in the country of origin, the availability and effectiveness of State protection needs to be carefully assessed based on reliable and up-to-date country of origin information. The reforms need to be more than merely transitional. Where laws criminalizing same-sex conduct have been repealed or other positive measures have been taken, *such reforms may not impact in the immediate or foreseeable future as to how society generally regards people with differing sexual orientation and/or gender identity.*

Id., ¶ 37 (emphasis added). Thus, the fact that some progress is being made in a given country does not foreclose the reality that LGBTI individuals nonetheless face persecution from which they might need to flee. The *Guidelines* again:

The existence of certain elements, such as anti-discrimination laws or presence of LGBTI organizations and events, do not necessarily undermine the well-foundedness

of the applicant's fear. Societal attitudes may not be in line with the law and prejudice may be entrenched, with a continued risk where the authorities fail to enforce protective laws. *A de facto, not merely de jure, change is required and an analysis of the circumstances of each particular case is essential.*

Id. (emphasis added).

This conclusion is consistent with decisions of this Court. In *Vitug v. Holder*, this Court found that evidence of “gay activism” and laws “to protect homosexuals from [] discrimination” in the Philippines “d[id] not indicate that there is any less violence against gay men or that police have become more responsive to reports of antigay hate crimes.” 723 F.3d 1056, 1066 (9th Cir. 2013).

Indeed, it is often the very increased activism on behalf of LGBTI individuals resulting in positive change which also leads to a concurrent increase in persecution, which a State may be unable or unwilling to address. As UNHCR has found, “[i]ncreased [LGBTI] activism has often been met with attacks on human rights defenders” *Sexual Orientation Guidelines*, ¶ 66. Again, this Court has recently reached the same conclusion, concluding with respect to Mexico that, “the passage of [anti-discrimination] laws has made the situation [there] paradoxically . . . *more* perilous for the [LGBTI] community, as the public and authorities react to their expressions of a form of sexuality that the culture does not embrace and, in fact, fears.” *Avendano-Hernandez*, 800 F.3d 1072, 1081–82 (9th Cir. 2015) (emphasis added) (alterations and internal quotation marks omitted). The panel

highlighted that Mexico’s “highest number of hate crimes in 2010 took place in Mexico City—where arguably the *most* efforts have been made to protect the rights of sexual minorities” *Id.* at 1082.

Thus, some progress does not alone foreclose a well-founded fear of persecution. *See Handbook*, ¶¶ 43, 65; *Sexual Orientation Guidelines*, ¶¶ 35–37. Instead, an adjudicator must take a comprehensive view of multiple independent and reliable sources for country of origin information, if available.⁹

III. UNHCR HAS NOT TAKEN THE POSITION THAT LGBTI INDIVIDUALS FLEEING MEXICO FAIL TO MEET THE REFUGEE DEFINITION.

In the case under review, the panel majority cited two United Nations publications in support of its position that Petitioner had not proven the Mexican government was unable or unwilling to protect him from persecution on account of his sexual orientation. *See slip. op.* at 14 n.5. In UNHCR’s view, it is inaccurate to interpret these statements as representing the view that LGBTI individuals in Mexico are precluded

⁹ UNHCR urges adjudicators to make use of reports of non-governmental and international organizations and to conduct independent research. *See, e.g., Sexual Orientation Guidelines*, ¶ 66; *UNHCR Guidelines on International Protection: Gender-Related Persecution within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol Relating to the Status of Refugees*, U.N. Doc. HCR/GIP/02/01 (May 7, 2002) <<http://www.unhcr.org/3d58ddef4.html>>, ¶ 37.

from establishing that the government is unable or unwilling to protect them.

The majority opinion first cited a press release from UNHCR noting Mexico’s “history of protecting asylum-seekers.” *See* UNHCR, *UNHCR Hails Mexico as New Refugee Law Comes into Force* (Jan. 28, 2011).¹⁰ In that press release—now five years old—UNHCR hailed Mexico for “sign[ing] new legislation on refugees and asylum-seekers into law.” *Id.* The statement, however, only addresses Mexico’s move to codify laws implementing a legal framework for dealing with refugees. Those efforts say little about whether the Mexican government is unable or unwilling to protect certain segments of Mexico’s society from domestic persecution. Nor does it address the status of LGBTI individuals in Mexico. Indeed, American courts have on numerous occasions recognized that Mexican nationals, including LGBTI individuals, may be refugees since that law went into effect in 2011. *See, e.g., Madrigal v. Holder*, 716 F.3d 499 (9th Cir. 2013) (former member of Mexican armed forces); *Cordoba v. Holder*, 726 F.3d 1106 (9th Cir. 2013) (established landowner); *R.R.D. v. Holder*, 746 F.3d 807 (7th Cir. 2014) (honest former Mexican law-enforcement agent); *Avendano-Hernandez*, 800 F.3d 1072 (transgender female). It also bears highlighting that UNHCR has on two occasions since the 2011 statement

¹⁰ <<http://www.unhcr.org/4d42e6ad6.html>>

documented that Mexico has much work to implement the standards referenced in UNHCR’s press release. *See* UNHCR, *Women on the Run: First-Hand Accounts of Refugees Fleeing El Salvador, Guatemala, Honduras and Mexico* 44–45 (2015);¹¹ Submission by the United Nations High Commissioner for Refugees for the Office of the High Commissioner for Human Rights’ Compilation Report—Universal Periodic Review: Mexico (2012).¹²

The majority opinion also relied on a United Nations report—this one from the United Nations High Commissioner for Human Rights—that recounted steps Mexico has taken to attempt to advance protection for LGBTI individuals in that country. *See* slip op. at 14 n.5. As the majority opinion correctly noted, the report to the Human Rights Council observed that Mexico has established a “specialized hate crime prosecution unit[,]” developed a “new judicial protocol to guide adjudication of cases involving human rights violations on grounds of sexual orientation,” implemented specialized training for police officers, and officially designated May 17 as “National Day Against Homophobia.” *Id.* (quoting United Nations High Commissioner for Human Rights, *Discrimination & Violence Against Individuals Based on Their Sexual Orientation & Gender Identity*, ¶¶ 40, 74–75, U.N.

¹¹ <<http://www.unhcr.org/5630f24c6.html>>

¹² <<http://www.refworld.org/pdfid/513d90c52.pdf>>

Doc. A/HRC/29/23 (May 4, 2015)) (Report to the Human Rights Council).¹³

It is important to note, however, that the Report to the Human Rights Council does not address whether the recent measures taken by Mexico have been effective. And it does not address whether an LGBTI individual fleeing persecution in Mexico on account of his sexual orientation and/or gender identity could establish that the Mexican government was unable or unwilling to protect him. Notably, that a country has some specialized police forces does not answer the question of how an LGBTI individual is actually treated or how such individuals may be treated by the balance of the police force. Indeed, as the *Sexual Orientation Guidelines* highlight, “[i]ndividual acts of ‘rogue’ officers may still be considered as State persecution, especially where the officer is a member of the police and other agencies that purport to protect people.” ¶ 34. And while a national day of recognition is a positive step, it is not informative of whether a government has the ability and willingness to protect LGBTI individuals who are targeted for persecution—persecution that can often come from, “paramilitary and rebel groups, as well as criminal gangs and vigilantes, [who] may target LGBTI individuals specifically.” *Id.*, ¶ 35.

¹³ <<http://tinyurl.com/OHCHRreport>>

The Report to the Human Rights Council also did not conclude that the progress that has been made—in Mexico and elsewhere—is sufficient to protect LGBTI individuals from persecution. To the contrary, the report concluded:

The present study is the second on violence and discrimination based on sexual orientation and gender identity requested by the Human Rights Council. *While some progress has been made since the first study in 2011, the overall picture remains one of continuing, pervasive, violent abuse, harassment and discrimination affecting [LGBTI] persons in all regions.* These constitute serious human rights violations, often perpetrated with impunity, indicating that current arrangements to protect the human rights of [LGBTI] persons are inadequate.

Report to the Human Rights Council, ¶ 76 (emphasis added). As is relevant here, in one of its many recommendations, the Report observed that States should ensure “that no one fleeing persecution on grounds of sexual orientation or gender identity is returned to a territory where his or her life or freedom would be threatened.” *Id.*, ¶ 78(i).

It bears highlighting that the Report to the Human Rights Council is not the only recent statement by a United Nations entity concerning LGBTI individuals in Mexico. A 2014 report of a UN Special Rapporteur to Mexico described “an alarming pattern of grotesque homicides of lesbian, gay, bisexual and transgender (LGBT) individuals and broad impunity for their perpetration, sometimes with the suspected complicity of investigative authorities.” *Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions,*

Christof Heyns, Addendum: Mission to Mexico, U.N. Doc. HRC/26/36/Add.1 (Apr. 28, 2014), ¶ 85.¹⁴ The Special Rapporteur found that “[k]illings of LGBT individuals are marked by either a total failure to investigate or a faulty investigation guided by stereotypes and prejudice [C]rimes and human rights violations based on sexual orientation, gender identity or expression are not isolated, but are emblematic of patterns of conduct of some members of society and recurrent actions of certain public servants, including prejudices, dislikes and rejections, reflecting the existence of a serious structural problem of intolerance.” *Id.*, ¶ 86.

Because it is cited in the same paragraph as the citation to the two United Nations statements, UNHCR also addresses here the panel’s reliance on Mexico’s adoption of the *Brazil Declaration and Plan of Action* (“*Brazil Declaration*”) with respect to the protection of refugees. *See slip op.* at 14 n.5. Following on two previous similar plans, the *Brazil Declaration* is a road map that was adopted in December 2014 by representatives of 28 countries and three territories in Latin America and the Caribbean to address new displacement trends and end statelessness. *See Brazil Declaration and Plan of Action*, Dec. 3, 2014.¹⁵ While UNHCR applauds Mexico for taking a positive step by adopting

¹⁴ <<http://tinyurl.com/HeynsMexico>>

¹⁵ <<http://tinyurl.com/BrazilDeclaration>>

the *Brazil Declaration*, its adoption is not an indicator of present country conditions in Mexico as experienced by LGBTI individuals facing, and fleeing, persecution on account of their sexual orientation or gender identity.

CONCLUSION

For all the foregoing reasons, UNHCR respectfully urges this Court to grant the petition for panel rehearing or rehearing *en banc*.

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AMICUS CURIAE
IN SUPPORT OF PETITIONER

FEBRUARY 22, 2016

CERTIFICATION OF COMPLIANCE

This brief complies with the typeface and type style requirements of Fed. R. App. P. 32(a)(5)(a) and (a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word 2013 in Century Expanded BT 14-point font.

This brief complies with the type-volume limitations of Fed. R. App. P. 29(d) and Cir. R. 29–2(c)(2) because it contains 3,971 words excluding the parts exempted by Fed. R. App. P. 32(a)(7)(B)(iii).

s/ Ana C. Reyes _____

ANA C. REYES

DATED: FEBRUARY 22, 2016

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 22, 2016. 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.

s/ Ana C. Reyes

ANA C. REYES

DATED: FEBRUARY 22, 2016