No. 15-15636

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

THE REPUBLIC OF THE MARSHALL ISLANDS,

Plaintiff - Appellant,

v.

THE UNITED STATES OF AMERICA; PRESIDENT BARACK OBAMA, THE PRESIDENT OF THE UNITED STATES OF AMERICA; THE DEPARTMENT OF DEFENSE; SECRETARY ASHTON CARTER, THE SECRETARY OF DEFENSE; THE DEPARTMENT OF ENERGY; SECRETARY ERNEST MONIZ, THE SECRETARY OF ENERGY; AND THE NATIONAL NUCLEAR SECURITY ADMINISTRATION,

Defendants - Appellees.

On Appeal from the United States District Court for the
Northern District of California: No. C 14-01885 JSW
The Honorable Jeffrey S. White

BRIEF OF AMICUS CURIAE GLOBAL JUSTICE CENTER FOR THE APPELLANT SUPPORTING REVERSAL

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Fed. R. App. P. 26.1, *amicus curiae* Global Justice Center states that it is a non-profit corporation registered in the state of New York and accorded status as a tax-exempt organization under Section 501(c)(3) of the Internal Revenue Code. It has no parent corporation and no stock.

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I. IDENTITY, INTEREST, AND AUTHORITY TO FILE

This brief of *amicus curiae* the Global Justice Center (GJC) is submitted pursuant to Rule 29(a) of the Federal Rules of Appellate Procedure and Ninth Circuit Rule 29-2 with the consent of all parties to the case. GJC is a non-governmental organization dedicated to promoting the enforcement of international law in a progressive, non-discriminatory manner. Thus, GJC has a direct and vital interest in the issues before this Court, which will impact the ability of future litigants to vindicate their rights under international treaties. No part of this brief was authored by a party or party's counsel, nor did any party, party's counsel, or other person outside of GJC contribute money intended to fund the preparation of this brief.

II. INTRODUCTION

The District Court dismissed Plaintiff's case below both because it found that Plaintiff lacked standing to bring its claims, and because it found the issues in this case to be non-justiciable political questions. Order Granting Mot. to Dismiss at 5-7. This *amicus* brief will address the latter of these issues, arguing that the District Court erred in applying the political question doctrine to Plaintiff's claims.

In *Baker v. Carr*, the Supreme Court outlined six factors any of which may justify abstention from a case as a political question. 369 U.S. 186, 217 (1962). The District Court found two of these factors to be implicated by the case at bar: textual commitment to one of the political branches, and a lack of judicially discoverable and manageable standards. Order Granting Mot. to Dismiss at 5-7. This brief will argue that the meaning of Article VI of the Nuclear Non-Proliferation Treaty (NPT), and the question of whether or not the United States (U.S.) is in compliance with it are not political questions, and in particular, that the District Court was wrong to hold that no judicially manageable standards are available to guide its analysis of these questions. This brief will identify a rich array of judicial and non-judicial sources that could inform the court's development of new standards. This brief will also contest the outdated and overbroad statement of Executive authority over foreign affairs that led the District Court to find that resolution of this issue was textually committed to the Executive.

III. THERE ARE JUDICIALLY DISCOVERABLE AND MANAGEABLE STANDARDS AVAILABLE TO RESOLVE THIS CASE.

A. The Court Must do an Exhaustive Search for Judicially Discoverable and Manageable Standards.

In order to determine whether judicially discoverable and manageable standards exist to guide the resolution of a case, "courts must ask whether they have the legal tools to reach a ruling that is principled, rational, and based upon

reasoned distinctions." *Alperin v. Vatican Bank*, 410 F.3d 532, 552 (9th Cir. 2005). The Supreme Court has counseled "against holding a case nonjusticiable under the second *Baker* test without first undertaking an exhaustive search for applicable standards." *Id*. at 552-53. To determine whether judicially manageable standards are available, courts can look to precedent, drafting history, and other guidance for crafting a rule of decision. *See*, *e.g*., *Zivotofsky v. Clinton*, 132 S. Ct. 1421, 1428-30 (2012) (pointing out the "detailed legal arguments" provided by the parties); *Japan Whaling Ass'n v. American Cetacean Soc.*, 478 U.S. 221, 230 (1986) (citing relevant statutory scheme); *Los Angeles County Bar Ass'n v. March Fong Eu*, 979 F.2d 697, 702 (9th Cir. 1992) (relying on existing standards that "are well developed, although they have not often been applied to these facts."); *Spectrum Stores, Inc. v. Citgo Petroleum Corp.*, 632 F.3d 938, 952 (5th Cir. 2011) (citing *Lane v. Halliburton*, 529 F.3d 548, 562) (considering the availability of "statutory, administrative or case law").

Although the Court may need to use innovative and creative means to find judicially discoverable and manageable standards with respect to Article VI, "courts have repeatedly risen to the challenge of handling cases involving international elements." *Alperin*, 410 F.3d at 554. "[E]ven where significant foreign policy concerns are implicated, a case does not present a political question under this factor so long as it involves . . . normal principles of treaty or executive

agreement construction." *Gross v. German Foundation Indus. Initiative*, 456 F.3d 363, 388 (3rd Cir. 2006) (citing *Japan Whaling*, 478 U.S. at 230).

In dismissing the Plaintiff's claims, the District Court did not undertake an exhaustive search for applicable standards. Order Granting Mot. to Dismiss at 6-7. Instead, the Court summarily concluded that it "lack[ed] any judicially discoverable and manageable standards for resolving the dispute" and that "[w]hat constitutes good faith efforts to pursue negotiations of effective measures relating to cessation of the nuclear arms race are determinations for the political branches to make . . . ." Order Granting Mot. to Dismiss at 7. However, had the Court conducted an exhaustive search, it would have found an array of standards relating to good faith negotiation under Article VI specifically, and negotiating in good faith pursuant to treaties generally. These standards are addressed below.

B. International Sources Provide Resources for Judicially Manageable Standards.

The Supreme Court looks to international sources for guidance to inform its selection of standards or interpretation of statutory language when relevant material exists. *See e.g.*, *Hamdi v. Rumsfeld*, 542 U.S. 507 (2004) (analyzing international treaties and customary international law in interpreting the Authorization for the Use of Military Force (115 Stat. 224)); *Lawrence v. Texas*, 539 U.S. 558 (2003) (analyzing an European Court of Human Rights decision and the practice of other nations and overruling *Bowers v. Hardwick*, 488 U.S. 176

(1986)). Although some of these sources are not binding in this Circuit, they are to be accorded "respectful consideration." *Sanchez-Llamas v. Oregon*, 548 U.S. 331, 334 (2006) (citing *Breard v. Greene*, 523 U.S. 371, 375 (1998) (per curiam)). There are a number of international sources that can serve as standards in evaluating the U.S.'s compliance with Article VI. Several examples are presented below.

1. Consensus Results of the NPT Review Conferences Provide Potential Standards.

The States parties to the NPT (including the U.S.) conduct Review Conferences every five years in order to evaluate compliance with the treaty's provisions. Treaty on the Non-Proliferation of Nuclear Weapons, July 1, 1968, 21 U.S.T. 483, 729 U.N.T.S. 161. In 2000, the Review Conference adopted a consensus document specifically addressing implementation of Article VI. *2000 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons – Final Document*, NPT/CONF.2000/28 (Parts I and II). The document outlines thirteen steps towards negotiating nuclear disarmament, including: "a moratorium on nuclear-weapon-test explosions or any other nuclear explosions pending entry into force of that Treaty;" application of "the principle of irreversibility . . . to nuclear disarmament;" reduction in arsenals; increased transparency of nuclear weapons capabilities; and "an unequivocal undertaking by

the nuclear-weapon States to accomplish the total elimination of their nuclear arsenals leading to nuclear disarmament." *Id.* at ¶ 15.[1] In fact, these thirteen steps were used by the United Kingdom during the NPT's 2010 Review Conference to show and attempt to prove the Country's progress in implementing Article VI. *2010 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons – Statement by the United Kingdom*, ¶¶ 11-22, NPT/CONF.2010/SR.12 (June 15, 2010).[2]

These steps provide a principled, rational, and reliable basis to determine a State party's compliance with Article VI. In other words, they can operate as judicially manageable standards. Even if these standards have not yet been adjudicated does not preclude the court from applying them to the facts of this case. *See Los Angeles County Bar* Ass'n, 979 F.2d. at 702 ("So long as the nature of the inquiry is familiar to the courts, the fact that standards needed to resolve a

[1] These 13-steps constitute a "post-ratification understanding"— a fundamental canon of treaty interpretation. *See* Vienna Convention on the Law of Treaties art. 31(3), May 23, 1969, 1155 U.N.T.S. 331; *see also Medellin v. Texas*, 552 U.S. 491, 507 (2008) (collecting cases).

[2] For example, in regards to the step on imposing a moratorium on nuclear test explosions, the United Kingdom indicated that there is "a voluntary moratorium in place," and the United Kingdom "ha[s] not carried out any nuclear weapon test explosion or any other nuclear explosion since 1991." *2010 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons – Statement by the United Kingdom*, ¶¶ 11-22, NPT/CONF.2010/SR.12 (June 15, 2010). Further, concerning irreversibility of disarmament measures, "the UK has not reversed any of its nuclear disarmament measures," and finally, is transparent as to their nuclear weapons capabilities. *Id.*

claim have not yet been developed does not make the question a non-justiciable political one.").

2. International Tribunals Have Established Standards for "Good Faith Negotiations."

The concept of good faith treaty negotiations is a fundamental principle of international law and has been frequently adjudicated by international courts and arbitral tribunals.[3] Analysis of these cases and their treatment of "good faith negotiations" provide this Court both with concrete examples of the existence of "judicially manageable standards" to evaluate Plaintiff's claims, as well as a proven rubric for using those standards. Specifically, international tribunals have interpreted the obligation to negotiate in good faith to require, *inter alia*: (1) sustained maintenance of meaningful negotiations; (2) willingness to compromise; or (3) serious efforts to achieve agreement.

[3] As a matter of law, once an international agreement enters into force it creates binding legal obligations for States parties to it. Vienna Convention on the Law of Treaties art. 26, May 23, 1969, 1155 U.N.T.S. 331. Thus, in agreements in which subsequent good faith negotiations are required, the law protects the carrying out of those negotiations—the parties are legally obligated to perform in good faith the obligations they have assumed and legal consequences for noncompliance are prescribed. Vienna Convention on the Law of Treaties arts. 26 and 60, May 23, 1969, 1155 U.N.T.S. 331; M. Rogoff, The Obligation to Negotiate in Int'l Law: Rules and Realities, 16 MICH. J. INT'L L. 141, 144-145 (1994-1995).

a) Good Faith Negotiations Require Sustained Maintenance of Meaningful Negotiations.

Negotiations "shall be meaningful and not merely consist of a formal process of negotiations." *Claims arising out of decisions of the Mixed Graeco-German Arbitral Tribunal set up under Article 304 in Part X of the Treaty of Versailles (Greece v. Germany)*, 19 R.I.A.A. 27, 64 (1972). This requires the parties to maintain a "sustained upkeep of negotiations over a period appropriate to the circumstances, awareness of the interests of the other party, and a preserving quest for an acceptable compromise." *Arbitration between Kuwait and the American Independent Oil Co (Aminoil)*, 21 I.L.M. 976, 1014 (1982).

In *Mavrommatis Palestine Concessions (Greece v. United Kingdom)*, the Permanent Court of International Justice (predecessor to current International Court of Justice) made findings that shine a light on what constitutes "sustained upkeep" of "meaningful negotiations." Judgment, 1924 P.C.I.J. (ser. A) No. 2, (Aug. 30), at ¶¶ 25-29. In that case, Mavrommatis, a Greek subject, sued the governments of the United Kingdom and of Palestine for failing to recognize his contractual rights to construct certain public works. *Id.* at ¶ 1. As part of its jurisdictional analysis and pursuant to a procedural rule requiring that any dispute be diplomatically negotiated before an action at law, the court determined whether the dispute had, in fact, been negotiated. *Id.* at ¶¶ 25-29. In making this determination, the court looked at the history of discussion between the parties, the

individuals between whom they were conducted, their official character and contents, and the substantive overlap between two different sets of discussions. *Id.* Although the exchanges had not reached the point of formally defining the parties' positions, the court held that discussions between Mavrommatis and British authorities had so defined the relevant issues so as to meet the diplomatic negotiation requirement for the court to have jurisdiction. *Id.* at ¶ 29.

b) Good Faith Negotiations Require Willingness to Compromise.

Good faith negotiations require willingness to compromise; parties must make every effort to reach a mutually satisfactory compromise, even going so far as to abandon previous inflexibly held positions. *See Graeco-German Arbitral Tribunal*, 19 R.I.A.A. at 56, 57 and 64. Negotiations cannot be conducted if "either party insists upon its own position without contemplating a modification of it." *Id.* at 64. This does not require a party to accept an agreement on unreasonable terms. *Tacna-Arica Question (Chile v. Peru)*, 2 R.I.A.A. 921, 929 (1925). Instead, a party violates good faith if it systematically refuses to consider adverse propositions of interests or consistently rejects proposed agreements, even though its positions had been taken into account, in order to prevent the conclusion of any reasonable agreement. *Id.* at 929; *Lake Lanoux Arbitration (France v. Spain)*, 12 R.I.A.A. 281 (1957).

c) Good Faith Negotiations Require Serious Efforts to Achieve Agreement.

Negotiations require "at the very least—a genuine attempt by one of the disputing parties to engage in discussions with the other disputing party, with a view to resolving the dispute." *Case Concerning Application of the Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russia)*, 2011 I.C.J. 70, at ¶ 157 (Apr. 1). This includes "serious efforts aimed toward" achieving a negotiated conclusion. *Graeco-German Arbitral Tribunal*, 19 R.I.A.A. at 57. Importantly, the obligation to negotiate (*pacta de negotiando*) does not necessarily imply an obligation to reach an agreement, instead it requires efforts by the parties to negotiate with one another with a view to coming to mutually satisfactory terms. *Id.* at 56, 57. This has been found to require "a willingness by each party to abandon their earlier positions and meet the other side part way." *Id.* at 56.

d) The Rulings of International Tribunals Provide the Tools to Create Judicially Manageable Standards.

The three frameworks above, and the examples of their adjudication, provide the "legal tools" sufficient to "reach a ruling that is principled, rational and based upon reasoned distinctions" on the issue of good faith negotiations. *See Alperin*, 410 F.3d at 547 (citing *Vieth v. Jubelirer*, 541 U.S. 267, 278 (2004)).

The international legal rule that good faith negotiations require sustained upkeep of meaningful negotiations and the court in *Mavrommatis* make clear that

judicially manageable standards exist for the adjudication of good faith negotiation. Further, they also provide an easily accessible and applicable rubric for the District Court to decide the case at bar.

Under the concept of the willingness to compromise, the Court could look at whether the parties made every effort, including abandoning inflexible positions, to reach a compromise. Conversely, the Court could evaluate if a party systematically refused to consider adverse positions or consistently rejected proposals, even though their interests had been accounted for.

Finally, the District Court is well equipped to evaluate whether one or both parties to a dispute have evinced a serious effort at achieving an agreement, particularly in light of the international legal necessity that the parties be willing to abandon original demands with a view to meeting somewhere in the middle.

Bearing these rules in mind, we urge this Court to find that the District Court erred in concluding that no judicially manageable standards exist and dismissing the Plaintiff's action under the political question doctrine.

C. The Court Must Analyze Each Claim and Remedy Individually.

Conducting an "exhaustive search" for judicially manageable standards also requires that the court perform a separate analysis of each claim and remedy. The Ninth Circuit has stated that it uses "a surgical approach rather than a broad brush in benchmarking the Baker formulations against the individual claims. It is

incumbent upon us to examine each of the claims with particularity." *Alperin*, 410 F.3d at 547; s*ee also*, *El-Shifa Pharm Indus. Co.*, 607 F.3d 836, 842 (the court explained that, at least in cases concerning national security and foreign relations, "the presence of a political question . . . turns not on the nature of the government conduct under review but more precisely on the question the plaintiff raises about the challenged action").

An example of this approach can be found in *Flynn v. Shultz*, where Plaintiffs challenged the Executive's compliance with the Hostage Act, which imposed various obligations on the President to undertake certain acts upon learning an American citizen had been kidnapped overseas. 748 F.2d 1186, 1189 (7th Cir. 1984). The court analyzed each action requested by the Plaintiffs separately, finding that the Plaintiffs' request for injunctive relief implicated the political question doctrine, but that Plaintiffs' other claims were justiciable. *Id*. at 1195.

In the instant case, the District Court focused exclusively on the judicially manageability of the Plaintiff's claim for injunctive relief, including taking "all steps necessary to comply with its obligations under Article VI of the Treaty within one year of the Judgment," but did not assess the same for the other issues raised by the Plaintiff. Order Granting Mot. to Dismiss at 7.

However, by addressing each of the Plaintiff's claims separately, this Court might find that judicially manageable standards exist to interpret the meaning of Article VI, to find that the U.S. is currently in breach of its obligations under Article VI, or to find that some actions fall outside the scope of reasonable Executive discretion, *but not* to prescribe steps for compliance. For example, this Court could find that failing to attend *any* negotiations or that modernizing the U.S. weapons arsenal are clear breaches of good faith. At the very least, Plaintiff's request for declaratory relief should be found to be judicially manageable.

IV. ENFORCEMENT OF ARTICLE VI IS NOT TEXTUALLY COMMITTED TO THE EXECUTIVE BRANCH.

Finally, we urge the court to correct the District Court's outdated and overbroad statement of Presidential authority over foreign affairs, which was the basis for its finding that resolution of this issue is textually committed to the Executive.

A. The District Court Erred in Finding Exclusive Executive Authority in the Area of Foreign Affairs.

Below, relying on *Earth Island v. Christopher*, 6 F.3d 648 (9th Cir. 1991), "the Court [found] that Plaintiff's claims relate to 'the foreign affairs function, which rests with the exclusive province of the Executive Branch under Article II, section 2 of the United States Constitution." Order Granting Mot. to Dismiss at 6 (citing *Earth Island*, 6 F.3d at 652). In *Earth Island*, the Ninth Circuit in turn

relied on *United States v. Curtiss-Wright Export Corp*, which has long been the touchstone for the expansive view of the President as the "sole organ" of foreign affairs. *Earth Island*, 6 F.3d at 652-653 (citing *United States v. Curtiss-Wright Export Corp.*, 299 U. S. 304, 320 (1936) (calling the President the "the sole organ of the federal government in the field of international relations")).

The District Court's reliance on the *Curtiss-Wright* line of reasoning is no longer permissible in light of the Supreme Court's decision in *Zivotofsky v. Kerry*, __ S. Ct. __, No. 13-628, 2015 WL 2473281 (U.S. June 8, 2015). In that decision, the Supreme Court made clear that *Curtiss-Wright* can no longer be cited by the Executive to justify "broad, undefined powers over foreign affairs." *Id.* at *16-18 ("This Court declines to acknowledge that unbounded power . . . The Executive is not free from the ordinary controls and checks of Congress merely because foreign affairs are at issue . . . It is not for the President alone to determine the whole content of the Nation's foreign policy.").

Further, *Earth Island* is not instructive on this case. *Earth Island* uses *Curtiss-Wright's* reasoning to police the boundaries of Congressional power, not to restrict the role of the judiciary in enforcing treaties duly adopted by the political branches. *Earth Island* concerned a statutory provision that required the Secretary of State to "initiate negotiations with foreign countries to develop treaties to protect sea turtles." 6 F.3d at 650. Because the statute "impinge[d] upon power

exclusively granted to the Executive," the court could not "lawfully order the Executive to comply with [its] terms." *Id.* at 653. To do so would unconstitutionally aggrandize Congress at the expense of the Executive. *See Zivotofsky v. Clinton*, 132 S. Ct. 1421 2012) (refusing to enforce a statute interfering with the recognition power constitutionally committed to the Executive, but clarifying that doing so did not implicate a political question).[4]

B. The President's Authority over Foreign Affairs Does Not Preclude Judicial Review of U.S. Compliance with Treaty Obligations.

"[T]he Court is not empowered by the Constitution to require the Executive to initiate discussions with foreign nations," as the District Court concludes, any more than Congress is. Order Granting Mot. to Dismiss at 6. However, this does not speak to the question of whether a treaty ratified by the President with the

[4] In light of the Supreme Court's important clarification of the political question doctrine in *Zivotofsky v. Clinton*, a case similar to *Earth Island* decided today might not be characterized as a justiciability question at all but as simple judicial review of an unconstitutional statute. 132 S. Ct. 1421 (2012). *Zivotofsky* cautioned that the constitutional question of which branch of government should decide an issue should not be confused with the political question of what that substantive determination should be, holding that a federal court could review the constitutionality of a provision passed by Congress creating a statutory right to have one's birthplace recorded as Israel on a US Passport. *Id.* at 1428. This was not a political question because it asked the court to police whether one of the political branches was "aggrandizing its power at the expense of" the other, not to itself "decide the political status of Jerusalem." *Id.*

advice and consent of the Senate that requires future Executive action can be enforced by the Court.

The federal courts have a long history of interpreting and enforcing the provisions of treaties once they are in force. As the Supreme Court has said, "[i]f treaties are to be given effect as federal law, determining their meaning as a matter of federal law 'is emphatically the province and duty of the judicial department.'" *Sanchez-Llamas v. Oregon*, 548 U.S. 331, 353-354 (2006) (quoting *Marbury v. Madison*, 1 Cranch 137, 177 (1803)). Recent Supreme Court precedent has illustrated that the judiciary has a critical role to play in policing the U.S. government's compliance with international treaties, even when they touch on core executive functions, such as regulation of the military in the conduct of a war.

For instance, in *Hamdan v. Rumsfeld*, the Department of Justice argued that the Supreme Court should accept as binding the President's determination that the Geneva Conventions did not apply to the U.S. conflict with Al Qaeda as a "classic exercise of his war powers and his authority over foreign affairs more generally." Brief for Respondents, *Hamdan v. Rumsfeld* 548 U.S. 557 (2006) (no. 05-184), at 37-38; *see Hamdan v. Rumsfeld*, 548 U.S. 557, 572-576 (2006). Not only did the Court refuse to abstain from interpreting the treaty, but it scarcely seemed to afford any deference to the Executive's interpretation, proceeding to use traditional tools

of judicial analysis, such as its own consideration of the text. *See Hamdan*, 548 U.S. at 629-631.

In other cases with delicate issues of foreign policy at stake, the court has concluded that the Executive's interpretation of treaty obligations are "not conclusive." *Sanchez-Llamas*, 548 U.S. at 378 (Breyer, J., concurring) (citing *Perkins v. Elg*, 307 U.S. 325, 328, 337-342 (1939) (declining to adopt Executive's treaty interpretation; *Johnson v. Browne*, 205 U.S. 309, 319-321 (1907) (same); *De Lima v. Bidwell*, 182 U.S. 1, 181, 194-199 (1901)). If remanded to the District Court, it may well find that its interpretation of Article VI is reasonable and entitled to deference, be persuaded that the U.S. is in compliance with it, or that judicial intervention is impractical. However, this basic check on executive power must take place. Even in cases with delicate foreign policy import, courts interpret treaties for themselves. *See Hamdan* 548 U.S. at 629-631.

V. CONCLUSION

We urge this Court to reverse the District Court's finding that Plaintiff's claims are barred by the political question doctrine. As the analysis above has demonstrated, the Court can find judicially manageable standards if it consults the full panoply of sources at its disposal, including international case law and the post-ratification understanding of the signatory countries. Furthermore, reversal is

required due to the District Court failure to analyze the judicial manageability of each of Plaintiff's claims separately.

Finally, the Court should reverse the District Court's finding that this issue is textually committed to the Executive. The Supreme Court has made clear that Courts have a role to play in assessing and enforcing US compliance with its international obligations, even when they have implications for national security and military concerns.

RESPECTFULLY SUBMITTED this 20th day of July 2015.

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CERTIFICATE OF COMPLIANCE

This brief complies with Fed. R. App. P. 29(d) because this brief contains 4135 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7(B)(iii) and with Fed. R. App. P. 32(a)(5) because it uses a monospaced Times New Roman typeface, 14-point.

RESPECTFULLY SUBMITTED this 20th day of July 2015.

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing Brief of Appellant 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 20, 2015.

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.

DATED this July 20, 2015.

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