No. 18-16496

United States Court of Appeals for the Ninth Circuit

United States of America,
Plaintiff-Appellant,
v.
State of California, et al.,
Defendants-Appellees.

Appeal from the U.S. District Court
for the Eastern District of California,
No. 2:18-cv-00490-JAM-KJN
Hon. John A. Mendez, District Judge

AMICI CURIAE BRIEF OF NATIONAL LAW ENFORCEMENT ASSOCIATIONS AND VICTIMS' ORGANIZATIONS IN SUPPORT OF PLAINTIFF-APPELLANT AND REVERSAL

Christopher J. Hajec
Mark S. Venezia
Elizabeth A. Hohenstein
IMMIGRATION REFORM LAW INSTITUTE
25 Massachusetts Ave., NW, Suite 335
Washington, DC 20001
Phone: (202) 232-5590

Attorneys for Amici Curiae

CORPORATE DISCLOSURE STATEMENT

None of the organizations filing this brief—the National Sheriffs' Association, the National Police Association, Advocates for Victims of Illegal Alien Crime, and Stop Sanctuary State—has a parent company, and none issues stock.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Constitution:

Cases:

Federal Statutes:

Cal. Gov't Code:

Miscellaneous:

INTEREST OF *AMICI CURIAE*[1]

The National Sheriffs' Association ("NSA"), formed in 1940, seeks to promote the fair and efficient administration of criminal justice throughout the United States and in particular to advance and protect the Office of Sheriff throughout the United States. The NSA has over 20,000 members and is the advocate for 3,083 sheriffs throughout the United States. NSA supports the enforcement of the nation's immigration laws, which California Senate Bill 54 ("SB 54") frustrates.

The National Police Association ("NPA") is a non-profit organization founded to educate supporters of law enforcement in how to help police departments accomplish their goals. NPA advocates for the authorization of local police departments to carry out immigration law enforcement, and is opposed to sanctuary laws, such as California's, that hinder such enforcement.

Advocates for Victims of Illegal Alien Crime ("AVIAC") is an advocacy organization founded and led by individuals, including Californians, who have lost family members because of crimes committed by illegal aliens. AVIAC's mission is to be both a source of support for such victims across the country and an

[1] The parties have consented in writing to the filing of this *amicus curiae* brief. No counsel for a party in this case authored this brief in whole or in part, and no such counsel or party made a monetary contribution intended to fund the preparation of this brief. No person other than *amicus curiae,* its members, or its counsel made a monetary contribution to its preparation or submission.

advocate for policies that will enforce the nation's immigration laws and prevent government actors from sheltering illegal aliens, particularly criminal aliens, from deportation. AVIAC therefore takes an interest in the case at bar, which seeks to overturn California sanctuary laws that frustrate the enforcement of federal immigration law.

Fight Sanctuary State ("FSS") is a California-based advocacy organization also founded and led by individuals who have lost family members because of illegal alien crime. FSS is dedicated specifically to working to overturn or repeal laws in the state of California, such as SB 54, that protect illegal aliens, including criminal aliens, from law enforcement.

SUMMARY OF THE ARGUMENT

SB 54 impedes and interferes with federal immigration law enforcement in California, and was designed to do just that. By thus creating an obstacle to congressional purposes, SB 54 violates the Supremacy Clause of the U.S. Constitution.

SB 54 prohibits state and local officers from sharing the release dates of aliens, and their personal information, with U.S. Immigration and Customs Enforcement ("ICE"), and forbids such officers to transfer custody of aliens to ICE. In these prohibitions, California does not merely "stand[] aside," as the court below would have it, but compels many state and local officers who would

cooperate with federal enforcement not to cooperate with that enforcement. This choking-off of cooperation that would otherwise take place is an obstacle both to the federal-state cooperation that Congress sought to facilitate and to immigration law enforcement itself.

SB 54 is also conflict preempted in two other ways. First, it commands state and local officers to violate federal law against harboring illegal aliens. Second, it commands state and local officers to violate the Supremacy Clause by forcibly preventing federal officers from performing their duty. In both ways, SB 54 makes it impossible for state and local officers to obey both federal and state law.

SB 54 violates the Constitution in yet another way. By establishing California's own removal priorities, at variance with those of Congress, SB 54 usurps the federal government's exclusive authority over foreign policy.

ARGUMENT

I. SB 54 Is Obstacle Preempted.

SB 54 was enacted to "counterbalance" federal immigration enforcement efforts in California. Hearing on SB 54 before the Senate Standing Comm. on Public Safety (Jan. 31, 2017) (statement of Sen. Scott Wiener); Committee on the Judiciary Report (Senate), July 10, 2017, at 1.

To this end, SB 54 prohibits state and local law enforcement from "[p]roviding information regarding a person's release date or responding to

requests for notification by providing release dates or other information" to immigration authorities, unless that information is already publicly available or the individual has been convicted of certain enumerated crimes. Cal. Gov't Code §§ 7284.6(a)(1)(C), 7282.5(a). SB 54 further prohibits state and local law enforcement from providing "personal information" about aliens, such as a work or home address, to federal immigration authorities, unless such information is already publicly available. Cal. Gov't Code § 7284.6(a)(1)(D). Also, under SB 54, state and local law enforcement may "[t]ransfer an individual to immigration authorities" only if the United States presents a "judicial warrant or judicial probable cause determination" or if the individual has been convicted of certain enumerated crimes. Cal. Gov't Code §§ 7284.6(a)(4), 7282.5(a).

Thus, under SB 54, in many cases, if a federal immigration officers asks when an alien in local custody will be released, or that alien's home or work address, local officials who otherwise would be perfectly willing to provide that information may not provide it. In many cases, if a federal immigration officer seeks to assume custody of an alien from local officials, local officials who otherwise would be perfectly willing to transfer custody may not do so.

The Supremacy Clause provides that federal law "shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding." U.S. Const.

art. VI, cl. 2. Under this clause, Congress has the power to preempt state and local laws. *Arizona v. United States*, 567 U.S. 387, 399 (2012) (citing *Crosby v. Nat'l Foreign Trade Council*, 530 U.S. 363, 372 (2000)).

Preemption may be either express or implied, and implied preemption includes both field preemption and conflict preemption. *Lozano v. City of Hazleton*, 724 F.3d 297, 302 (3d Cir. 2013) (citing *Gade v. Nat'l Solid Wastes Mgmt. Ass'n*, 505 U.S. 88, 98 (1992)). Conflict preemption can occur in one of two ways: where "compliance with both federal and state regulations is a physical impossibility," or "where the challenged state law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." *Lozano*, 724 F.3d at 303 (citing *Arizona*, 567 U.S. at 399) (internal quotation marks and citations omitted). "If the purpose of the act cannot otherwise be accomplished—if its operation within its chosen field else must be frustrated and its provisions be refused their natural effect—the state law must yield to the regulation of Congress within the sphere of its delegated power." *Savage v. Jones*, 225 U.S. 501, 533 (1912), *quoted in Hines v. Davidowitz*, 312 U.S. 52, 67 n.20 (1941). The judgment of courts about what constitutes an unconstitutional impediment to federal law is "informed by examining the federal statute as a whole and identifying its purpose and intended effects." *Crosby*, 530 U.S. at 373.

Underlying the doctrine of obstacle preemption is the necessity of cooperation between state and federal sovereignties for our federal system to function properly. As the Second Circuit has explained:

> A system of dual sovereignties cannot work without informed, extensive, and cooperative interaction of a voluntary nature between sovereign systems for the mutual benefit of each system. The operation of dual sovereigns thus involves mutual dependencies as well as differing political and policy goals. Without the Constitution, each sovereign could, to a degree, hold the other hostage by selectively withholding voluntary cooperation as to a particular program(s). The potential for deadlock thus inheres in dual sovereignties, but the Constitution has resolved that problem in the Supremacy Clause, which bars states from taking actions that frustrate federal laws and regulatory schemes.

City of New York v. United States, 179 F.3d 29, 35 (2d Cir. 1999) (internal citations omitted) (holding 8 U.S.C. § 1373 constitutional).

By design, SB 54 frustrates the Immigration and Nationality Act ("INA") in two of its central purposes—not only the obvious purpose that immigration law be enforced, but the federal-state cooperation Congress intended to foster in that enforcement. As the Supreme Court has recognized, "consultation between federal and state officials is an important feature of the immigration system." *Arizona*, 567 U.S. at 411. For example, in passing the Illegal Immigration Reform and Immigrant Responsibility Act ("IIRAIRA"), which includes 8 U.S.C. § 1373, Congress intended unimpeded communication among federal, state, and local governments in sharing immigration status information, as well as unobstructed

cooperation in ascertaining the whereabouts of illegal aliens. Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. 104-208, 110 Stat. 3009(1996). The Senate Judiciary Committee Report accompanying IIRAIRA makes this general intent clear:

> Effective immigration law enforcement requires a cooperative effort between all levels of government. The acquisition, maintenance, and exchange of immigration-related information by State and Local agencies is consistent with, and potentially of considerable assistance to, the Federal regulation of immigration and the achieving of the purposes and objectives of the Immigration and Nationality Act.

S. Rep. No. 104-249, at 19-20 (1996) (emphasis added), *quoted in City of New York*, 179 F.3d at 32-33. Thus, in drafting § 1373, Congress intended a cooperative effort among local, state, and federal law enforcement to enforce immigration law.

A review of additional federal immigration provisions further underscores this intent. Shortly before enacting IIRAIRA, Congress enacted the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA). Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104-193, 110 Stat. 2105 (1996). Entitled "Communication between State and local government agencies and Immigration and Naturalization Service," Section 434 of this law, now 8 U.S.C. § 1644, is nearly identical to § 1373. *Id.* This provision of PRWORA forbids any prohibitions or restrictions on the ability of state or local governments to send to or receive from the federal government information about

the immigration status, lawful or unlawful, of an alien in the United States. Going further than the Senate Judiciary Committee Report accompanying IIRAIRA, in the Conference Report accompanying PRWORA, Congress made clear its intent in passing Section 434: to bar *any* restriction on local police in their communications with ICE. The scope includes the *whereabouts* of illegal aliens, which obviously includes notice of their release from detention.

> The conference agreement provides that no State or local government entity shall prohibit, or in any way restrict, any entity or official from sending to or receiving from the INS information regarding the immigration status of an alien or *the presence, whereabouts, or activities of illegal aliens*. It does not require, in and of itself, any government agency or law enforcement official to communicate with the INS.
>
> The conferees intend to give State and local officials the authority to communicate with the INS regarding *the presence, whereabouts, or activities of illegal aliens. This provision is designed to prevent any State or local law, ordinance, executive order, policy, constitutional provision, or decision of any Federal or State court that prohibits or in any way restricts any communication between State and local officials and the INS.* The conferees believe that immigration law enforcement is as high a priority as other aspects of Federal law enforcement, and that *illegal aliens do not have the right to remain in the United States undetected and unapprehended*.

H.R. Rep. No. 104-725, at 383 (1996) (Conf. Rep.), *quoted in City of New York*, 179 F.3d at 32 (emphases added).

Another federal statute also has the purpose of fostering cooperation in immigration enforcement. In 8 U.S.C. § 1357(g), Congress made clear that no agreement is needed for state and local officers or employees "to communicate

with [federal immigration authorities] regarding the immigration status of any individual, including reporting knowledge that a particular alien is not lawfully present in the United States." § 1357(g)(10)(A). Likewise, Congress has refused to require any formal agreement for state and local officers or employees to "cooperate with [federal immigration authorities] in the identification, apprehension, detention, or removal of aliens not lawfully present in the United States." § 1357(g)(10)(B).

SB 54 frustrates, and is intended to frustrate, federal enforcement of immigration law. By design, SB 54 keeps ICE in the dark about aliens' release dates and home and work addresses, sharply increasing the difficulty ICE has in locating removable aliens and taking them into custody. Furthermore, because SB 54, by its terms, mandates noncooperation with federal enforcement of immigration laws, it thwarts the congressional purpose of fostering such cooperation. By thus standing as an obstacle to central purposes of the INA, SB 54 plainly violates the Supremacy Clause.

In denying this conclusion, the court below only speciously addressed the government's argument that SB 54 impedes federal immigration enforcement:

> *[R]efusing to help is not the same as impeding*. If such were the rule, obstacle preemption could be used to commandeer state resources and subvert Tenth Amendment principles. Federal objectives will always be furthered if states offer to assist federal efforts. A state's decision not to assist in those activities will always make the federal object more

> difficult to attain than it would be otherwise. *Standing aside does not equate to standing in the way.*

ER 50 (emphases added). The flaw in the court's reasoning is readily apparent: the court misread SB 54 as a refusal of *California* to assist the federal government. In fact, SB 54 is a prohibition on California cities, counties, and state and local law enforcement officers, ordering *them* not to assist the federal government. The only question is whether this raises an obstacle to federal enforcement of immigration laws and to federal and state cooperation in that enforcement, both pervading purposes of the INA.

This outlawing of voluntary assistance certainly is such an obstacle. Many cities and officials *would* assist the federal government, as shown by the submission of an *amici curiae* brief in this case by numerous California municipalities and elected officials in support of the United States, were they not blocked from doing so by SB 54. It is as if a mover were trying to load a heavy crate onto a truck, while a crowd looked on. The mover asks for help from the crowd, and many would give it, but the employer of all of the people in the crowd announces that anyone who helps the mover will be fired. It is well within the bounds of the ordinary use of words to say that the employer has raised an "obstacle" to the mover's loading the crate onto the truck, and "frustrated" the mover's purpose—and it is a serious obstacle and a serious frustration to the extent that the mover would find it difficult to complete his job without help. Here, it is

very difficult for the federal government to deport criminal aliens if it cannot take custody of them in jails, or have local authorities transfer custody, or even learn their home addresses. To federal immigration enforcement in California and to congressional purposes behind the INA, SB 54 is, and was meant to be, a serious obstacle and a serious frustration. *Cf. State ex rel. Becerra v. Sessions*, 284 F. Supp. 3d 1015, 1035 (N.D. Cal. 2018) ("No cited authority holds that the scope of state sovereignty includes the power to forbid state or local employees from voluntarily complying with a federal program."); *City of New York*, 179 F.3d at 35 ("We therefore hold that states do not retain under the Tenth Amendment an untrammeled right to forbid all voluntary cooperation by state or local officials with particular federal programs.").

II. SB 54 Is Otherwise Conflict Preempted.

SB 54 is conflict preempted in two additional, very direct ways. First, SB commands state and local officers to commit harboring, in violation of federal criminal law. Second, SB commands state and local officers, in some circumstances, forcibly to prevent federal officers from carrying out their duty, and thus commands the former to violate the Supremacy Clause by their own actions. In both of these ways, SB 54 makes it impossible for state and local officers to obey both federal and state law.

A. *SB 54 commands officers to commit harboring.*

What are generally referred to as the "anti-harboring" provisions of the INA—located at Title II, Chapter 8, § 274 and codified at 8 U.S.C. § 1324—read in pertinent part:

> **Bringing in and Harboring Certain Aliens**
>
> **(a) Criminal penalties.—**
>
> (1) (A) Any person who—
> (iii) knowing or in reckless disregard of the fact that an alien has come to, entered, or remains in the United States in violation of law, conceals, harbors, or shields from detection, or attempts to conceal, harbor, or shield from detection, such alien in any place, including any building or any means of transportation; . . .
>
> (v) (I) engages in any conspiracy to commit any of the preceding acts, or (II) aids or abets the commission of any of the preceding acts, shall be punished as provided in subparagraph (B).
>
> (B) A person who violates subparagraph (A) shall, for each alien in respect to whom such a violation occurs—
> (ii) in the case of a violation of subparagraph (A)(ii), (iii), (iv), or (v)(II), be fined under title 18, United States Code, imprisoned not more than 5 years, or both . . . .

The INA defines "person" when used in Title II as "an individual or an organization." 8 U.S.C. § 1101(b)(3). "The term 'organization' means, but is not limited to, an organization, corporation, company, partnership, association, trust, foundation or fund; and includes a group of persons, whether or not incorporated, permanently or temporarily associated together with joint action on any subject or subjects." 8 U.S.C. § 1101(a)(28). Thus, § 1324 applies to municipal

corporations and unincorporated areas alike, which, under the INA's sweeping definition, are organizations, and thus persons.

By preventing state and local law enforcement from providing the information or cooperation that ICE requests in the course of enforcing federal immigration laws, SB 54 compels local law enforcement to "conceal[], harbor[], or shield[] from detection" aliens in "any place, including any building" (or to attempt to do so) in violation of 8 U.S.C. § 1324(a)(1)(a)(iii). For example, when ICE requests the release date of an illegal alien from a local jail, and local authorities refuse to give that information to it, the local authorities are thereafter, at any given moment during the remainder of the alien's confinement, concealing from ICE whether the alien is inside or outside of the jail, and thus "conceal[ing]" the alien's presence "in . . . a[] building." More drastically, if ICE agents arrive at or enter a local jail to assume custody of an illegal alien, and local authorities either refuse them entry or refuse to allow them to assume custody, as mandated by SB 54, the local officials are preventing the alien from being taken out of the jail, and thus "harbor[ing]" the alien "in . . . a[] building." Even if local law enforcement claims that receiving a Form I-247A from ICE does not give it the requisite knowledge of an alien's unlawful presence, the form includes a probable cause determination by the U.S. Department of Homeland Security that the alien is removable, thus at the very least making law enforcement's noncompliance in "reckless disregard" of the

alien's unlawful presence. Accordingly, SB 54 coerces local law enforcement to violate the federal anti-harboring statute.

B. *SB 54 commands officers to violate the Supremacy Clause.*

Under SB 54, in many cases, if a federal immigration officer attempts to assume custody of an alien from local officers, local officers may not transfer custody.

SB 54's bar on transferring custody applies whether the federal officer attempts to assume custody in a state or local jail or on a public street. In either circumstance, it is foreseeable that local officers would feel compelled to prevent such attempts, sometimes either by arresting or by using force against federal officers. Such a shocking course would, of course, violate the Supremacy Clause, as the Supreme Court decided well over a century ago in a case in which California arrested a federal marshal for an act in the performance of his duty to protect a U.S. Supreme Court justice:

> "If, when thus acting, and within the scope of their authority, [federal] officers can be arrested and brought to trial in a state court, for an alleged offence against the law of the State, yet warranted by the federal authority they possess, and if the general government is powerless to interfere at once for their protection—if their protection must be left to the action of the state court—the operations of the general government may at any time be arrested at the will of one of its members. *The legislation of a State may be unfriendly. It may affix penalties to acts done under the immediate direction of the national government, and in obedience to its laws. It may deny the authority conferred by those laws. The state court may administer not only the laws of the State, but equally federal law, in such a manner as to paralyze the operations of*

> *the government.* And even if, after trial and final judgment in the state court, the case can be brought into the United States court for review, the officer is withdrawn from the discharge of his duty during the pendency of the prosecution, *and the exercise of acknowledged federal power arrested*. We do not think such an element of weakness is to be found in the Constitution. The United States is a government with authority extending over the whole territory of the Union, acting upon the States and the people of the States. While it is limited in the number of its powers, so far as its sovereignty extends it is supreme. No state government can exclude it from the exercise of any authority conferred upon it by the Constitution; *obstruct its authorized officers against its will; or withhold from it, for a moment, the cognizance of any subject which that instrument has committed to it.*"

In re Neagle, 135 U.S. 1, 61-62 (1890) (quoting *Tennessee v. Davis*, 100 U.S. 257, 263 (1879)) (emphases added). *See generally* Seth P. Waxman & Trevor W. Morrison, *What Kind of Immunity? Federal Officers, State Criminal Law, and the Supremacy Clause*, 112 Yale L.J. 2195, 2236-37 (2003) (discussing *Neagle*).

In both these ways, then—by commanding state and local officers to commit harboring, and by commanding them to violate the Supremacy Clause—SB 54 makes compliance with both state and federal law an impossibility.

III. SB 54 Usurps The Federal Government's Exclusive Authority Over Foreign Relations.

The federal government "has broad, undoubted power over the subject of immigration and the status of aliens." *Arizona*, 567 U.S. at 394 (citing *Toll v. Moreno*, 458 U.S. 1, 10 (1982)). This power derives not only from the federal government's constitutional authority to "establish an uniform Rule of Naturalization," U.S. Const. art. I, § 8, cl. 4, but from its inherent, sovereign

power to conduct relations with foreign nations. *Arizona*, 567 U.S. at 394-395 (citing *Toll*, 458 U.S. at 10 (citing *United States v. Curtis-Wright Export Corp.*, 299 U.S. 304, 318 (1936)). Thus, the power to set immigration policy is a component of the federal government's foreign relations authority. *Arizona*, 567 U.S. at 395. "Immigration policy can affect trade, investment, tourism, and diplomatic relations for the entire Nation, as well as the perceptions and expectations of aliens in this country who seek the full protection of its laws." *Id.*; *see also Hines*, 312 U.S. at 68 ("[alien registration] legislation is in a field which affects international relations, the one aspect of our government that from the first has been most generally conceded imperatively to demand broad national authority.").

"No State can rewrite our foreign policy to conform to its own domestic policies." *United States v. Pink*, 315 U.S. 203, 233 (1942). As is crucial here, decisions regarding the removal process "touch on foreign relations and must be made with one voice." *Arizona*, 567 U.S. at 409; *see Reno* v. *American-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 483-484 (1999); *Jama* v. *Immigration and Customs Enf't*, 543 U.S. 335, 348 (2005) ("Removal decisions . . . may implicate [the Nation's] relations with foreign powers . . . ." (internal quotation marks omitted)); *Galvan* v. *Press*, 347 U.S. 522, 531 (1954) ("Policies pertaining to the entry of aliens and their right to remain here are

. . . entrusted exclusively to Congress . . . ."); *Harisiades v. Shaughnessy*, 342 U.S. 580, 588-589 (1952) ("[A]ny policy toward aliens is vitally and intricately interwoven with contemporaneous policies in regard to the conduct of foreign relations . . . ."). A decision on removability involves a determination of whether it is appropriate to allow a foreign national to continue living in the United States. *Arizona*, 567 U.S. at 409.

By restricting cooperation and communication with ICE concerning some categories of aliens but not others, the State of California, in SB 54, has enacted its own policy preferences about which foreign nationals should stay within the nation's borders and which should be removed. Thus, for example, when California restricts certain types of cooperation to a subset of aliens convicted of crimes listed in Cal. Gov't Code § 7282.5(a), the state creates its own categories of immigration enforcement, and enacts its own removal priorities, at variance with federal ones. Such state policies "violate[] the principle that the removal process is entrusted to the discretion of the federal government" and "must be made with one voice." *Arizona*, 567 U.S. at 409.

The federal government already has its own removal priorities, which include certain categories of inadmissible and deportable aliens outlined by Congress, and no longer exempts any class or category of removable aliens from potential enforcement. *See* Memorandum from John Kelly, Sec'y of Homeland

Sec. to Kevin McAleenan, Acting Comm'r of U.S. Customs and Border Patrol et al. on Enf't of the Immigration Laws to Serve the Nat'l Interest (Feb. 20, 2017). Thus, the federal government already has its own voice when it comes to which categories of aliens should depart from the United States, and it differs markedly from California's. Because, in both intent and effect, California has taken removal policy out of the hands of the federal government and into its own, SB 54 is an invalid usurpation of the national government's exclusive authority over foreign affairs.

CONCLUSION

For the foregoing reasons, the judgment of the court below should be reversed.

DATED: September 25, 2018

Respectfully submitted,

/s/ Christopher J. Hajec
Christopher J. Hajec
Mark S. Venezia
Elizabeth A. Hohenstein
IMMIGRATION REFORM LAW INSTITUTE
25 Massachusetts Ave., NW, Suite 335
Washington, DC 20001
Telephone: (202) 232-5590

Attorneys for *Amici Curiae*

CERTIFICATE OF COMPLIANCE

I certify that, pursuant to Federal Rules of Appellate Procedure 32(a)(5) and 32(a)(7)(B), the foregoing *amici curiae* brief is proportionally spaced, has a typeface of 14 point Times New Roman, and contains 4,387 words, excluding those sections identified in Fed. R. App. P. 32(f).

/s/ Christopher J. Hajec
Christopher J. Hajec
Attorney for *Amici Curiae*

CERTIFICATE OF SERVICE

I certify that on September 25, 2018, I electronically filed the foregoing brief with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system. Participants in the case are registered CM/ECF users, and service will be accomplished by the appellate CM/ECF system.

/s/ Christopher J. Hajec
Christopher J. Hajec