

Docket No. 05-35264

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

**UNITED STATES DEPARTMENT OF AGRICULTURE,
ANIMAL AND PLANT HEALTH INSPECTION SERVICE; et al.,**
Defendants-Appellants,

vs.

**RANCHERS CATTLEMAN ACTION LEGAL FUND
UNITED STOCKGROWERS OF AMERICA**
Plaintiffs- Appellees.

On Appeal from the United States District Court
for the District of Montana
Case No. CV-05-06-BLG-RFC

BRIEF OF *AMICI CURIAE*

**ON BEHALF OF THE CAMELID ALLIANCE; et. al.¹,
IN SUPPORT OF DEFENDANT-APPELLANT, SUPPORTING REVERSAL**

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Amici are the following nonprofit llama and alpaca organizations representing camelid owners around the U.S. and Canada and provide support and education for members and the public regarding proper care, reproduction, herd management and fiber production of llamas and alpacas. Their respective members raise, breed and sell camelids for fiber, recreation and show rather than for food.

1. The Camelid Alliance;
2. Llama Association of North America;
3. Western Idaho Llama Association;
4. The Pack Llama Trial Association;
5. Rocky Mountain Llama and Alpaca Association;
6. Carolina Alpaca Breeders and Owners, Inc.;
7. Vancouver Islands Llama & Alpaca Club;
8. LAMA Association of the Mid Atlantic States;
9. Greater Appalachian Llama & Alpaca Association;
10. The Maine Alpaca Association;

11. Missouri Llama Association;
12. Pennsylvania Llama & Alpaca Association;
13. Ohio River Valley Llama Association;
14. Illinois Alpaca Owners and Breeders Association;
15. Columbia Alpaca Breeders Association;
16. Great Lakes Alpaca Association;
17. Golden Plains Llama Association;
18. Maine Llama Association;
19. Alpaca Ranchers of the Northwest;
20. The Canadian Llama and Alpaca Association;
21. Ontario Camelids Association;
22. BC Llama Lovers;
23. Saskatchewan Alpaca Breeders' Network; and
24. Chief Mountain Llama & Alpaca Club.

The question in this case is whether the United States District Court for the District of Montana erred in issuing a preliminary injunction that was overbroad and beyond the scope of relief sought by Plaintiff/Cattleman. Amici respectfully request that this Court reverse and remand the injunction issued by the district court with instructions to narrowly tailor relief to the specific harm. *Armstrong v. Davis*, 275 F.3d 849 (9th Cir. 2001).

The USDA promulgated a regulation that recalled the Canadian border closure for many species of ruminants, which the USDA broadly defined to include both live cattle and camelids. Since the USDA found a minimal risk of BSE (bovine spongiform encephalopathy a/k/a Mad Cow Disease) from cattle imported from Canada, the USDA scheduled the reopening of the Canadian border on March 7, 2005, for these species under certain conditions. However, with respect to camelids (i.e. llamas, alpacas, guanacos, and vicunas), USDA found that these species did not present a high-risk for BSE and, as a result, "may be imported into the United States without any restrictions under §93.436(f)."

Plaintiff has alleged an injury that pertains only to live cattle, and which allegedly pose a severe economic risk to the cattle industry and a significant health risk to consumers. Plaintiff has offered no evidence that opening the Canadian border to camelids presents any risk of harm to the plaintiff but nevertheless persuaded the district court to grant a preliminary injunction enjoining the entire regulation thereby preventing the importation of camelids without any legal basis.

Under Federal Rule of Civil Procedure 65(d), every order granting an injunction "shall be specific in terms" and "reasonably clear so that ordinary persons will know precisely what action is prescribed." *U.S. v. Holtzman*, 762 F.2d 720, 726 (9th Cir. 1985). Moreover, the injunctive relief "should be limited in scope to the extent necessary to protect the interests of the parties." *Gibson v. Firestone*, 741 F.2d 1268, 1273 (11th Cir. 1984). Further, an injunction "should be tailored to restrain no more than what is reasonably required to accomplish its ends." *Consolidation Coal Co. v. Disabled Miners of Southern W.Va.*, 442 F.2d 1261, 1267 (4th Cir. 1971).

Amici urge this Court to review the breadth of the lower court's injunction as a grant of relief that exceeded the bounds necessary to protect the interests of the parties. For the foregoing reasons, *amici* respectfully request this Court to find that the district court abused its discretion by issuing a preliminary injunction, without proper limitation, and reverse that portion of the injunction that pertains to or affects camelids.

The Animal and Plant Health Inspection Service ("APHIS") is an agency of the Department of Agriculture ("USDA") that regulates the importation of

animals and animal products into the United States to guard against the introduction of animal diseases, including Bovine Spongiform Encephalopathy ("BSE"). APHIS has defined BSE or mad cow disease as "a progressive and fatal neurological disorder of cattle that results from an unconventional transmissible agent." *See* 70 Fed. Reg. 460. Under its duties, APHIS establishes conditions or bans for the importation of certain animals in order to prevent the introduction of BSE into the United States.

In the instant case, USDA banned the importation of all ruminants on May 29, 2003 following the discovery of a Canadian cow which tested positive for BSE. APHIS found that a ban would prevent the risk of BSE from infecting meat products used for human consumption. After careful review, APHIS and USDA promulgated the Final Rule "Bovine Spongiform Encephalopathy, Minimal Risk Regions and Importation of Commodities; Final Rule and Notice" on January 4, 2005. 70 Fed. Reg. 460 ("Final Rule"). The Final Rule recalled the border closure issued against Canada on May 29, 2003. Before the Final Rule went into effect, the Plaintiffs, Ranchers Cattleman Action Legal Fund United Stockgrowers of America ("Plaintiffs"), filed for preliminary injunction in the United States District Court for the District of Montana.

Plaintiffs are a non-profit trade organization that represents independent cattle producers. Plaintiffs sought to enjoin the USDA Final Rule that would allow 1.7 to 2 million head of live cattle to enter U.S. borders.² Although Plaintiffs believe the meat packing industry has the USDA "rush[ing] to open this border," the Final Rule includes a broad base of species and is not isolated to live cattle. The Final Rule recalls the ban on numerous species other than cattle. In particular to the

² Record ("R") for Ranchers Cattleman v. USDA, No. CV-5-06-BLG-RFC at 3 (D. Mont. March 2, 2005).

interest of *amici* are the provisions in the Final Rule, which, for importation purposes, distinguishes camelids from cattle and other species of ruminants.

Camelid Background

_____ In North America, llamas and alpacas are a valuable livestock. The International Llama Registry lists 26,347 owners and 129,274 llamas in the United States. ³ The Alpaca Registry records approximately 20,000 alpacas. *Id.* However, these registries do not account for the total number of camelids, which may exceed 200,000. ⁴ These animals are of great value to breeders who are facing large losses in sales. ⁵ Some llamas and alpacas that are stranded in Canada originated in the U.S. and owners transported them prior to the border closure for breeding purposes. Since 1990, every camelid exported from Canada to the U.S. is registered and recorded in the Canadian Llama and Alpaca Association Herdbook. ⁶ This record facilitates review of a camelid's history, population, structure in each country, movement, place of birth, and herd of origin. Over half of the camelids in Canada were born after the ruminant food ban began and it is extremely unlikely that any camelid would have been exposed to BSE. ⁷ *Amici* are various organizations of camelid owners who requested that USDA revoke the border closure for these animals which are used as breeding stock, fiber producers and companions. ⁸

³ www.llamaregistry.com.

⁴ *Id.*

⁵ See Lynette Hintze, *Llamas in Limbo*, *The Daily Inter Lake*, March 30, 2005. This article reports on one specific breeder who lost \$100,000 in sales from 8 llamas.

⁶ Many llamas and alpacas are permanently microchipped for identification purposes.

⁷ Public Comment of Canadian Alpaca Breeders Association and Canadian Llama and Alpaca Association to Final Rule.

⁸ The Camelid Alliance submitted public comment on the proposed Final Rule (docket no. 03-08-01).

During the public comment period for the Final Rule, USDA addressed the public concern for the camelid species. ⁹ *See Comments on Proposed Rule*, Government of Alberta. The Final Rule discussed comments under How the Rule Applies to Camelids, Cervids, Bison, and Water Buffalo, Alpacas and Other Camelids. 70 Fed. Reg. 477.

These comments included those submitted by the United States Animal Health Association ("USAHA"), which is a 107-year-old science based, national organization that serves as an advisory body to the USDA. ¹⁰ The USAHA found:

The current import ban on llamas and alpacas (camelids) from Canada should be rescinded to conform with the international camelid movement. Specifically, Canada and Australia have both exempted camelids for their current ban of U.S. livestock imports following the BSE case in Washington state December 2003. Australia did not ban llamas and alpacas from Canada after May 20, 2003. In the absence of TSE in the suborder of Tylopoda, family Camelidae worldwide, no assumptions of TSE susceptibility should be made.

USDA amended the Final Rule and, for importation purposes, recognized a distinction between camelids and cattle. USDA found,

⁹ The Government of Alberta submitted to the USDA and APHIS comments stating that camelids (live animals including llamas and alpacas and their products, have never had a recorded case of BSE or any other TSE in any country. Further, "the main use of camelids is not for their meat. As such it is our view that camelids do not represent a realistic, scientifically supported risk of transmission of BSE." Alberta requested that the USDA remove the ban on camelids. These comments were a joint submission with the Canadian Llama and Alpaca Association and the Canadian Alpaca Breeders' Association.

¹⁰ Public Comment to Docket No. 03-08-01, BSE Minimal Risk Regions and Importation Commodities. The USAHA is composed of state and federal animal health agencies and other governmental departments. The USAHA serves as a clearinghouse for new information and methods that may be incorporated into laws, regulations, policies and programs. The USAHA also develops solutions to animal health and safety food issues based on science, new information and methods, public policy, risk/benefit analysis.

notwithstanding "taxonomic differences" between camelids and cattle, that camelids were sufficiently similar to cattle to be regulated as "ruminants", they also found that camelids did not present the same risk of introducing BSE into the United States as cattle and may be imported into the United States without restrictions based on the following:

1. The mitigation measures that must be in place for minimal risk regions such as Canada;
2. Camelids are not typically fed ruminant byproducts;
3. There have been no diagnosed cases of BSE in camelids.

In reaching the conclusion that camelids may be imported from BSE minimal-risk regions without restrictions, USDA reviewed and considered the following comments:

- (1) Camelids are physiologically distinct from ruminants and are not true ruminants. For instance, camelids have a three-compartment stomach, whereas other animals considered ruminants have a four-compartment stomach;
- (2) Camelids are traditionally used for fiber, recreation, and show, rather than for food;
- (3) Purebred registries for camelids ensure the animals' health and identification;
- (4) Camelids are not fed high-protein feeds;
- (5) ...[N]o camelid has been diagnosed with a TSE ¹¹;

¹¹ *Id.* Transmissible Spongiform Encephalopathies is the family of diseases that includes BSE's. The theory that is most accepted in the scientific community is that TSE's and BSE are caused by an agent that is a prion. This agent is an abnormal form of a normal protein known as cellular prion protein.

(6) Prohibiting camelids from a BSE minimal-risk region would not be consistent with OIE 12 guidelines, both because the OIE guidelines on BSE relate only to bovines, and because OIE recommends that an importing country not be more trade-restrictive than necessary to achieve the desired level of protection. 70 Fed. Reg 476.

Upon review of scientific evidence and public commentary, the USDA properly found:

- (1) *It was "not necessary to prohibit importation of camelids from minimal-risk regions;*
- (2) *We agree it would be highly unlikely BSE would be introduced into the United States through the importation of camelids from BSE minimal-risk regions." Id.*
- (3) *Camelids from a BSE minimal risk region may be imported into the United States without any restrictions related to BSE. §93.436(f)*

APHIS and USDA have a duty to ensure the protection of public health from animal diseases.

Under the law, both agencies have acted reasonably in enacting this Final Rule and weighing all substantial evidence in the record. The district court failed to review any evidence that dealt with other species such as camelids. The district court found that rejecting international standards, such as OIE, because they are too conservative would be arbitrary and capricious, but did not review OIE findings pertaining to camelids.

Opinion on Order of Preliminary Injunction ("Op."), *Ranchers Cattleman v. USDA*, No.

CV-05-06-BLG-RFC at 13 (D.Mont. March 2, 2005). Presently, the district judge's injunction includes all species of ruminants. Since USDA defines camelids as ruminants, they are included in the court's injunction and barred from entry to the United States. *Amici* urge this Court to consider APHIS' and USDA's clear intention to remove the border closure for species, such as camelids, that do not pose a significant risk of BSE to the U.S. consumer.

¹² Office of International des Epizooties. The United States is a member of OIE, which is an international organization that reviews standards for animal health. OIE Terrestrial Animal Health Code recommends that risk management strategies must be scientific-based, transparent, and not more trade restrictive than necessary for health protection. Under this policy, the U.S. established a risk management strategy that is overly protective and does not address a realistic risk to human health. As such, the U.S. must use restrictive measures that reflect the actual animal health status of the exporting country and the risk of camelids creating a source of infection.

The district court erred in issuing an overbroad preliminary injunction that failed to "narrowly tailor to the specific harm claimed by the party." *Armstrong v. Davis*, 275 F.3d 849 (9th Cir. 2001). The law is clear that injunctive relief should be limited "to the extent necessary to protect the interests of the parties." *Gibson v. Firestone*, 741 F.2d 1268, 1273 (11th Cir. 1984); *see also Consolidation Coal Co. v. Disabled Miners of Southern W.Va.*, 442 F.2d 1261, 1267 (4th Cir. 1971) (an injunction "should be narrowly tailored to restrain no more than what is reasonably required to accomplish its ends."). This Court found that a preliminary injunction will be reversed if a district court abused its discretion, *Gregorio T. v. Wilson*, 59 F.3d 1002, 1004 (9th Cir. 1995). Additionally, the preliminary injunction "must be supported by findings of fact, which are reviewed for clear error." *Hawkins v. Comparet-Cassani*, 251 F.3d 1230, 1239 (9th Cir. 2001); *See Coalition for Economic Equity v. Wilson*, 122 F.3d 692, 701 (9th Cir. 1997).

In *Zepeda v. INS*, this Court found that a "district judge may abuse discretion in three ways: (1) he may apply incorrect substantive law or an incorrect preliminary injunction standard; (2) he may rest his decision to grant or deny a preliminary injunction on a clearly erroneous finding of fact that is material to the decision to grant or deny the injunction; or (3) he may apply an acceptable preliminary injunction standard in a manner that results in an abuse of discretion." 753 F.2d 719, 725 (9th Cir. 1985). Although a reviewing court is not empowered to substitute its judgment for that of the lower court, it may determine if an abuse of discretion occurred. *Id.* This Court determined if an abuse occurred by "consider[ing] whether the decision was based on a consideration of the relevant factors and whether there has been a clean error of judgment. *Id.*

During the hearing for preliminary injunction in this matter, both parties as well as the district judge focused solely on the impact of live cattle to the U.S. consumer market. Although the Final Rule covers more than solely cattle, the Plaintiff sought an injunction to remedy a specific harm—the negative economic impact on the cattle industry. The Final Rule reviewed all pertinent comments, including those for other species and acted accordingly. Under these circumstances, the district court failed to consider all relevant factors and overlooked other species that would be affected by the injunction.

On March 2, 2005, Plaintiff appeared before the district court to argue their application for preliminary injunction. Plaintiff argued, "the importance of issuing this preliminary injunction to the cow/calf producing industry of the United States could not be overstated." (R. at 4.) Further, Plaintiff alleged that live cattle would create a risk of "total devastation of the entire cow/calf, beef producing industry, because if we open this border and come to [see] a BSE cow or cows in this country, the devastation that we saw to the markets, to the confidence in the public beef back in December of 2003, can never be regained." (R. at 7). Plaintiff never presented any evidence and the court made no findings that camelids presented any risk of harm whatsoever. All discussion and ensuing questions for the defense focus solely on the BSE risk carried by live cattle. Plaintiff stated "the urgent reason for granting this preliminary injunction and stopping the opening of the gates on Monday, Judge, is once these Canadian cattle come into this country, they will disappear into the food chain." (R. at 7). The district judge did discuss the standard of review for agency action

and found that the court did not have to grant deference if the rule was based on unsubstantiated facts. Although this arbitrary and capricious standard is correct, the district judge erred in overlooking all the facts relevant to this regulation.

Under *Zepeda*, the district court should have limited the preliminary injunction and stayed within its scope of discretion. 753 F.2d 719, 725 (9th Cir. 1985). This Court found that the district judge abused its discretion by issuing a preliminary injunction that exceeded reasonable limitations and rested on an "erroneous reading" of the law. *Id.* at 731; *see also Keener v. Convergys*, 342 F.3d 1264, 1270 (9th Cir. 2003) (this Court held that the district court "extended this injunction beyond reasonable scope...and the injunction should be modified to preclude" enforcement). The *Zepeda* injunction prohibited too much and unreasonably limited INS from obtaining local or state police assistance. As such, that portion of the preliminary injunction must be reversed and remanded. *Id.*

In this case, Plaintiff's specific injury resulted from the entrance of cattle into the United States and not any other species. Upon review of the entire record, the district court had a duty to narrow this injunction solely to cattle and substantiate its ruling. Although Plaintiffs argued imminent irreparable harm, the only relief sought was a ban on the importation of live cattle.

This Court in *Zepeda* held that review of a lower court was limited to the available record. *Id.* In the current case, the record included a Final Rule with lengthy public comments on a variety of issues. The district court recognized that the hearing was limited to the administrative record and that it consisted of about 12,650 pages. (R. at 4). Under the *Zepeda* standard, findings of fact must properly support the preliminary injunction. Without

proper findings, the district judge will be unable to narrowly tailor the injunction to restrain only what is articulated as the harm. As in this case, an injunction that exceeds these boundaries results in an abuse of discretion.

Id.

In *Lewis v. Casey*, the Supreme Court held that "the scope of relief is dictated by the extent of the violation." 518 U.S. 359 (1996). This Court interpreted *Lewis v. Casey* and found that "the main concern of *Lewis* is to ensure that courts do not enter broader injunctions than necessary and do not prohibit conduct that is not threatened." *Armstrong*, 275 F.3d at 871. This Court will defer to the trial court's scope of class and injury if the "conclusion is based upon adequate findings supported by substantial evidence in the record." *Id.*

In *Meinhold v. Department of Defense*, this Court invalidated a nationwide injunction that was overbroad. 34 F.3d 1469 (9th Cir. 1994). The district court permanently enjoined the DOD from discharging or denying enlistment based on sexual orientation, and restraining DOD from maintaining files on sexual orientation of service members. *Id.* The district court found that the Navy's policy of banning gays and lesbians based on status not conduct violated the Equal Protection Clause. Citing *Califano v. Yamasaki*, this Court held that "an injunction 'should be no more burdensome to the defendant than necessary to provide complete relief to the plaintiffs.'" 442 U.S. 682, 702 (1979). This case was not a class action and the Plaintiff sought to enjoin the Navy to reinstate him. *Meinhold*, 34 F.3d at 1480. Therefore, under those circumstances, "effective relief c[ould] be obtained by directing the Navy not to apply its regulation to Meinhold...DOD should not be constrained from applying its regulations to

Meinhold and all other personnel." *Id.* The district court's injunction was vacated except for its application against Meinhold. *Id.*

The Eleventh Circuit Court of Appeals has also vacated injunctions that were overbroad and beyond the district court's discretion. *Chandler v. Siegelman*, 230 F.3d 1313 (11th Cir. 2000). Chandler involved a suit against state and school officials challenging a statute permitting prayer at school-sponsored events. The district court enjoined the school district from permitting any prayer in a public context at any school event. The Eleventh Circuit held that this injunction was overbroad in that it eliminated any possibility of even private student religious speech in any public context at school under any circumstances other than silently or behind closed doors. *Id.* at 1316. The court reasoned that such a ban was neither required nor permitted under the U.S. Constitution and remanded the case to ensure that it did not command the school district to go beyond constitutional restraints and prohibit too much. *Id.* at 1318.

Similarly, the instant matter involves a sweeping injunction that invalidated an entire regulation and obstructed the implementation of all provisions. The preliminary injunction hearing involved a 12,650 page record that included scientific evidence supporting the USDA's findings in its Final Rule. (R. at 4). The district court failed to review the record before it issued an injunction that provided excessive relief to the Plaintiff.

Rule 65 of the Federal Rules of Civil Procedure requires an injunction be "specific in terms; [and] describe in reasonable detail, and not by reference to the complaint or other document, the act or acts sought to be restrained." Fed. R. Civ. P. 65(d). The Supreme Court held in *Califano* that "scope of injunctive relief is dictated by the extent of the violation." 442 U.S. 682 (1979). The district court, however, failed to limit the injunction to

the Defendant's alleged violation. Nor did the district court tailor the injunction to remedy the "specific action" and ensure that the order was not overbroad. An injunction that fails to meet these requirements is overbroad. *U.S. Steel Corp. v. United Mine Workers of Am.*, 519 F.2d 1246 (5th Cir. 1975). *U.S. Steel* defined broadness as "the range of proscribed activity" and referred to it as a matter of substantive law. *Id.* at 1246.

In this case, the district judge enjoined the entire regulation without properly reviewing the record that included a Final Rule addressing public concerns. Plaintiffs' sought review of the Final Rule under the Administrative Procedure Act ("APA"). 5 USC § 706(2). Plaintiffs' argued that the USDA acted arbitrarily and capricious in promulgating a Final Rule without reviewing all the substantial evidence. Nevertheless, under the APA "an injunction that enjoins an agency from disclosing more than has been requested...is overbroad because it exceeds the legal basis for the lawsuit." *Doe v. Veneman*, 380 F.3d 807 (5th Cir. 2004). In *Doe*, the Fifth Circuit found that the district court's injunction was overbroad because it included more than what the Plaintiff had requested. *Id.* at 819. Further, the court held that when a "court enters an injunction that exceeds the scope of judicial review [under the APA] an injunction is necessarily overbroad because it exceeds the extent of the violation established. *See also Califano*, 442 U.S. at 702. As the Fifth Circuit found in *Doe*, the district court in this matter exceeded its scope of review and issued an injunction that included not only live cattle, but also any other species involved in the Final Rule. The district judge viewed the Final Rule as a "decision that subjected the entire U.S. beef industry to potentially catastrophic damages and that presents a genuine risk of death for U.S. consumers." (Op. at 9.) If the USDA allows "1.7 million head of cattle a year to the U.S., as it did in 2002

prior to the discovery of BSE in Canada, it is virtually certain that Canadian cattle infected with BSE would be imported into the U.S." (Op. at 11).

Under these circumstances, the court found the Final Rule caused "substantial, irreparable consequences for the cattle growers and also for all consumers of beef in or from the U.S." (Op. at 24). Nowhere in the final opinion does the district court discuss the effects of other species included in the Final Rule. Nor does the court refer to other possible ramifications of enjoining the Final Rule in its entirety. On the other hand, the court focused on how "reopening the border to Canadian cattle will have a serious irreparable impact on ranchers in the U.S. and the U.S. economy." (Op. at 25.) Plaintiffs never argued that the camelid species would cause them irreparable injury. In addition, Plaintiffs did not argue camelids would cause a genuine risk to of death or irreparable harm to consumers of beef. Throughout the hearing and the district court's opinion, the focus remained on cattle and edible beef products. *Amici* believe that the record does not support enjoining implementation of the entire Final Rule. The district court should have limited the injunction specifically to live cattle and edible meat imports that would increase the human risk of BSE exposure. Thus, the district court abused its discretion by issuing an injunction that was overbroad and exceeded the Plaintiffs' legal basis for suit and the extent of injury.

As the agencies empowered to protect human health and safety, both USDA and APHIS have acted reasonably in promulgating a Final Rule that allows the importation of camelids from minimum risk regions, such as Canada, without restrictions. In seeking injunctive relief, plaintiff alleges an injury that pertains only to the importation of

live cattle. Plaintiff offered no evidence that opening the Canadian border to camelids would present any risk of harm to the plaintiff but nevertheless persuaded the district court to grant a preliminary injunction enjoining the entire Final Rule thereby preventing the importation of camelids without any legal basis. The district court abused its discretion by failing to limit the breadth of this preliminary injunction to the Plaintiffs' specified injury and failing to support its findings with the record before it.

Based on the foregoing, amici urge this Court to reverse the decision of the U.S. District Court for the District of Montana and vacate the preliminary injunction, at least to the extent it bans the importation of camelids from Canada.

Dated: April _____, 2005.

Respectfully submitted,

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_____ I CERTIFY that pursuant to Fed. R. App. P. 29(d) and 9th Cir. R. 32-1, the attached amici brief is proportionally spaced, has a typeface of 14 points or more and contains 7000 words or less.

L.L.C.

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I hereby certify that on this _____ day of April, 2005, two copies of the foregoing amici curiae brief were served on the following by U.S. mail:

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Gregg Spyridon