No. 12-11926-DD

IN THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

RICKY KNIGHT, *et al.*,

Plaintiffs-Appellants,

v.

LESLIE THOMPSON, *et al*.

Defendants-Appellees

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF ALABAMA NORTHERN DIVISION

BRIEF OF *AMICI CURIAE* NATIONAL CONGRESS OF AMERICAN INDIANS AND HUY SUPPORTING PLAINTIFFS-APPELLANTS' MOTION FOR REHEARING *EN BANC*

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September 21, 2015

CERTIFICATE OF INTERESTED PERSONS AND CORPORATE DISCLOSURE STATEMENT

Pursuant to 11th Circuit Rule 26.1-1, counsel hereby certifies that the following persons and entities may have an interest in the outcome of this particular case and/or appeal:

1. Adams, Thomas "Otter" (Plaintiff-Appellant)
2. Albritton, Hon. Harold (U.S. District Judge, Middle District of Alabama)
3. Allen, Tom (Defendant-Appellee)
4. American Civil Liberties Union of Alabama
5. American Civil Liberties Union, National Headquarters
6. Aminifar, Amin (United States Department of Justice)
7. Anderson, April J., (Attorney for the United States)
8. Bailey, Douglas (Dark Horns) (Plaintiff-Appellant)
9. Beck, George (United States Attorney, Middle District of Alabama)
10. Bentley, Robert (Defendant-Appellee; Governor of the State of Alabama)
11. Bowen, James (Defendant-Appellee)
12. Brasher, Andrew
13. Carter, Eddie (Defendant-Appellee)
14. Chestnut, Coley (Defendant-Appellee; Chaplain)

15. Clem, Michael (Plaintiff-Appellant)

16. Coody, Hon. Charles, (U.S. Magistrate Judge, Middle District of Alabama;

17. Dees, Steve (Defendant-Appellee; Warden)

18. Dodson & Steadman, P.C., (Counsel for Defendants-Appellees)

19. Dubois, James (Assistant United States Attorney, Middle District of Alabama)

20. Dunaway, Roy (Defendant-Appellee)

21. Dunn, Jefferson

22. Estes, DeWayne (Defendant-Appellee)

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28. Haber, Roy (Counsel for Plaintiffs-Appellants)

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30. Hill, Anne (General Counsel, Alabama Department of Corrections

31. Harrelson, Lynn (Defendant-Appellee; Warden)

32. Herring, Tommy (Defendant-Appellee)

33. Hightower, Roy (Defendant-Appellee)

34. Hooks, Ralph (Defendant-Appellee; Warden)

35. Irvin, Franklin "Running Bear" (Plaintiff-Appellant)

36. Johnson, Willie (Defendant-Appellee)

37. Jones, Billy "Two Feathers" (Plaintiff-Appellant)

38. Knight, Ricky (Plaintiff-Appellant)

39. Lindsey, Bill (Defendant-Appellee; Chaplain)

40. Martin, Preston (Counsel for Plaintiffs-Appellants)

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42. McClure, James (Defendant-Appellee)

43. Mitchem, Billy (Defendant-Appellee)

44. Moseley, Gwyn (Defendant-Appellee; Warden)

45. Mygatt, Timothy D. (United States Department of Justice)

46. Native American Prisoners of Alabama (& Turtle Wind Clan)

47. Parker, Darrell (Defendant-Appellee; Deputy Warden)

48. Patrick, Kenneth (Defendant-Appellee)

49. Perez, Thomas E. (Assistant Attorney General, United States Department of Justice, Civil Rights Division)

50. Redd, Andrew W. (Defendant-Appellee; Former General Counsel, Alabama Department of Corrections)

51. Russell, Neal W. (Defendant-Appellee)

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60. Steadman, Joe (Counsel for Defendants-Appellees)

61. Strange, Luther, (Defendant-Appellee; Attorney General, State of Alabama)

62. Sutton, Ron (Defendant-Appellee)

63. Thigpen, Morris (Defendant-Appellee)

64. Thomas, Kim (Commissioner, Alabama Department of Corrections)

65. Thompson, Leslie (Defendant-Appellee)

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STATEMENT REGARDING REHEARING *EN BANC*

I express a belief, based on a reasoned and studied professional judgment, that the panel decision is contrary to the following decision(s) of the Supreme Court of the United States or the precedents of this Circuit and that consideration by the full court is necessary to secure and maintain uniformity of decisions in this Court:

Holt v. Hobbs, 135 S. Ct. 853 (2015).

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STATEMENT OF ISSUES

Whether a prison system violates RLUIPA where it has not demonstrated that a grooming policy with no religious exemption actually furthers compelling penological interests when applied to specific Native American claimants and where it has not considered demonstrably effective, less restrictive means of furthering its asserted compelling interests.

INTERESTS OF *AMICI CURIAE*

Amicus Curiae National Congress of American Indians (NCAI) is the oldest and largest national organization representing American Indian and Alaska Native interests, with a membership of more than 250 American Indian tribes and Alaska Native villages. NCAI was established in 1944 to protect the rights of Indian tribes and improve the welfare of Native Americans, including religious and cultural rights. In courtrooms around the nation and within the halls of Congress, NCAI has vigorously advocated for Native American religious freedom, including passage of the Religious Freedom Restoration Act, 42 U.S.C. §§2000bb *et seq*., (RFRA) and the Religious Land Use and Institutionalized Persons Act, 42 U.S.C. §§2000cc, *et seq.* (RLUIPA).

Amicus Curiae Huy is a nationally recognized non-profit organization established to enhance religious, cultural, and other rehabilitative opportunities for imprisoned American Indians, Alaska Natives and Native Hawaiians. In the

traditional Coast Salish language known as Lushootseed, the word huy (pronounced "hoyt"), means: "See you again/we never say goodbye." Huy's directors include, among others, the President of the National Congress of American Indians, elected chairpersons of federally recognized tribal governments, a former Washington State legislator, and the immediate past Secretary of the Washington State Department of Corrections. In addition to funding and supporting indigenous prisoner religious programs, Huy advocates for Native prisoners' religious rights in federal courts, state administrative rulemakings, and through testimony and reports to the United Nations.

This case presents issues vital to Native culture and inmate rehabilitation. Approximately 29,700 American Indian and Alaska Natives are incarcerated in the United States. Todd D. Minton, *Jails in Indian Country* Bureau of Justice Statistics (Office of Justice Programs, U.S. Dep't of Justice) Bulletin, Sept. 2012, *available at* http://bjs.gov/content/pub/pdf/jic11.pdf. Native People in the United States have the highest incarceration rate of any racial or ethnic group, at 38 percent higher than the national rate. CHRISTINE WILSON DUCLOS & MARGARET SEVERSON, AMERICAN INDIAN SUICIDES IN JAIL: CAN RISK SCREENING BE CULTURALLY SENSITIVE?, Research for Practice (Nat'l Inst. of Justice, Office of Justice Programs, U.S. Dep't of Justice) June 2005; LAWRENCE A. GREENFELD & STEVEN K. SMITH, AMERICAN

INDIANS AND CRIME (Bureau of Justice Statistics, Office of Justice Programs, U.S. Dep't of Justice) Feb. 1999.

Native inmates are "important human and cultural resources, irreplaceable to their Tribes and families. When they are released, it is important to the cultural survival of [] Native communities that returning offenders be contributing, culturally viable members." Walter Echo-Hawk, *Native Worship in American Prisons*, 19.4 CULTURAL SURVIVAL Q. (1995). For these reasons, Tribal governments share with federal, state and local governments the penological goals of repressing criminal activity and facilitating rehabilitation in order to prevent habitual criminal offense. *See* National Congress of American Indians Res. No. REN-13-005 (Jun. 27, 2013).

Hair has religious significance for all Native American tribes, communities and families—particularly uncut hair. (R471-PEX2 at ¶4). For the Native person, forced haircutting desecrates the body and spirit, and is the supreme confiscation of personal dignity. Ever since the Republic's founding, forced haircuts and imprisonment have been specific modes of governmental religious discrimination against Native People. In a calculated effort to extinguish Native culture, the United States historically outlawed traditional practices and ceremonies, punishing practitioners with imprisonment and starvation. Senator Daniel K. Inouye, *Discrimination and Native American Religion*, 23 UWLA L. REV. 3, 14 (1992). Due to its religious significance, United States officials, implementing an explicit "kill

the Indian, save the man" federal policy, utilized forced haircutting to coerce American Indians away from their traditional religion, even into the Twentieth Century.[1] (R475 - Tr. II at 84-85 - Dr. Walker Testimony; R 471- PEX 2 Walker Report, at ¶ 5); Jill E. Martin, *Constitutional Rights and Indian Rites: An Uneasy Balance*, 3 W. LEGAL HIST. 245, 248 (1990).

The same coercion exists today in prison systems like Alabama's, which forces Native inmates to make a Hobson's choice: abandon their sacred religious practice, or undergo either forced haircuts or punishment for non-compliance with grooming policies. This degrading and unnecessary treatment of our citizens not only damages individual Native inmates, but deprives Native communities of a valued resource: a rehabilitated Native citizen who could otherwise return to society as a contributing, culturally viable member. Thus, rehearing *en banc* is vitally important to *Amici* because this case addresses the continued well-being of our Native People, tribal communities, and our indigenous culture and traditions.

[1] These overtly discriminatory policies ended in 1934, but infringement on Native religious liberty persisted, necessitating a succession of laws in the latter Twentieth Century crafted to protect Native religion and culture. Among these was the American Indian Religious Freedom Act of 1978, 42 U.S.C. §1996 (1993 amendments at 42 U.S.C. §1996a), which explicitly recognized that First Amendment religious liberty protection had never worked for Native people, thus requiring a specific federal law preserving their religious rights. Other laws crafted to remedy this shameful legacy include the Native American Graves Protection and Repatriation Act, 25 U.S.C. §§3001 *et seq.*, the Indian Arts and Crafts Act of 1990, 25 U.S.C. §§3005, *et seq.*, the National Historic Preservation Act, 16 U.S.C. §470, *et seq.*, and the Archeological Resource Protection Act, 16 U.S.C. §§470aa, *et seq.*, RFRA and RLUIPA.

STATEMENT OF THE PROCEEDINGS

Section 3 of RLUIPA forbids any government from imposing "a substantial burden on the religious exercise of a person residing in or confined to an institution," unless the burden furthers "a compelling governmental interest," and does so by "the least restrictive means." 42 U.S.C. §2000cc-1(a)(1)-(2). Here, it is undisputed that the Alabama Department of Corrections' (ADOC) grooming policy substantially burdens the Plaintiff-Appellants' Native American religious exercise. Accordingly, ADOC must prove its exemption-less grooming policy is the least restrictive means of furthering a compelling interest.

Following a bench trial, a magistrate judge held that ADOC carried its burden and the district judge adopted the magistrate's findings. A panel of this Court affirmed. *Knight v. Thompson*, 723 F.3d 1275 (11th Cir. 2013) ("*Knight I*"). Plaintiffs filed a Petition for Writ of Certiorari, and shortly thereafter the Supreme Court granted review in *Holt v. Hobbs*, a RLUIPA case where an Muslim inmate challenged the Arkansas prison system's refusal to provide a religious exception to a grooming policy forbidding beards, which prevented him from wearing a half-inch beard pursuant to his religion. The Supreme Court held the *Knight* petition until after it ruled in *Holt*. After issuing the *Holt* decision, which held Arkansas' exemption-less grooming policy violated RLUIPA, the Supreme Court vacated *Knight I* and remanded to this Court for reconsideration in light of *Holt*.

On August 5, 2015, the panel issued a pair of opinions, reaffirming its earlier decision. One opinion discussed the implications of the Supreme Court decision in *Holt*, and concluded that *Holt* had no effect on the outcome of this appeal. *Knight v. Thompson*, No. 12-11926, 2015 WL 4638873 (11th Cir. Aug. 5, 2015). The second opinion reissued the earlier opinion in *Knight I*, with slight revisions to one paragraph and made no mention of *Holt*. *Knight v. Thompson*, No. 12-11926, 2015 WL 4638871 (11th Cir. Aug. 5, 2015) ("*Knight II*"). Plaintiffs-Appellants now petition for rehearing *en banc*.

SUMMARY OF THE ARGUMENT

For decades, Native Americans have litigated the issue of wearing unshorn hair in prison because it is a fundamental, essential facet of traditional beliefs and practices. Although the vast majority of prison systems no longer restrict this religious practice, for the minority that do the refrain is always "safety, security and hygiene." *Holt* made clear that RLUIPA requires a prison to do more than recite those objectives. RLUIPA demands a case-specific, individualized inquiry. Consequently, courts must scrutinize a prison's "marginal interest" in denying a specific prisoner's religious accommodation. Here, ADOC offered no evidence on this point, and the panel erred in failing to engage in this essential inquiry.

Much like religious beards in *Holt*, the evidence that so many jurisdictions safely accommodate unshorn hair raises this question: What is the difference between ADOC, which refuses to allow unshorn hair or grant religious exemptions,

and the 80 percent of prison systems that do? *Holt* sets forth an analytical framework for addressing this question, but the panel did not utilize it when the Supreme Court remanded with specific instructions to apply *Holt*. Like the individualized inquiry into a prison's compelling interests, *Holt* requires that prison officials tailor justifications for not utilizing less restrictive alternatives to the specific claimants. However, ADOC's generalized rationale falls well short of this requirement.

At bottom, ADOC urges this Court to ratify a blanket short-hair policy for male inmates that never allows for religious exemptions. However, as *Holt* explains, RLUIPA makes religious accommodation the rule and mandates the most demanding, searching judicial scrutiny when this rule is not followed. Here, the panel did not apply RLUIPA's mandate for rigorous judicial review, as elucidated by *Holt*. Therefore, *en banc* review is warranted to ensure this Circuit's application of RLUIPA comports with tests very recently set forth by the Supreme Court.

ARGUMENT

I. ADOC's compelling interests are not tailored to the Native American plaintiffs seeking religious accommodation.

At the heart of the trial court and panel analysis is a fundamental flaw: the failure to apply RLUIPA "to the person." Rather than courts accepting generalized prison safety, security and hygiene concerns, the unanimous decision in *Holt* "requires the Government to demonstrate that the compelling interest test is satisfied through application of the challenged law 'to the person' – the particular claimant

whose sincere exercise of religion is being substantially burdened." *Holt*, 135 S. Ct. at 863. *Holt* instructs courts to scrutinize the asserted harm of granting specific exemptions to *particular religious claimants* and examine the marginal interest in enforcing the challenged government action in that specific context. *Id*.

ADOC failed to present this type of focused, individualized evidence. Instead, ADOC asserted a generalized interest in safety and security, claiming that prisoners could conceal weapons in their unshorn hair. However, out of the thousands of inmates housed in prisons with more permissive grooming policies, ADOC could point to only a single problematic incident from an admittedly chaotic Virginia prison system. *See Knight I,* 723 F.3d at 1279. Similarly, ADOC's only substantiation of its hygiene interest was an unverified story of a prisoner with dreadlocks who had a spider nest in his hair and worries that unshorn hair might conceal scalp sores or tumors – an issue that would presumably be posed in its female prisons, which allow long hair. *Id.* Not a single concrete example of unshorn hair being problematic was offered that actually occurred in Alabama, let alone with reference to the Native prisoners seeking relief.

The erroneous acceptance of ADOC's overly-generalized assertions is pointedly illustrated by the panel's restatement of its previous conclusion that "the detailed record developed during the trial of this case amply supports the [d]istrict [c]ourt's factual findings about the risks and costs associated with permitting *male*

inmates to wear long hair." *Knight II* at *6 (emphasis added). Under *Holt*, the inquiry is not focused on the risks and costs associated with male inmates generally, but only those associated with the specific plaintiffs. ADOC offered no evidence on this point. Consequently, there is no elucidation of ADOC's "marginal interest" in denying a religious accommodation for these inmates. This is far short of RLUIPA's stringent requirements as articulated in *Holt*.

ADOC's exemption-less grooming policy stands in stark contrast to RLUIPA, which codifies religious accommodation as the general rule unless narrow exceptions are proven. If the type of evidence ADOC advances were acceptable, then it could simply wave the flag of "safety, security and hygiene" to circumvent RLUIPA's religious accommodation requirements in any circumstance. In order to avoid this end-run of the law, *Holt* makes clear that the government's compelling interest must be demonstrated through application of the challenged regulation "to the person." *Holt*, 135 S. Ct. at 863.

Because it accepted ADOC's generalized assertions, unmoored to any Native American claimant, the panel disregarded the claimant-specific analysis required by *Holt*, placing the Eleventh Circuit at odds with the Supreme Court.

II. Accommodating Native American religious practice furthers compelling penological objectives.

A national trend allowing unshorn hair or religious exemptions suggests that exemption-less grooming standards do not actually further compelling penological interests. *See* Dawinder Sidhu, *Religious Freedom and Inmate Grooming Standards*, 66 U. MIAMI L. REV. 923, 955 (concluding the Federal Bureau of Prisons, thirty-nine states, and the District of Columbia have permissive hair-length policies); *see also Cutter v. Wilkinson*, 544 U.S. 709, 725 (2005) ("For more than a decade, the Federal Bureau of Prisons has managed the largest correctional system in the Nation under the same heightened scrutiny standard as RLUIPA without compromising prison security, public safety, or the constitutional rights of other prisoners.") (*quoting* Brief for United States); Statement of Interest of the United States at 8, *Limbaugh v. Thompson*, No. 2:93-cv-1404-WHA (M.D. Ala. Apr. 8, 2011). If unshorn hair were so problematic, surely prisons would be moving toward more restrictive standards, rather than more relaxed ones.

Traditional religious practices address many ills unique to Native inmates. For example, Native inmates use alcohol in 95 percent of the crimes they commit, 15 percent higher than the general prison population nationally. Sharon O'Brien, *The Struggle to Protect the Exercise of Native Prisoner's Religious Rights*, 1 INDIGENOUS NAT. STUD. J. 29, 34 (2000). Moreover, alcohol plays a role in 90 percent of Indian-related homicides. *Id*. While ADOC worries about unshorn hair, it

ignores, or does not know, that the values taught through the Native American Church and The Way of the Pipe—the two most dominant Native traditions practiced in prisons—emphasize the body's sacred nature and require adherents refrain from drug and alcohol use. *Id*. To properly fulfill these beneficial teachings, Native inmates need to participate in ceremonies and follow other religious practices, such as the wearing of unshorn hair. *Id.* at 35. Yet, in Alabama, Native prisoners face punishment for their religious exercise because it requires unshorn hair, which violates an arbitrary grooming policy.

Far from threatening safety and security, religious practices, including traditional Native religious practices, reduce recidivism, positively affect discipline, reduce violence, and aid rehabilitation. *See, e.g.*, Melvina T. Sumter, Religiousness and Post-Release Community Adjustment: Graduate Research Fellowship – Final Report (Aug. 3, 1999) (unpublished Ph.D. dissertation, Florida State University (on file with National Criminal Justice Reference Service – U.S. Dep't of Justice)); Byron R. Johnson, et. al., *Religious Programs, Institutional Adjustment, and Recidivism Among Former Inmates in Prison Fellowship Programs*, 14 Just. Q. 145 (1997); Matt Hooley & Jacob Stroub, *Sweatlodges in American Prisons*, HARVARD PLURALISM PROJECT, http://www.pluralism.org/reports/view/103 (last visited Sept. 12, 2015). This should be weighed against the fact that ADOC offered no examples

of unshorn hair actually being a security or safety issue in Alabama, nor with regard to these plaintiffs.

While ADOC officials speculate that unshorn hair *may* lead to gang affiliation, prisons that have actually thoroughly evaluated options and provided accommodations for traditional Native American religious practices report no such problems. To the contrary, California corrections officials have acknowledged that appropriate accommodation reduces violence and affords inmates a sense of pride and brotherhood and that this cooperative attitude carries over into their social reintegration upon release. ELIZABETH S. GROBSMITH, INDIANS IN PRISON: INCARCERATED NATIVE AMERICANS IN NEBRASKA 164 (1994). Idaho prison officials have likewise reported that Native practices enable inmates to engage in mutual self-help, stating, "It is definitely rehabilitative for those individuals that have no direction in life or no concern or understanding for self or others." *Id.* Oklahoma officials stated that Native people's practices have a positive effect on discipline. *Id.* However, Native inmates in ADOC's male prisons are unduly restricted from exercising their religion and realizing these benefits.

III. ADOC's justifications for not examining less restrictive alternatives are not specific to the Native American claimants at bar.

RLUIPA's exceptionally demanding standard requires the government to demonstrate that it lacks other means of achieving its interests without substantially burdening a claimant's religious exercise. *Holt*, 135 S. Ct. at 864. The *Holt* Court

found that the Arkansas Department of Correction "failed to establish that it could not satisfy its security concerns by simply searching petitioner's beard." *Id.* Arkansas prison officials feared that objects such as razors and needles could be hidden in beards, endangering guards during a search. *Id.* However, the Supreme Court rejected this claim because the same contraband could be hidden in the clothing and hair, which prison guards already searched. *Id.* As a solution, the Court suggested that these concerns could be simply addressed by having an inmate run a comb through his beard. *Id.*

This case presents the same scenario. ADOC failed to consider many alternatives at its disposal, much less prove their ineffectiveness when utilized for these specific plaintiffs. Just as in *Holt*, the very same objects that ADOC fears could be hidden in unshorn hair could be hidden in an inmate's clothing and other locations that guards already search. ADOC can simply require Native American inmates with long hair to run a comb through their hair.

Further, ADOC could utilize security measures already employed in its female prisons. Surely ADOC can search the long hair of male Native American inmates just as it searches the long hair of its female inmates. Likewise, ADOC's concerns over inmates evading identification by changing their hair length or style can be addressed in the same manner for both female and male inmates.

Additionally, the vast majority of penal institutions employ procedures ensuring safe accommodation of unshorn hair. *See generally* Sidhu, *supra*; *Cutter*, 544 U.S. at 725. ADOC officials were admittedly uninformed about these measures, did not consider them, and never explained why they are unworkable for these Native American practitioners. As the *Holt* court made clear regarding beards: "That so many other prisons allow inmates to grow beards while ensuring prison safety and security suggests that the [Arkansas Department of Correction] could satisfy its security concerns through a means less restrictive than denying petitioner the exemption he seeks." 135 S.Ct. at 866. The same holds true for the unshorn hair the Native plaintiffs seek in this case.

Despite all these feasible, less restrictive alternatives, when the Supreme Court remanded this case, the panel repeated its prior conclusion that, "neither we nor Plaintiffs can point to a less restrictive alternative that accomplishes the ADOC's compelling goals." *Knight II*, 2015 WL 4638871 at *8. That is neither the rigorous scrutiny RLUIPA demands nor the review the Supreme Court directed in remanding this case for reconsideration in light of *Holt*.

Indeed, it is cases like the one *sub judice*, where prison officials admittedly made absolutely no inquiry into viable religious accommodation methods, that RLUIPA was specifically enacted to remedy. ADOC's apparent disinterest in less restrictive alternatives deprives Native American inmates of the ability to worship,

extinguishes their "last source of hope for dignity and redemption," and deprives tribal communities of the opportunity for the return of productive and contributing tribal citizens. *See O'Lone v. Estate of Shabazz*, 482 U.S. 342, 368 (1987) (Brennan, J., dissenting). Thus, this misguided application of RLUIPA has very tangible, negative impacts on Native American inmates as well as Tribal governments, Native communities and Native families.

CONCLUSION

For the forgoing reasons, Your *Amici* respectfully request that the Court grant rehearing *en banc* and set the matter for briefing and oral argument. Alternatively, the panel opinion should be vacated, and the case remanded to the district court with instructions to permit ADOC to offer additional evidence regarding the proof required by *Holt*.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMITATION

Counsel certifies that this brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because, according to the word-counting function of the Microsoft Word system used by *amicus*, it contains 3,309 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii).

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CERTIFICATION OF COMPLIANCE WITH DIGITAL SUBMISSIONS

Pursuant to the Federal Rules of Appellate Procedure and Eleventh Circuit Rules, the undersigned hereby certifies that

(1) All required privacy redactions have been made and, with the exception of those redactions, every document in Digital Form or scanned PDF format is an exact copy of the written document filed with the Clerk, and;

(2) The digital submissions have been scanned for viruses with the most recent version of avast! Online scanner (VPS 120827-0 27.08.2012) with the scan occurring on September 18, 2015, and, according to avast!, are virus free.

/s/Robert David Segall
ROBERT DAVID SEGALL

September 21, 2015

CERTIFICATE OF DELIVERY TO COURT AND PARTIES

Pursuant to Fed. R. App. P. 25(d)(2), I hereby certify that on this 18th day of September, 2015, the foregoing pleading and the attached brief was filed electronically through the CM/ECF system with the Court and that the requisite number of true and correct copies of the attached brief are being forwarded by United States Priority Mail to the Court within two days of the date of electronic transmission.

Further, pursuant to Fed. R. App. P. 25(d)(1), I hereby certify that on this 18th day of September, 2015 parties or counsel in this matter were served by electronic means as more fully reflected on the Notice of Electronic Filing and that a true and correct copy of the foregoing pleading and the attached are being forwarded to the following by United States first class mail within two days of the date of electronic transmission:

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