Case No. 08-70343

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

RAFAEL CASTRO-MARTINEZ,

Petitioner-Appellant,

v.

ERIC H. HOLDER JR., ATTORNEY GENERAL,

Respondent-Appellee.

On Petition For Rehearing And Suggestion For Rehearing En Banc
On Appeal From The Board Of Immigration Appeals

BRIEF OF AMICI CURIAE PUBLIC COUNSEL, LEGAL SERVICES FOR CHILDREN, U.S. COMMITTEE FOR REFUGEES AND IMMIGRANTS, KIDS IN NEED OF DEFENSE, YOUTH LAW CENTER, CENTER FOR GENDER & REFUGEE STUDIES, THE IMMIGRANT CHILD ADVOCACY PROJECT, AND THE WOMEN'S REFUGEE COMMISSION IN SUPPORT OF PETITIONER'S PETITION FOR REHEARING AND SUGGESTION FOR REHEARING EN BANC

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1, amicus curiae Public Counsel states that it has no parent corporations and has not issued shares of stock to the public. Amicus curiae Legal Services for Children states that it has no parent corporations and has not issued shares of stock to the public. Amicus curiae U.S. Committee for Refugees and Immigrants states that it has no parent corporations and has not issued shares of stock to the public. Amicus curiae Kids in Need of Defense states that it has no parent corporations and has not issued shares of stock to the public. Amicus curiae Youth Law Center states that it has no parent corporations and has not issued shares of stock to the public. Amicus curiae Center for Gender & Refugee Studies states that it has no parent corporations and has not issued shares of stock to the public. Amicus curiae Immigrant Child Advocacy Project states that it has no parent corporations and has not issued shares of stock to the public. Amicus curiae Women's Refugee Commission ("WRC") states that it has no parent corporations and has not issued shares of stock to the public. The WRC further states that it is legally part of, but does not receive direct financial support from, the International Rescue Committee, a non-profit 501(c)(3) organization.

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STATEMENT OF AMICI CURIAE[1]

Each of the amici has a direct interest in the development of immigration law, particularly as applied to children.

Amicus curiae Public Counsel, based in Los Angeles, California, is the largest *pro bono* law office in the nation. Public Counsel's Immigrants' Rights Project provides *pro bono* legal representation to low-income asylum seekers, a significant number of which have asylum claims based on physical and/or sexual abuse suffered in childhood.

Amicus curiae Legal Services for Children ("LSC") is one of the first non-profit law firms in the country dedicated to advancing the rights of youth. LSC provides holistic advocacy through teams of attorneys and social workers in the area of abuse and neglect, immigration, and education.

Amicus curiae U.S. Committee for Refugees and Immigrants ("USCRI") helps refugees and immigrants build better lives and futures in the United States and around the world. USCRI's National Center for Refugee and Immigrant Children works to provide unaccompanied immigrant children nationwide with access to *pro bono* legal, health, and social services.

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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. No person—other than the amici, its members, or its counsel—contributed money that was intended to fund preparing or submitting this brief.

Amicus curiae Kids in Need of Defense ("KIND") is a nonprofit organization committed to helping provide competent and compassionate legal counsel to unaccompanied refugee and immigrant children. KIND partners with law firms and corporations to find *pro bono* lawyers for unaccompanied children and hosts trainings to teach attorneys about the immigration process and legal remedies available to children.

Amicus curiae Youth Law Center ("YLC") is a public interest law firm working to protect the rights of vulnerable children, especially those involved in the child welfare or juvenile justice systems. YLC attorneys represent children in court cases, have written on a broad range of child welfare and juvenile law issues, and are often consulted on juvenile law and child welfare policy matters.

Amicus Curiae Center for Gender & Refugee Studies ("CGRS"), based at the University of California, Hastings College of the Law, conducts national trainings and advises attorneys representing asylum seekers fleeing violence from non-state actors, including an ever-increasing number of child asylum seekers. Through scholarship, expert consultations, advocacy, and appellate litigation, CGRS has played a central role in the development of refugee law and policy.

Amicus Curiae Immigrant Child Advocacy Project ("ICAP") advocates on behalf of the best interests of unaccompanied and separated immigrant children.

ICAP advocates for and has a vested interest in ensuring that children receive fair and just treatment in immigration proceedings.

Amicus Curiae Women's Refugee Commission ("WRC") advocates for the protection, access to safety, and due process rights of refugee, migrant, and asylum-seeking women, children, and families. The WRC's work on immigrant children's issues includes serving as an expert resource for attorneys and the government and raising the profile of migrant children's issues with policymakers and the public.

ISSUES ADDRESSED BY AMICI CURIAE

Amici curiae address issues related to children who seek asylum. As the panel acknowledged, Petitioner Castro's "claim of past persecution was based on sexual abuse he experienced as a child," including having been "raped brutally and repeatedly" when he was "between six and ten years old." *Castro-Martinez v. Holder*, 641 F.3d 1103, 1106 (9th Cir. 2011).

SUMMARY OF ARGUMENT

Children are not adults. They are different physically, mentally, and emotionally. This is a "universal" truth that justifies the law's special protection of children, from sentencing guidelines that impose harsher punishment on criminals who victimize children, to ordinary contract law that protects children from financial exploitation. *See J.D.B. v. North Carolina*, 131 S. Ct. 2394, 2403-04

(2011) ("The law has historically reflected the … assumption that children characteristically lack the capacity to exercise mature judgment and possess only an incomplete ability to understand the world around them.").

Immigration law is no different. When a child flees abuse in his or her home country and seeks asylum, courts require adjudicators to evaluate the child's asylum claim from the perspective of a child of similar age. The panel failed to do this. Rather than consider whether a young child between the ages of 6 and 10 would have reported repeated brutal sexual assaults in light of threats made against the child and his family, the panel analogized to a case of a 17-year-old who failed to report date rapes for different reasons.

The panel applied incorrect legal standards in other ways as well, severely limiting the ability of victims of persecution by private actors to seek redress through the immigration laws. In so doing, the panel placed undue emphasis on whether a petitioner reported persecution to authorities. A heightened emphasis on reporting is especially harmful to children, who are particularly vulnerable to physical and sexual abuse and are unlikely to have the ability to report such abuse to the authorities.

Finally, the panel improperly relied on evidence of changed conditions in Mexico decades after Castro was sexually abused to dismiss Castro's reasons for failing to report. Such evidence of attitudes and policies in Mexico decades after

Castro was abused is irrelevant to Castro's actions at the time he suffered the abuse. In addition to looking at the wrong decade to assess country conditions, the panel improperly looked solely at whether the Mexican government was willing to control sexual abuse of children, disregarding the question of whether the government was able to do so at the time Castro was abused.

For these reasons, as discussed below, rehearing or rehearing en banc should be granted.

ARGUMENT

I. THE PANEL APPLIED THE WRONG LEGAL TEST FOR CASES INVOLVING PERSECUTION BY PRIVATE ACTORS.

The legal standards applied by the panel conflict with established law in three important ways. First, the panel limited the manner by which a petitioner can demonstrate that the government is "unable or unwilling" to prevent private persecution and held that a failure to report "undermine[s]" this showing. Second, in so doing, the panel erred by failing to consider the issues from the perspective of a child of a similar age at the time the child suffered the abuse. Third, the panel failed to consider whether the government was unable to prevent private persecution, regardless of whether the government would have been willing to do so.

A. The Panel Improperly Limited The Manner By Which A Petitioner Can Demonstrate A Government's Inability Or Unwillingness to Prevent Persecution By Private Actors.

The panel relied on an overly restrictive test for whether authorities would have been willing and able to control private persecutors. The panel concluded that, because Castro failed to report his sexual abuse, he was required to "demonstrate that doing so would have been futile, or that contacting the authorities would have subjected him to further abuse." 641 F.3d at 1108. Moreover, the panel held that "Castro's failure to report the crime undermined his claim that he was unable to seek protection" from the authorities. *Id.* at 1109. This Court, however, has on several recent occasions held that reporting private abuse is not required and, where no such report has been made, there is simply a "gap in proof" that can be filled in a flexible manner.

In *Rahimzadeh v. Holder*, 613 F.3d 916, 921 (9th Cir. 2010), the Court concluded that "[t]he reporting of private persecution to the authorities is *not* … an essential requirement for establishing government unwillingness or inability to control attackers." (Emphasis added). The Court explained that "[t]he absence of a report to police does not reveal anything about a government's ability or willingness to control private attackers; instead, it leaves a gap in proof about how the government would respond if asked, which the petitioner may attempt to fill by other methods." *Id.* at 922. These other methods include, for example,

"establishing that private persecution of a particular sort is widespread and well-known but not controlled by the government" or "by demonstrating that a country's laws or customs effectively deprive the petitioner of any meaningful recourse to governmental protection." *Id.* at 921-22.

Similarly, in *Afriyie v. Holder*, 613 F.3d 924, 931 (9th Cir. 2010), this Court explained that "reporting persecution to government authorities is *not* essential" and the "gap in proof" may be filled, "for example," by evidence of "generalized country conditions information to show that reporting such activity to the police would have been futile … or that doing so might have placed the applicant in greater danger." (Emphasis added).

The panel improperly penalized Castro for failing to report and unduly limited the manner by which an asylum applicant can fill the "gap in proof" where there was no report. The panel's opinion was, therefore, contrary to the flexible standard set forth in *Rahimzadeh* and *Afriyie*.

B. The Panel Failed To Consider Castro's Failure to Report Abuse From A Child's Perspective.

The panel compounded its initial error by failing to consider the issue from the perspective of a child of Castro's age at the time of his abuse. The sensible

rule in this Circuit holds that a child's age must be considered in addressing his or her asylum claim.[2]

In *Hernandez-Ortiz v. Gonzales*, 496 F.3d 1042, 1046 (9th Cir. 2007), this Court granted a petition for review in a case involving two brothers who suffered persecution as children because "the IJ did not take into consideration the age of the brothers in 1982," when the persecution occurred, and because the IJ "did not look at the events from their perspective, nor measure the degree of their injuries by their impact on children of their ages." Similarly, in *Ramos-Rodriguez v. Holder*, No. 08-72103, 2011 WL 2259767, at *1 (9th Cir. June 9, 2011), this Court granted a petition for review because "the BIA did not take into account the petitioners' ages at the time of the mistreatment." *See also Ortiz-Ortiz v. Holder*, 383 F. App'x 618, 619 (9th Cir. 2010) (instructing the BIA to "tak[e] into consideration Ortiz-Ortiz's age at the time of the past harms"); *Maldonado v. Holder*, 334 F. App'x 861, 862 (9th Cir. 2009); UNHCR, *Guidelines on*

[2] It does not matter that Castro was no longer a child when he applied for asylum. *See, e.g., Guidelines for Children's Asylum Claims, INS Policy and Procedural Memorandum from Jeff Weiss, Acting Director, Office of International Affairs to Asylum Officers, Immigration Officers, and Headquarters Coordinators (Asylum and Refugees)* 5 (Dec. 10, 1998), *available at* 1998 WL 34032561 ("[A]n applicant who is above the age of 18 at the time of the asylum interview, but whose claim is based on experiences that occurred while under the age of 18, may exhibit a minor's recollection of the past experiences and events."); *Mejilla-Romero v. Holder*, 614 F.3d 572, 573 (1st Cir. 2010); *Kholyavskiy v. Mukasey*, 540 F.3d 555, 570 (7th Cir. 2008) ("[I]t has been recognized by Congress and the courts that childhood sexual abuse and mistreatment may have harmful, long-term effects.").

International Protection: Child Asylum Claims Under Articles 1(A)2 and 1(F) of the 1951 Convention and/or 1967 Protocol Relating to the Status of Refugees ¶¶1-5 (HCR/GIP/09/08) (Dec 22, 2009) (hereinafter, "UNHCR Guidelines").[3]

In this matter, the panel acknowledged that Castro's "claim of past persecution was based on sexual abuse he experienced as a child," including having been "raped brutally and repeatedly" when he was "between six and ten years old." 641 F.3d at 1106. Yet, rather than consider Castro's failure to report from the perspective of a young child, the panel instead relied on a case involving a 17-year-old who did not report date rapes. *Id.* at 1108 (citing *Castro-Perez v. Gonzales*, 409 F.3d 1069 (9th Cir. 2005)). The panel explicitly reasoned that, because the 17-year-old in *Castro-Perez* advanced reasons similar to Castro's for not reporting the sexual abuse he suffered between the ages of 6 and 10 years old, Castro's reasons for not reporting the abuse were similarly insufficient. *Id.*[4]

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[3] Cases from other circuits are in accord. *See, e.g.*, *Jorge-Tzoc v. Gonzales*, 435 F.3d 146, 150 (2d Cir. 2006); *Abay v. Ashcroft*, 368 F.3d 634, 640 (6th Cir. 2004).

[4] The two cases are also readily distinguishable on other grounds. The victim in *Castro-Perez* was raped twice by her boyfriend. 409 F.3d at 1070-71. Castro was raped or molested over four hundred times by multiple abusers. AR 74-75. Also, the victim in *Castro-Perez* failed to report her rapes because she did not believe the police would investigate date-rape claims and feared how her father would react. 409 F.3d at 1070-71. Castro did not report his abuse because he feared his abusers would kill his parents and beat him, as they had threatened to do. AR 74-75, 96-97.

Analogizing a 6-10 year old's failure to report to that of a near adult's does not take into account the very distinct stages of childhood development and conflicts with existing law requiring adjudicators to adopt the perspective of a child. Children, even though legally minors under a certain age, are not all the same. *See, e.g.*, *J.D.B.*, 131 S. Ct. at 2407 (observing that it is "common sense" that "a 7-year-old is not a 13-year-old"); *Yarborough v. Alvarado*, 541 U.S. 652, 669 (2004) (O'Connor, J., concurring) (distinguishing between a 17-year-old and younger children for *Miranda* purposes); UNHCR Guidelines ¶15 ("Immaturity, vulnerability, undeveloped coping mechanisms and dependency as well as the differing stages of development and hindered capacities may be directly related to how a child experiences or fears harm."). Very young children are even less able or likely to report abuse as older children. *See* Section II, below.

C. The Panel Failed To Consider Whether The Government Was Able To Protect Castro From Persecution.

The panel also ignored the long-standing rule that an applicant may qualify for asylum based on persecution by private actors if the government is simply *unable* to control the persecutors, regardless of the government's willingness to do so. The panel held that "[v]iolence or discrimination inflicted by private parties does not constitute persecution if it is not condoned by the state and if the state takes reasonable steps to prevent and respond to it." 641 F.3d at 1107. Although the panel cited briefly the "unwilling or unable" test, the decision focused

exclusively on the "unwilling" prong. For example, the panel emphasized that "there was no evidence in the record that Mexican authorities would have ignored the rape of a child, which is a crime under Mexican law." *Id.* at 1108; *see also* AR 2-3.

Asylum decisions, however, should "depend not only on the existence of a legal system that criminalizes and provides sanctions for the persecutory conduct," but also "on whether or not the authorities ensure that such incidents are effectively investigated and that those responsible are identified and appropriately punished." UNHCR Guidelines ¶38. Thus, for instance, the mere "enactment of legislation prohibiting or denouncing a particular persecutory practice against children, in itself, is not sufficient evidence to reject a child's claim to refugee status." *Id.*

This Court has also recognized the difference between "unwilling" and "unable." In *Avetova-Elisseva v. INS*, 213 F.3d 1192, 1197-98 (9th Cir. 2000), this Court rejected the reasoning that the "unable or unwilling" test was satisfied where the Russian government was unable to address violence and discrimination, not because of any ill will on the part of government authorities, but simply because the government lacked the resources to address all allegations of crimes. As this Court explained: "It does not matter that financial considerations may account for such an inability to stop elements of ethnic persecution. What matters instead is

that the government is unwilling or *unable* to control those elements of its society committing the acts of persecution." *Id.* at 1198 (internal quotations omitted).

In the context of Castro's case, even if Mexican authorities were willing to help Castro, he should still be entitled to relief if the authorities would have been "unable" to prevent Castro's persecution at the hands of private actors. The panel eviscerated the difference between "unwilling" and "unable" that this Court has repeatedly held are separate prongs of the inquiry.

II. APPLICATION OF THE INCORRECT LEGAL STANDARD POSES UNIQUE AND SERIOUS CONSEQUENCES TO CHILD ABUSE VICTIMS.

By focusing solely on whether a foreign government is unwilling (rather than unwilling *and* unable) to stop persecution, the panel invented a new standard that will make it nearly impossible for many child abuse victims to secure a safe haven in the United States.

A. The "Unable" Prong Is Usually Most Relevant.

Although virtually no country endorses child abuse, a great number of countries are unable to control it due to the unique vulnerabilities of children and the reluctance of foreign governments to intervene in what is often viewed as a family or personal issue in which the state should not interfere. For example, sexual abuse of children often goes unaddressed because foreign "[g]overnments are cautious about interfering in the private lives of citizens, and prefer sometimes

to maintain traditional practices and disregard the rights of the abused child." International Save the Children Alliance, *Protecting Children from Sexual Abuse and Exploitation*, at 3 (Aug. 2003).[5] This is especially true with respect to widespread practices, such as female genital mutilation, that are internationally recognized as abusive, but may be socially or culturally accepted. *See, e.g.*, *Abay*, 368 F.3d at 638. The panel's new standard effectively prevents such victims from seeking refuge in the United States.

B. Children Are Unlikely And Often Unable To Report Abuse.

If the panel's opinion stands, victims of severe child abuse may be denied asylum because they lacked the ability to report to authorities or failed to do so out of fear of their persecutors. In the United States, sexual abuse of children is severely underreported. *See, e.g.*, The National Center for Victims of Crime, *Child Sexual Abuse*[6] ("Although child sexual abuse is reported almost 90,000 times a year, the numbers of unreported abuse is far greater because the children are afraid to tell anyone what has happened, and the legal procedure for validating an episode is difficult."); American Academy of Child & Adolescent Psychiatry, *Facts for*

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[5] *Available at* http://www.savethechildren.net/alliance/resources/childabuse1003 eng.pdf.

[6] *Available at* http://www.ncvc.org/ncvc/main.aspx?dbName=DocumentViewer& DocumentID=32315.

Families: Child Sexual Abuse (May 2008).[7] Indeed, the record in this case demonstrates that as many as 90% of child sexual abuse victims will not report their abuse. AR 198-99.

Reporting in foreign countries is even more uncommon. "Sexual abuse and exploitation of children is rarely reported in most societies, and when it is, there is frequent denial and minimisation [sic] of the effects on the child, resulting in the rejection of the rights and needs of the child." International Save the Children Alliance, *Protecting Children from Sexual Abuse and Exploitation*, at 3.

There are many reasons why children infrequently report sexual abuse. First, a child may not report abuse because of actions of the abuser himself. "[C]hildren most often do not tell us when they are being abused because they have been told by the offender not to tell, or they are afraid that they will be in trouble if they do tell." AR 268; *see also* The National Center for Victims of Crime, *Child Sexual Abuse*. The abuser may make threats against the child or his or her family, tell the child that no one will believe him or her, or use more subtle coercion in order to keep the child victim silent. *Cf. J.D.B.*, 131 S. Ct. at 2405 ("[C]hildren are most susceptible to influence … and outside pressures.") (internal

[7] *Available at* http://www.aacap.org/galleries/FactsForFamilies/09_child_sexual_abuse.pdf.

quotations and citations omitted). Indeed, this was the case here, where one of Castro's rapists threatened Castro and his family if he reported the abuse. AR 97.[8]

Second, children may not know what to report or to whom to report it. "It is important to remember that, due to their young age, children may not be able to approach law enforcement officials or articulate their fear or complaint in the same way as adults." UNHCR Guidelines ¶39. Similarly, even when child victims attempt to report abuse, they "often give a very tentative disclosure to see how the listener will respond," and "[i]f the person they tell is unable to 'hear' the child or is punishing (blaming or shaming of the child), the child may tell no more." AR 268.

Third, a child victim may not be able to report abuse. In some cases the child is so young that he or she is cognitively incapable of understanding or reporting the abuse. In other cases, the child may be emotionally incapable, either because of the child's developmental stage, or because of the harm caused by the abuse itself.

In addition to these reasons, children in foreign countries may not report abuse for further reasons as well. "Many sexually abused children and their families are reluctant to report violations due to the socio-cultural values and

[8] Threats made to children are also more likely to be perceived as genuine and more traumatic than similar threats made to an adult.

stigma attached." International Save the Children Alliance, *Protecting Children from Sexual Abuse and Exploitation*, at 3. And even where a victim is old enough to have the capacity to report abuse, he is unlikely to do so because "judicial systems are often rife with potential for further victimisation [sic] and justice is often not done." *Id.*; *see also* UNHCR Guidelines ¶39 ("Children may be more easily dismissed or not taken seriously by the officials concerned, and the officials themselves may lack the skills necessary to interview and listen to children.").

The panel, although it severely penalized Castro for failing to report, does not take into full account the difficult hurdles children, like Castro, typically face.

III. THE PANEL ERRED BY CONSIDERING OBJECTIVE EVIDENCE OF COUNTRY CONDITIONS FROM THE WRONG TIME PERIOD.

A government's inability or unwillingness to prevent persecution by private actors must also be viewed from the appropriate time period, namely, at the time the petitioner suffered the persecution. The panel does not follow this common sense rule of law but instead focuses on the government's efforts many years later.

Because the question of whether the government would have been unable or unwilling to prevent the persecution is meant to substitute for a lack of a report to the government at the time of the persecution, it is the time of the persecution, rather than the time of the asylum application or some other later period, that matters. *See, e.g., Duarte de Guinac v. INS*, 179 F.3d 1156, 1162 (9th Cir. 1999) ("[T]he purpose of country conditions evidence … [is] *to provide information*

about the context in which the alleged persecution took place ….") (emphasis added).

Here, the panel incorrectly relied on evidence of government efforts and changes in policy decades after Castro was first abused. *See* 641 F.3d at 1109; *see also* AR 42 ("It is clear, however, that the government of Mexico has made great strides during the past decades, as cited by the statements made above in this oral decision.").[9]

Viewing the government's inability or unwillingness to prevent persecution by private actors at the correct time is especially important in cases of sexual abuse or other violence against children. Sexual abuse and violence against children has long been a problem and only recently has begun to be addressed on an international scale. *See* UNHCR Guidelines ¶3 ("Global awareness about violence, abuse and discrimination experienced by children is growing ….").

Thus, even where a foreign government has made "great strides" towards

[9] Neither the IJ nor the BIA made a determination that there has been a "fundamental change in circumstances" that would justify the denial of Castro's asylum application pursuant to 8 C.F.R. § 1208.13(b)(1)(i)(A). This is significant because, once an asylum applicant establishes past persecution, a well-founded fear of future persecution is presumed. *See, e.g.*, *Mamouzian v. Ashcroft*, 390 F.3d 1129, 1135 (9th Cir. 2004). The government then has the burden of demonstrating that the applicant does not have a well-founded fear of persecution because, for example, "country conditions have changed." *Id.* By considering evidence of country conditions from decades after Castro's abuse occurred as part of the determination of whether Castro had established prior persecution, the panel relieved the government of its burden.

addressing sexual abuse and violence against children, the foreign government may not have always been so able. Indeed, that a government has made great strides strongly suggests that the government previously was unable or unwilling to address the problem. If left to stand, the panel's mix-and match approach on this important issue will unfairly prejudice claims by children, who are often only able to seek refuge years after they were abused.[10]

[10] Prior cases confirm that Mexican authorities have, in the past, not only been unable and unwilling to stop sexual abuse against gays and children, but have also perpetrated such abuse. *See Ornelas-Chavez v. Gonzales*, 458 F.3d 1052, 1057 (9th Cir. 2006); *Boer-Sedano v. Gonzales*, 418 F.3d 1082, 1086 (9th Cir. 2005).

CONCLUSION

For the foregoing reasons, this Court should grant the petition for rehearing or rehearing en banc. The panel's opinion significantly changes well-accepted standards for asylum seekers and, in particular, would have substantial, deleterious effects on children seeking refuge.

Date: July 11, 2011

Respectfully submitted,

s/ Adam J. Reinhart

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CERTIFICATE OF COMPLIANCE

I certify that the brief of Amici Curiae in Support of Petitioner's Petition for Rehearing and Suggestion for Rehearing En Banc conforms with the type specifications of Fed.R.App.P. 32(a)(5) and, pursuant to Circuit Rules 29-2 and 40-1, does not exceed the greater of fifteen pages or 4,200 words, as calculated using Microsoft Word's word count tool.

Date: July 11, 2011

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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 July 11, 2011.

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.

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