Nos. 10-56971, 09-02371-IEG

IN THE
United States Court of Appeals for the Ninth Circuit

EDWARD PERUTA, et al.,

Plaintiffs-Appellants,

v.

COUNTY OF SAN DIEGO, et al.,

Defendants-Appellees.

On Appeal from the United States District Court
for the Southern District of California, No. 09-cv-2371-IEG (BGS)
District Judge Irma J. Gonzalez

# BRIEF OF AMICUS CURIAE BRADY CENTER TO PREVENT GUN VIOLENCE IN SUPPORT OF REHEARING EN BANC

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December 22, 2014

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## CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure, the Brady Center to Prevent Gun Violence states that it has no parent corporation, nor has it issued shares or debt securities to the public. The Brady Center to Prevent Gun Violence is a 501(c)(3) non-profit corporation, and no publicly held corporation holds ten percent of its stock.

## CONSENT TO FILE

This Court's Order filed December 3, 2014 gave blanket leave to *amici curiae* wishing to file briefs concerning whether the panel decision should be reheard en banc. See Filed Order, Peruta v. Cnty. of San Diego, No. 10-56971 (9th Cir. Dec. 3, 2014) (Dkt. 161).

## STATEMENT OF INTEREST OF *AMICUS CURIAE*

*Amicus* Brady Center to Prevent Gun Violence is the nation's largest non-partisan, non-profit organization dedicated to reducing gun violence through education, research, and legal advocacy.[1] Through its Legal Action Project, it has filed numerous *amicus curiae* briefs in cases involving firearms regulations, including McDonald v. City of Chicago, 130 S. Ct. 3020, 3095 n.13, 3105 n.30, 3107 n.34 (2010) (Stevens, J., dissenting) (citing Brady Center brief); United States v. Hayes, 555 U.S. 415, 427 (2009) (citing Brady Center brief); and District of Columbia v. Heller, 554 U.S. 570 (2008). *Amicus* brings a broad and deep perspective to the issues raised here and has a compelling interest in ensuring that the Second Amendment does not impede reasonable governmental action to prevent gun violence.

[1] *Amicus* Brady Center is the sister organization of Proposed Intervenor Brady Campaign to Prevent Gun Violence, a 501(c)(4) non-profit entity that shares a president, website and counsel with the Brady Center. See Brady Campaign Mot. to Join State's Petition for Rehearing, Peruta v. Cnty. of San Diego, No. 10-56971 (9th Cir. Nov. 26, 2014) (Dkt. 158); Brady Campaign Mot. to Intervene, Peruta v. Cnty. of San Diego, No. 10-56971 (9th Cir. Feb. 27, 2014) (Dkt. 123-1).

## INTRODUCTION

The panel majority's opinion "conflicts with Heller, the reasoned decisions of other Circuits, and [this Court's] own case law." ADD71 (Thomas, J., dissenting). The question before the panel on appeal was whether San Diego County's interpretation of "good cause" in the context of its concealed-carry licensing scheme violates the Second Amendment. Reaching far beyond that narrow question – and without offering the State the opportunity to defend its laws – "the majority opinion instead considered the constitutionality of California's firearm regulatory framework." ADD125 (Thomas, J., dissenting). By divided panel, this Court held for the first time that the Second Amendment protects the right to carry a firearm outside the home for self-defense. That expansive holding leaps beyond the Supreme Court's 2008 decision in Heller, which recognized a Second Amendment right to bear arms only in "defense of hearth and home." District of Columbia v. Heller, 554 U.S. 570, 635 (2008). In fact, Heller confirmed that "prohibitions on carrying concealed weapons" are "presumptively lawful." Id. at 635.

The panel attempted to minimize the breadth of its holding by characterizing the post-Heller landscape as marked by "consensus," ADD43-44, and has continued, on the basis of this initial decision, to undermine the concealed-carry permitting policies of other governmental entities, including those of another

California county in Richards v. Prieto, 560 F. App'x 681 (9th Cir. 2014), and those of the State of Hawaii in Baker v. Kealoha, 564 F. App'x 903 (9th Cir. 2014). The panel's initial decision in Peruta, however, represents a marked deviation from post-Heller jurisprudence in this and other circuits. In fact, when a Maryland district court reached a result similar to the panel's in 2012, the Fourth Circuit characterized it as "trailblazing" and struck it down. Woollard v. Gallagher, 712 F.3d 865, 868 (4th Cir. 2013).

Further, the panel's decision implicates a question of exceptional importance, involving the only constitutional amendment the content of which endangers human life – the Second Amendment. En banc review should be granted.

## FACTUAL AND PROCEDURAL BACKGROUND

As many states have done throughout American history, California regulates concealed weapons to improve public safety. Cal. Penal Code § 25400. "[T]he California scheme does not prevent every person from bearing arms outside the home in every circumstance." ADD48-49. Rather, an individual may lawfully carry a concealed weapon in public by first obtaining a permit pursuant to California Penal Code Sections 26150(b)(1) and 26155(b)(1).[2] The California

[2] There are other exceptions where individuals may carry concealed weapons without a permit if, for example, they are members of particular groups, see e.g., id. § 25450 (peace officers); id. § 25620 (military personnel); id. § 25650 (retired

legislature has established by statute the general prerequisites for a license: an applicant must demonstrate good moral character; residence or other substantial connection to the issuing county; completion of a firearms training course; and good cause for the permit to issue. Id. §§ 26150(a), 26155(a).

California delegates responsibility to county sheriffs to administer the state's concealed-carry license program, including the responsibility to issue written policies on the statutory requirements for a permit. Id. § 26160. Here, the San Diego County Sheriff's Department complied with this mandate and issued a written policy that interprets the statutory requirement of "good cause" as "a set of circumstances that distinguish the applicant from the mainstream and causes him or her to be placed in harm's way." The Sheriff's Department determines the existence of good cause on "on an individual basis." It may exist in "situations related to personal protection as well as those related to individual businesses or occupations," but concern for one's personal safety alone does not, by itself, constitute good cause. ADD6-7.

That interpretation of good cause is at the heart of the Plaintiff-Appellants' challenge. Each of the five individual Plaintiff-Appellants ("Applicants") wishes

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federal officers), or are in particular locations, see e.g., id. § 26035 (private property or place of business); id. § 26040 (where hunting is allowed), or are carrying at particular times, see e.g., id. § 26045 (when confronted with "immediate, grave danger"); id. § 26050 (when attempting a lawful arrest).

to obtain a license to carry a concealed weapon within San Diego County.[3] Prior to filing suit, each Applicant either (1) was denied a license to carry a concealed weapon because he or she could not demonstrate good cause for the issuance of a permit or (2) declined to apply for a permit after concluding that he or she could not demonstrate good cause. ADD7.

On October 23, 2009, Applicant Edward Peruta filed suit against Sheriff William D. Gore under 42 U.S.C. § 1983, asserting that San Diego County's concealed-carry licensing policy violated the Second Amendment. The State of California was not named as a party. Plaintiff Peruta requested "injunctive and declaratory relief from the enforcement of the County policy's interpretation of 'good cause.'" ADD8.

A little over a year later, the District Court denied Plaintiffs' motion for summary judgment while granting Defendants'. Peruta v. Cnty. of San Diego, 758 F. Supp. 2d 1106 (S.D. Cal. 2010). Chief Judge Irma E. Gonzalez held that, assuming without deciding the Second Amendment encompasses the right to carry a firearm in public, the County's policy passed constitutional muster under intermediate scrutiny. Specifically, San Diego County's "important interest in reducing the number of concealed handguns in public because of their

[3] There is an additional, non-individual Plaintiff-Appellant, the California Rifle and Pistol Association Foundation, which represents many San Diego Country residents "in the same predicament as the individual Plaintiffs." Id.

disproportionate involvement in life-threatening crimes of violence" trumped any burden on the Applicants' Second Amendment interests. Id. at 1115-17.

By divided panel, this Court reversed and remanded. The panel majority found that the Second Amendment includes a right to bear arms in public for the purpose of self-defense. According to the majority, because San Diego County's interpretation of good cause — when combined with other provisions of California law — effectively "destroys" this right for responsible, law abiding citizens, the County's interpretation is invalid. ADD51. The Court declined to specify the level of scrutiny it was applying, determining instead that San Diego County's policy was so burdensome as to nullify the need for such analysis. ADD52.

Eight days later, Sheriff Gore announced that he did not intend to petition for rehearing of the decision en banc. See Ex. B to Brady Campaign Mot. to Intervene, Peruta v. Cnty. of San Diego, No. 10-56971 (9th Cir. Feb. 27, 2014) (Dkt. 123-1). As a result, Brady Campaign to Prevent Gun Violence, in addition to the State of California, separately moved to intervene. Brady Campaign Mot. to Intervene, Peruta v. Cnty. of San Diego, No. 10-56971 (9th Cir. Feb. 27, 2014) (Dkt. 123-1); State's Mot. to Intervene, Peruta v. Cnty. of San Diego, No. 10-56971 (9th Cir. Feb. 27, 2014) (Dkt. 122-1).

This Court denied both motions. ADD116. The State of California moved for rehearing of that denial, State's Petition for Rehearing, Peruta v. Cnty. of San

Diego, No. 10-56971 (9th Cir. Nov. 26, 2014) (Dkt. 157-1), and the Brady Campaign to Prevent Gun Violence moved to join the State's motion. Brady Campaign Mot. to Join State's Petition for Rehearing, Peruta v. Cnty. of San Diego, No. 10-56971 (9th Cir. Nov. 26, 2014) (Dkt. 158). Both motions are still pending.

In the meantime, a judge of this Court "made a *sua sponte* call for a vote on whether this case should be reheard en banc," and this Court requested briefing from the parties and *amici* on "their respective positions on whether this case should be reheard en banc." Filed Order, Peruta v. Cnty. of San Diego, No. 10-56971 (9th Cir. Dec. 3, 2014) (Dkt. 161).

**REASONS FOR GRANTING REHEARING EN BANC**

Rehearing en banc is appropriate when either: (A) "the panel decision conflicts with a decision of the United States Supreme Court or of the court to which the petition is addressed . . . or (B) the proceeding involves one or more questions of exceptional importance," such as where "the panel decision conflicts with authoritative decisions of other United States Courts of Appeals that have addressed the issue." Fed. R. App. P. 35(b)(1). All of these factors apply here.

## I. THE PANEL'S DECISION CONFLICTS WITH SUPREME COURT LAW

The panel majority's holding "strikes down San Diego County's concealed carry policy" on the basis that it impermissibly infringes upon the right to bear arms in public for self-defense. ADD71. This conflicts with Supreme Court precedent and is reason enough for rehearing en banc. Fed. R. App. P. 35(b)(1)(A).

1. As an initial matter, Heller does not support this Court's drastic extension of the right to bear arms. Heller recognized a Second Amendment right only of "law-abiding, responsible citizens to use arms *in defense of hearth and home*." 554 U.S. at 634-35 (emphasis added). Subsequent Supreme Court decisions have left no doubt that this is the holding of Heller. See McDonald v. City of Chicago, Ill., 561 U.S. 742, 791 (2010) ("In Heller, we held that the Second Amendment protects the right to possess a handgun *in the home* for the purpose of self-defense.") (emphasis added).

2. In fact, the panel majority's holding contravenes Supreme Court precedent. Heller confirmed that "the Constitution leaves" jurisdictions with "a variety of tools for combating" the problem of gun violence. 554 U.S. at 636. Specifically, "prohibitions on carrying concealed weapons" are among the "longstanding" and "presumptively lawful regulatory measures" that the Supreme Court approved of in Heller. Id. at 626-27 & n.26. Heller's approval of

"prohibitions on carrying concealed weapons" is not surprising because the Supreme Court has expressed its support for such measures in even stronger terms for more than a hundred years. In Robertson v. Baldwin, the Supreme Court forcefully stated that "the right of the people to keep and bear arms (article 2) is not infringed by laws prohibiting the carrying of concealed weapons." 165 U.S. 275, 281-82 (1897). Significantly, Robertson regarded this statement to be self-evident, on par with the fundamental proposition that "the freedom of speech and of the press (article 1) does not permit the publication of libels[.]" Id. at 281. The Court has not wavered on this point since Robertson; "no case, including Heller, has ever called it into question." ADD94.

Nonetheless, the panel seized upon this case as an opportunity to map the outer boundaries of the Second Amendment by striking down a licensing program that is a far less intrusive regulation than the complete prohibitions on the carrying of concealed weapons discussed by the Supreme Court. Rehearing en banc should be granted so that this Court may step back from such perilous terrain.

## II. THE DECISION CONFLICTS WITH NINTH CIRCUIT LAW

1. The panel's decision also demands en banc review because it "conflicts with . . . [this Court's] own case law." ADD71 (Thomas, J., dissenting). That is so in at least two respects. First, the Ninth Circuit has always – in line with Supreme Court precedent – interpreted Heller narrowly, as holding only that

the Second Amendment protects the right to possess firearms for self-defense *in the home*. See U.S. v. Chovan, 735 F.3d 1127, 1138 (9th Cir. 2013) ("Heller tells us that the core of the Second Amendment is 'the right of law-abiding, responsible citizens to use arms in defense of hearth and home.'") (citations omitted); U.S. v. Vongxay, 594 F.3d 1111, 1115 (9th Cir. 2010) (same); U.S. v. Morsette, 622 F.3d 1200, 1202 (9th Cir. 2010) (same).[4] Yet this panel relied on the same precedent to reach a contrary result, marking the first time that this Court has interpreted the Second Amendment as encompassing a broad right to carry guns in public.

2. Second, the panel's refusal to apply any form of scrutiny to its analysis cannot be squared with this Court's prior decisions. In Chovan, this Court identified a two-step inquiry for Second Amendment challenges, including an express directive to "apply the appropriate level of scrutiny." 735 F.3d at 1136.[5] Ignoring that directive, the panel declined to "apply a particular standard of heightened scrutiny." ADD62. According to the panel majority, that approach was warranted because California's regulatory scheme is so burdensome as to

[4] Similarly, district courts in this Circuit have overwhelmingly adhered to this narrow interpretation of Heller. See e.g., Young v. Hawaii, 911 F. Supp. 2d 972, 988 (D. Haw. 2012); Scocca v. Smith, 912 F. Supp. 2d 875, 888 (N.D. Cal. 2012).

[5] District courts in this Circuit have also consistently applied a specific level of scrutiny to Second Amendment challenges. See e.g., San Francisco Police Officers Association v. City and County of San Francisco, No. C 13-05351 WHA, slip op. at 7 (N.D. Cal. Feb. 19, 2014); Young, 911 F.Supp.2d at 990; U.S. v. Parker, 919 F. Supp. 2d 1072, 1083-84 (E.D. Cal. 2013); Nichols v. Brown, No. CV 11-09916 SJO (SS), 2013 WL 3368922, at *5 (C.D. Cal. July 3, 2013).

"effect[] a *destruction* of the [Second Amendment] right." Id. (emphasis added). Not so. California law does not prohibit the carrying of guns in public, but rather allows law enforcement to keep citizens without good cause from carrying. It does not approach the District of Columbia's total ban on handgun possession everywhere, including in the home, Heller, 554 U.S. at 574, or Illinois' broad prohibition on all public carry, Moore v. Madigan. 702 F.3d 933, 942 (7th Cir. 2012). Nor does it have any effect on the right to possess a handgun at home. As even the panel recognized, it does not effect a complete ban on concealed-carry *outside* of the home. ADD48-49.[6] In truth, California's law is like the laws in New York, New Jersey, and Maryland – all of which have been upheld. See infra at 15-16. Accordingly, the panel majority's heavy reliance on Moore, which involved a far broader and more restrictive regulatory scheme, was improper. Rehearing is warranted. Fed. R. App. P. 35(b)(1)(A).

## III. THE DECISION RAISES AN EXCEPTIONALLY IMPORTANT AND RECURRING QUESTION

1. The panel also has raised a question of exceptional importance by substantially (and improperly) enlarging the Second Amendment to encompass the right to carry guns in public for self-defense. The panel's expansive interpretation

[6] Moreover, that 1,223 individuals received concealed carry permits in San Diego County at the time of summary judgment belies the panel majority's contention that California's scheme "destroys" the Second Amendment right. Brief of Appellee at 4, Peruta v. Cnty. of San Diego, No. 10-56971 (9th Cir. Aug. 12, 2011) (Dkt. 49).

of the Second Amendment is troubling because of the unique risks it entails. Its decision could lead to the unraveling of concealed-carry restrictions in states throughout this circuit, forcing the issuance of thousands of permits to carry by persons whom law enforcement has determined have no good cause to carry guns in public. Simply put, a potential result like that demands en banc review.

Guns are designed to kill, and gun possession and use subject others to a serious and often deadly risk of harm. This risk is exacerbated when firearms are brought into the public domain. United States v. Masciandaro, 638 F.3d 458, 476 (4th Cir. 2011), cert. denied, 132 S. Ct. 756 (2011) (the risks associated with gun carrying could "rise exponentially as one moved the right [announced in Heller] from the home to the public square.").

The risks associated with carrying a firearm in public are augmented in three ways. First, public carrying threatens the safety of a broader range of individuals than those endangered by guns in the home. Since 2007, seventeen law enforcement officers, in addition to more than 600 private citizens, have been killed by concealed handgun permit holders. See Violence Policy Center, Concealed Carry Killers (2013), available at http://vpc.org/ccwkillers.htm (last viewed December 16, 2014). Second, public carrying repeatedly has been shown

to increase the chances that one will fall victim to violent crime.[7] John Donohue, The Impact of Concealed-Carry Laws, Evaluating Gun Policy Effects on Crime and Violence 289, 320 (2003) (most states that broadly allow concealed firearms in public appear to "experience increases in violent crime, murder, and robbery when [those] laws are adopted."); see also Abhay Aneja et al., The Impact of Right to Carry Laws and the NRC Report: The Latest Lessons for the Empirical Evaluation of Law and Policy 80-81 (Stanford Law and Economics Olin Working Paper No. 461, 2014) (analysis of state data from 1979-2010 "suggest[s] that [right-to-carry] laws increased every crime category by at least 8 percent" except murder, which rose three percent.).[8] Third, law enforcement's ability to protect themselves and the public could be greatly restricted if officers were required to presume that a person carrying a firearm in public was doing so lawfully. See Commonwealth v. Robinson, 600 A.2d 957, 959 (Pa. Super. Ct. 1991); see also Lawrence E. Rosenthal, The Limits of Second Amendment Originalism and the Constitutional Case for Gun Control, WASH. U. L. REV. (forthcoming) ("If the Second

[7] This remains true even for the individuals who are defending themselves; "guns did not seem to protect those who possessed them from being shot in an assault." Charles C. Branas et al., Investigating the Link Between Gun Possession and Gun Assault, 99 Am. J. Pub. Health 2034 (Nov. 2009).

[8] *Available at* http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2443681. While the three percent murder increase from 1979-2010 was considered statistically insignificant, post-1999 regressions estimate that right-to-carry laws increased murder rates a statistically significant 1.5 percent. Critically, "[i]n none of [the] 28 regressions was there any statistically significant estimate[s] suggesting that RTC laws decreased crime." *Id.* at 81.

Amendment conferred a right to carry firearms in public . . . the ability to execute a stop-and-frisk strategy aimed at driving guns off the streetscape would be sharply circumscribed").[9]

2. Because of the dramatically increased risk that firearms pose in public, other circuits have tread with particular caution, upholding restrictions similar to California's and declining to reach the application of the Second Amendment outside the home when the case can be decided on narrower grounds. See infra, at 15-16.[10] Even the Seventh Circuit in Moore – which invalidated Illinois' far more restrictive prohibition on all public carrying in response to a direct challenge to an entire law, as opposed to a single County's interpretation of it – was more procedurally circumspect. ADD106 (Thomas, J., dissenting). That panel stayed its "mandate stayed for 180 days to allow the Illinois legislature to craft a new gun law that will impose reasonable limitations . . . on the carrying of guns in public." Moore, 702 F.3d at 942.[11]

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[9] *Available at* http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2414681.

[10] The panel rejected the approaches of the Second, Third, and Fourth Circuits as "unpersuasive" "[b]ecause [they] eschewed history and tradition in their analysis." ADD62. By that logic, the panel also should have rejected Moore, 702 F.3d at 942 ("We are disinclined to engage in another round of historical analysis to determine whether eighteenth-century America understood the Second Amendment to include a right to bear guns outside the home.").

[11] Indeed, the Heller Court addressed only the narrow challenge before it: the complete prohibition on keeping an operable gun in the home. District of Columbia v. Heller, 554 U.S. 570, 573 (2008). In contrast, the panel's approach

But the panel in this case foreswore the prudent restraint of other circuits. ADD74 n.2. Despite conceding that the Plaintiff-Appellants sought injunctive relief only from San Diego County's written concealed-carry policy, ADD8, the panel evaluated California's entire approach to regulating open *and* concealed weapons and concluded that, when considered within this larger framework, the County's policy infringed upon citizens' right to carry firearms in public for self-defense — a right newly announced by the same panel. ADD55.

3. That not only demonstrated a lack of restraint, but also led, in numerous ways, to both an analysis and a result that diverge sharply from other circuits in addressing the scope of the Second Amendment. As a threshold matter, the panel's refusal to specify and apply a particular level of scrutiny to its analysis is contrary to Ninth Circuit law and inconsistent with the unanimous approach adopted by other circuits post-Heller, *all* of which have specified the relevant level of scrutiny and then applied it. See e.g., Peterson v. Martinez, 707 F.3d 1197, 1208 (10th Cir. 2013); Drake v. Filko, 724 F.3d 426, 436-37 (3d Cir. 2013); Nat'l Rifle Ass'n of Am., Inc. v. McCraw, 719 F.3d 338, 349 (5th Cir. 2013) cert. denied, 2014 WL 684061 (2014); Woollard, 712 F.3d at 882; Kachalsky v. Cnty. of Winchester, 701 F.3d 81, 93 (2d Cir. 2012).

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disregards the doctrine of constitutional avoidance. Ashwander v. TVA, 297 U.S. 288, 347 (1936) (Brandeis, J., concurring).

Additionally, by holding unequivocally that the Second Amendment protects "the right to carry an operable firearm outside the home for . . . self-defense," ADD43, the panel's decision diverges from the conclusion reached by the majority of other circuits. In fact, the panel's decision gives this Court the distinction of being the *only* circuit to strike down a concealed-carry permitting regime post-Heller. Compare ADD8 with Drake, 724 F.3d at 433 (upholding New Jersey's permitting scheme, requiring a showing of "justifiable need"); Woollard, 712 F.3d at, 882 (same); Kachalsky, 701 F.3d at 83 (same); Peterson, 707 F.3d at 1201 ("In light of our nation's extensive practice of restricting citizens' freedom to carry firearms in a concealed manner, we hold that this activity does not fall within the scope of the Second Amendment's protections").[12]

A majority of circuits have expressly declined to recognize a right to carry guns outside of the home, refusing to "push Heller beyond its undisputed core holding." Masciandaro, 632 F.3d at 475; Drake, 724 F.3d at 431, 436 (declining to "declare that the individual right to bear arms for the purpose of self-defense extends beyond the home"); Woollard, 712 F.3d at 872 (reversing district court's holding that the Second Amendment "extends beyond the home," noting that such ruling "br[oke] ground that our superiors have not tread") (internal quotation marks

[12] Even the one court of appeals to embrace a broader right to carry in public struck down a total ban on public carrying; it did not address a permitting scheme like California's. Moore, 702 F.3d at 940.

and citations omitted) (alteration in original); Kachalsky, 701 F.3d at 89. Such refusal is well-founded. See Masciandaro, 632 F.3d at 475-76 ("We do not wish to be even minutely responsible for some unspeakably tragic act of mayhem because in the peace of our judicial chambers we miscalculated as to Second Amendment rights"). The decision of the panel was not.

## CONCLUSION

The petition for rehearing en banc should be granted.

Respectfully submitted,

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**NINTH CIRCUIT RULE 28-2.6 STATEMENT**

In accordance with Ninth Circuit Rule 28-2.6, there are two other cases in this Court that are deemed related to the above-captioned matter in that they raise closely related issues: Richards v. Prieto, 11–16255 (9th Cir.) and Baker v. Kealoha, No. 12–16258, (9th Cir.).

/s/ Neil R. O'Hanlon

# ADDENDUM

## CERTIFICATE OF COMPLIANCE

I certify that, pursuant to 9th Circuit Rules 35-4 and 40-1, the attached *brief of amicus curiae* is proportionately spaced, has a typeface of 14 points, and contains 4,079 words.

/s/ Neil R. O'Hanlon

## CERTIFICATE OF SERVICE

I certify that the foregoing brief of *amicus curiae* was filed with the Clerk using the appellate CM/ECF system on December 22, 2014. All counsel of record are registered CM/ECF users, and service will be accomplished by the CM/ECF system.

/s/ Neil R. O'Hanlon