

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 REHEARING EN BANC
ON APPEAL FROM THE BOARD OF IMMIGRATION APPEALS
BIA No. A88-515-684

**BRIEF OF AMICI CURIAE LAWYERS' COMMITTEE FOR CIVIL
RIGHTS, EAST BAY COMMUNITY LAW CENTER, NATIONAL
CENTER FOR LESBIAN RIGHTS, NATIONAL IMMIGRANT
JUSTICE CENTER, IMMIGRATION EQUALITY, PUBLIC LAW
CENTER, AND LAMBDA LEGAL DEFENSE AND EDUCATION
FUND, INC. IN SUPPORT OF PETITION FOR
REHEARING AND REHEARING EN BANC**

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CORPORATE DISCLOSURE STATEMENT

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Amici respectfully submit this brief in support of Petitioner-Appellant, Rafael Castro-Martinez (“Castro-Martinez”).

IDENTITY AND INTEREST OF AMICI CURIAE

Amici Lawyers’ Committee for Civil Rights of the San Francisco Bay Area, East Bay Community Law Center, National Center for Lesbian Rights, National Immigrant Justice Center, Immigration Equality, Public Law Center, and Lambda Legal Defense and Education Fund, Inc. are nonprofit organizations that promote the rights of lesbian, gay, bisexual, and transgender (“LGBT”) persons and immigrants. Amici provide free legal services and representation to low-income refugees, including LGBT asylum seekers who—like Castro-Martinez—have fled sexual orientation-based persecution by private actors.¹

SUMMARY OF ARGUMENT

On June 17, 2011, the United Nations Human Rights Council passed a historic resolution, condemning for the first time in the organization’s history acts of persecution and violence against individuals based on sexual orientation and gender identity. This symbolic resolution marks the latest milestone in the development of the legal rights of LGBT people, yet it also reflects that LGBT people continue to face persecution throughout the world.

¹ No party or party’s counsel authored this brief in whole or in part, or contributed money that was intended to fund preparing or submitting this brief. No person, other than the amici, their members, or their counsel, contributed money that was intended to fund preparing or submitting this brief.

While the United Nations resolution marks the latest milestone in the development of LGBT rights, the panel's opinion in *Castro-Martinez* dealt a resounding blow to the legal rights traditionally available to LGBT asylum seekers (and indeed, to all asylum seekers) by misstating basic asylum law and refusing to consider record evidence of a country's inability to prevent violence against LGBT citizens.

As discussed in the Petition for Rehearing, the panel's significant legal errors created new obstacles to obtaining asylum. First, the panel misstated the standard for past persecution by requiring only that the government have taken "reasonable steps" to prevent abuse, instead of considering the government's unwillingness *or inability* to prevent abuse—the long-standing Ninth Circuit test. Second, the panel improperly penalized Castro-Martinez for not reporting his rapes by placing the burden on Castro-Martinez to justify his lack of reporting, instead of recognizing substantial record evidence of the government's inability or unwillingness to prevent abuse. Third, the panel conflated past and current country conditions and used recent government reform efforts as evidence of the conditions that existed at the time Castro-Martinez was raped decades earlier. Finally, the panel misstated the requirements for proving a well-founded fear of future persecution by considering only one method of proof, and thus ignoring record

evidence demonstrating a reasonable possibility that Castro-Martinez would be targeted for individualized persecution.

The Court should grant rehearing or rehearing en banc to correct these significant misstatements of asylum law. If the panel's decision is allowed to stand, LGBT asylum seekers such as Castro-Martinez, who are subjected to rape, violence, threats, and other forms of horrific abuse, may be foreclosed from obtaining asylum and forced to return to environments of government-permitted persecution.

ARGUMENT

I. THE PANEL'S MISSTATEMENT OF THE STANDARD FOR PAST PERSECUTION AND ITS FAILURE TO CONSIDER DECISIVE EVIDENCE OF PAST PERSECUTION WILL WIDELY FORECLOSE ASYLUM TO VICTIMS OF PRIVATE ABUSE.

To qualify for asylum in past persecution cases, long-standing Ninth Circuit precedent requires a showing that persecution was inflicted by government actors or by private actors that the government was *unable or unwilling to control*. See, e.g., *Sangha v. INS*, 103 F.3d 1482, 1487 (9th Cir. 1997). Under the panel's misstatement in *Castro-Martinez*, however, abuse by private actors no longer qualifies as persecution in cases where the government is *unable* to control such abuse. Rather, the panel held that so long as abuse by private actors "is not condoned by the state and [] the state takes *reasonable steps* to prevent and respond to it"—regardless of whether those steps are effective—it is not

persecution. Op. at 5118 (emphasis added). The panel’s formulation of a “reasonable steps” standard foreclosed inquiry into government inability. If this misstatement stands, it will severely limit the instances in which asylum seekers, especially those who are LGBT, may be able to prove persecution and will effectively remove one prong of a previously two-pronged test.²

A. The Panel Failed To Acknowledge Evidence Of The Mexican Government’s Widespread Inability To Protect LGBT Persons.

In *Castro-Martinez*, the panel’s misstatement of this standard prevented it from considering significant record evidence illustrating the Mexican government’s long-standing and systemic inability to control private persecution of LGBT individuals. From at least the early 1980s until the mid-1990s, during which time Castro-Martinez was repeatedly raped, homophobia was deeply ingrained in Mexican culture, and violence against LGBT persons could not be

² The “reasonable steps” standard is also inconsistent with the international law standard set forth in the 1951 Convention Relating to the Status of Refugees and the 1967 Protocol Relating to the Status of Refugees to which the United States is a signatory. Where serious discriminatory or other offensive acts are committed by the local populace, they can be considered as persecution “if they are knowingly tolerated by the authorities, or if the authorities refuse, or prove unable, to offer effective protection.” UNHCR, *Guidelines on International Protection No. 2: “Membership of a Particular Social Group” within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees* (HCR/GIP/02/02), May 7, 2002. The 1967 Protocol provides a guide for interpreting United States asylum law. See *INS v. Cardoza-Fonseca*, 480 U.S. 421, 436 (1987).

controlled by the government. *See, e.g.*, AR 89, 99, 106, 206, 223, 228, 372, 375, 397–400, 416, 452, 455, 457, 498–500.

Castro-Martinez himself, in testimony found credible by the immigration judge, provided evidence of the brutal sexual violence he suffered in Mexico from the time he was six years old through his late teens (from the early 1980s to the mid-1990s) because he was an effeminate gay male. AR 70–78. The violent abuse suffered by Castro-Martinez is consistent with the violence experienced by other effeminate gay men. For example, another Mexican gay man born in 1978 was abused by his aunt during his childhood for being gay, and in his early teens, he was “beaten regularly by boys in the street who taunted him for his feminine looks.” AR 498. The man noted that the police would not arrest people for this behavior, but would instead “beat you up, too.” *Id.* Similarly, in or earlier than 1986, a teenager was assaulted by three men and stabbed for socializing with a friend who appeared feminine and gay. AR 499.

From at least 1988 to 1991, effeminate LGBT youths were molested by male relatives, beaten by their family or their peers, and often expelled from their homes. AR 500; *see also* Annick Prieur, *Mema’s House, Mexico City on Transvestites, Queens, and Machos* 12 (1998). Also in the 1980s, from an extremely young age, Mexican children learned and used derogatory terms for

LGBT persons and assaulted LGBT children at school, illustrating ingrained cultural homophobia and acceptance of abuse. *See, e.g.*, AR 372.

The record shows such violence continuing into the 1990s when LGBT persons in Mexico had “acute difficulties . . . in trying to claim their rights under the law, [because of] the reluctance of state officials to protect these rights.” AR 452. LGBT persons were subject to “violent threats, physical attacks, beating, torture” AR 453. Between 1991 and 1994, for example, 12 gay men were killed in a single Mexican city, and “[a] systematic failure to implement the rule of law granted impunity to these homicides.” AR 457. In May 1998, an NGO was established specifically to monitor murders of gay and lesbian people. AR 416. According to the NGO’s reports, 149 people, almost all of whom were gay men, were killed due to homophobic hatred from February 1995 to September 1998. AR 416–17. In fact, at least through the late 1990s, there was a “‘systematic and silent genocide’ of sexual minorities in Mexico.” AR 452 (citations omitted).

The Mexican government’s inability to control persecution continued into the 2000s, even as its attempts to address LGBT rights—cited by the panel as “reasonable steps”—were initiated. *See, e.g.*, AR 206, 223, 228, 375, 400. In 2000, “violence against homosexuals in Mexico continued . . . police ‘at times abuse[d] homosexuals,’ and anti-gay violence continue[d] at an alarming rate.” AR 399. In the early 2000s, “a series of killings of gay men in Colima, Mexico,

went unpunished and inadequately investigated”—as one activist noted, it was “as if [the gay community] d[id not] enjoy the protection of the law.” AR 397.

Similarly, in 2001, a gay activist was kidnapped, raped, beaten, and cut.

AR 400-01. In 2005, “15 homophobic or transphobic murders occur[red] each month in Mexico.” Pet. Brief to BIA at 6. A “large number of these murders [went] unpunished because authorities allegedly minimize[d] the significance of sexual preference in hate crimes.”³ *Id.* at 6–7.

Although the panel noted initial government reform efforts as “reasonable steps,” the record illustrates that as late as the early 2000s, “the main political parties did not have the will to take the necessary measures in order to really change the situation.”⁴ AR 400. Some commentators have noted that Mexican prosecutors assign lower priority to murder cases involving LGBT persons and that there is a general prejudice against LGBT persons in Mexican courts. AR 417. Moreover, throughout Mexico’s history, many types of abuse “up to and including physical assault, [have been] classified in law as [only] violations of municipal

³ Castro-Martinez’s credible testimony noted that when a gay man was burned to death, the police did nothing because they do not “give any kind of protections to gays at all.” AR 90. “The police do nothing to protect us and many times the policeman [sic] rape us, force us to perform oral sex on them or extort money from us, always threatening to put us in jail if we do not agree to what they want.” AR 375.

⁴ While it is essential that countries take steps to combat homophobia, the steps noted in this case were only the first steps in what will be a long and complicated fight should the government choose to go forward.

laws” and only resulted in minor fines or brief detentions. AR 415–16. Even if an LGBT person [wa]s beaten, “the incident [wa]s not necessarily classified as a crime.” AR 416. Such long-standing and systemic abuse reflects the Mexican government’s widespread inability to protect LGBT persons.

B. The Panel’s New “Reasonable Steps” Formula Will Have A Negative Effect On Asylum Seekers, Especially Those Who Are LGBT.

Not only will the new “reasonable steps” standard affect Castro-Martinez, it will likely also broadly bar other applicants from seeking asylum based on private abuse, even in countries where conditions are as violent as they were for Castro-Martinez. LGBT asylum applicants will be especially affected because homophobia is deeply ingrained in many countries, and governments are unable to prevent persecution against LGBT people—even when the governments have taken steps to promote tolerance or prevent abuse.

While many countries have taken initial steps to combat homophobia, these steps are at most only the first catalysts of change and do not, upon implementation, prevent violence against LGBT persons. For example, in Colombia, the phrase “‘social cleansing’ has often been used as a euphemism . . . for the murder of . . . sexual minorities.” AR 492. Although the Colombian Constitutional Court recently recognized pension rights for same-sex couples and various cities have implemented outreach campaigns on LGBT issues, the latest

Country Report for Colombia notes that there were still at least 50 murders last year due to sexual orientation (up from 39 the previous year) and LGBT activists are still subject to “social cleansing” threats. *See* U.S. Dep’t of State, Bureau of Democracy, Human Rights, and Labor, *2010 Country Report on Colombia* (2011); U.S. Dep’t of State, Bureau of Democracy, Human Rights, and Labor, *2009 Country Report on Colombia* (2010).⁵ If the panel’s decision holds and, as in *Castro-Martinez*, such steps were considered “reasonable steps,” courts would have license to deny asylum claims on this basis without reference to the broader climate and history of homophobic violence within a country.

If the panel’s misstatement is allowed to stand, LGBT applicants from nations such as Mexico, Colombia, and others that are in the initial stages of reform efforts on LGBT issues could be foreclosed from seeking asylum regardless of the effectiveness of such efforts.

⁵ The Court may take judicial notice of country conditions evidence which was not available when the BIA made its decision, *see Gafoor v. INS*, 231 F.3d 645, 655-56 (9th Cir. 2000) (superseded by statute on other grounds), and may take judicial notice of “public, undisputed facts.” *Dimitrov v. Holder*, 346 F. App’x 200, 202 (9th Cir. 2009). Accordingly, the Court may take notice of evidence of recent country conditions in Mexico and elsewhere.

II. THE PANEL IMPROPERLY PENALIZED CASTRO-MARTINEZ FOR NOT REPORTING HIS SEXUAL ASSAULTS, AND FAILED TO CONSIDER THE WIDESPREAD FUTILITY AND DANGER OF REPORTING PRIVATE ABUSE.

The panel erred further by finding that Castro-Martinez's failure to report his rapes undermined his claim that the government was unwilling or unable to control private abusers. *Op.* at 5119-21. Ninth Circuit precedent establishes that reporting is *not* a requirement for a successful showing of the inability or unwillingness of the government to control private abuse. *See, e.g., Rahimzadeh v. Holder*, 613 F.3d 916, 921 (9th Cir. 2010). To the contrary, evidence that abuse was reported but not adequately addressed by the government is only one of several ways an applicant might demonstrate the government's inability or unwillingness to control private attackers. *Id.* at 921-22. "[G]eneralized 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" can take the place of reporting to demonstrate government inability or unwillingness to protect the applicant. *Afriyie v. Holder*, 613 F. 3d 924, 931 (9th Cir. 2010).

Although the panel acknowledged that reporting is not a requirement, by penalizing Castro-Martinez for failing to report his abuse, the panel created an additional burden on him (and other asylum applicants) to present evidence justifying the lack of reporting. This burden is starkly at odds with the absence of

a reporting requirement—if an applicant need not report his abuse, his failure to report should not be counted against him.

Moreover, the panel ignored extensive evidence that reporting would have been futile and dangerous. *See Afriyie*, 613 F.3d at 931; *see also* AR 397, 400-01, 498. As discussed in Section I, Mexico’s law enforcement and judicial systems place a low priority (if any) on crimes against LGBT persons. *See, e.g.*, AR 417, 452. Accordingly, up to 98 percent of crimes against LGBT persons in Mexico still go unsolved. *See Nacion, Mexican Homophobia Results in an Average Three Homosexual Deaths Per Month*, June 22, 2007.

Many victims also met with further violence for reporting abuse. A schoolteacher was suspended and later dismissed from his post because of his sexual orientation. When he challenged his dismissal, he was arbitrarily arrested and detained, held in a maximum security prison, beaten by security guards, and raped repeatedly by prison inmates. *See* U.S. Dep’t of State, Bureau of Democracy, Human Rights, and Labor, *2009 Country Report on Mexico* (2010). A gay activist was kidnapped, raped, and beaten. When he complained to local prosecutors, he received multiple death threats for reporting the crime. AR 400-01. Yet the panel disregarded evidence of the futility and danger of reporting.

The significance of this error should not be discounted. Indeed, the panel’s decision has already been cited as the basis for denying asylum and withholding of

removal to LGBT applicants. For example, on April 18, 2011, an immigration judge in Los Angeles denied asylum to a transgender Mexican woman who had been raped at age nine, repeatedly beaten and sexually abused, and nearly burned to death because of her sexual identity. Citing the panel's decision, the judge found that the woman could not show that the government was unable or unwilling to protect her because she did not report being burned (despite previously reporting abuse to no avail). On May 19, 2011, another Los Angeles immigration judge denied withholding of removal to a transgender Mexican who had been repeatedly raped and beaten as a child, because she had not reported her abuse and therefore could not show government inability or unwillingness to act.⁶ Rehearing is needed before even more asylum seekers are denied relief based on the panel's misstatements.

III. THE PANEL CONFLATED PAST AND CURRENT COUNTRY CONDITIONS EVIDENCE AND DREW UNSUPPORTED INFERENCES FROM EVIDENCE OF REFORM EFFORTS.

In addition to improperly penalizing Castro-Martinez for failing to report his abuse, the panel improperly conflated current and former country conditions in considering evidence of recent reforms in Mexico's law and policy. These recent reform efforts shed no light on whether the Mexican government would have been

⁶ These applicants were denied asylum in oral decisions rendered by each judge, and are represented by Amici Public Law Center and the USC Law School Immigration Clinic, respectively.

able to protect Castro-Martinez from abuse at the time it occurred, in the 1980s and 1990s. The record instead shows that reporting would have been dangerous and futile. *See* Sections I and II.

Evidence of efforts by the Mexican government to promote tolerance of LGBT people nearly two decades after Castro-Martinez was first abused does not diminish the persecutory nature of the acts that Castro-Martinez endured in the 1980s and 1990s. Rather, the evidence of later reform efforts supports the reasonable inference that earlier conditions were even less favorable to LGBT persons than those existing at the time of the reform efforts.

The panel erred by drawing the opposite and unsupported inference that recent reform efforts meant that Castro-Martinez would have faced no danger twenty years earlier in reporting his abuse. The problem of LGBT persecution in Mexico, however, is pervasive in all facets of life, from acts of state authorities to widespread private abuse that authorities have been unable to control. AR 206. The record does not support the inference drawn by the panel and in fact shows that increased violence and a failure to investigate would have been the most likely response to any reporting. *See* AR 362, 397, 416, 418, 420, 452, 493, 498, 500.

The panel's inference was not only unsupported by the evidence in the record, but was also highly inaccurate. Mexico currently has the second highest number of homophobic hate crimes in Latin America. *See* Letra S, *Report on*

Homophobic Hate Crimes in Mexico, 1995-2008, May 2010. Government reform efforts must be considered in light of their enforceability and the extent to which the reforms actually reduce the risk of persecution to LGBT persons. Reform efforts have not reduced the risk of persecution. Indeed, the rate of homophobic violence in Mexico has dramatically intensified following the recent enactment of legislation approving marriage by same-sex couples, and reports of homophobic violence doubled in the year after enactment of the law. *See* CNN Mexico, *Reports of Homophobia Double Subsequent to Same-Sex Marriage Approval*, Aug. 8, 2010. Moreover, the past year has seen the emergence of homophobic militias, such as “Civic Justice,” which contribute to a climate of fear by assaulting LGBT people with impunity. *See* El Universal, *Gay Couple Denounces Homophobic Aggression*, Mar. 23, 2010.

In some respects, Mexico’s current country conditions are significantly worse than when Castro-Martinez was raped in the 1980s and 1990s. The ongoing conflict between Mexican security forces and drug-trafficking cartels has resulted in a catastrophic deterioration of security conditions in Mexico. *See* U.S. Dep’t of State, Bureau of Democracy, Human Rights, and Labor, *2010 Country Report on Mexico* (2011). Significantly, the Mexican security forces and the drug cartels both actively persecute LGBT persons in Mexico. *See* Letra S, *Report on Homophobic Hate Crimes in Mexico, 1995-2008*; Amnesty International, *Mexico:*

New Reports of Human Rights Violations by the Military (2009). Where the Mexican state has thus far been unable to stem the tide of violence, there is no reason to believe that state authorities are able to prevent security forces or private actors from persecuting LGBT persons. The reform efforts identified by the panel fall far short of providing effective protection against the persecution that Castro-Martinez would face if forced to return to Mexico.

The panel's erroneous treatment of country conditions evidence extends far beyond *Castro-Martinez*, giving courts license to disregard evidence of relevant past country conditions in light of recent reforms. LGBT asylum applicants are deeply disadvantaged by the panel's precedent, which allows even cursory evidence of recent reforms to undermine an enduring record of past persecution.

If the panel had properly considered relevant record evidence of country conditions at the time of Castro-Martinez's abuse, it would have overturned the agency's finding and held that past persecution had occurred. Upon a finding of past persecution, Castro-Martinez would have been entitled to a presumption of future persecution, 8 C.F.R. § 208.13(b)(1), shifting the burden to the government to rebut by a preponderance of the evidence that country conditions have fundamentally changed.⁷ The government would not have been able to satisfy this

⁷ Remand would then have been necessary for the agency to decide in the first instance whether the government could indeed rebut the presumption. *See INS v. Orlando Ventura*, 537 U.S. 12, 16-17 (2002).

burden, given evidence of Mexico's recent country conditions. Accordingly, the panel's improper treatment of country conditions evidence deprived Castro-Martinez of the presumption of future persecution and contributed to its improper denial of asylum.

IV. BY MISSTATING THE REQUIREMENTS FOR PROVING WELL-FOUNDED FEAR OF FUTURE PERSECUTION, THE PANEL FAILED TO GIVE ADEQUATE WEIGHT TO CRUCIAL EVIDENCE OF CURRENT COUNTRY CONDITIONS.

The panel committed clear legal error by solely applying the “pattern or practice” standard to the evaluation of well-founded fear of future persecution and failing to consider that Castro-Martinez could also demonstrate a “reasonable possibility” that he would be targeted for individualized persecution upon his return to Mexico. It is a bedrock principle of asylum law that “even a ten percent chance that the applicant will be persecuted is enough to establish a well-founded fear.” *See INS v. Cardoza-Fonseca*, 480 U.S. 421, 440 (1987); *Wakkary v. Holder*, 558 F.3d 1049, 1052-53 (9th Cir. 2009).

While amici believe that the current conditions of LGBT persecution in Mexico demonstrate a “pattern or practice” of discrimination against a protected group, even without such a finding, the evidence overwhelmingly illustrates more than a reasonable possibility that Castro-Martinez will suffer persecution upon his return to Mexico based on his sexual orientation. *See* Section III; Letra S, *Report on Homophobic Hate Crimes in Mexico, 1995-2008*, May 2010 (30 percent of

LGBT persons in Mexico have been mistreated by the police). Moreover, because he is also HIV-positive, it is nearly inevitable that he will be targeted for individualized persecution if forced to return to Mexico.

Castro-Martinez will be at risk of persecution throughout the country because he is gay. AR 417; *see also* Sections I and II. Castro-Martinez's HIV status puts him in even greater danger of individualized persecution. HIV-positive gay men in Mexico are frequently the victims of hate crimes. In recent cases, an HIV-positive gay man was found tortured, stoned, and suffocated; an HIV/AIDS activist was murdered; and a blind HIV-positive gay man was savagely beaten by members of his family after he used their bathroom. *See* AR 206; EDGE Boston, *Gay Mexican Tortured, Stoned*, Feb. 29, 2008; La Jornada, *HIV-Positive Male Suffers Beating at the Hand of Mother's In-Laws*, Sept. 27, 2005.

If Castro-Martinez is forced to return to Mexico, he will very likely be tested for HIV by prospective employers and precluded from gainful employment because of his HIV status. AR 569. He will face exclusion from health care when denied employment, and will most likely not have access to essential medications, with the consequence that his forced return to Mexico will be nothing less than an "indirect death sentence." AR 569, 570; *see also* National Council for the Prevention of Discrimination, *Informative Report on Homophobia*, May 17, 2010. Accordingly, Castro-Martinez more than satisfies the ten-percent threshold for

likelihood of individualized persecution under the “reasonable possibility” standard.

The implications of the panel’s misstatement of the legal standard for a well-founded fear of future persecution extend far beyond Castro-Martinez. If applicants are barred from succeeding even where they can illustrate a reasonable possibility they will be singled out for persecution, the number of applicants eligible even to be considered for asylum will likely drop dramatically, particularly among the LGBT community.

CONCLUSION

For the foregoing reasons, amici respectfully request that the Court grant Castro-Martinez’s petition for rehearing or rehearing en banc.

Dated: July 11, 2011

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CERTIFICATE OF COMPLIANCE

I hereby certify that the brief of Amici Curiae in Support of Petition for Rehearing and Rehearing En Banc complies with Circuit Rules 29-2 and 40-1 because this brief contains 4,178 words, as calculated using Microsoft Word's word count tool, and thus does not exceed the greater of fifteen pages or 4,200 words.

Undersigned counsel further certifies that 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), as required by Fed. R. App. P. 29(c), because this brief has been prepared in a proportionally spaced 14-point Times New Roman typeface using Microsoft Word 2003.

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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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