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IN THE SUPREME COURT
OF THE
STATE OF CALIFORNIA

EILEEN GARCIA, *et al.*,
Plaintiffs and Appellants,

v.

STEVEN DICTEROW, *et al.*,
Defendants and Respondents.

After Decision by the Court of Appeal
Fourth Appellate District, Division Three
Case No. G039824
Orange County Superior Court Case No. 06CC10595
The Honorable Gregory Munoz

PETITION FOR REVIEW

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MISCELLANEOUS

Petitioners hereby respectfully request review of the opinion of the Court of Appeal, Fourth Appellate District, Division Three filed on November 26, 2008. A copy of the opinion is attached hereto.

ISSUE PRESENTED FOR REVIEW

Are municipal day labor hiring centers that facilitate the employment of illegal aliens preempted under federal immigration law?

SUMMARY OF GROUNDS FOR GRANTING REVIEW

This Court should grant review to resolve this important question of law that has significant and continuing consequences in communities across California. Like many communities, the City of Laguna Beach ("City") has sought to regulate the street-side solicitation of employment by day laborers. Also like many communities, the City has chosen a course of action that runs directly contrary to federal immigration law.

In order to address problems associated with day laborer solicitation, the City has adopted a policy of centralizing and regulating day laborer solicitation. This City has done this by creating a "hiring center" that provides employment referrals for day laborers. The problem is that, as the City is fully aware, day laborers consist primarily of illegal aliens. Under federal law, illegal aliens are not eligible for employment in the United States. In fact, the U.S. Congress has

declared, employment is the "magnet" that draws illegal aliens to this country. Hence, the City's, and other communities', solution to day laborer solicitation – facilitating their employment – is in direct conflict with federal law that explicitly prohibits the employment of illegal aliens. The City, like other communities, is facilitating the employment of illegal aliens at the same time the federal government is trying to prevent such employment to discourage illegal immigration.

This case thus presents an important question of law as to the proper scope of federal preemption when policies of local governments are directly opposed to the purposes of federal law. Review by this Court is appropriate as federal preemption issues are important questions regularly reviewed by this Court. *Farm Raised Salmon Cases*, (2008) 42 Cal. 4th 1077; *In re Tobacco Cases II*, (2007) 41 Cal. 4th 1257. The preemption issue in this case is particularly relevant in light of the substantial number of communities across California that have created municipal day labor hiring centers, and in so doing, are facilitating the unlawful employment of illegal aliens. For these reasons, this significant preemption issue merits review by this Court.

FACTUAL AND PROCEDURAL BACKGROUND

The facts in this case were never in dispute. In 1993, the City formally designated an area on the side of a highway as the only location in the City to solicit day labor. Op. at 2. This location has been used ever since as the City's day labor hiring area. *Id.* The City purportedly established the day labor hiring area to try to eliminate what it has described as "nuisances" associated with day laborers and, therefore, located the area "in a place that would be least offensive to people in the community." *Id.* at 2-3.

Since 1999, the City has supported and subsidized the day labor hiring area, which has since become known as the Laguna Beach Day Worker Center ("Center") by providing grants to a nonprofit organization to operate the Center.[1] *Id.* at 3. The City has expended additional taxpayer-financed resources on the day laborer hiring area, including making structural improvements and leasing the property. Op. at 3; CT at 33, 60. Day laborers who use the Center receive employment referral services from the Center's on-site staff, who match day laborers' skills, English proficiency, and wage requirements with the needs of the employers seeking to hire them. *Id.* In addition to employment referral, the

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[1] Community assistance grants totaled $206,500. Op. at 4.

Center provides food distribution, medical check ups, health information, education, and at least some English language instruction to day laborers. *Id.*

Currently, approximately 140 day laborers are registered to use the Center. Clerk's Transcript ("CT") at 34. In a typical month, a total of approximately 1,000 day laborers will receive services at the Center, with roughly one-third (33%) of those receiving employment. *Id.* at 36. As described in a grant application, the Center "help[s] Laguna Beach residents to find work at the same time it helps contractors/homeowners find skilled and reliable workers." CT at 38, 87.

The City's Knowledge of Day Laborers' Status As Illegal Aliens

The City was and is aware that its day laborers include illegal aliens. As early as 1991, City officials indicated they did not want federal immigration officials called in to try to address the City's day laborer "issues." CT 36:19-23. Similarly, City Manager Ken Frank testified that, at the time the Center was established in 1993, the City and the day laborers had an "unspoken arrangement that [City officials] would not be calling in the INS . . . they're cooperating by going to a location that's less of a problem, and we're cooperating by not calling INS." CT 36:14-18. Moreover, in 1999, the City's Chief of Police assured day laborers using the Center that the City would not call in federal immigration officials. CT 37:19-23, 54.

Other undisputed evidence of the City's knowledge was established. At a January 10, 2006 meeting of the City Council, Plaintiff Eileen Garcia provided council members with copies of a report by the Center for the Study of Urban Poverty indicating that eighty-five percent (85%) of persons seeking employment at day laborer sites are illegal aliens. CT 37:3-7. In addition, prior to the filing of this lawsuit, the City was provided a copy of a joint study, published in January 2006 by the University of California at Los Angeles, the University of Illinois at Chicago, and the New School University, which found that seventy-five percent (75%) of the day laborer work force consists of illegal workers. CT:36:24-26 – 37:1-2. The City also acknowledges receiving citizen complaints that the Center fosters illegal immigration.[2] CT: 37:21-22.

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[2] Despite these undisputed facts, the City has tried to argue that it has no specific knowledge of day laborers' immigration status. City Manager Ken Frank testified at deposition, with respect to the immigration status of day laborers using the Center, "I've heard people say that some of them were legal and some of them are not legal, and all of them are legal and all of them are illegal. I really don't know." CT 37:23-25. This testimony demonstrates, however, that the City was at least aware that a substantial question exists about whether day laborers using the Center may do so lawfully. Similarly, according to the September 27, 2007 edition of the *Laguna Beach Coastline Pilot*, Frank stated:

> . . . the city spends money on the center in order keep workers (sic) -- legal or not -- from seeking work on city streets. "It's not anything to do with immigration. It's about taking a situation that the federal government can't control and making it bearable for our residents."

It also was established that the nonprofit organization through which the City's operates the Center has knowledge that day laborers utilizing the Center include illegal aliens. A board member of the organization and the husband of the Center's coordinator admitted to the *Orange County Register* that he used the Center as an illegal alien, as did other persons. CT 37:8-19.[3] In addition, David

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CT 92-93. This statement concedes that, not only may illegal aliens be using the Center, but that the City is fully aware of the relationship between day laborers and illegal immigration.

[3] According to a newspaper report, persons who have used the Center, including a board member of the nonprofit organization and the husband of the Center's coordinator, admittedly were and/or are illegal aliens:

> Eduardo Gonzales, 35, said he has come to Laguna Beach for the past seven years looking for day work. "We are happy because all the people in Laguna Beach need us, and we need them," said Gonzalez, a Laguna Hills resident who said he came to the United States illegally.
>
> Tom Ronses, 42, said he would not be where he is today had the day-labor site not been a place for him to find work. He entered the country illegally, but earned U.S. citizenship and owns a business, he said. "If it weren't for the opportunity I had here, I'd be out on the street, he told the council. I really appreciate what you guys are doing."

Laylan Connelly and Amy Taxin, "Day-Labor site gets one-year reprieve," *Orange County Register*, July 12, 2006. CT 37:8-19. Tim Ronses is a member of the board of directors of the nonprofit organization that manages the Center, and is the husband of the Center's coordinator, Irma Ronses. *Id.*

Peck, the head of the nonprofit organization managing the Center, admitted being aware that day laborers using the Center may be illegal aliens. CT 36:7-9.[4]

Proceedings Below

Petitioners filed their complaint in the Superior Court of California, County of Orange, in October 2006. CT 14-22. Under Cal. Code Civ. Proc. § 526a, Plaintiffs, as taxpayers, sought the following relief: (1) a declaration that the City of Laguna Beach's expenditure of taxpayer funds and taxpayer-financed resources for the operation of the Center is unlawful, void, and a waste of taxpayer funds and (2) permanent injunctive relief restraining and preventing the City of Laguna Beach from expending any further taxpayer funds or taxpayer-financed resources for the operation of the Center. Op. at 2.

In lieu of a bench trial, the parties submitted briefs to the trial court and a set of "Stipulated Facts With Exhibits," and the trial court subsequently issued a two and one-half page opinion, ruling in favor of the City. CT 205-07. Petitioners

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[4] At deposition, Peck testified as follows:

Q: Are you personally aware that some of the workers who utilize the day labor center may be undocumented?

A: **Yes.**

timely appealed to the Court of Appeal for the Fourth Appellate District, Division Three.

Petitioners contend that the City's establishment and support of the Center directly violated three provisions of federal law: (1) referral of unauthorized aliens for employment (8 U.S.C. § 1324a); encouraging and inducing unauthorized aliens to remain in the United States by providing a means to obtain unlawful employment (8 U.S.C. § 1324(a)(1)(A)(4)); and providing "public benefits" to ineligible aliens (8 U.S.C. § 1621). Petitioners also argued that the City's actions – whether or not they are otherwise illegal – are preempted by federal immigration law as they undermine and frustrate the purposes of federal law.

On November 26, 2008, the Court of Appeal ruled against Petitioners on each of their claims in an unpublished opinion. In ruling that the City's actions were not prohibited under the doctrine of federal preemption, the Court of Appeal stated that preemption "does not apply to all actions of a state or locality but only to its laws and regulations." Op. at 15. Petitioners did not seek rehearing from the Court of Appeal.

Petitioners seek review only of their claim that the Center is preempted by federal immigration law.

ARGUMENT

I. This Court Should Grant Review Because of the Statewide Importance of the Issue Raised and to Properly Establish the Limits of Federal Preemption.

Every day, tens of thousands of day laborers, most of them illegal aliens, solicit employment in many cities in California. They are often found on busy sidewalks, major thoroughfares, and parking lots. Controversy often follows. As one study summarized:

> The presence of day laborers in many communities throughout California and the nation has created conflict between community residents, employers, and day laborers. Concerns over day laborers range from community safety to the abuse of workers to the role that local government can play in mitigating the effects of this market.

See Arturo Gonzalez, Public Policy Institute of California, *California Economic Policy: Day Labor in the Golden State* (July 2007) ("*Gonzalez*") at 1; available at http://www.ppic.org/content/pubs/cep/EP_707AGEP.pdf; *see also* Cristina M. Rodriguez, *The Significance of the Local in Immigration Regulation*, 106 Mich. L. Rev. 567 (2008); Margaret Hobbins, Note, *The Day Laborer Debate: Small Town, U.S.A. Takes on Federal Immigration Law Regarding Undocumented Workers*, 6 Conn. Pub. Int. L.J. 111 (2006).

Some communities have adopted restrictive ordinances and other measures to address problems arising from day laborer solicitation of employment. *See, e.g.*, Associated Press, *Redondo Beach Police Arrest Day Laborers In Crackdown* (Oct. 22, 2004). Other communities, such as the City, have established and support "hiring centers" for day laborers. The Daily News of Los Angeles, *Thousand Oaks Council Continues Day Labor Site* (July 24, 2003). At least 24 of these formal hiring centers, such as the Center, now operate every day in California to assist day laborers in procuring employment. *Gonzalez* at 2. These hiring centers facilitate the employment of day laborers by providing referrals to the employers who wish to hire them.

Notably, these municipal day laborer hiring centers provide employment referrals even though most day laborers are illegal aliens not authorized to work in the United States. They operate in this way despite that federal law unequivocally prohibits the employment of illegal aliens. Federal immigration policy restricts employment because, as the U.S. Congress has forcefully stated, "employment [is] the magnet that attracts aliens here illegally." *See* H.R. Rep. No. 99-682(I), at 46 (1986), reprinted in 1986 U.S.C.C.A.N. 5649, 5650.

The City, for example, facilitates the employment of illegal aliens through the Center as a part of a corrupt bargain. According to one City official, the City

and the day laborers had an "unspoken arrangement that [City officials] would not be calling the INS" if the day laborers would agree to use the Center. CT:36:14-18. Even more audaciously, the City's own program guidelines and handouts, prepared, posted, and distributed at the Center by the City Police Department state, in both English and Spanish:

> The Laguna Beach Police Department *wants to help you find work.* We need your assistance and cooperation in helping us to keep this area safe place to be hired by contractors, homeowners and others.
>
> * * *
>
> Thank you for helping us, and *we hope that you find much work.*
>
> The City of Laguna Beach wants you and your family and friends to be a part of the community and to enjoy a healthy quality of life . . .You are a very important person in our community. *We want to help you find work so that you can stay here* or send money to your loved ones back home.

CT 37:27 – 38:10. Unashamedly, the acknowledged purpose of the City is to help day laborers, most of whom are illegal aliens, find employment so that they can continue to reside in the United States.

As a result, a municipal day labor hiring center like the Center is in direct conflict with federal law: the Center facilitates the employment of illegal aliens, matches employers' needs with day laborers' skills and pay requirements, and even encourage them to "stay here." In comparison, federal law explicitly

prohibits the employment of illegal aliens and seeks to discourage them from remaining here. Again, Congress unmistakably has stated that employment is the magnet that draws illegal aliens to this county. The policy of the City and purpose underlying federal law cannot be reconciled.

In order to resolve this conflict, this Court should review the question of whether municipal day labor hiring centers, like the Center, are preempted by federal law. This issue is of statewide concern and is being played out daily in Laguna Beach and many other communities across California. It is worthy of review by this Court.

II. The Doctrine of Federal Preemption Applies to Local Policies Which Undermine or Frustrate Federal Law.

Under the well-established federal preemption doctrine, a locality is prohibited from taking actions which -- whether or not they are otherwise illegal -- undermine or frustrate federal law. As the U.S. Supreme Court has explained:

> Even where Congress has not completely displaced state regulation in a specific area, state law is nullified to the extent that it actually conflicts with federal law. Such a conflict arises when compliance with both federal and state regulations is a physical impossibility, . . . or when state law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.

Fidelity Fed. Sav. & Loan Ass'n v. De La Cuesta, 458 U.S. 141, 152 (1982) (internal quotation marks and citations omitted) (emphasis added).[5] These same preemption doctrine principles apply even though the subject matter may be one of particular interest to a local government, such as preventing day laborers from congregating along city streets. *De La Cuesta*, 458 U.S. at 152 (rejecting view that preemption should not apply "simply because real property law is a matter of special concern to the States"). Furthermore, "[t]he relative importance to the State of its own law is not material when there is a conflict with a valid federal law, for the Framers of our Constitution provided that the federal law must prevail." *Id.* (internal quotation marks and citations omitted). Thus, there is no exception in the federal preemption doctrine for actions involving a locality to address perceived matters of local concern.

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[5] Federal preemption doctrine is derived from the Supremacy Clause of the U.S. Constitution which states: "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding." U.S. Const., art. VI, cl. 2. While the express language of the clause only forbids state constitutions or laws that are contrary to federal law, as explained herein, the doctrine is applied broadly to the actions of states or localities.

A. The Preemption Doctrine Is Not Limited to "Statutes and Regulations" Enacted by States or Localities.

The Court of Appeal's assertion that the preemption doctrine is confined to the "laws and regulations" of a locality is contrary to abundant case law. Courts have routinely applied the preemption doctrine to state and local policies, practices, and other actions that undermine or frustrate federal law.

In *Toll v. Moreno*, 458 U.S. 1 (1982), the United States Supreme Court addressed the issue of whether a state university's "in-state" tuition *policy* was invalid under the Supremacy Clause of the Constitution, insofar as the policy denied in-state status to certain aliens holding valid visas. *Id.* at 3. The U.S. Supreme Court held that the university's policy was preempted, in light of a federal statute allowing the visa-holders to live in the United States. According to the Court, the state's decision to deny "in-state" status frustrated the federal policies embodied statute creating the visa under which the aliens resided in this country. 458 U.S. at 15. As this case plainly demonstrates, a state policy in conflict with purposes of federal law is subject to federal preemption principles.[6]

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[6] The Supreme Court also has described the Supremacy Clause and preemption in this way:

> When the national government by treaty or statute has established rules and regulations touching the rights, privileges, obligations or burdens of aliens as such, the treaty or statute is the supreme law of

Consistent with *Toll*, courts routinely review policies as they would a state statute for Supremacy Clause purposes. For example, in *Equal Access Educ. v. Merten*, 305 F. Supp. 2d 585 (E.D. Va. 2004), the plaintiffs claimed that a university's policy of denying admission to illegal aliens or to persons they believed to have an "unlawful" immigration status violated the U.S. Constitution's Supremacy Clause. Applying the Supreme Court's decision in *De Canas v. Bica*, 424 U.S. 351 (U.S. 1976), the court noted that "[i]n its analysis, the Supreme Court set forth a three-part test for determining whether an immigration-related state statute, *action, or policy* is pre-empted by federal law." 305 F. Supp. 2d at 601 (emphasis added). Of particular significance here, the court stated:

> While there is no state statute at issue in this case, the parties do not dispute that **a state policy related to immigration is subject to the same analysis as a statute**. *See, e.g., Gonzales v. City of Peoria*, 722

> the land. *No state can add to or take from* the force and effect of such treaty or statute. . ..
>
> * * *
>
> Our system of government is such that the interest of the cities, counties and states, no less than the interest of the people of the whole nation, imperatively requires that federal power in the field affecting foreign relations *be left entirely free from local interference.*

Hines v. Davidowitz, 312 U.S. 52, 62-63 (1941) (emphasis added). Thus, the form of the "interference" is irrelevant as long as the action can be imputed to the local government.

> F.2d 468 (9th Cir. 1983), *overruled on other grounds by Hodgers-Durgin v. de la Vina*, 199 F.3d 1037 (9th Cir. 1999), (analyzing city police policy of arresting aliens for violations of immigration law under *De Canas* framework).

Id. at 601 n.14 (emphasis added). Ultimately, the court determined that federal preemption did not bar the university from adopting and enforcing admissions policies that denied admission to illegal aliens, provided that defendants used federal immigration status standards to identify which applicants were illegal aliens. *Id.* at 611.

The U.S. Court of Appeals for the Ninth Circuit ("Ninth Circuit") similarly has applied the preemption doctrine to policies of local government entities. In *Bernhardt v. County of Los Angeles*, 339 F.3d 920 (9th Cir. 2003), the plaintiff attempted to hire counsel in a civil rights case she had against a county government. The plaintiff alleged that she was unable to retain counsel due to the county's unofficial policy or practice to settle federal civil rights cases only for a lump sum, including all attorney's fees. The Ninth Circuit found that such policy could conflict with 42 U.S.C. § 1988 that authorized attorney's fees for prevailing parties, including those who prevailed by way of settlement, in violation of the Supremacy Clause. *Id.* Notably, the Ninth Circuit relied on *Evans v. Jeff D.*, 475 U.S. 717 (1986), in which the U.S. Supreme Court suggested that § 1988 might

prohibit a governmental unit from implementing a "statute, policy, or practice" precluding the payment of attorney fees in settlements of civil rights cases. *Id.* at 739-40.

As these cases demonstrate, courts, including the U.S. Supreme Court, do not hesitate to apply the preemption doctrine to state or local policies and practices. Other courts have similarly considered challenges to policies of various governmental entities when they come into conflict with federal law. *See, e.g., Rochester Gas & Elec. Corp. v. Public Serv. Comm'n.*, 754 F.2d 99, 100 (2nd Cir. 1985) (applying preemption principles to *policy* adopted by utility commission); *Ahmed v. University of Toledo*, 664 F. Supp. 282 (N.D. Ohio 1987) (applying preemption doctrine to challenge to university *policy* requiring foreign students to carry health insurance); *United States v. Onslow County Bd. of Educ.*, 728 F.2d 628 (4th Cir. 1984) (upholding claim that a county board of education *resolution* violated the Supremacy Clause); *LeClerc v. Webb*, 419 F.3d 405 (5th Cir. 2005) (applying preemption doctrine to claim that state supreme court *rule* required state bar applicants be United States citizens or resident aliens violated the Supremacy Clause); *Dingemans v. Board of Bar Examiners*, 568 A.2d 354, 357 (Vt. 1989) (upholding preemption challenge to state supreme court *rule* that required bar admission applicants be either a citizen or "an alien who has been lawfully

admitted to the United States for permanent residence" and noting that the rule imposed "a burden on the federal immigration program that could not have been intended by the Congress" and was therefore preempted pursuant to the Supremacy Clause); *Rutledge v. Shreveport*, 387 F. Supp. 1277 (W.D. La. 1975) (upholding challenge to police department rule requiring dismissal of officers declaring bankruptcy as contrary to purpose underlying federal bankruptcy law).

As plainly seen in these cases, federal preemption is routinely applied in review of a wide range of actions by state or local governmental entities. The policies underlying municipal day laborer hiring centers are similarly subject to review under federal preemption principles.

B. Municipal Day Labor Hiring Centers Undermine and Frustrate the Purposes and Objectives of Federal Immigration Law Which Proscribes Employment of Illegal Aliens.

Municipal day labor hiring centers operating across California facilitate the employment of illegal aliens by scofflaw employers. In this particularly egregious case, the undisputed facts show that the City intended to help illegal aliens find unlawful employment in the United States. The undisputed facts established that the City:

- Enacted an ordinance designating the Center as the only location in the City to solicit day labor;

- Expended taxpayer funds and resources to provide more than $206,000 in grants to operate the Center, upgrade its facilities, and pay its rent;

- Agreed not to call in federal immigration authorities as long as day laborers solicited employment only at the designated hiring site; and

- Distributed flyers at the Center stating that *"[w]e want to help you find work so that you can stay here."*

It is clear that the City is acting with full knowledge, if not the specific intent, that the employment illegal aliens will obtain at the Center and such employment will help them "stay here."

In striking contrast, federal law plainly provides that it is unlawful to hire "unauthorized" persons for employment in the United States. The Immigration Reform and Control Act of 1986 makes it unlawful to employ aliens who (a) are not lawfully present in the United States, or (b) are not lawfully authorized to work in the United States.[7] *See* 8 U.S.C. §§ 1324a(a)(1) and 1324a(h)(3). The underlying "purpose" behind these laws is to eliminate "employment as the

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[7] For an alien to be "authorized" to work in the United States, he or she must possess "a valid social security account number card" (8 U.S.C. § 1324a(b)(C)(i)), or "other documentation evidencing authorization of employment in the United States which the Attorney General [of the United States] finds, by regulation, to be acceptable for purposes of this section," (8 U.S.C. § 1324a(b)(C)(ii)). *See also* 8 U.S.C. § 1324a(h)(3)(B) (defining "unauthorized alien" as any alien "[not] authorized to be so employed by this chapter or by the Attorney General").

magnet that attracts aliens here illegally." H.R. Rep. No. 99-682(I), at 46 (1986), reprinted in 1986 U.S.C.C.A.N. 5649, 5650. The purpose of federal law is, therefore, undermined by policies that promote the employment of "unauthorized" aliens.

The City's policy is plainly opposite the purposes of federal immigration law, which prohibits the employment of illegal aliens. The City is openly flouting federal law by facilitating the employment of illegal aliens and undermining the purpose of federal law. Like those of other cities operating municipal day labor hiring centers, the City's policy "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." This direct conflict between the policies of cities operating municipal day laborer center and federal law presents a question worthy of review by this Court.

CONCLUSION

For the reasons set forth above, Petitioners respectfully request that this Court grant review of the question whether municipal day laborer hiring centers are preempted under federal law.

Dated: January 5, 2009

Respectfully submitted,

JUDICIAL WATCH, INC.

By _____
Sterling E. Norris

CERTIFICATE OF COMPLIANCE

Pursuant to Rule 8.204(c)(1) of the California Rules of Court, I hereby certify that this brief, including footnotes, contains 5,290 words, which is less than the 8,400 words permitted by this rule. Counsel relies on the word count of the computer program used to prepare the brief.

Dated: January 5, 2009

Sterling E. Norris

PROOF OF SERVICE

I am a citizen of the United States and employed in the City of Washington, District of Columbia. I am over the age of 18 and not a party to the within action. My business address is 501 School Street, S.W., Suite 500, Washington, DC 20024. On January 5, 2009, I served a copy of the within document described as:

PETITION FOR REVIEW

by placing a true and correct copy thereof in a sealed Federal Express envelope and affixing a pre-paid air bill, and causing the envelope to be delivered to a Federal Express agent for delivery to the following:

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The Hon. Gregory Munoz
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I declare under penalty of perjury of the laws of the State of California that the foregoing is true and correct.

Executed on January 5, 2009 in Washington, D.C.

James F. Peterson