

No. 13-30077
[NO. CR12-119MJP, USDC, W.D. Washington]

**IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

MICHAEL DREYER,
Defendant-Appellant.

**BRIEF FOR APPELLEE IN RESPONSE TO
DECEMBER 16, 2014, ORDER OF THE COURT**

Appeal from the United States District Court
for the Western District of Washington at Seattle
The Honorable Marsha J. Pechman
United States District Judge

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PRELIMINARY STATEMENT

This Court has requested the parties to state their views on whether the Panel's decision in this case should be reheard *en banc*. The United States believes that the Panel's application of the exclusionary rule to a violation of the regulations extending the Posse Comitatus Act (PCA), 18 U.S.C. § 1385, to Navy military personnel—the first time that any federal court has suppressed evidence for a PCA violation, *see United States v. Dreyer*, 767 F.3d 826, 838-90 (9th Cir. 2014) (O'Scannlain, J., dissenting)—warrants review by this Court *en banc*. *En banc* review is warranted because the Panel's decision to order suppression conflicts with Supreme Court and Ninth Circuit case law making clear that the exclusionary rule should not be used as a remedy for regulatory violations. The Panel's opinion, which applies a judicially created suppression remedy to the violation of the PCA-like restrictions even though Congress has not mandated that remedy and no constitutional rights were violated or even implicated, extends the exclusionary rule well beyond its proper bounds.

But even if the exclusionary rule could ever be applied to a violation of PCA-like restrictions that infringes no constitutional rights, as Judge O'Scannlain recognized in his dissenting opinion, the conduct in this case does not justify that extraordinary remedy. *Dreyer*, 767 F.3d at 838-39. The conduct at issue—the use of a computer program by a Naval Criminal Investigative Service (NCIS) agent to locate computers in Washington State that were offering child pornography on publicly available peer-to-peer software—did not pervade civilian law enforcement or

demonstrate an exceptional need for deterrence. The agent did not participate in a search, seizure, or arrest, or otherwise engage in conduct that violated the Constitution; rather, the agent merely looked for material available to any member of the public using peer-to-peer software. *See United States v. Ganoe*, 538 F.3d 1117, 1127 (9th Cir. 2008). Because Dreyer was not a military member, the agent then reported his findings to local law enforcement for an independent investigation and did not participate further in any investigation. The Court's holding that such conduct violates the PCA-like restrictions is more than sufficient to prevent future similar NCIS investigations without imposing the substantial societal cost of suppressing the evidence of Dreyer's second violation of federal child pornography laws.

Because the Panel's novel holdings are inconsistent with basic limitations on the role of the exclusionary rule when a court considers non-constitutional regulatory violations, and because of the significant and unjustified costs of suppressing reliable evidence of Dreyer's violations, this Court should rehear these issues *en banc*.¹

¹ The United States has requested the Panel to reconsider its conclusion that NCIS Agents are subject to PCA-like restrictions. *See* Petition For Panel Rehearing, Docket No. 45. Although that case-specific conclusion does not present an issue that independently satisfies the criteria for rehearing *en banc* under Rule 35 of the Federal Rules of Appellate Procedure, correction of the Panel's error on that issue would obviate the need for consideration of the Panel's unprecedented and *en banc* worthy invocation of the exclusionary rule.

STATEMENT OF THE CASE

This appeal concerns an NCIS agent's use of RoundUp, a software program that permits law enforcement officers to identify the Internet Protocol (IP) address of a computer offering child pornography for download on publicly available peer-to-peer file-sharing programs. ER_113-14, 173.² Individuals have no reasonable expectation of privacy in a computer IP address because such addresses "are voluntarily turned over in order to direct the third party's servers." *United States v. Forrester*, 512 F.3d 500, 510 (9th Cir. 2008). *See also United States v. Christie*, 624 F.3d 558, 573 (3d Cir. 2010) (same); *United States v. Perrine*, 518 F.3d 1196, 1205 (10th Cir. 2008) (same). RoundUp identifies digital files containing child pornography that an individual has placed in a "share" file and made available for download after loading peer-to-peer software on his or her computer. ER_115-117, 173. The program does not permit access to private areas of a person's computer, or files that are not placed into the publicly-available "share" file, and does not involve any form of hacking. ER_115-117, 343.

To use RoundUp, an agent first sets available geographic limits to IP addresses in a particular state, and then types search terms commonly identified with child pornography. ER_17, 344. The program searches "share" files on computers using

² "ER_" refers to the Excerpts of Record; and "CR_" refers to the district court clerk's docket.

peer-to-peer networks for file names containing these search terms. ER_344. When a computer offering such a file is located, RoundUp applies a hash value library for known child pornography imagery. ER_126-127. If any identified file contains such imagery, the agent can download that file and ask the program to identify the IP address used by the particular computer. ER_117, 344. Using a subpoena, the agent may then seek the identity of the subscriber using that IP address at that date and time.

In December 2010, after receiving training regarding child pornography investigations, three NCIS special agents began using RoundUp to investigate the computer trade and distribution of child pornography. ER_113. On April 14, 2011, Agent Steve Logan logged onto RoundUp, set the program's geographic limits to Washington State, a state with multiple military bases, ER_339, 360-62, and entered various search terms. Because the only identifying information RoundUp can provide is an IP address, Logan's search could only be limited geographically. ER_360-62.

On that date, Logan downloaded three known child pornography files from a computer offering for download twenty files containing Logan's search terms. ER_120-21, 132-34, 344, 349-52. After obtaining the IP address, Logan sought assistance to obtain the identity of the subscriber using that IP address at that date and time. ER_139-140, 353-54. An administrative subpoena later issued by the FBI revealed the subscriber was Dreyer. ER_142, 354. Because Dreyer was not an active-duty military member (he was retired), Logan's investigative report was forwarded to

local law enforcement and his involvement in the investigation ended. Logan never spoke with local law enforcement about the investigation and did not participate in the two searches that followed.

Dreyer's computer was later seized during the execution of a state warrant obtained based on Logan's observations. The forensic search of Dreyer's computer pursuant to a subsequent federal warrant discovered a collection of twenty videos and over 1300 images of child pornography despite Dreyer's prior federal conviction for child pornography possession. ER_488, 492-93.

Dreyer was charged with both distribution and possession of child pornography. ER_482-484. He moved to suppress the evidence discovered on his computer, CR_17, 18, later arguing suppression was required because the Posse Comitatus Act, 18 U.S.C. § 1385, restricted Logan's lawful authority to investigate child pornography offenses. CR_25 at 6. The district court denied the motion after an evidentiary hearing. ER_60-65. Following a jury trial, Dreyer was convicted of all charges.

THE PANEL DECISION

The Panel held that Logan's "investigation constituted improper military enforcement of civilian laws," in violation of the "PCA-like restrictions" applicable to

the Navy through 10 U.S.C. § 375, and resulting regulations and policy directives.³ *Dreyer*, 767 F.3d at 827-31. The Panel also rejected the argument that Logan’s actions constituted only indirect assistance to civilian law enforcement, finding instead that his conduct was that of “an independent actor who initiated and carried out this activity.” *Id.* at 833. Because Logan’s investigation involved all computers in Washington State using peer-to-peer networks, and could not be limited to computers belonging to military personnel, the Panel also rejected the argument that Logan’s investigation had an independent military purpose. *Id.* at 833-35.

Having found a violation of the PCA-like restrictions, the Panel turned to the remedy. The Panel majority concluded the evidence obtained by searching Dreyer’s computer must be suppressed to deter future violations because it concluded that NCIS agents routinely had engaged in “broad surveillance activities that violate the restrictions on military enforcement of civilian law.” *Id.* at 836. The Panel found the violations were wide-spread because Logan and other NCIS agents had conducted similar investigations over the course of several months. *Id.* The Panel also found that suppression was warranted based on the government’s litigating position which it

³ Title 10, United States Code, Section 375 directs the Secretary of Defense to adopt regulations “to ensure that any activity” under Title 10 “does not include or permit direct participation by any member of the Army, Navy, Air Force or Marine Corps in a search, seizure, arrest, or other similar activity unless participation in such activity by such member is otherwise authorized by law.”

described as demonstrating “a profound lack of regard for the important limitations on the role of the military in our civilian society.” *Id.*

Judge O’Scannlain dissented regarding the remedy. *Id.* at 838-42. Although “not question[ing]” the suggestion in this Court’s prior cases “that application of the exclusionary rule in the PCA context could be justified,” Judge O’Scannlain observed “that there is a strong argument to be made that exclusion is never justified for violations of the PCA.” *Id.* at 841 n.3. The considerations that Judge O’Scannlain identified as supporting this argument include “(1) the fact that Congress could have provided for exclusion had it thought such a remedy was appropriate; (2) the PCA provides for its own enforcement through criminal sanctions, see 18 U.S.C. § 1385; and (3) ‘the [PCA] express[] a policy that is for the benefit of the people as a whole, but not one that may fairly be characterized as expressly designed to protect the personal rights of defendants.’” *Id.* (quoting *United States v. Walden*, 490 F.2d 372, 377 (4th Cir. 1974)). Even under an approach that permitted exclusion in some cases, however, Judge O’Scannlain concluded suppression was inappropriate “[g]iven the significant costs of exclusion in PCA cases, as well as the meager evidence of PCA violations contained in the record.” *Id.* at 842.

**THIS COURT SHOULD REHEAR THE REMEDIAL
PORTION OF THIS OPINION *EN BANC*.**

**I. Where PCA-Like Restrictions Do Not Separately Violate
Constitutional Rights, Suppression Should Not Be a Remedy.**

En banc review is warranted in this case because the Panel’s invocation of the exclusionary rule cannot be reconciled with opinions of the Supreme Court and this Court that indicate that the exclusionary rule should *never* be used as a remedy for violations of statutes or regulations in the absence of constitutional violations. Because any decision to apply the exclusionary rule in a particular case must turn on the reasons why suppression is authorized in the first place, whether the exclusionary rule should be applied in this case raises the important antecedent question of whether suppression is ever authorized for violations of PCA-like restrictions.⁴

⁴ The government did not raise this categorical argument in its answering brief. But whether a judicially implied suppression remedy is ever appropriate is a question logically antecedent to whether suppression was warranted on the facts of a particular case. Thus, in a closely analogous circumstance, the Supreme Court recognized that an issue that was forfeited may nevertheless be reviewed when antecedent to the issue presented. *See United States v. Grubbs*, 547 U.S. 90, 94 (2006). In *Grubbs*, the Court “address[ed] the antecedent question whether anticipatory search warrants are categorically unconstitutional” even though that issue had not been preserved and the Court had granted review only of the question whether the anticipatory warrant at issue “ran afoul of the Fourth Amendment’s particularity requirement.” *Id.* The Court explained that it would “make little sense to address what the Fourth Amendment requires of anticipatory search warrants if it does not allow them at all,” so review of the categorical issue was “predicate to an intelligent resolution of the question presented.” *Id.* at 94 & n.1 (quoting *Ohio v. Robinette*, 519 U.S. 33, 38 (1996)). Applying that analysis here, *en banc* review is warranted to consider whether suppression should ever be ordered to remedy a violation of a PCA-like restriction, (continued . . .)

Supreme Court and Ninth Circuit precedents have drawn a clear line between the availability of suppression as a remedy for constitutional violations on the one hand, and statutory or regulatory violations on the other. Thus, in *Sanchez-Llamas v. Oregon*, 548 U.S. 331 (2006), the Supreme Court declined to create an exclusionary remedy for violations of the right to consular notification under a treaty. The Court recognized that it had “applied the exclusionary rule primarily to deter constitutional violations” and “ha[d] suppressed evidence for statutory violations” in only a “few cases” where “the excluded evidence arose out of statutory violations that implicated important Fourth and Fifth Amendment interests” such as incriminating statements made following prolonged detention, or the evidence was “the product of a search incident to an unlawful arrest.” *Id.* at 348; *see also United States v. Caceres*, 440 U.S. 741, 754-57 (1979) (declining to apply an exclusionary remedy to an agency’s violation of its own regulations governing electronic eavesdropping).

Consistent with *Sanchez-Llamas*, this Court and others have held that “an exclusionary rule is typically available only for constitutional violations, not for statutory or treaty violations.” *United States v. Lombera-Camorlinga*, 206 F.3d 882, 886 (9th Cir. 2000) (*en banc*). *Accord, e.g., United States v. Adams*, 740 F.3d 40, 43-44 (1st Cir.

(continued . . .)

the logically antecedent question to an intelligent resolution of whether the Panel erred in granting suppression.

2014) (“statutory violations, untethered to the abridgment of constitutional rights, are not sufficiently egregious to justify suppression”); *United States v. Abdi*, 463 F.3d 547, 556-57 (6th Cir. 2006) (“the exclusionary rule is an appropriate sanction for a statutory violation only where the statute specifically provides for suppression as a remedy or the statutory violation implicates underlying constitutional rights such as the right to be free from unreasonable search and seizure”). Moreover, this Court has held that an exclusionary remedy should not be read into a statutory scheme when Congress has prescribed a remedy other than exclusion. *See, e.g., United States v. Forrester*, 512 F.3d 500, 512-13 (9th Cir. 2008) (pen register statute); *United States v. Feng*, 277 F.3d 1151, 1154 (9th Cir. 2002) (prosecutor’s alleged violation of criminal bribery statute); *United States v. Michaelian*, 803 F.2d 1042, 1049 (9th Cir. 1986) (IRS’ unauthorized disclosure of tax return information). These precedents dictate that suppression should not be used for violations of the PCA-like restrictions at issue here.

The PCA itself prescribes criminal sanctions for certain military involvement in civilian law enforcement, not exclusion of evidence. 18 U.S.C. § 1385. Accordingly, it “would ‘encroach upon the prerogatives’ of Congress” to supplement a criminal sanction with suppression. *Forrester*, 512 F.3d at 512 (quoting *United States v. Frazin*, 780 F.2d 1461, 1466 (9th Cir. 1986)). If a PCA violation does not give rise to an exclusionary remedy absent a constitutional violation, then it follows that this remedy is unavailable for violations of the regulations resulting from the statute directing the

Secretary of Defense to extend PCA-like restrictions to the Navy. Nothing in the statutory text—which directs the Secretary to act “as may be necessary” to avoid “direct participation” by the Armed Forces in civilian law enforcement activities—speaks of excluding evidence. 10 U.S.C. § 375.

The legislative history also does not evince any Congressional preference for exclusion. The House Report reveals that Congress was aware of the uniform federal court precedents declining to apply the exclusionary rule to PCA violations, and does not suggest that Congress disapproved of that result. H.R. Rep. No. 97-71, Part 2, at 5, 97th Cong., 1st Sess. (June 12, 1981).

Although suppression may be available when statutory violations “implicate[] important Fourth and Fifth Amendment interests,” *see Sanchez-Llamas*, 548 U.S. at 348, no such interests are at play here. Downloading files from Dreyer’s “share” files did not constitute a Fourth Amendment search because Dreyer had no expectation of privacy in files he offered to the world. As this Court has recognized, a defendant has no expectation of privacy in files shared on a peer-to-peer network. *See United States v. Boromy*, 595 F.3d 1045, 1048 (9th Cir. 2010) (defendant was aware “that LimeWire was a file-sharing program that would allow the public at large to access files in his shared folder unless he took steps to avoid it” and thus lacked a reasonable expectation of privacy in the shared files); *United States v. Ganoë*, 538 F.3d 1117, 1127 (9th Cir. 2008) (defendant’s reasonable expectation of privacy did not survive his “decision to install

and use file-sharing software, thereby opening his computer to anyone else with the same freely available program”). *See also United States v. Stults*, 575 F.3d 834, 843 (8th Cir. 2009) (same).

Agent Logan’s actions were ones that any member of the public using peer-to-peer software could take and did not involve surveillance or conduct that intruded on any private information. Thus, regardless of whether Logan violated PCA-like restrictions, there was no violation of Dreyer’s constitutional rights, only a violation of the regulations and directives adopted to implement 10 U.S.C. § 375. In short, the conduct was a violation that related only to Agent Logan’s agency affiliation. That is both a far cry from the statutory violations described in *Sanchez-Llamas*, 548 U.S. at 348, and directly analogous to the “technical defect[s]” in arrest authority this Court and others have found to be an insufficient basis for excluding evidence. *See United States v. DiCesare*, 765 F.2d 890, 896-97 (9th Cir. 1985) (declining to apply exclusionary rule where federal officer allegedly lacked statutory authority to execute a state warrant, because the warrant would have been valid if executed by state officer, and any defect was “merely a technical [one that] did not implicate any constitutional violations”); *United States v. Harrington*, 681 F.2d 612, 614-15 (9th Cir. 1982) (similar). *See also United States v. Ryan*, 731 F.3d 66, 68-69 & n.3 (1st Cir. 2013) (refusing to suppress fruits of an otherwise lawful “arrest made outside of a federal law enforcement officer’s statutory jurisdiction”).

Finally, suppression is all the more unwarranted here because the perceived violation is of agency regulations, not a statute. *See Dreyer*, 767 F.3d at 830-35. This Court has held that “violation of an agency regulation does not require suppression of evidence” “[a]bsent a constitutional violation or a congressionally created remedy,” both of which are lacking here. *United States v. Hinton*, 222 F.3d 664, 674 (9th Cir. 2000) (citation and quotation marks omitted); *see also United States v. Choate*, 619 F.2d 21, 23 (9th Cir. 1980). Indeed, the District of Columbia made precisely that observation in *United States v. Yunis*, 924 F.2d 1086, 1094 (D.C. Cir. 1991) (exclusionary rule or similar prophylactic measures is inappropriate for violations of PCA-like restrictions that did not amount to a constitutional violation).

That standard follows from *Caceres*, where the Court explained that “rigid application” of the exclusionary rule to regulatory violations could discourage agencies from regulating the conduct of criminal investigations. 440 U.S. at 755-56. This case directly implicates that concern. The Navy’s incentive to maintain what the Panel believed to be broad restrictions against Navy employees’ participation in civilian law enforcement, *Dryer*, 767 F.3d at 831-32, is reduced when a civilian employee’s violation can become a basis for suppression of evidence if a court later deems the violation sufficiently widespread or deterrence-worthy. As *Caceres* notes, “the result might well be fewer and less protective regulations.” 440 U.S. at 756. That disincentive does not dissolve because the Secretary of Defense must follow a Congressional directive to extend the PCA-like restrictions to the Navy. The

directive in 10 U.S.C. § 375 speaks in terms of “member[s]” a “term of art” referring to enlisted military personnel, not civilians. *Cf. Vermont Agency of Natural Resources v. United States ex. Rel. Stevens*, 529 U.S. 765, 782-83 (2000) (referencing “the term of art ‘member of an armed force’ used throughout Title 10”). If suppression is a remedy for violations of regulations, the Secretary might well prefer “to have no rules except those mandated by statute,” *Caceres*, 440 U.S. at 756, that is, restrictions that apply only to “member[s]” of the Navy, not civilian NCIS Agents.

II. *En Banc* Review is Also Warranted Because the Court’s Remedial Decision Conflicts with Decisions of This and Other Courts.

Even if suppression were ever permissible for a violation of PCA-like restrictions, *en banc* review is warranted because the Panel’s decision to apply it here conflicts with *United States v. Roberts*, 779 F.2d 565 (9th Cir. 1986), and the opinions of other courts. In *Roberts*, this Court found the involvement by Navy military personnel in a drug investigation—involvement that included seizure of a vessel and arrests of individuals—was deliberate and in violation of PCA-like restrictions.⁵ *Id.* at 568. Nonetheless, the *Roberts* Court concluded suppression was not warranted finding instead that “the clear costs of applying an exclusionary rule are not countervailed by any discernible benefits” and that the violation was “unintentional and in good faith.” *Id.* at 568 (citing *United States v. Leon*, 468 U.S. 897 (1984)).

⁵ Specifically, the Court found a violation of 10 U.S.C. § 374, which has since been amended. *See United State v. Khan*, 35 F.3d 426, 432 n.7 (9th Cir. 1994).

The *Roberts* Court noted that “courts have uniformly refused to apply the exclusionary rule to evidence seized in violation of the Posse Comitatus Act,” citing *United States v. Wolffs*, 594 F.2d 77, 85 (5th Cir. 1979), and *Walden*, 490 F.2d at 376-77, cases that reject suppression as a remedy for violations of the PCA unless there are “widespread and repeated violations” demonstrating a need for such a remedy. *Roberts*, 779 F.2d at 568. Adopting the approach taken in *Wolffs* and *Walden*, the *Roberts* Court concluded suppression was not warranted for violations of PCA-like restrictions “until a need to deter future violations is demonstrated.” *Id.* at 568.

Since *Walden*, the Fourth Circuit has clarified that suppression is not a remedy for a PCA violation where the violative military operation did not involve the seizure of evidence. *United States v. Al-Talib*, 55 F.3d 923, 930 (4th Cir. 1995) (citing *United States v. Griley*, 814 F.2d 967, 976 (4th Cir. 1987)). The *Al-Talib* Court observed this limitation comported with the Supreme Court’s command to restrict the exclusionary rule to “those areas where its remedial objectives are most efficaciously served.” *Al-Talib*, 55 F.3d at 930 (quoting *United States v. Calandra*, 414 U.S. 338, 348 (1974)). *See also Hayes v. Hawes*, 921 F.2d 100, 103-104 (7th Cir. 1990) (courts have required a violation that amounts to “military permeation of civil law enforcement” before suppression is warranted for a seizure of evidence in violation of PCA restrictions). That conclusion is consistent with the directive in 10 U.S.C. § 375, which requires the Secretary of Defense to adopt regulations prohibiting participation

in “search, seizure, arrest, or other similar activity” not otherwise permitted by law, activities that could implicate constitutional rights.

Here, to the extent Logan’s conduct constituted a violation of PCA-like restrictions, his conduct did not pervade civilian law enforcement. Logan did not participate in a search, seizure, or arrest, and did not even suggest that a search should take place. Rather, Logan’s conduct can be best described as providing leads to local law enforcement based on accessing files available to any member of the public using a peer-to-peer network. RoundUp merely made the search for such files easier. And, as noted above, Logan’s conduct here did not violate the Constitution because Dreyer had no expectation of privacy in files that he shared on a peer-to-peer network. *See Borony*, 595 F.3d at 1048; *Ganoe*, 538 F.3d at 1127. Thus, regardless of whether Logan violated PCA-type restrictions, there was no violation of Dreyer’s constitutional rights, only violation of the regulations and directive adopted to implement 10 U.S.C. § 375. Before this case, no federal court suppressed evidence for violations of the PCA or PCA-like restrictions, much less for a violation where constitutional rights were not implicated.⁶

⁶ The two state courts that have applied a suppression remedy for violations of the PCA have done so as a matter of supervisory powers for statutory violations. *See State v. Pattioary*, 896 P.2d 911, 924-25 (Hawaii 1995); *Taylor v. State*, 645 P.2d 522, 524 (Okla. 1982).

It is true that NCIS agents regularly used RoundUp in a similar fashion over a number of months. But this fact does not mean the agents' conduct during this period pervaded civilian law enforcement, or that this Court's finding of a violation would be insufficient to deter any future conduct of this nature. Further, the Sixth Circuit's conclusion—albeit in a non-precedential unpublished decision—that an NCIS agent's use of RoundUp did not violate the PCA, suggests the issue was at least debatable and that the government's litigation position did not demonstrate that suppression was needed to deter future conduct. *See United States v. Holloway*, 531 F. App'x. 582 (6th Cir. 2013). To the contrary, the Court's finding of a violation is more than sufficient to deter NCIS agents from engaging in any future investigative efforts of this type. *Cf. United States v. Payner*, 447 U.S. 727, 733 n.5 (1980) (refusing to assume that future lawless conduct by IRS agents “if brought to the attention of responsible officials, would not be dealt with appropriately”).

CONCLUSION

For the foregoing reasons, the United States respectfully requests that this Court rehear the remedial portion of this opinion *en banc*.

Dated this 30th day of January, 2015.

Respectfully submitted,

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**CERTIFICATE OF COMPLIANCE
WITH WORD LIMIT**

I certify that, pursuant to Circuit Rules 35-4 and 40-1, and the order of this Court, the attached the Petition for Rehearing is proportionately spaced, has a Garamond typeface of 14 points, and contains 4,196 words, less than the 4,200 allowed.

DATED this 30th day of January, 2015.

/s/Helen J. Brunner
HELEN J. BRUNNER
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CERTIFICATE OF SERVICE

I hereby certify that on January 30, 2015, I electronically filed the foregoing Brief of the United States with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system.

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 30th day of January, 2015.

/s/Elisa G. Skinner
ELISA G. SKINNER
Paralegal Specialist