No. 12-17808

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

GEORGE K. YOUNG, JR.,
Plaintiff-Appellant,

v.

STATE OF HAWAII, ET AL.,
Defendants-Appellees.

On Appeal from the United States District Court for the
District of Hawaii, No. 12-CV-0336 (Gillmor, J.)

BRIEF OF *AMICUS CURIAE* GIFFORDS LAW CENTER TO PREVENT GUN VIOLENCE IN SUPPORT OF APPELLEES AND REHEARING

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rules of Appellate Procedure 26.1 and 29(a), Giffords Law Center to Prevent Gun Violence states that it has no parent corporation. It has no stock, and therefore no publicly held company owns 10% or more of its stock.

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INTEREST OF *AMICUS CURIAE*

Amicus curiae Giffords Law Center to Prevent Gun Violence ("Giffords Law Center") is a non-profit, national policy organization dedicated to researching, writing, enacting, and defending laws and programs proven to reduce gun violence and save lives. Giffords Law Center provides free assistance and expertise to lawmakers, advocates, legal professionals, law enforcement, and citizens who seek to make their communities safer from gun violence, and has a strong interest in supporting laws regulating the public possession of firearms and laws that require a showing of good cause for a license to carry a firearm. As an *amicus*, Giffords Law Center has provided informed analysis in a variety of firearm-related cases, including *District of Columbia v. Heller*, 554 U.S. 570 (2008), *McDonald v. City of Chicago*, 561 U.S. 742 (2010), and *Peruta v. County of San Diego*, 824 F.3d 919 (9th Cir. 2016) (en banc).[1]

BACKGROUND AND SUMMARY OF ARGUMENT

Among the 50 states, Hawaii and California have among the lowest rates of gun death, ranking 47th and 43rd, respectively.[2] A rigorous body of social science

[1] *Amicus* affirms, pursuant to Fed. R. App. P. 29, that no counsel for a party authored this brief in whole or in part and that no person other than *amicus curiae* and its counsel made a monetary contribution to its preparation or submission. All parties to this action have granted consent for *amicus* to file this brief. *Id.*; Ninth Cir. R. 29-2.

[2] *Annual Gun Law Scorecard*, GIFFORDS LAW CTR. TO PREVENT GUN VIOLENCE, http://lawcenter.giffords.org/scorecard/.

evidence, bolstered with new and updated research from within the past year, supports the conclusion that strong public carry permitting laws like those enacted in Hawaii and California are significant factors in reducing violent crime and homicide rates. Three other federal circuit courts have concluded that similar public carry permitting laws are constitutional under the Second Amendment. And in *Peruta*, 824 F.3d 919, this Court sitting *en banc* reached a similar conclusion with respect to California's concealed carry regulations.

Nonetheless, on July 24, 2018, a divided three-judge panel struck down Hawaii's statute providing for issuance of permits to openly carry loaded firearms to those "engaged in the protection of life and property." In concluding that the law violated the Second Amendment, the panel majority incorrectly interpreted it as "[r]estricting open carry to those *whose job entails* protecting life or property." Panel Op. at 52 (emphasis added). The panel majority further concluded, for the first time in this Circuit, that the right to carry a loaded, openly visible firearm in public is a "core" Second Amendment right that cannot be meaningfully regulated in the manner provided for in Hawaii's permitting statute. *Id*. at 49-50. By a two-to-one vote, the panel elevated the right to openly carry loaded firearms in public places to equal footing with the right to have a firearm for self-defense in one's home.

The majority's analysis to arrive at this reading of the Second Amendment flouts the Supreme Court's guidance in *Heller*, 554 U.S. at 576-636, espouses an unduly restrictive reading of Hawaii's requirements for ordinary law-abiding citizens to obtain an open carry license, and invites confusion and uncertainty into a domain where courts should defer to states' evidence-based legislative judgments. The issue at stake here is one of exceptional importance, potentially resulting in many more gun deaths and injuries annually: whether states within the Ninth Circuit are prohibited from requiring those seeking to openly carry loaded firearms on public streets to show any urgency or need to do so.

For the reasons stated in Hawaii's *en banc* petition and in light of the recently issued opinion from the Hawaii Attorney General,[3] the panel decision should be vacated and the case remanded for application of binding circuit precedent and development of the record on how Hawaii has interpreted and applied its open-carry law. Should the Court decline to vacate and remand, *en banc* consideration is warranted to align this Circuit's jurisprudence with the decisions of the majority of other federal appellate courts on the exceptionally important issue of public carry.[4]

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[3] Brief for Petitioners-Appellees at 9, *Young v. Hawaii*, No. 12-17808 (9th Cir. Sept. 14, 2018), ECF No. 155.

[4] Should *en banc* consideration be granted here, *amicus* urges the Court to grant the State of California's petition for initial *en banc* hearing in *Flanagan v. Becerra*,

ARGUMENT

I. In Light of Serious Factual and Legal Errors by the Panel Majority, the Court Should Vacate the Panel Opinion and Remand.

Hawaii generally prohibits the public carrying of loaded firearms without a license,[5] and, like 26 other states, it restricts the carrying of openly visible, loaded firearms by civilians.[6] In particular, Hawaii limits open-carry licenses to persons "engaged in the protection of life and property," a requirement the panel majority interpreted to restrict eligibility to applicants who must carry a firearm as part of their job duties.[7] As explained in Petitioners' Brief, the Hawaii Attorney General has clarified that the panel majority's rigid interpretation of Hawaii's licensing

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No. 18-55717, which involves the same exceptionally important issue presented here. *See* Appellees' Petition for Initial Hearing En Banc, *Flanagan, et al. v. Becerra*, No. 18-55717 (9th Cir. Sept. 21, 2018), ECF No. 12. It would serve the interests of both circuit uniformity and judicial economy for the *en banc* court to consider this case together with *Flanagan*.

[5] *See* H.R.S. § 134. A person without a license may, however, carry an unloaded firearm publicly for purposes of hunting or target practice or to transport it to a firearms exhibit, licensed firearms dealer, place of repair, or police station. H.R.S. §§ 134-23, 134-24, 134-25, 134-26, 134-27.

[6] *Open Carry*, GIFFORDS LAW CTR. TO PREVENT GUN VIOLENCE, http://lawcenter.giffords.org/gun-laws/policy-areas/guns-in-public/open-carry/.

[7] Hawaii's licensing statute actually provides: "[w]here the urgency or the need has been sufficiently indicated, the respective chief of police may grant to an applicant of good moral character who is . . . engaged in the protection of life and property, and is not prohibited under section 134-7 from the ownership or possession of a firearm, a license to carry a pistol or revolver and ammunition therefor unconcealed on the person within the county where the license is granted." H.R.S. 0134-0009.

requirements was incorrect.[8] The panel majority's invalidation of Hawaii's licensing regime, therefore, relied on a complete misunderstanding of Hawaii's law. As such, its opinion should be vacated and the case remanded for further development of the factual record.

Remand is also appropriate here in light of methodological errors by the panel majority that are contrary to the approach applied by both the Supreme Court and this Court. In concluding that public carry of loaded firearms is a "core" right subject to categorical invalidation under any standard of scrutiny, the panel stated that it was "unpersuaded [by] historical regulation of public carry." Panel Op. at 49. But in analyzing firearms regulation, both the Supreme Court and this Circuit have given due weight to historical regulation, and have distinguished carefully among different forms of regulation.

In *Heller*, 554 U.S. 570, the Supreme Court stated that the Second Amendment "surely elevates above all other interests the right of law-abiding, responsible citizens to use arms in defense of hearth and home." *Id.* at 635. Sitting *en banc* in *Peruta*, this Court concluded that concealed-carry prohibitions are constitutional based on *Heller*'s guidance. *Peruta*, 824 F.3d at 936 (citing *Heller*, 554 U.S. at 626 ("[T]he majority of the 19th-century courts to consider the

[8] Brief for Petitioner-Appellee at 9, *Young v. Hawaii*, No. 12-17808 (9th Cir. Sept. 14, 2018), ECF No. 155.

question held that prohibitions on carrying concealed weapons were lawful under the Second Amendment.")). In so doing, the Court, like the Supreme Court in *Heller*, did not suggest that states must then allow all citizens to openly carry firearms—a practice that is in many ways far more disruptive to public safety. *See Heller*, 554 U.S. at 595 ("[W]e do not read the Second Amendment to protect the right of citizens to carry arms for *any sort* of confrontation."). To reach that decision, the Court interpreted the Second Amendment in view of the Statute of Northampton, an English law dating back to the Fourteenth Century that prohibited the open carrying of weapons. *Peruta*, 824 F.3d at 931.[9] This Court "found nothing in the historical record suggesting that the law in the American colonies with respect to concealed weapons differed significantly from the law in England." *Peruta*, 824 F.3d at 933.

To reach its conclusion that the Second Amendment protects an expansive open-carry right, the panel majority expressly rejected the Statute of Northampton as a basis for interpreting the Second Amendment. Panel Op. at 36. This wholesale rejection of the origins of the Second Amendment is inconsistent with

[9] The Statute of Northampton provided that "no Man great nor small . . . be so hardy to come before the King's Justices, or other of the King's Ministers doing their office, with force and arms . . . nor to go nor ride armed by night nor by day, in Fairs, Markets, nor in the presence of the Justices or other Ministers, nor in no part elsewhere . . .'" 2 Edw. 3, c. 3 (1328).

Peruta. And the panel majority declined to afford weight to the decisions of most nineteenth-century courts (referenced in *Heller*) upholding laws prohibiting the public carry of firearms under the Second Amendment, setting aside the very historical sources *Peruta* credited as authoritative.[10]

The panel decision, moreover, fails to identify any alternative sources from which the meaning of our Second Amendment right may derive. Because "the Second Amendment was not intended to lay down a 'novel principl[e]' but rather codified a right 'inherited from our English Ancestors,'" *Heller*, 554 U.S. at 600 (internal citation omitted), the panel opinion moves beyond the holding in *Heller* in ways that decision cannot support. *See also id.* at 592 (citing *United States v. Cruikshank*, 92 U.S. 542, 553 (1876) ("This is not a right granted by the Constitution. Neither is it in any manner dependent upon that instrument for its existence.")).

The panel majority's expansion of the Second Amendment right beyond that recognized in *Heller* and its rejection of the historical sources from which *Heller*

[10] *See, e.g.*, *Fife v. State*, 31 Ark. 455 (1876) (characterizing a carrying prohibition as a lawful "exercise of the police power of the State without any infringement of the constitutional right"); *State v. Workman*, 14 S.E. 9, 10-12 (W. Va. 1891); *Ex parte Thomas*, 97 P. 260, 262 (Okla. 1908) ("Practically all of the states under constitutional provisions similar to ours have held that acts of the Legislatures against the carrying of weapons concealed did not conflict with such constitutional provision denying infringement of the right to bear arms, but were a valid exercise of the police power of the state.").

held the Second Amendment derives are particularly troublesome in light of new historical research that has emerged since *Peruta* was decided. This research indicates that the founding-era understanding of the phrase "bear arms" overwhelmingly referred to soldiers collectively wielding weapons in military service, not to individual civilians carrying guns in public as they went about daily life. The field of corpus linguistics has enhanced historical and linguistic research techniques by allowing researchers to analyze vast quantities of newly digitized historical texts. Applying this new approach to a data set containing more than 100,000 texts and billions of words, Josh Blackman and James C. Phillips observe that, "applying corpus linguistics to the Second Amendment" reveals that the "overwhelming majority of instances" in which the phrase "bear arms" was used in the founding era involved the military context, not civilians carrying guns for self-defense.[11] Professor Dennis Baron conducted a similar analysis and found that "[n]on-military uses of 'bear arms' are not just rare—they're almost non-existent."[12] Baron concludes that the military use of the phrase is the most natural

[11] Josh Blackman & James C. Phillips, *Corpus Linguistics and the Second Amendment*, HARV. L. REV. BLOG (Aug. 7, 2018), https://blog.harvardlawreview.org/corpus-linguistics-and-the-second-amendment/.

[12] Dennis Baron, *Antonin Scalia was wrong about the meaning of 'bear arms,'* WASH. POST. (May 21, 2018), https://www.washingtonpost.com/opinions/antonin-scalia-was-wrong-about-the-meaning-of-bear-arms/2018/05/21/9243ac66-5d11-11e8-b2b8-08a538d9dbd6_story.html?utm_term=.59773d1eff7d.

reading, since "'[b]ear arms' has never worked comfortably with the language of personal self-defense, hunting or target practice." *Id.*[13] This recent linguistics research confirms that civilians carrying loaded firearms in public for self-defense was not recognized as a "core" right at the founding. It counsels at least a degree of caution in expanding the right recognized in *Heller*, caution entirely lacking from the panel majority's analysis.

The panel majority's determination that the Second Amendment protects carrying openly visible firearms outside the home to the same extent as it protects home possession disregards *Heller*'s careful distinctions between home possession and public carry. Its failure to give weight to historical regulation of public carry is inconsistent with the Supreme Court's careful examination of the historical evidence in *Heller* and this Court's *en banc* decision in *Peruta*. And its conclusions are based on an understanding of the regulatory regime that fundamentally misconstrues Hawaii's law. For all these reasons, the panel

[13] Law professor and historian Alison LaCroix has conducted similar research and concluded that "[r]ecent advances in theoretical and computational linguistics, as well as vast new corpora of American and English usage" "demonstrates that the language of the Second Amendment points toward a more collective interpretation of the right of gun ownership," explaining that "consulting actual historical sources suggests that the context of the Second Amendment had more to do with militias and magazines than with solo householders molding bullets over their hearths." *See* Alison L. LaCroix, *Historical Semantics and the Meaning of the Second Amendment*, THE PANORAMA (Aug. 3, 2018), http://thepanorama.shear.org/2018/08/03/historical-semantics-and-the-meaning-of-the-second-amendment/.

majority's opinion should be vacated and the case remanded for application of the proper legal standards to an accurate factual record.

Should the Court decline to vacate and remand, however, *en banc* rehearing on the merits is warranted, together with initial *en banc* hearing of *Flanagan v. Becerra* (*see* note 4, *supra*), for the reasons set forth below.

II. *En Banc* Rehearing Is Warranted Because the Panel Decision Creates an Irreconcilable Conflict with the Second, Third, and Fourth Circuits on a Question of Exceptional Importance.

A. The Panel Decision Conflicts with the Second, Third, and Fourth Circuits on the "Core" Right Protected by the Second Amendment.

The panel majority's opinion diverges from three other federal circuits on an exceptionally important question: the extent to which the public carry of loaded firearms is a "core" constitutional right, and whether states can regulate and restrict public carry consistent with the Second Amendment. Three other circuits have determined that public carry, which directly endangers other people, does not lie at the core of the Second Amendment's protections. *Drake v. Filko*, 724 F.3d 426

(3d Cir. 2013); *Woollard v. Gallagher*, 712 F.3d 865 (4th Cir. 2013); *Kachalsky v. Cty. of Westchester*, 701 F.3d 81 (2d Cir. 2012).[14]

The approach of these circuits is correct. In *Kachalsky*, *Woollard*, and *Drake*, the Second, Fourth, and Third Circuits upheld state statutes requiring handgun owners demonstrate: a "special need for protection" in order to carry their weapons openly, *Kachalsky*, 701 F.3d at 84; a "good-and-substantial-reason . . . such as a finding that the permit is necessary as a reasonable precaution against apprehended danger," *Woollard*, 712 F.3d at 869; or "the urgent necessity for self-protection . . . that cannot be avoided by means other than by issuance of a permit to carry a handgun." *Drake*, 724 F.3d at 428.

Those opinions found that premising the right to publicly carry loaded firearms on an applicant's showing of a heightened need for self-protection was "presumptively lawful" because the "core" protection of the Second Amendment is the "right of law-abiding, responsible citizens to use arms in defense of hearth and home." *Kachalsky*, 701 F.3d at 89, 93; *see id.* at 94 (citing *Heller*, 554 U.S. at 628); *Woollard*, 712 F.3d at 874-876 (declining to apply strict scrutiny to firearms regulations "outside the home" where "firearm rights have always been more

[14] With little analysis, one circuit has found that public carry is part of the "core" of the Second Amendment. *See Wrenn v. District of Columbia*, 864 F.3d 650, 667 (D.C. Cir. 2017) (striking down "good reason" law limiting issuance of concealed-carry licenses to those with a special need for self-defense).

limited") (citing *United States v. Masciandaro*, 638 F.3d 458, 470-71 (4th Cir. 2011)); *Drake*, 724 F.3d at 436 (agreeing with district court that "[i]f the Second Amendment protects the right to carry a handgun outside the home for self-defense at all, that right is not part of the core of the Amendment").

As this Court's sister circuits have recognized, when it comes to guns in public, where exercising self-defense rights can and does inevitably endanger others, it is appropriate to apply heightened scrutiny to test the state's public safety justifications rather than striking down strong public carry laws as categorically unconstitutional. *See, e.g.*, *Bonidy v. U.S. Postal Serv.*, 790 F.3d 1121, 1126 (10th Cir. 2015) (concluding that intermediate, rather than strict scrutiny, is appropriate for a law regulating public carry because "[t]he risk inherent in firearms and other weapons distinguishes the Second Amendment right from other fundamental rights" that "can be exercised without creating a direct risk to others"). The great weight of authority confirms that where "laws [] burden [any] right to keep and bear arms outside the home[,]" intermediate scrutiny applies. *Masciandaro*, 683 F.3d at 470-71; *see also Kachalsky*, 701 F.3d at 96 ("Because our tradition so clearly indicates a substantial role for state regulation of the carrying of firearms in public, we conclude that intermediate scrutiny is appropriate in this case."). Particularly in light of the important public safety concerns at stake, the panel majority's departure from the approach of other federal courts in applying

intermediate scrutiny to the public carry statute in this case warrants rehearing *en banc*.

B. Application of the Proper Level of Scrutiny Is Particularly Important in Light of New Social Science Evidence Confirming the Exceptional Importance of Strong Public Carry Regulations in Safeguarding Public Safety.

By characterizing the right to carry a firearm openly for self-defense as a "core" Second Amendment right, the approach of the panel majority would categorically invalidate any regulations burdening the right to "self-defense" wherever they apply, despite the near consensus of other circuits to uphold public carry regulations as constitutional for striking an appropriate balance between self-defense and public safety. If the panel's decision stands, it will bind subsequent panels considering the constitutionality of other public carry regulations—like the California restrictions at issue in *Flanagan*. But such regulations should be analyzed with reference to the compelling public safety justifications that support them—not evaluated under the erroneous standard and absolute open-carry right announced by the panel majority.

Application of the appropriate intermediate scrutiny in this case is especially important in light of new social science evidence that reveals the important public safety interests served by public carry regulation. The courts that have assumed, without explicitly holding, that the Second Amendment applies outside of the home have held that strong public carry regulations "nonetheless withstand[]

intermediate scrutiny" in light of their importance to public safety. *Drake*, 724 F.3d at 440; *Kachalsky*, 701 F.3d at 101, 98 (upholding New York's one-hundred-year-old law "limiting handgun possession in public to those who show a special need for self-protection" under intermediate scrutiny because it is "substantially related to New York's interests in public safety and crime prevention"). Under intermediate scrutiny, restricting the right to public carry to those that establish they are "engaged in the protection of life and property" furthers the important objective of protecting Hawaiian residents against firearm violence, while reasonably allowing citizens to exercise their right to self-defense.

Where a regulation does not "amount[] to a destruction" of, or severely burden the "core" of the Second Amendment right, *Jackson v. City & Cty. of S.F.*, 746 F.3d 953, 961 (9th Cir. 2014) (quoting *Heller*, 554 U.S. at 629), the regulation will be upheld under intermediate scrutiny if "the government's stated objective . . . [is] significant, substantial, or important" and there is "a 'reasonable fit' between the challenged regulation and the asserted objective." *Silvester v. Harris*, 843 F.3d 816, 821-22 (9th Cir. 2016) (quoting *United States v. Chovan*, 735 F.3d 1127, 1139 (9th Cir. 2013)). Given the overwhelming empirical evidence establishing a direct causal relationship between permissive right-to-carry laws and firearm violence, there is a "reasonable fit" between Hawaii's licensing regime and the "important" objective of protecting public safety and preventing crime.

Recent social science research supports the conclusion that unrestricted carry of firearms leads to increased violent crime and homicides. A 2018 study led by Professor John J. Donohue concluded that right-to-carry ("RTC") states experienced a 13-15% increase in violent crime rates as compared to violent crime rates prior to passage of RTC laws.[15] Most troubling, this analysis found "statistically significant evidence of increases in murder." *Id.* at 27. The Donohue study looked at 33 states that adopted RTC laws between 1981 and 2007. The study found that RTC laws increased violent crime by "increasing the likelihood a generally law-abiding citizen will commit a crime," in addition to "facilitat[ing] the criminal conduct of those who generally have a criminal intent." *Id.* at 6. This research demonstrates that RTC laws "encourage[] hostile confrontations" for permit holders, are exploited by "criminal gangs," "furnish[] more than 100,000 guns per year to criminals" because of increased gun theft, encourage criminals to "arm themselves more frequently," and "complicate the job of police" since "efforts to get guns off the street . . . are less feasible when carrying guns is presumptively legal." *Id.* at 8-16. The Donohue study found "the longer the RTC law is in effect . . . the greater the cost in terms of increased violent crime," which

[15] John D. Donohue, et al., *Right-to-Carry Laws and Violent Crime: A Comprehensive Assessment Using Panel Data, the LASSO, and a State-Level Synthetic Controls Analysis*, NAT'L BUREAU OF ECON. RESEARCH, Working Paper No. 23510 (2018), http://www.nber.org/papers/w23510.

refutes the notion that RTC laws reduce violent crime. *Id.* at 48-49. Significantly, the impacts of RTC laws on violent crime "were uniform": "states that passed RTC laws experienced 13-15 percent higher aggregate violent crime rates than their synthetic controls after ten years." *Id.* at 63. As the Donohue study notes, this finding is consistent with previous research finding that "RTC laws increased murder by 15.5 percent for the eight states that adopted RTC laws" from 1999 to 2010.[16] In another recent study, a team of researchers led by Professor Michael Siegel compared the number of murders in RTC states and "may issue" states like Hawaii and California. They found that RTC laws increase firearm and handgun murders, but do not increase non-gun murders.[17]

Scholarly research also indicates that the panel majority's decision would make it more difficult for police officers to protect the public. As Professor Geoffrey Corn has observed, "open carry laws fundamentally alter" a police officer's ability to seize individuals who are wielding loaded firearms in public, "leaving the officer to speculate whether the individual is lawfully entitled to carry

[16] *Id.* at 31 (citing Paul R. Zimmerman, *The deterrence of crime through private security efforts: Theory and evidence*, 37 INT'L REV. L. & ECON. 66 (2014)).

[17] Michael Siegel et al., *Easiness of Legal Access to Concealed Firearm Permits and Homicide Rates in the United States*, 107 AM. J. PUB. HEALTH 1923, 1923-1929 (2017).

the weapon or the weapon is an indication of potential criminal misconduct."[18] "Open carry laws present [a police] officer with a genuine Catch-22: her authority to temporarily seize the individuals in possession and/or their firearm is contingent on some indication of wrongdoing, but the lawful authority to carry the weapon openly indicates that her observation upon arrival at the scene cannot satisfy that requirement." *Id.* Further, refusal to cooperate with an officer in open-carry situations does not provide "good cause" for a seizure or arrest if open carry is deemed a core constitutional right. Corn observes that "the volatility of a situation will be exacerbated when police are unable to determine who should and who should not be armed, or when the lawfully armed citizen believes, perhaps justifiably, that police are exceeding their authority to demand cooperation." *Id.* Thus, empirical evidence and common sense confirm that licensing regimes like Hawaii's are vital to reducing firearm violence.

CONCLUSION

The panel majority's reliance on an incorrect interpretation of Hawaii's law, its disregard of the historical sources recognized as authoritative in *Heller* and *Peruta*, and its novel and unprecedented holding that the right to carry a loaded firearm openly for self-defense falls within the "core" of the Second Amendment

[18] Geoffrey Corn, *Open-carry opens up series of constitutional issues for cops*, THE HILL (Sept. 23, 2016), https://thehill.com/blogs/pundits-blog/civil-rights/297480-why-police-interactions-in-open-carry-states-are-so.

will lead lower courts and states into dangerous and uncharted territory. The Court should vacate the panel decision and remand.

In the alternative, in light of the exceptional importance of the issue presented here, *en banc* consideration of this case with *Flanagan* would be the most efficient way to resolve these critical issues, address the panel opinion's radical departure from the majority view of the circuits, and ensure uniformity within this Circuit's jurisprudence.

Dated: September 24, 2018

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I hereby certify that:

1. This brief complies with the type-volume limitation of Ninth Circuit Rule 29-2(c)(2) because this brief contains 4,193 words, excluding the parts of the brief exempted by Federal rule of Appellate Procedure 32(f).

2. This brief complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and type style requirements of Federal Rule of Appellate Procedure 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2010 in 14-point Times New Roman font.

Dated: September 24, 2018

COVINGTON & BURLING LLP

By: *s/ Simon Frankel*
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CERTIFICATE OF SERVICE

I hereby certify that on September 24, 2018, I electronically filed the foregoing Brief of *Amicus Curiae* Giffords Center to Prevent Gun Violence in Support of the Petition of Defendants-Appellees for Rehearing En Banc with the Clerk of the Court of the United States Court of Appeals for the Ninth Circuit using the appellate CM/ECF system.

I certify that all participants in this case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

Dated: September 24, 2018

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