

No. _____

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

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

-vs-

_____, JUVENILE MALE,

Defendant-Appellant.

OPENING BRIEF OF DEFENDANT-APPELLANT

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF _____
_____ DIVISION

HONORABLE _____
UNITED STATES DISTRICT JUDGE, PRESIDING

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I. STATEMENT OF JURISDICTION

**A. STATUTORY BASIS OF SUBJECT MATTER
JURISDICTION OF THE DISTRICT COURT**

The United States District Court for the District of _____ has jurisdiction over this case in accordance with Article III, Section 2, Clause 1 of the United States Constitution and 18 United States Code § 3231 because Defendant _____ was charged as a juvenile Indian person with the offense of _____, in violation of 18 United States Code §§ 1153, _____, and 5031 *et. seq.*, within the District of _____.

B. STATUTORY BASIS OF JURISDICTION OF THE
COURT OF APPEALS

The Court of Appeals has jurisdiction over this case for the reason that ____ has appealed from the final decision of the United States District Court. *See*, 28 United States Code §1291 and Fed.R.Crim.P. 32.

C. APPEALABILITY OF DISTRICT COURT ORDER AND
TIMELINESS OF THE APPEAL

The District Court filed and entered its final Order, as required by Rule 32 of the Federal Rules of Criminal Procedure, on _____. (Excerpts of the Record (“ER”) 109-111). A Notice of Appeal was filed on _____. (ER 112-114). Therefore, the appeal is timely as having been filed within ten days after the date of entry of judgment as required by Fed.R.App. 4(b).

II. STATEMENT OF THE ISSUE

DID THE GOVERNMENT PROVE BEYOND A REASONABLE DOUBT WITH UTMOST CERTAINTY THAT ____ IS AN “INDIAN PERSON” WHERE ____ IS BLACK AND HE HAS NOT BEEN SOCIALLY RECOGNIZED AS AN INDIAN AND DOES NOT PARTICIPATE IN INDIAN SOCIAL LIFE?

III. STATEMENT OF THE CASE

A. NATURE OF THE CASE

1. Introduction

This is an appeal from a criminal conviction entered in United States District Court. ____ was convicted as a juvenile of, and was sentenced for, _____, in violation of 18 United States Code §§ 1153, ____, and 5031 *et. seq.*. The charges are alleged in the Information. (ER 1-3). ____ presents one argument for *de novo* review on appeal: the Government failed to prove beyond a reasonable doubt that ____, whose father is black and who has not been socially recognized as an Indian and does not participate in Indian social life, to be an “Indian person.”

2. Course of the Proceedings

On _____, ____ was charged as a juvenile by Information filed in the United States District Court for the District of _____, _____ Division, in

Cause No. _____, with the offense of _____, in violation of 18 United States Code §§ 1153, _____, and 5031 *et. seq.*. (ER 1-3). This crime is alleged to have occurred on _____, at _____, in the State and District of _____, and within the exterior boundaries of the _____ Indian Reservation. (Id.).

On _____, _____ appeared in Court and pleaded “Not True” (Not Guilty) to the alleged offense. (Clerk of Court Docket Sheet; ER 119). He was detained pending trial. (ER 118).

A bench trial commenced on _____. (Transcript of Bench Trial Part 1 (BT1) 1-19; ER 18-40). Prior to trial, _____ filed an Admission of Elements. (ER 14-17). After the District Court recessed the bench trial, the parties filed Stipulated Facts with Exhibits. (ER 41-61). The only element or issue in contention was whether _____ is an “Indian person.” (Id.; ER 14-17).

The District Court reconvened the bench trial on _____. (Transcript of _____; ER 62-77). The District Court announced that it had determined that _____ is an “Indian person.” (BT2 7-8; ER 69-70). Subsequently, the District Court filed its Dispositional Statement Regarding Indian Status. (ER 78-85).

The District Court held the Dispositional Hearing on _____. (Transcript _____; ER 86-108). The District Court sentenced _____ to serve 14 months in juvenile detention. (DT 14-15; ER 99-100). The final Order was filed on _____. (ER

109-111). A Notice of Appeal was filed on _____. (ER 112-114).

3. Disposition in the District Court

_____ was sentenced to serve a term of 14 months in official juvenile detention. (ER 109-110).

4. Bail Status of Defendant-Appellant

_____ is presently incarcerated at _____.

B. STATEMENT OF THE FACTS

1. Offense Conduct.¹

On _____, ____, then ____ years old, and another juvenile stole a ____ pick up truck in _____. The truck was found abandoned. It had been set on fire.

The other juvenile admitted that he and ____ had stolen the truck. The other juvenile further admitted that he alone set the truck on fire.

More specifically, the other juvenile admitted that he and ____ broke out the back window of the truck, crawled inside the truck, found a spare key, started the truck, and then drove the truck away. Both ____ and the other juvenile drove the truck. ____ drove the truck on and off the highway, “driving

¹

These facts are derived from the United States’ Trial Brief (ER 4-10).

through fences, before the truck stopped, due to some malfunction.” The two then abandoned the truck and walked back to town.

2. Admission of Elements.

Prior to trial, ___ submitted a signed Admission of Elements. (ER 14-17). Therein, he conceded and admitted that the Government would prove beyond a reasonable doubt four of the five elements, i.e., One, that the crime occurred on the ___ Indian Reservation; Two, that the Defendant, ____, did take away the property of another; Three, that the Defendant, ____, did so with the intent to steal or purloin; and Four, that at the time the offense was committed, the Defendant, ____, was a juvenile. (ER 15).

However, ___ specifically stated “that if the Government were to present its evidence to the Court, the Government would not prove beyond a reasonable doubt that I am an Indian person as required by 18 U.S.C. § 1153(a).” (Id.). Thus, the only issue for trial was the “Indian person” element.

3. The Test for Determination of Indian Status in the Ninth Circuit.²

In the Ninth Circuit, “Indian Person” under 18 U.S.C, § 1153(a) means

²

This test is derived from United States v. Bruce, 394 F. 3d 1215, 1224 (9th Cir. 2005); United States v. Cruz, 554 F. 3d 840, 845-846, 849 n. 13 (9th Cir. 2009); and United States v. Maggi, 598 F. 3d 1073, 1078, 1081 (9th Cir. 2010); *see*, 9TH CIR. CRIM JURY INSTR. 8.113 (2010).

someone who:

- 1) has some [“a sufficient”] degree of Indian blood; and
- 2) has tribal or federal recognition as an Indian.

In determining whether someone has some [“a sufficient”] degree of Indian blood, evidence of a parent, grandparent, or great-grandparent who is clearly identified as an Indian is generally sufficient to satisfy this p___g.

In determining whether someone has tribal or federal recognition as an Indian, evidence of the following factors must be considered, in declining order of importance:

- 1) Tribal Enrollment in a tribe recognized by the federal government;
- 2) Government recognition formally and informally through receipt of assistance reserved only to Indians;
- 3) Enjoyment of the benefits of tribal affiliation; and
- 4) Social recognition as an Indian through residence on a reservation and participation in Indian social life.

4. The District Court Requests Submission of Stipulated Facts.

At the commencement of the bench trial, Judge ___ invited the parties to submit the case to the Court “on a stipulated set of facts.” (BT1 6; ER 23). The judge observed that “the state of the law is uncertain as to how the several elements that are set forth in the Bruce, Maggi, and Cruz cases are to be

weighed one against the other; certainly how – as to how they are to be weighed if there is any conflict in the facts relating to such components of the process.” (BT1 9; ER 26). Judge ____’s “core concern” was “that given the uncertain state of the law, notwithstanding three decisions from the Ninth Circuit Court of Appeals on this particular question, I want the record complete so that when I make a decision, I can be as definitive as possible in doing so.” (BT1 11; ER 28).

Based on this request by the District Court, the parties agreed to try to stipulate to as many facts as possible. (BT1 11, 13, 14; ER 28, 30, 31). Judge ____ then further observed, “...if there is an issue that continues to be vexing and perplexing to this court, it is the issue that we are discussing here today. And I, for one, will welcome any clarification that the Ninth Circuit chooses to give any of us on how to resolve that question better.” (BT1 15; ER 32)

5. Evidence of _____’s Indian Status.³

____ was born in _____ in California. He was ____ years old at the time of the alleged offense. ____ has never met his parents. His mother is Native American and his father is African-American.

³

These facts are derived from the Stipulated Facts (ER 41-61).

____ was raised in foster homes and in group homes in _____, California. His foster parents were Black and Mexican. ____ grew up in a predominately Black neighborhood and attended predominantly Black public schools.

Although he has 1/4 total Native American blood and is an enrolled member of the _____ Indian Tribe (a federally recognized tribe), ____ has never held himself out as an Indian person. He does not consider himself to be an Indian person. ____ grew up as, and considers himself to be, an African-American.

When ____ was ____ years old, he sought refuge by leaving California to live with his maternal grandmother on the ____ Indian Reservation in _____. He left California to get away from a bad living situation.

____ has no interest in Indian culture and traditions. He has never worn traditional Indian clothing. ____ does not participate in the Indian social, cultural, and religious activities that are available on the ____ Reservation the ____ Reservation. These include pow-wows,⁴ sweats,⁵ smudging,⁶ sun dances,⁷

⁴

An American Indian social gathering or fair usually including competitive traditional dancing.

⁵

A sweat lodge is an American Indian tradition where individuals enter a dome-

and round dances.⁸

Because ____ cannot afford to pay for his own medical and hospital care, he has sought and obtained medical care at the Indian Health Service (IHS) facility in _____. ____ has personally received a total of four per capita payments⁹ totaling \$400.00 from the ____ Tribe. Until recently, ____ was not

shaped dwelling to experience a sauna-like environment. The lodge itself is typically a wooden-framed structure made from tree branches. Hot rocks are placed inside an earthen-dug pit located in the center of this man-made enclosure. Water is periodically poured over the heated rocks to create a hot and steamy room. The sweat ceremony is intended as a spiritual reunion with the creator and a respectful connection to the earth itself as much as it is meant for purging toxins out of the physical body.

6

According to American Indian tradition, before a person can be healed or heal another, he or she must be cleansed of any bad feelings, negative thoughts, bad spirits or negative energy - cleansed both physically and spiritually. To accomplish this, one common ceremony is to burn certain herbs, take the smoke in one's hands and rub or brush it over the body. This is called "smudging." The three plants most frequently used in smudging are sage, cedar, and sweetgrass.

7

The sun dance is an American Indian ceremony which includes dancing, singing and drumming, the experience of visions, fasting, and, in some cases, self-mutilation.

8

The American Indian round dance is a friendship dance that has long been held as a courting activity. It is performed during a portion of a powwow and during many social occasions.

9

Per-capita payments are payments that are made according to the number of individuals in a tribe and in which each individual tribal member shares

aware that per-capita checks had been sent on his behalf to his foster parents when he was living in California.

Other than per capita checks, ____ has not enjoyed the benefits of tribal affiliation. He has never received any type of financial assistance from the tribe. ____ is not entitled to any settlement money from the Cobell lawsuit.¹⁰ He did carry a tribal identification card.

Since living in _____, ____ has been arrested and charged with several offenses, both as a juvenile and as an adult, in the ____ Tribal Court. However, he has been treated as a Black person in ____ Juvenile Detention and in the ____ Tribal Jail (adult).

____ has not been socially recognized or accepted as an Indian. He is considered as, and treated as, Black by tribal members. ____ is called a “nigger” by tribal members who do not know him. Even his Indian “friends” call him

equally.

¹⁰

Cobell v. Salazar (On December 21, 2010, The United States District Court for the District of Columbia in Cause No. 1:96CV01285-JR granted preliminary approval to a settlement. On December 8, 2010, President Obama signed legislation approving the settlement and authorizing \$3.4 billion in funds. \$1.5 billion will be provided to compensate an estimated 500,000 individual Indian trust beneficiaries who have or had Individual Indian Money (IIM) accounts or hold an interest in trust or restricted land. The settlement resolves claims that the federal government violated its trust duties to these beneficiaries).

“Nigga ____.”

On one occasion when ____ was invited by his grandmother to watch her dance in a pow-wow, he was called “nigger” and threatened with bodily harm by a large Indian youth gang. He quit his job with _____ because one of the employees called him “nigger” and the manager refused to do anything about it. Indian jail inmates (both juvenile and adult) have repeatedly called ____ a “nigger” and have started fights with _____. For his own protection, the jailors have had to segregate ____ from the other inmates.

_____ has been warned several times not to go to _____, in the heart of the ____ Indian Reservation because he is not welcome and most likely will be assaulted or killed. The Indians in _____ do not want a “nigger” in their town.

6. The District Court Finds _____ to be an “Indian Person”.

Following the filing of the parties’ written Stipulated Facts (ER 41-61), Judge ____ reconvened the bench trial. (BT2 1-19; ER 62-77). The judge observed that “both sides are in agreement that this matter be submitted to the Court for a determination on the merits on the basis of the statements that are contained in the Admission of Elements...and the statement of stipulated facts.” (BT2 5; ER 67).

After referencing the applicable caselaw, Judge ____ found “to a beyond-

a-reasonable-doubt standard that this Defendant is an Indian Person, and that with that finding all elements of the juvenile offense are established and are established to the legal standard required to prove beyond a reasonable doubt.” (BT2 7-8; ER 69-70). “[F]rom the record, I conclude and adjudicate this Defendant is a juvenile delinquent for having committed the offense as charged in the juvenile information in the file. (BT2 9; ER 71).

Judge ____ noted that “determination of Indian Status is a political issue as defined in federal jurisprudence. It is not an issue of race.” (BT2 8; ER 70). The judge then declared that the “two-prong test laid down in the Bruce case...are to be satisfied.” (Id.). Judge ____ also recognized the four factors which must be considered and cited the three principal cases, Bruce, Cruz, and Maggi. (BT2 8-9; ER 70-71).

“This continues to be, in the mind of this Court, a thorny issue.” (BT2 9; ER 70-71). The judge announced his intention to file a “dispositional statement”, i.e., a “summary analysis of the facts” and “the application of those facts to the test that this Court is to apply in making this determination,” “...because I would have every expectation that this matter receive appellate review.” (BT2 8, 9; ER 70, 71).

Judge ____ requested counsel to take this case to the court of appeals to

“bring this issue to a definitive resolution.” (BT2 10-11; ER 72-73). “I offer the observation that it is not in the interest of the administration of justice to be deciding the status of individuals – as to whether they are not Indians, within the meaning of law – on a case-by-case, one-at-a-time basis...I simply offer that observation that there has to be a better way than doing it on that basis.” (BT2 11; ER 73).

7. Dispositional Statement Regarding Indian Status.

One week after announcing his decision in court, Judge ____ filed his Dispositional Statement Regarding Indian Status. (ER 78-85). Therein, the judge sets forth the facts and law in support of his conclusion that “the undisputed evidence in this case shows that [____] was an Indian person under 18 U.S.C. § 1153 at the time of the offense. This statutory element of the case is satisfied.” (ER 84-85).

IV. SUMMARY OF ARGUMENT

“We have been bucked and we have been scorned. We have been treated bad, talked about as just bones.”

James Brown

Say It Loud (I’m Black and I’m Proud)

____, whose father is a Black and whose mother is Native American, had no choice as to whether to be a Black person or an “Indian person.” He was raised as a Black person in _____, California. Although he is a member of the ____ Indian Tribe, tribal members call ____ “nigger” and treat him as an outsider. Except for free Indian Health Service benefits and periodic per-capita payments, ____ enjoys no other benefits of tribal affiliation.

When ____ sought employment, the Indians called him “nigger.” When he went to a pow-wow, they called him “nigger” and threatened him. When ____ was put in jail, the Indians called him “nigger” and assaulted him. ____ considers himself Black and has never held himself out to be an “Indian person.” He does not participate in Indian social, cultural, or religious activities, nor does he want to. The Government did not prove beyond a reasonable doubt with sufficient certainty that ____ is an “Indian person.”

V. ARGUMENT

THE GOVERNMENT DID NOT PROVE BEYOND A REASONABLE DOUBT WITH UTMOST CERTAINTY THAT ____ IS AN “INDIAN PERSON” BECAUSE ____ IS BLACK AND HE HAS NOT BEEN SOCIALLY RECOGNIZED AS AN INDIAN AND DOES NOT PARTICIPATE IN INDIAN SOCIAL LIFE.

Standard of Review

This Court reviews *de novo* the district court’s determination of Indian status under 18 U.S.C. § 1152 and § 1153 “because it is a mixed question of law and fact.” United States v. Ramirez, 537 F.3d 1075, 1081 (9th Cir. 2008) (quoting United States v. Bruce, 394 F.3d 1215, 1218 (9th Cir. 2005)). “Viewing the evidence in the light most favorable to the government, [this Court] must determine whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” Id.; *see also*, United States v. Maggi, 598 F.3d 1073, 1080 (9th Cir. 2010). The same test applies to both jury and bench trials. United States v. Doe, 136 F.3d 631, 636 (9th Cir. 1998).

Reviewability

____ contested the Indian Status element of the charge against him. ____ specifically stated “that if the Government were to present its evidence to the Court, the Government would not prove beyond a reasonable doubt that I am an Indian person as required by 18 U.S.C. § 1153(a).” (ER 15). No further objection is required.

Argument

____ is not an “Indian person.” Like his father, he is Black. ____ was raised as a Black and attended Black schools. He grew up in a Black neighborhood. ____ has never held himself out as an Indian person. He does not

consider himself to be an Indian person. ____ grew up as, and considers himself to be, Black.

____ tribal members treated ____ as a Black. Not only did the Indians consider ____ to be non-Indian, they discriminated against ____ by taunting him, threatening him, assaulting him, and even calling him “nigger.” Why would ____ want to participate in the Indian social, cultural, and religious activities? The one time he tried to watch his grandmother dance at a pow-wow, he was assaulted.

____ cannot be adjudged guilty of a criminal offense unless “a proper factfinder [is convinced] of his guilt with **utmost certainty**.” In re Winship, 397 U.S. 358, 364 (1970) (Emphasis added). Judge ____ is so confused and “uncertain” with the state of the law that he decreed the “Indian person” element to be “vexing,” “perplexing,” and “thorny.” The Government failed to prove, and Judge ____ did not find, beyond a reasonable doubt with utmost certainty that ____ is an “Indian person.”

“No man should be deprived of his life under the forms of law unless...the evidence ...is sufficient to show beyond a reasonable doubt the existence of every fact necessary to constitute the crime charged.” Davis v. United States, 160 U.S. 469, 488 (1895), quoted with approval in Winship, Id. at 363. “Lest

there remain any doubt about the constitutional stature of the reasonable-doubt standard, we explicitly hold that the Due Process Clause protects the accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged.” Winship, Id. at 364. “[W]here a [juvenile] is charged with an act of stealing which renders him liable to confinement ...then, as a matter of due process...the case against him must be proved beyond a reasonable doubt.” Winship, Id. at 368.

A “defendant’s Indian status is an essential element of a § 1153 [Major Crimes Act] offense which the government must allege in the indictment and prove beyond a reasonable doubt.” United States v. Bruce, 394 F.3d 1215, 1229 (9th Cir. 2005); United States v. Cruz, 554 F.3d 840, 845 (9th Cir. 2009); United States v. Maggi, 598 F. 3d 1073, 1077 (9th Cir. 2010). Quite simply, ____’s Indian status was not proven beyond a reasonable doubt.

As to the first prong of the Indian status test, the Government did prove beyond a reasonable doubt that ____ has a “sufficient ‘degree of Indian blood’” because he is 1/4 _____, Cruz, Id. (quoting Bruce 394 F.3d at 1223). As to the second prong of the Indian status test, the Government easily proved two of the four tribal or federal recognition as Indian factors, i.e., tribal enrollment and government recognition formally or informally through receipt of assistance

reserved only to Indians. Arguably, the Government proved, in part, the third factor, i.e., enjoyment of the benefits of tribal affiliation although tribal members' inimical treatment of ____ calls to question whether ____ actually "enjoyed" any "benefits."

The Government completely failed to prove the fourth factor, i.e., that ____ has been socially recognized as an Indian through residence on a reservation or that ____ has participated in Indian social life. Judge ____ specifically found that ____ "has not voted in tribal elections. He has not participated in any Indian social, cultural or religious activities on the ____ Indian Reservation. A number of tribal members consider [____] to be Afro-American, rather than Indian." (ER 83). These facts alone raise a reasonable doubt as to whether ____ is an "Indian person."

If a reasonable doubt is a "doubt based upon reason and common sense," the undisputed fact that ____ has not been socially recognized as an Indian and has not participated in Indian social life raises a reasonable doubt. Francis v. Franklin, 471 US 307, 334 (1985). If proof beyond a reasonable doubt must be "proof of such a convincing character" that a reasonable person "would not hesitate to rely and act upon it," the undisputed fact that ____ has not been socially recognized as an Indian and has not participated in Indian social life

raises a reasonable doubt. Victor v. Nebraska, 511 U.S. 1, 20 (1994); Holland v. United States, 348 U.S. 121, 140 (1954).

If a reasonable doubt is a doubt “based on reason which arises from the evidence or lack of evidence,” the lack of evidence that ____ has been socially recognized as an Indian or that he has participated in Indian social life raises a reasonable doubt. Johnson v. Louisiana, 406 US 356, 360 (1972). Because there is reasonable doubt, Judge ____ had the duty as the fact finder to reach a verdict of not guilty. Davis, 160 U.S. at 471-472 (Where the evidence raised a reasonable doubt, the defendant is entitled to an acquittal).

“[R]easonable doubt is that frame of mind which forbids you to say, all the evidence considered and weighed, ‘I have an abiding conviction of the defendants’ guilt;’ or, as it has been expressed, ‘I am convinced of the defendants’ guilt to a moral certainty.’” United States v. Wilson, 232 US 563, 569-570 (1914). If proof beyond a reasonable doubt must be convincing proof to a moral certainty, the undisputed fact that ____ has not been socially recognized as an Indian and has not participated in Indian social life raises a reasonable doubt.

At best, the Government has proven three of the four tribal or federal recognition as Indian factors. Three out of four, or 75%, is not proof beyond

a reasonable doubt. United States v. Fatico, 458 F.Supp 388, 409-410 (E.D.N.Y. 1978). “Blackstone would have put the probability standard for proof “beyond a reasonable doubt” at somewhat more than 90%, for he declared: “It is better that ten guilty persons escape than one innocent suffer.” W. Blackstone, *The Law of England*, Book the Fourth, Chapter 27, p. 358 (T. Wait and Co., Portland 1807).” Id. at 411.

No court has determined a criminal defendant to be an “Indian person” unless the individual actually held himself or herself out to be an Indian. *See, Bruce*, 394 F.3d at 1226 n.7; United States v. Torres, 733 F.2d 449, 456 (7th Cir. 1984); United States v. Dodge, 538 F.2d 770, 787 (8th Cir. 1976) (“We find that both Williams and Alvarado are of Indian blood and have held themselves out to be Indians. We, therefore, affirm the decision of the trial court in determining that they are Indians within the meaning of 18 U.S.C. 1153.”). ____ has never held himself out as an Indian. ____ does not want to be Indian. ____ is not an Indian and he is not an “Indian person.”

Clearly, “the extent to which an individual considers himself an Indian...is most certainly relevant to determining Indian status.” Cruz, 554 F.3d 849-850. ____ is not an “Indian person” because he does not consider himself to be an Indian.

In sum, the Supreme Court has directed that a judge or jury must reach a state of near certainty concerning the guilt of the defendant prior to convicting. Victor, 511 U.S. at 15; Jackson v. Virginia, 443 U.S. 307, 315 (1979) (“a subjective state of near certitude.”). The judge or jury must be “firmly convinced” of the defendant’s guilt. United States v. Valesquez, 980 F.2d 1275, 1278 (9th Cir. 1992). The evidence here of ____’s Indian status does not reach the required level of near certitude or firm conviction.

VI. CONCLUSION

The trier of fact, Judge _____, was “uncertain” and “perplexed” with the “thorny” issue of ____’s Indian status. The judge completely ignored the fact that ____ has never held himself out to be an Indian. Because ____ has been socially recognized as Black and does not participate in Indian social life, the Government failed to prove beyond a reasonable doubt, either with utmost certainty or to a moral certainty, that ____ is an “Indian person.” Thus, this Court must enter a judgment of acquittal and order that ____ be immediately released from custody.

RESPECTFULLY SUBMITTED this ____ day of _____.

By _____

Counsel for Defendant-Appellant

CERTIFICATE OF COMPLIANCE

I hereby certify that this Opening Brief is in compliance with Ninth Circuit Rule 32. The Brief's line spacing is double spaced. The brief is proportionately spaced, the body of the argument has a Times New Roman typeface, 14 point size and contains less than 14,000 words at an average of 194 words (or less) per page, including footnotes and quotations. (Total number of words: 5,082, excluding tables and certificates).

DATED this ____ day of _____.

By _____

Counsel for Defendant-Appellant

STATEMENT OF RELATED CASES

The undersigned, counsel of record for the Defendant-Appellant, _____, certifies, pursuant to Ninth Circuit Rule 28-2.6, that there are no related cases pending in this Court known to this Appellant to the best of counsel's knowledge, information and belief.

DATED this ____ day of _____.

By _____

Counsel for Defendant-Appellant

CERTIFICATE OF SERVICE
When Not All Case Participants are Registered for the
Appellate CM/ECF System

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

Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system.

I further certify that some of the participants in the case are not registered CM/ECF users. I have mailed the foregoing document by First-Class Mail, postage prepaid, or have dispatched it to a third party commercial carrier for delivery within 3 calendar days to the following non-CM/ECF participants:

Counsel for Defendant-Appellant