

IN THE
United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT
14-5194

AMIR MESHAL,

Plaintiff-Appellant,

—v.—

CHRIS HIGGENBOTHAM, FBI Supervising Special Agent, in his individual capacity; STEVE HERSEM, FBI Supervising Special Agent, in his individual capacity; JOHN and JANE DOES 3-10; JOHN DOE 1; JOHN DOE 2,

Defendants-Appellees,

UNITED STATES OF AMERICA,

Intervenor-Appellee.

STEPHEN VLADECK; JAMES PFANDER; CARLOS VAZQUEZ; JUAN E. MENDEZ;
MANFRED NOWAK; THEO VON BOVEN; NIGEL RODLEY,

Amici Curiae for Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA
(1:09-CV-02178-EGS)

**BRIEF FOR *AMICUS CURIAE* DONALD BORELLI
IN SUPPORT OF PLAINTIFF-APPELLANT**

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CERTIFICATE AS TO PARTIES, RULINGS, AND RELATED CASES

Pursuant to Circuit Rule 28(a)(1), the undersigned counsel of record certifies as follows:

A. Parties and Amici Curiae

All parties, intervenors, and other *amici curiae* appearing in this Court are listed in the Brief for the Plaintiff-Appellant.

B. Rulings Under Review

References to the rulings at issue appear in the Brief for Plaintiff-Appellant.

C. Related Cases

Counsel is unaware of any cases related to this appeal other than those listed in the Brief for Plaintiff-Appellant.

/s/ Christopher M. Egleson

Christopher M. Egleson

December 22, 2014

COMPLIANCE WITH RULE 29

Pursuant to Fed. R. App. P. 29(a) and Circuit Rule 29(b), *amicus* certifies that all parties have consented to the filing of this brief.

Pursuant to Fed. R. App. P. 29(c)(5), *amicus* certifies that this brief was authored by *amicus* and counsel listed on the front cover. No party or party's counsel authored this brief, in whole or in part. No party or party's counsel contributed money that was intended to fund preparing or submitting this brief. No person besides *amicus* and their counsel contributed money that was intended to fund preparing or submitting this brief.

Pursuant to Circuit Rule 29(d) *amicus* certifies that it is not practicable to join all other *amici* in this case in a single brief and this separate brief is necessary. *Amicus curiae* Donald Borelli seeks to address issues regarding FBI policies and procedures and their relationship to the U.S. Constitution, which Counsel believes will not be addressed by other parties.

/s/ Christopher M. Egleson

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December 22, 2014

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**INTEREST OF *AMICUS CURIAE* AND
SOURCE OF AUTHORITY TO FILE**

Before retiring in 2010, *amicus curiae* Donald Borelli served in the FBI for twenty-five years. Most recently, he served as Assistant Special Agent in Charge in the FBI's Counterterrorism Division in New York; previously, among other notable roles, he served in the FBI's legal attaché office in Amman, Jordan, with responsibility for overseeing FBI activities in Jordan, Lebanon, and Syria. The awards Mr. Borelli has received for his service to the nation include the Attorney General's Award, the FBI Director's Award, and the Award for Excellence from the FBI's International Operations Division.

Mr. Borelli is currently the Chief Operating Officer of The Soufan Group, an international strategic consultancy group. He is also a Fellow at the Center on National Security at Fordham Law School and a Senior Fellow at the Center for Advanced Defense Studies in Washington, D.C.

Amicus submits this brief to present the Court with legal authority—which is fully consistent with his own personal experience—that FBI agents are required to adhere to the Constitution whenever and wherever they carry out their work. This fundamental mandate applies with equal force to FBI investigations within the territory of the United States and abroad. As outlined below, the requirement that FBI agents follow the Constitution is embedded in the FBI's core values and in the internal directives that govern FBI operations. It is also a rule of law that has been

consistently applied by our federal courts in a large body of federal case law. In these precedents, courts have repeatedly applied constitutional standards to extraterritorial FBI investigations, particularly when those investigations are focused on individuals who are citizens of the United States.¹

¹ *Amicus* expresses no view on the merits of Appellant's claims, including the availability of a damages remedy under applicable case law. All parties have consented to this filing.

INTRODUCTION AND SUMMARY OF ARGUMENT

In response to ever-changing law enforcement and national security threats, the Federal Bureau of Investigation (“FBI”) has evolved over time and the agency’s work has taken on an increasingly international scope. However, notwithstanding these changes—and regardless of the location and nature of particular FBI investigations—one thing has remained constant: the FBI’s core commitment to uphold and respect the Constitution. As set forth in its own internal policies and governing documents, and as a central tenet of the organization’s culture, FBI agents are expected, at all times and in all places, to conform their conduct to the requirements of the U.S. Constitution. This principle is especially true when the FBI is investigating a U.S. citizen for possible violations of law. It applies to *all* investigations, regardless of whether they occur in Kenya or in Kansas or whether they relate to terrorism or tax fraud.

Faithful adherence to the Constitution is at the heart of the FBI’s core values. It is also required by the legal directives that govern FBI operations, and is mandated by federal case law. On this latter point, as outlined below, federal courts have consistently applied constitutional rules to the overseas conduct of FBI and other law enforcement agents, especially when the rights of U.S. citizens are at issue. The relevant precedents span many years and range over several legal

contexts, including criminal prosecutions, habeas corpus proceedings, and other litigation.

Amicus believes that the foregoing principles may assist the Court in assessing the ability of the federal courts to address constitutional claims such as those raised by Appellant.

ARGUMENT

I. THE FBI RESPECTS THE CONSTITUTIONAL RIGHTS OF UNITED STATES CITIZENS ABROAD.

Founded in 1908, the FBI is “one of the world’s premier security and crime-fighting forces.”² It works to address national security threats—principally terrorism, espionage/foreign intelligence operations and cyber and high-tech crimes—as well as domestic criminal threats such as public corruption, civil rights violations, organized crime, white collar crime, and violent crime, and in so doing carries out “dual responsibilities as a law enforcement and intelligence agency.”³ From its early days as a squad of some thirty-four agents, today’s FBI has grown to a force of approximately 36,000 employees with an operating budget of more than \$8 billion per year.⁴ In addition to its domestic operations, the FBI maintains sixty-

² U.S. Dep’t of Justice, FBI, *Today’s FBI: Facts & Figures 2013-2014*, at 5 (2013), available at <http://www.fbi.gov/stats-services/publications/todays-fbi-facts-figures/facts-and-figures-031413.pdf/view> [hereinafter *FBI Facts & Figures*].

³ *Id.* at 5, 33, 45.

⁴ *Id.* at 9, 45. For a detailed history of the FBI see generally U.S. Dep’t of Justice, FBI, *The FBI: A Centennial History, 1908-2008* (2008), available at

three international offices and fifteen additional international legal attaché sub-offices.⁵

For much of the twentieth century, the FBI focused on domestic organized crime, although its work has long had an international component.⁶ The attacks of September 11, 2001, prompted a major realignment. Since those attacks, the FBI's national security role has grown in importance and the bureau has shifted its focus from that of a "reactive law enforcement agency" to a "proactive" one.⁷

"Combating terrorism" is now the FBI's "top investigative priority."⁸ Driven by that goal, the FBI has increased its agent force by forty percent and has tripled the number of intelligence analysts it employs.⁹ It has also significantly strengthened its efforts to formally coordinate with other agencies, notably by establishing joint task forces and collaborating closely with law enforcement officials in foreign countries.¹⁰

<http://www.fbi.gov/about-us/history/a-centennial-history/the-fbi-a-centennial-history-1908-2008> [hereinafter *FBI Centennial History*].

⁵ *FBI Facts & Figures*, *supra* note 2, at 7, 14, 34.

⁶ *Id.* at 19, 20.

⁷ JEROME P. BJELOPERA, CONG. RESEARCH SERV., RL 41780, THE FEDERAL BUREAU OF INVESTIGATION AND TERRORISM INVESTIGATIONS 1, 2, 18 (2013) [hereinafter BJELOPERA].

⁸ *FBI Facts & Figures*, *supra* note 2, at 34.

⁹ *Id.* at 31; BJELOPERA, *supra* note 7, at 2.

¹⁰ *See* COMM'N ON THE INTELLIGENCE CAPABILITIES OF THE UNITED STATES REGARDING WEAPONS OF MASS DESTRUCTION, REP. TO THE PRESIDENT OF THE UNITED STATES 452, 466 (2005), *available at*

Throughout this period of major change, and notwithstanding the complexities of its worldwide operations and the pressures of preemptive national security work, the FBI has remained committed to upholding and respecting the U.S. Constitution in both its domestic and foreign operations.

For example, in Executive Order 12333, President Ronald Reagan prescribed guidelines for the activities of U.S. agencies gathering intelligence within and outside the United States. By its terms, the order applies to the FBI in its intelligence-gathering capacity, requiring it to “[c]onduct counterintelligence activities outside the United States in coordination with the CIA as required by procedures agreed upon by the Director of Central Intelligence and the Attorney General.”¹¹ This document repeatedly emphasizes that while foreign intelligence is “essential to informed decisionmaking in the areas of national defense and foreign relations” and is a “priority objective,” it must be pursued in a manner that is “consistent with the Constitution and applicable law” and “respectful of the principles upon which the United States was founded.”¹² The order requires that

http://fas.org/irp/offdocs/wmd_report.pdf; Att’y Gen. Guidelines for Domestic FBI Operations, at 5–6 (2008), *available at* <http://www.justice.gov/sites/default/files/ag/legacy/2008/10/03/guidelines.pdf> [hereinafter 2008 AG Guidelines]; *see generally* BJELOPERA, *supra* note 7, at 1–4; *FBI Facts & Figures*, *supra* note 2, at 8, 34, 54, 57.

¹¹ Exec. Order No. 12333, 46 Fed. Reg. 59941, 59949, 59953 (Dec. 4 1981) (as stated at sections §§ 1.4 & 3.4(f)(6)).

¹² *Id.* § 2.1.

the FBI and other subject agencies must “use the least intrusive collection techniques feasible within the United States or directed against United States persons abroad,” and requires that the intelligence gathering procedures adopted by all subject agencies “shall protect constitutional and other legal rights and limit use of such information to lawful governmental purposes.”¹³ The order further provides that nothing in it “shall be construed to authorize any activity in violation of the Constitution or statutes of the United States.”¹⁴

This mandate that the FBI respect the Constitution is consistent with the FBI’s longstanding values, and the Attorney General and the FBI have implemented it in their formal operational guidelines. One of the FBI’s “Core Values” is “rigorous obedience to the Constitution of the United States,” which ensures that the FBI carries out its activities with “[f]airness and compassion” by “treat[ing] everyone with the highest regard for constitutional, civil, and human rights.”¹⁵ As the FBI has explained in a recent publication, “[i]t is the FBI’s responsibility to protect Americans not only from crime and terrorism but also

¹³ *Id.* § 2.4.

¹⁴ *Id.* § 2.8.

¹⁵ FBI Domestic Investigations and Operations Guide § 3.1 (2011), *available at* <http://vault.fbi.gov/FBI%20Domestic%20Investigations%20and%20Operations%20Guide%20%28DIOG%29/fbi-domestic-investigations-and-operations-guide-diog-2011-version/fbi-domestic-investigations-and-operations-guide-diog-october-15-2011-part-01-of-03> [hereinafter DIOG].

from incursions into their constitutional rights,” and it is “therefore ingrained in FBI personnel to carry out all activities with full adherence to the Constitution and the principles of personal liberty and privacy.”¹⁶ Indeed, at the very outset of his or her service, each FBI agent swears an oath to “support and defend the Constitution of the United States[.]”¹⁷

Consistent with its core values and the sworn oath of its agents, and as required by Executive Order 12333, the 2003 Attorney General’s Guidelines for FBI National Security Investigations and Foreign Intelligence Collection provide that “intelligence gathering activities must be carried out in a ‘responsible manner that is consistent with the Constitution and applicable law[.]’”¹⁸ The guidelines instruct that even certain authorized departures from the guidelines must “be carried out in a manner consistent with the Constitution[.]”¹⁹ More generally, to *Amicus’s* knowledge, all publicly available guidelines governing the FBI’s conduct of its operations reflect that same commitment to respect and uphold the

¹⁶ *FBI Facts & Figures*, *supra* note 2, at 74; *see also id.* at 6.

¹⁷ Jonathan L. Rudd, *Our Oath of Office: A Solemn Promise*, FBI L. ENFORCEMENT BULL. (Sept. 2009), *available at* <http://www2.fbi.gov/publications/leb/2009/september2009/oath>; *FBI Centennial History*, *supra* note 4, at 121.

¹⁸ Att’y Gen. Guidelines for FBI National Security Investigations and Foreign Intelligence Collection, Introduction (2003), *available at* <https://www.fas.org/irp/agency/doj/fbi/nsigidelines.pdf>; *see also id.* § I.B.3, at 7–8.

¹⁹ *Id.* § I.D.2, at 11.

Constitution.²⁰ And in *Amicus*'s experience, the commitment to abide by the Constitution set forth in the FBI's policy documents is reflected in the FBI's culture and in its day-to-day practices both domestically and abroad.

II. THE CONSTITUTION PROTECTS UNITED STATES CITIZENS ABROAD.

The FBI's longstanding commitment to respect the Constitution—including when it acts abroad in respect of U.S. citizens—reflects and implements the long-established rule that the Constitution applies to and constrains U.S. government action against U.S. citizens abroad.

In *Reid v. Covert*, 354 U.S. 1 (1957), the Supreme Court recognized that U.S. citizens enjoy the Constitution's protections in respect of the acts of U.S. government officials abroad. The case concerned two U.S. civilian citizens

²⁰ See DIOG, *supra* note 12 §§ 3.1.1, 4.1.3. The FBI's domestic conduct is generally governed by the 2008 AG Guidelines and by the DIOG. The guidelines that apply to foreign operations are generally classified in whole or in relevant part. See 2008 AG Guidelines, *supra* note 10 § I.A, at 12; DIOG § 1.1 (listing (1) the Attorney General's Guidelines for Extraterritorial FBI Operations and Criminal Investigations; (2) the Attorney General's Guidelines for FBI National Security Investigations and Foreign Intelligence Collection (to the extent not superseded by the 2008 AG Guidelines); (3) the Attorney General Guidelines on the Development and Operation of FBI Criminal Informants and Cooperative Witnesses in Extraterritorial Jurisdiction; (4) the Attorney General Procedure for Reporting and Use of Information Concerning Violations of Law and Authorization for Participation in Otherwise Illegal Activity in FBI Foreign Intelligence, Counterintelligence or International Terrorism Intelligence Investigation; and (5) the Memorandum of Understanding Concerning Overseas and Domestic Activities of the Central Intelligence Agency and the Federal Bureau of Investigation). *Amicus* does not rely here on any classified source.

residing overseas who were tried and convicted by court-martial based on allegations that they had murdered their service-member spouses on U.S. military bases. *Id.* at 3–4. Both defendants sought habeas relief on the grounds that their trials by military authorities were unconstitutional given their status as civilians. *Id.* at 4–5. The Court granted them relief. *Id.* at 5. In doing so, a majority of the Court recognized a proposition that continues to resonate almost a half-century later:

At the beginning we reject the idea that when the United States acts against citizens abroad it can do so free of the Bill of Rights. The United States is entirely a creature of the Constitution. Its power and authority have no other source. It can only act in accordance with all the limitations imposed by the Constitution. When the Government reaches out to punish a citizen who is abroad, the shield which the Bill of Rights and other parts of the Constitution provide to protect his life and liberty should not be stripped away just because he happens to be in another land. This is not a novel concept. To the contrary, it is as old as government. It was recognized long before Paul successfully invoked his right as a Roman citizen to be tried in strict accordance with Roman law.

Id. at 6 (plurality opinion); *see also id.* at 56 (“Governmental action abroad is performed under both the authority and the restrictions of the Constitution.”) (Frankfurter, J., concurring in the judgment).

Over the years, lower courts have consistently and unequivocally upheld *Reid*'s mandate that the Constitution applies to U.S. actions against U.S. citizens anywhere in the world. *See, e.g., Al Bahlul v. United States*, 767 F.3d 1, 65.n.3

(D.C. Cir. 2014) (en banc) (Kavanaugh, J., concurring in part and dissenting in part) (“As a general matter, the United States Constitution applies to U.S. citizens worldwide[.]”); *Langenegger v. United States*, 756 F.2d 1565, 1570 (Fed. Cir. 1985) (“It is settled law that the United States is bound by our Constitution when it takes actions that affect citizens outside our territory . . . therefore the government must provide just compensation for takings by its forces which occur abroad, when not acts of war.”) (internal citations omitted); *Rosado v. Civiletti*, 621 F.2d 1179, 1189 (2d Cir. 1980) (“the Bill of Rights does apply extraterritorially to protect American citizens against the illegal conduct of United States agents”); *United States v. Toscanino*, 500 F.2d 267, 280 (2d Cir. 1974) (recognizing that it is “well settled” that “the Bill of Rights has extraterritorial application to the conduct abroad of federal agents directed against United States citizens”); *Garvey v. Gibbons*, No. CV 03-6043-GPS (JTL), 2008 WL 4500011, at *8 (C.D. Cal. Oct. 5, 2008) (recognizing Fourth Amendment protects U.S. citizen alleging excessive force in connection with his arrest and transport by U.S. officials abroad); *United States v. Bin Laden*, 126 F. Supp. 2d 265, 270–71 (S.D.N.Y. 2000) (recognizing Fourth Amendment’s application to U.S. citizens abroad).

For example, in the criminal context, courts (including this Court) have consistently recognized that the Fourth Amendment protects U.S. citizens abroad when they are subjected to searches and seizures by U.S. officials. *Powell v.*

Zuckert, 366 F.2d 634, 640 (D.C. Cir. 1966) (recognizing Fourth Amendment’s application to search of military personnel’s off-base home in Japan); *see also* *United States v. Juda*, 46 F.3d 961, 968 (9th Cir. 1995) (“We agree with Juda that the Fourth Amendment’s reasonableness standard applies to United States officials conducting a search affecting a United States citizen in a foreign country.”); *Colello v. SEC*, 908 F. Supp. 738, 753–54 (C.D. Cal. 1995) (recognizing that Fourth Amendment applied to freezing of U.S. citizens’ Swiss bank accounts despite a treaty between the United States and Switzerland permitting such seizure based on “reasonable suspicion” alone); *Berlin Democratic Club v. Rumsfeld*, 410 F. Supp. 144, 156–57 (D.D.C. 1976) (considering U.S. participation in wiretapping of U.S. citizens abroad and concluding that “prior judicial authorization is [constitutionally] required for electronic surveillance instituted by the Army on non-military United States citizens” abroad). While the Fourth Amendment generally does not protect noncitizens abroad, *see United States v. Verdugo-Urquidez*, 494 U.S. 259 (1990), its application to U.S. citizens abroad is firmly established, and the relevant cases have addressed narrower questions that are fully capable of judicial resolution. Among such questions are whether the Warrant Clause is applicable outside the territory of the United States,²¹ and whether the

²¹ *See, e.g., In re Terrorist Bombings of U.S. Embassies in E. Afr. (Fourth Amendment Challenges)*, 552 F.3d 157, 171 (2d Cir. 2008) (holding “the Fourth Amendment’s Warrant Clause has no extraterritorial application and that foreign

United States's participation in a particular search, seizure, or interrogation is sufficiently meaningful for constitutional protections to attach.²²

Courts have also recognized the Constitution's extraterritorial application in considering habeas petitions made by U.S. citizens. For example, in *Abu Ali v. Ashcroft*, 350 F. Supp. 2d 28 (D.D.C. 2004), the court roundly rejected the suggestion that it lacked jurisdiction to consider the habeas petition of a U.S.

searches of U.S. citizens conducted by U.S. agents are subject only to the Fourth Amendment's requirement of reasonableness"); *United States v. Stokes*, 726 F.3d 880, 891–93 (7th Cir. 2013) (same). Inquiries have arisen with respect to *Miranda* warnings in the Fifth Amendment context, although the questions differ because "a violation of the Fifth Amendment's right against self-incrimination occurs only when a compelled statement is offered at trial against the defendant," which is often in the United States. *In re Terrorist Bombings of U.S. Embassies in E. Afr. (Fifth Amendment Challenges)*, 552 F.3d 177, 177, 198, 203–05 (2d Cir. 2008); *Cranford v. Rodriguez*, 512 F.2d 860, 863 (10th Cir. 1975) (finding a "good faith effort to comply with the *Miranda* doctrine" under the circumstances); *United States v. Dopf*, 434 F.2d 205, 207 (5th Cir. 1970) (finding no Fifth Amendment violation where "appellants were not in [the] custody of the United States").

²² See, e.g., *United States v. Getto*, 729 F.3d 221, 233 (2d Cir. 2013) (applying "principles of 'virtual agency' and intentional constitutional evasion" in determining whether there was sufficient U.S. participation for constitutional protections to attach); *United States v. Abu Ali*, 528 F.3d 210, 228–30 (4th Cir. 2008) (analyzing whether United States involvement caused constitutional protections to attach under the "joint venture doctrine"); *United States v. Peterson*, 812 F.2d 486, 490–92 (9th Cir. 1987) (same); *United States v. Morrow*, 537 F.2d 120, 139–41 (5th Cir. 1976) (same); see also *United States v. Covington*, 783 F.2d 1052, 1056 (9th Cir. 1985) ("Where there has been no compulsion by a [U.S.] state or federal agent, either directly or by significant participation by such an agent, then the constitutional mandate has not been violated.").

citizen alleged to be held at the direction of U.S. officials in a foreign prison.²³ The prisoner, who had been studying in Saudi Arabia, was arrested and held indefinitely in a Saudi prison, allegedly at the direction of U.S. officials. *Id.* at 31–32. The court affirmed that the prisoner was entitled to present his habeas claims in federal court, holding that “a citizen cannot be so easily separated from his constitutional rights” and “the United States may not avoid the habeas jurisdiction of federal courts by enlisting a foreign ally as an intermediary to detain the citizen.” *Id.* at 31, 38, 40, 41, 54. In so concluding, the court recognized “the fundamental nature of a citizen’s right to be free from involuntary confinement by his own government without due process of law” that had been recently reaffirmed by the Supreme Court in *Hamdi v. Rumsfeld*, 542 U.S. 507 (2004). *Abu Ali*, 350 F. Supp. 2d at 39.²⁴

²³ After the habeas litigation, Abu Ali was convicted of federal crimes and sentenced to a substantial term of imprisonment. *See United States v. Abu Ali*, 528 F.3d 210 (4th Cir. 2008).

²⁴ In a different context, this Court has recognized the Constitution’s application abroad in a case alleging a Fifth Amendment takings violation. *See Ramirez de Arellano v. Weinberger*, 745 F.2d 1500, 1511–12 (D.C. Cir. 1984) (en banc), *rev’d on other grounds*, 471 U.S. 1113 (1985). *Ramirez* held that where the U.S. government had established a Regional Military Training Center in Honduras on property belonging to a U.S. citizen, the citizen had a cognizable takings claim. *Id.* at 1511, 1516, 1543. The court rejected the view that “teaming up with foreign agents” could “exculpate officials of the United States from liability to United States citizens for the United States officials’ unlawful acts.” *Id.* at 1542–43.

As these cases demonstrate, the Constitution protects U.S. citizens who are the subject of U.S. government investigations regardless of the geographic location. Courts have consistently and successfully applied this fundamental rule of law in the context of overseas activities by the FBI and other U.S. law enforcement agents.

CONCLUSION

For the reasons stated, this Court should conclude that the FBI is bound to respect and uphold the Constitution in its domestic and foreign operations, and that the protections of the Constitution extend to U.S. citizens abroad.

Respectfully submitted,

/s/ James J. Benjamin Jr.

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DECEMBER 2014

CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies that this brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because it contains 3,493 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii), and also complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word for Windows in 14-point font and Times New Roman type style.

/s/ Christopher M. Egleson

Christopher M. Egleson

December 22, 2014.

CERTIFICATE OF SERVICE

I hereby certify that I caused the foregoing Brief for *Amicus Curiae* Donald Borelli in Support of Plaintiff-Appellant to be served on counsel for all parties via Electronic Mail generated by the Court's electronic filing system (CM/ECF) with a Notice of Docket Activity:

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I certify that an electronic copy was uploaded to the Court's electronic filing system. Seven (7) paper copies of the foregoing Brief for *Amicus Curiae* Donald Borelli in Support of Plaintiff-Appellant were sent to the Clerk's Office by Federal Express Next Business Day Delivery to:

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on this 23rd day of December 2014.

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