

No. 21-15562

**In the United States Court of Appeals
for the Ninth Circuit**

ANDREW NAMIKI ROBERTS

Plaintiff-Appellant,

v.

AL CUMMINGS, IN HIS OFFICIAL CAPACITY AS THE STATE SHERIFF
DIVISION ADMINISTRATOR; CLARE E. CONNORS, IN HER OFFICIAL
CAPACITY AS THE ATTORNEY GENERAL OF THE STATE OF HAWAII

Defendants-Appellees,

and

SUSAN BALLARD, in her Official Capacity as the Chief of Police of
Honolulu County,

Defendant.

**Appeal from the United States District Court
For the District of Hawaii,
Civ. No. 18-cv-00125-HG-KSC
United States District Court Senior Judge Helen Gillmor**

Appellant's Opening Brief

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INTRODUCTION

Andrew Namiki Roberts (“Plaintiff” or “Appellant”) moved for summary judgment in his challenge to the State of Hawaii’s ban on the possession of electric arms (Tasers and stun guns) in the home. Defendants filed their Cross Motion for Summary Judgment on September 4, 2019. The matter was fully briefed, set for hearing, and argument was heard by the district court on November 26, 2019.

But at the end of the hearing, the district court stayed the proceedings pending a decision by the United States Supreme Court in *New York State Rifle & Pistol Association, Inc. v. City of New York*, No. 18-280. After *New York Rifle* was mooted by the Supreme Court, the district court refused to lift the stay and rule on the matter.

Because Mr. Roberts has been put effectively out of court on an indefinite stay by the district court that refuses to rule on a matter it 1) has jurisdiction over, and 2) has been fully briefed and argued, Mr. Roberts turns to this Court for relief. To be clear, Mr. Roberts is not asking this Court to rule on his motion for summary judgment, but to require the lower court to rule on it.

JURISDICTIONAL STATEMENT

The district court had jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1343, 2201, 2202 and 42 U.S.C. § 1983 and § 1988. This Court has jurisdiction over this appeal under 28 U.S.C. § 1291.

The district court refuses to rule on the Appellant's Motion for Summary Judgement and has stayed this matter, in one form or another, since November 26, 2019. The Appellants filed a notice of appeal on March 26, 2021. ER003-ER007.

STATEMENT OF ISSUES FOR REVIEW

1. Did the district court err by continuing to stay the underlying case indefinitely?

STATEMENT OF THE CASE

I. The District Court Indefinitely Stayed Mr. Robert's Case

Since November 26, 2019, Mr. Robert's challenge to Hawaii's complete ban on ownership of electric arms in the home has been stayed by the district court for one reason or another. As set forth below, this is an indefinite stay under this Court's precedent and the district court should be summarily reversed and remanded with instructions to rule on Mr. Robert's matter.

II. Procedural History

A. Plaintiff's Constitutional Challenge to H.R.S. § 134-16

Plaintiff filed his Complaint for Declaratory and Injunctive Relief on April 2, 2018 against Defendants-Appellees Russell Suzuki,¹ in his Official Capacity as the Attorney General of the State of Hawaii and Al Cummings, in his Official Capacity as the State Sheriff Administrator, and Defendant Susan Ballard, in her Official Capacity as the Chief of Police of Honolulu County. Mr. Roberts filed his Amended Complaint

¹ Clare E. Connors, as the current Attorney General, is automatically substituted under Fed. R. Civ. P. 25(d).

on May 21, 2018.² ER043-ER064. The Amended Complaint asserted that Hawaii's ban on electric arms violated Plaintiff's Second Amendment rights and sought an Order declaring H.R.S. § 134-16 unconstitutional and violative of the Second Amendment and an order declaring H.R.S. § 134-51 and other applicable Hawaii law unenforceable as applied to Mr. Roberts, or alternatively that H.R.S. § 134-51 does not apply to electric arms. The Amended Complaint also sought injunctive relief via an Order, preliminarily and permanently enjoining the Defendants and all those in concert with Defendants, from enforcing the offending statute and for damages. ER058-ER059.

B. The District Court's Indefinite Stay

On December 17, 2018, an agreement was reached with Defendants to stay the matter pending a legislative fix. ER040-ER042. That stay was lifted on April 29, 2019 after the Hawaii legislature failed to act. ER038-ER039. For purposes of this Brief, this agreed upon stay is not counted in the total number of involuntarily stayed days.

On August 2, 2019, Mr. Roberts filed his Motion for Summary Judgment (Docket Nos. 51, 52)³ and Defendants filed their Cross Motion for Summary Judgment on September 4, 2019 (Docket Nos. 54, 55). The matter was fully briefed and set for hearing. It was heard by the district court on November 26, 2019. After the hearing,

² Defendant Susan Ballard was dismissed pursuant to Fed. R. Civ. P. 41(a)(1)(i) on July 3, 2018.

³ Due to the voluminous nature of the motions for summary judgment, and the fact that the Plaintiff is only challenging the district court's indefinite stay, the motions are not included in the Excerpt of Records.

the district court stayed the proceedings pending a decision by the United States Supreme Court in *New York State Rifle & Pistol Association, Inc. v. City of New York*, No. 18-280. ER033-ER035. *New York Rifle* was subsequently mooted by the United States Supreme Court on April 27, 2020. See *New York State Rifle & Pistol Association, Inc. v. City of New York*, 140 S.Ct. 1525 (2020) Immediately after that, Mr. Roberts moved the district court to lift the first court-imposed stay.

On June 17, 2020, the Court entered an Order continuing the stay:

Pursuant to the issues raised before the Ninth Circuit Court of Appeals, the District Court elects to continue to STAY the proceedings in this case pending the en banc decision by the Ninth Circuit Court of Appeals in Young v. State of Hawaii, No. 12-17808.

In addition, the State of Hawaii represents that the Motions may become moot as “[t]here is now pending in the Hawaii State Legislature SB2292 which would repeal the total ban on electric guns and replace it with a regulatory scheme.” (Supplement at p. 3, ECF No. 77).

The Court will instruct the Parties how to proceed following the en banc decision by the Ninth Circuit Court of Appeals in Young.

ER033-ER034. On July 27, 2020, Mr. Roberts filed his Motion to Lift Stay after the legislature again failed to act:

Mr. Roberts’ rights have been and are continuing to be infringed. This matter has been stayed three times. The first, Mr. Roberts agreed to the stay to allow the legislature to act. The second stay was issued immediately after oral argument pending *NYSRPA v. NYC*, 140 S.Ct. 1525 (2020) in the Supreme Court which was subsequently mooted. The third stay was put in place pending *Young, supra*. Because the Hawaii legislature will not correct this issue, it is incumbent upon the Court to issue its ruling.

ER030-ER032. Further, the Defendants stated in the conference of counsel pursuant to Local Rule 7.8, and reflected in ER032, that they would not oppose the relief requested in the motion.

Despite the Motion to Lift Stay and the Defendants not opposing the relief requested, the district court still denied Plaintiff's Motion to Lift Stay. *See* Docket Nos. 81 & 82. Then, this Court issued its en banc ruling in *Young v. Hawaii*, No. 12-17808, 2021 U.S. App. LEXIS 8571 (9th Cir. Mar. 24, 2021).

Immediately, Mr. Roberts filed, again, a Motion to Lift the Stay and re-urge his motion for summary judgment. ER025-ER029. The district court recognized that *Young* was decided by the en banc Court, but now decided that court will not resume until *Young* is "concluded" because one of Mr. Roberts' attorney (also an attorney for Mr. Young) said he would seek review at the Supreme Court in *Young* in a news article contained in the Honolulu Star-Advertiser. ER008-ER009.

SUMMARY OF THE ARGUMENT

The district court completely abused its discretion and committed clear error in indefinitely staying this matter. Because the district court has essentially refused to rule on the matter, it has effectively placed Mr. Roberts outside of court. Mr. Robert's constitutional rights were violated and are continuing to be violated by the offending law, and the district court simply will not rule which is an impermissible abdication of its power under Article III. Because the district court refuses to rule, this Court should

reverse and remand with instructions to rule on Mr. Roberts' matter and should make clear that indefinite stays are not acceptable.

ARGUMENT

I. Legal Standard

The Ninth Circuit reviews “a district court's stay order for abuse of discretion, but this standard is ‘somewhat less deferential’ than the abuse of discretion standard used in other contexts.” *Lockyer v. Mirant Corp.*, 398 F.3d 1098, 1105 (9th Cir. 2005). (citation omitted). “Ordinarily, a stay order is not an appealable final decision.” *Davis v. Walker*, 745 F.3d 1303, 1308 (9th Cir. 2014). But, “because the already lengthy and indefinite stay puts [the plaintiff] ‘effectively out of court,’ the stay order on these facts ‘amounts to a dismissal of the suit’ and is reviewable as a final decision under § 1291.” *Id.* at 1308. “A ‘practical’ construction requires that when a plaintiff's action is effectively dead, the order which killed it must be viewed as final. Effective death should be understood to comprehend any extended state of suspended animation.” *Hines v. D'Artois*, 531 F.2d 726, 730 (5th Cir. 1976).

II. This Court has Jurisdiction Over this Appeal

The motions panel found that it had jurisdiction when it ordered the district court to provide its reasons for staying the matter: “[w]e have jurisdiction under 28 U.S.C. § 1291 to review stay orders that impose lengthy or indefinite delays and ‘place a plaintiff effectively out of court.’” *Roberts v. Cummings*, No. 21-15562, 2021 U.S. App.

LEXIS 14276, at *1 (9th Cir. May 13, 2021) (quoting *Blue Cross & Blue Shield of Ala. v. Unity Outpatient Surgery Ctr., Inc.*, 490 F.3d 718, 724 (9th Cir. 2007)).

This is the precise issue here and because of this, the Court has jurisdiction under §1291. Mr. Roberts has had his case involuntarily stayed by the district court for over 658 days.⁴ And there is no end in sight because the district court has stayed Roberts' matter pending the outcome of now two non-related cases, one of which was granted by the Supreme Court (*New York Rifle*), and one of which has a writ of certiorari pending grant or denial (*Young*). This does not take into account the briefing, argument and waiting for the opinion that would issue from the Supreme Court if it did grant the petition for certiorari in *Young*, and does not take into account any time for if the Supreme Court remands *Young* or *New York Rifle* for further proceedings at some such time in the future.

“[L]engthy and indefinite stays place a plaintiff effectively out of court. Such an indefinite delay amounts to a refusal to proceed to a disposition on the merits.” *Blue Cross & Blue Shield of Ala. v. Unity Outpatient Surgery Ctr., Inc.*, 490 F.3d 718, 724 (9th Cir. 2007). The district court's stay orders and refusal to lift the stay even when the conditions of its stay orders have been satisfied have placed Mr. Roberts out of court. The district court continues to stay the matter pending some other condition precedent since November 26, 2019. First it was the Supreme Court's resolution in the now-

⁴ This counts the day this brief is filed.

mooted *New York Rifle*. Then it was the Ninth Circuit’s en banc resolution in *Young* and that maybe the legislature would act a second time. Now it is the actual conclusion of *Young* which there is no way to know how long that will take. See *Landis v. N. Am. Co.*, 299 U.S. 248, 257, 57 S. Ct. 163, 167 (1936) (“When once those limits have been reached, the fetters should fall off... [a]n order which is to continue by its terms for an immoderate stretch of time is not to be upheld as moderate because conceivably the court that made it may be persuaded at a later time to undo what it has done”). “... [The Supreme Court] has cautioned, a federal court’s ‘obligation’ to hear and decide a case is ‘virtually unflagging.’” *Sprint Communs., Inc. v. Jacobs*, 571 U.S. 69, 77, 134 S. Ct. 584, 591 (2013) (additional citation omitted).

This Circuit has previously stated that “[w]e respect the trial court’s inherent power ‘to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel and for litigants’ and we give deference to the district court’s judgment that the stay will avoid hardship and inequity, but we ‘cannot abdicate our [role] . . . to prevent the ossification of rights which attends inordinate delay.’” (citations and footnote omitted, alteration in original).” *Hoewn Yong v. INS*, 208 F.3d 1116, 1119 (9th Cir. 2000) (*quoting Itel Corp. v. M/S Victoria U (Ex Pishtaḡ Iran)*, 710 F.2d 199, 202-03 (5th Cir. 1983)).

Hoewn, while a habeas case, is similar in the analysis because that case was stayed pending a resolution of a different case to the Supreme Court. The stay “term is indefinite . . . because the stay terminates upon the ‘resolution of the [Ma] appeal,’ if the

Supreme Court should grant certiorari to review this court's decision in *Ma*, the stay could remain in effect for a lengthy period of time, perhaps for years if our decision in *Ma* is reversed and the case is remanded for further proceedings.” *Hoenn Yong v. INS*, 208 F.3d 1116, 1119 (9th Cir. 2000). And this is no different than staying Mr. Roberts' case pending a grant of certiorari in the Supreme Court appeal in *Young* or a ruling in *New York Rifle*.⁵ And what then happens if *Young* (or *New York Rifle*) is remanded for further proceedings after the Supreme Court's ruling? Given the district court's order, since *Young's* case would not be “concluded,” it is an indefinite stay.

After Mr. Roberts filed his Motion for Summary Disposition, on May 13, 2021, this Court issued its Order remanding this proceeding to the district court for the limited purpose of “reconsider[ing] its decision and to set forth its reasons for whatever decision it reaches” regarding this stay. (quoting *Blue Cross & Blue Shield of Ala. V. Unity Outpatient Surgery Ctr., Inc.* 490 F.3d 718, 725 (9th Cir. 2007)). The Court stated that the district court “is required to balance multiple considerations, including ‘the interests of the parties, the public, and the court.’ [Id. at 724]; *Lockyer v. Mirant Corp.*, 398 F.3d 1098, 1110-11 (9th Cir. 2005).” The Court stated that the district court did “not set forth [its] analysis or explain its weighing of the relevant factors” and the Court could not “review

⁵ See also fn. 2 of *Hoenn*: “... once a federal circuit court issues a decision, the district courts within that circuit are bound to follow it and have no authority to await a ruling by the Supreme Court before applying the circuit court's decision as binding authority...” *Hoenn Yong v. INS*, 208 F.3d 1116, 1119 n.2 (9th Cir. 2000).

the district court's exercise of discretion in weighing these factors unless [it] knows that it has done so and why it reached its result. *Blue Cross*, 490 F.3d at 724.”

On June 2, 2021, the district court filed its ruling. ER010-ER016. On June 3, 2021, it was filed with this Court. [Docket No. 12]. The district court's ruling does not discuss the “considerations, including ‘the interests of the parties, the public, and the court.’” *Id.* Its analysis is largely focused on the procedural posture of this matter and the unrelated *Young v. Hawaii*, 12-cv-00336 HG-BMK proceeding and counsel involved for plaintiffs in both cases.

The district court devoted a paragraph to the “State of Hawaii Defendants” opposition to lift the stay that they filed after this Court's Order on limited remand and discussed a current electric gun bill that had passed the Hawaii legislature and was awaiting signature from the Governor who had until July 6, 2021, to sign it. ER014-ER015.

The district court then stated that “Attorneys Beck and Stamboulieh, on behalf of Plaintiff Roberts, filed a Reply outlining the arguments on behalf of lifting the stay.” *Id.* There is no analysis of Plaintiff's Reply.⁶ ER015.

The district court then again stayed the case pending three conditions precedent:

- 1) For the Supreme Court “to address the standard of review that applies to a Second Amendment challenge, which is before the Court in *New York State Rifle*

⁶ Plaintiff's Reply is attached as ER017-ER024.

cf. *Pistol Assoc. v. Corlett*, No. 20-843, 2021 WL 1602643 (U.S. Apr. 26, 2021).”

ER015.

- 2) Pending “the decision by the United States Supreme Court ... in *Young v. State of Hawaii*, No 12-17808...”; and
- 3) So the Governor of Hawaii can “review HB 891, which Defendants represent would repeal and replace the Hawaii electric gun statute that is at issue in this case.” ER016.

Now that Roberts filed this Appeal, the stay in his case increased from one reason to three reasons. The district court failed to offer any analysis of any “consideration” listed in this Court’s Order. The district court does not appear to have analyzed any of Roberts’ Reply to the Defendants’ Opposition after limited remand (because the ruling is wholly silent as to what, if anything, it considered from the Reply) unlike what is contained in the short paragraph for the Defendants.

This Court ordered the district court to apply the *Blue Cross*⁷ factors. That the district court failed to do. For that reason alone, this Court should rule in Plaintiff’s favor.

More, none of the three reasons provided in the Ruling change the fact that this is an indefinite stay, and in fact, now being stayed pending an *additional* Supreme Court case makes the already indefinite stay more indefinite. The only difference at this point,

⁷ *Blue Cross* cites to *Keating v. Office of Thrift Supervision*, 45 F.3d 322, 325 (9th Cir. 1995) for a listing of the five factors for a stay.

is that the Governor of Hawaii signed Bill 891 into law, which purports to repeal the ban on electric weapons and creates a regulatory scheme around them.⁸

III. Mr. Roberts' Case is Not Moot

This Court ordered that “[t]he parties shall also address the extent to which any live controversy remains in this action following the State of Hawaii’s repeal of Haw. Rev. Stat. § 134-16. *See Bd. of Trustees of Glazing Health & Welfare Tr. v. Chambers*, 941 F.3d 1195, 1197-99 (9th Cir. 2019) (discussing principles for evaluating ‘whether the repeal, amendment, or expiration of legislation renders a lawsuit challenging the legislation moot’).”

Pursuant to *Bd. of Trustees of Glazing Health & Welfare Tr.* (“*Glazing Health*”), generally, “the repeal, amendment, or expiration of challenged legislation is generally enough to render a case moot and appropriate for dismissal.” *Id.* at 1198. *Glazing Health* cited a Supreme Court opinion *Northeastern Florida Chapter of the Associated General Contractors of America v. City of Jacksonville*, where “the Court similarly refused to dismiss an appeal as moot after a city had entirely repealed and replaced a challenged ordinance because the replacement ordinance disadvantaged plaintiffs only ‘to a lesser degree’ than the original one. 508 U.S. 656, 662-63, 113 S. Ct. 2297, 124 L. Ed. 2d 586 (1993).” *Id.*

⁸ See http://www.capitol.hawaii.gov/session2021/bills/GM1311_PDF, Governor Ige’s message stating he signed HB0891 HD2 SD2 CD1 into law on July 6, 2021 as Act 183 (21). But it does not take effect until January 1, 2022, which still means that Mr. Roberts’ rights are continually violated.

After the Governor signed the bill into law, Senator Karl Rhoads stated that “carrying stun guns is covered under HRS 134-51 where it’s a crime to carry deadly weapons in most circumstances.”⁹ H.R.S. § 134-51 provides, in part, that:

[a]ny person, not authorized by law, who carries concealed upon the person's self or within any vehicle used or occupied by the person or who is found armed with any dirk, dagger, blackjack, slug shot, billy, metal knuckles, pistol, or other deadly or dangerous weapon shall be guilty of a misdemeanor and may be immediately arrested without warrant by any sheriff, police officer, or other officer or person.

Mr. Roberts’ matter is plainly not moot because the change in law did not give him all the relief he sought. And in Mr. Roberts’ Amended Complaint, he cites to H.R.S. § 134-51 for this very proposition. (*see* ¶¶ 58-62, ER052-ER053). Mr. Roberts asked the district court for “an order declaring HI Rev Stat § 134-51 and other applicable Hawaii law unenforceable as applied to Mr. Roberts and facially to the extent it prohibits using, keeping, possession within a vehicle, carrying, bearing and arming oneself with electric arms or alternatively a declaration that HI Rev Stat § 134-51 does not apply to electric arms.” *See* Prayer for Relief ¶ 5, ER058. The case isn’t moot just because Mr. Roberts can “possess” an electric arm in his home, but not until next year. And this case is still on an indefinite stay because the district court will not even rule on the issues until both *New York Rifle* and *Young* are completed.

⁹ *See* <https://www.hawaiinewsnow.com/2021/07/08/hawaii-citizens-can-legally-own-taser-starting-january-1/>.

Mr. Roberts also sought damages for the violation of his Second Amendment rights, something that the change in legislation will not effect, because Mr. Roberts' constitutional rights were violated by the offending law. *See* Prayer for Relief ¶ 7, ER058.

This is the exact scenario that played out in the first *New York Rifle* case:

Petitioners also argue that, even though they have not previously asked for damages with respect to the City's old rule, they still could do so in this lawsuit. Petitioners did not seek damages in their complaint; indeed, the possibility of a damages claim was not raised until well into the litigation in this Court. The City argues that it is too late for petitioners to now add a claim for damages. On remand, the Court of Appeals and the District Court may consider whether petitioners may still add a claim for damages in this lawsuit with respect to New York City's old rule. The judgment of the Court of Appeals is vacated, and the case is remanded for such proceedings as are appropriate.

N.Y. State Rifle & Pistol Ass'n v. City of N.Y., 140 S. Ct. 1525, 1526-27 (2020). But Mr. Roberts did seek damages in his complaint. In Justice Alito's dissent, he cited numerous cases for the proposition that "it is widely recognized that a claim for nominal damages precludes mootness. *See* 13C C. Wright, A. Miller, & E. Cooper, *Federal Practice and Procedure* §3533.3, n. 47 (3d ed. Supp. 2019) (collecting cases); *see also, e.g., Central Radio Co. v. Norfolk*, 811 F. 3d 625, 631-632 (CA4 2016); *Morgan v. Plano Independent School Dist.*, 589 F. 3d 740, 748, n. 32 (CA5 2009); *Bernhardt v. County of Los Angeles*, 279 F. 3d 862, 872 (CA9 2002); *Amato v. Saratoga Springs*, 170 F. 3d 311, 317 (CA2 1999) (Sand, J., joined by Sotomayor, J.); *Committee for First Amendment v. Campbell*, 962 F. 2d 1517, 1526-1527 (CA10 1992); *Henson v. Honor Committee of U. Va.*, 719 F. 2d 69, 72, n. 5 (CA4 1983)." *N.Y. State Rifle & Pistol Ass'n v. City of N.Y.*, 140 S. Ct. 1525, 1536 (2020) (Alito,

J., dissenting). “When a plaintiff’s constitutional rights have been violated, nominal damages may be awarded without proof of any additional injury.” *Id.* at 1535 (Alito, J., dissenting).

Mr. Roberts’ case is plainly not moot, and this Court should require the district court to rule on Mr. Roberts’ allegations, including damages for the violation of his constitutional rights.

A. Mr. Roberts Has A Live Claim Regarding H.R.S. § 134-51

Mr. Roberts wishes to carry electric arms on his person and outside the home. ER052-ER053, ER058, ER061. As stated above, H.R.S. § 134-51 prohibits the carry of any dangerous and deadly weapon outside the home. Dangerous and deadly weapons are “one designed primarily as a weapon or diverted from normal use and prepared for combat”. *State v. Giltner*, 56 Haw. 374, 537 P.2d 14 (1975). H.R.S. § 134-51 does not require that weapons be “concealed” within a car or while carrying it in order to violate the statute. *See State v. Ogata*, 572 P.2d 1222, 1223 (Haw. 1977). (“HRS § 134-51 may be violated by the carrying of deadly or dangerous weapons, whether concealed or unconcealed”). Electric arms are designed primarily for use as a self-defense weapon. Thus, electric arms arguably fall within H.R.S. § 134-51’s definition of a deadly or dangerous weapon.

Therefore, even after electric arms become legal to possess on January 1, 2022, there is a live case or controversy as to whether Mr. Roberts will be prohibited from carrying electric arms for self-defense. Therefore, his complaint still contains a live case

or controversy that the trial court must rule on even if this Court finds his claim against H.R.S. § 134-16 is moot. The relief sought by Mr. Roberts cannot be tied to either of the aforementioned Supreme Court cases because House Bill 891, signed by the Governor, does not speak about any type of permitting scheme at all for carrying of an electric arm.¹⁰ Therefore, this is not a case about whether the Second Amendment applies to carry of a Taser or electric arm outside of the home. This is a matter of whether H.R.S. § 134-51's prohibition on carry of a deadly weapon applies to the carry of a Taser or electric weapon. And thus, this case is not implicated at all by a ruling in *New York Rifle* or *Young*.

CONCLUSION

This Court should find that the district court committed clear error and abused its discretion by mandating an indefinite stay, and reverse and remand this appeal for the district court to rule on Mr. Roberts' allegations of violations of his civil rights.

Respectfully submitted,

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¹⁰ See https://www.capitol.hawaii.gov/session2021/bills/HB891_CD1_.pdf.

STATEMENT OF RELATED CASES

To the best of our knowledge, there are no related cases.

CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limitations of Fed. R. App. P. 32(f) because, excluding the parts of the document exempted by Fed. R. App. P. 32(f), it contains 4,226 words and complies with the word limit of Cir. R. 32-1.
2. This brief complies with the typeface and type size requirements of Fed. R. App. P.32(a)(5) and (6) because it has been prepared in a proportionally spaced typeface using Microsoft Word 365 in 14-point Garamond.

Dated: September 13, 2021.

/s/ Stephen D. Stamboulieh
Stephen D. Stamboulieh

CERTIFICATE OF SERVICE

I hereby certify that on September 13, 2021, I filed the foregoing Appellants' Opening Brief 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.

/s/ Stephen D. Stamboulieh
Stephen D. Stamboulieh