No. 20-2755

In the United States Court of Appeals for the Third Circuit

BOARD OF CHOSEN FREEHOLDERS OF THE COUNTY OF OCEAN; COUNTY OF OCEAN; CAPE MAY SHERIFF; COUNTY OF CAPE MAY,
Plaintiffs-Appellants,

v.

ATTORNEY GENERAL OF THE STATE OF NEW JERSEY; STATE OF NEW JERSEY OFFICE OF THE ATTORNEY GENERAL; DEPARTMENT OF LAW AND PUBLIC SAFETY DIVISION OF CRIMINAL JUSTICE,
Defendants-Appellees.

ON APPEAL FROM U.S. DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY, NOS. 3:19-CV-18083-FLW
HON. FREDA L. WOLFSON, CHIEF DISTRICT JUDGE

BRIEF FOR *AMICUS CURIAE* IMMIGRATION REFORM LAW INSTITUTE IN SUPPORT OF PLAINTIFFS-APPELLANTS AND REVERSAL

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 26.1 of the FEDERAL RULES OF APPELLATE PROCEDURE, *amicus curiae* Immigration Reform Law Institute has no parent corporation and does not issue stock.

Dated: December 16, 2020

Respectfully submitted,

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IDENTITY, INTEREST, AND AUTHORITY TO FILE

Amicus curiae Immigration Reform Law Institute ("IRLI") files this brief pursuant to the accompanying motion for leave to file.[1] IRLI is a non-profit 501(c)(3) public interest law firm dedicated to litigating immigration-related cases on behalf of, and in the interests of, United States citizens and lawful permanent residents, and also assisting courts in understanding and accurately applying federal immigration law. IRLI has litigated or filed numerous *amicus curiae* briefs in several venues and jurisdictions, including the Board of Immigration Appeals and the Supreme Court of the United States. *See, e.g., Ryan v. United States Customs & Immigration Enf't*, No. 19-1838, 2020 U.S. App. LEXIS 27804 (1st Cir. 2020); *Trump v. Hawaii*, 138 S. Ct. 2392 (2018); *United States v. Texas*, 136 S. Ct. 2271 (2016); and *Arizona Dream Act Coal. v. Brewer*, 818 F.3d 101 (9th Cir. 2016). For more than twenty years, the Board of Immigration Appeals has solicited *amicus* briefs drafted by IRLI staff from IRLI's parent organization, the Federation for American Immigration Reform, because the Board considers IRLI an expert in immigration law. For these reasons, IRLI has a direct interest in the issues here.

[1] Pursuant to FED. R. APP. P. 29(a)(4)(E), the undersigned counsel certifies that: counsel for *amicus* authored this brief in whole; no counsel for a party authored this brief in any respect; and no person or entity—other than *amicus*, its members, and its counsel—contributed monetarily to this brief's preparation or submission.

STATEMENT OF THE CASE

Two New Jersey political subdivisions ("Plaintiffs-Appellants") challenge the Law Enforcement Directive No. 2018-6 (the "Immigrant Trust Directive") issued by New Jersey's Attorney General. The District Court ruled for the Attorney General, and this appeal followed.

SUMMARY OF ARGUMENT

The Supremacy Clause of the U.S. Constitution prohibits to the states the power to make laws that conflict—either logically or as obstacles to federal aims—with valid federal law. Therefore, such power is not reserved to the states through the Tenth Amendment. By rejecting this implication of the Supremacy Clause, the District Court applied the Tenth Amendment in a profoundly erroneous way.

The Immigrant Trust Directive creates clear and direct obstacles to the purposes Congress intended to achieve with federal immigration laws. The Immigrant Trust Directive not only prohibits state and local officers from sharing such basic information as the release dates of criminal removable aliens with federal immigration authorities but also explicitly prohibits such state and local officers from *any* participation in federal enforcement of immigration law. New Jersey has thus enacted a prohibition that compels state and local officers, many of whom would otherwise cooperate with federal law enforcement, not to offer such cooperation. By prohibiting this wholly foreseeable voluntary cooperation, New

Jersey has intentionally created an obstacle to the enforcement of federal immigration law, which contemplates cooperation among federal and state law enforcement, as well as to the congressional purpose that criminal aliens be detained and deported after completing their sentences for state criminal offenses.

The District Court's decision to uphold the Immigrant Trust Directive simply disregards established law regarding preemption by finding that the provisions of federal immigration law at issue are not in fact obstacles, but mere inconveniences that the federal government is capable of surmounting. The New Jersey Attorney General enacted specific and explicit rules that are intended to block the ability of the federal government to enforce the law, an action that is a clear example of conflict-obstacle preemption and not, as the District Court found, a valid exercise of the state's reserved police powers.

The holding by the District Court that these powers are reserved shows a profound misunderstanding of federalism jurisprudence, and of the relationship between the Supremacy Clause and the Tenth Amendment. The Tenth Amendment sets forth a method of determining whether given powers are reserved to the states (or the people) by the Constitution. It provides that any powers not delegated to the federal government nor prohibited to the states by the Constitution are reserved to the states or the people. The District Court did not follow this method in its holding. Rather, the District Court merely presupposed, *sub silentio*, that these police powers

were reserved to New Jersey. Clearly, they are not; the power to make laws that stand as obstacles to congressional purposes is prohibited to the states through the Supremacy Clause, and so, under the terms of the Tenth Amendment, is not reserved to the states.

In the same vein, the District Court's holding is erroneous because the Immigrant Trust Directive is also conflict-impossibility preempted: it commands state officials to violate federal law criminalizing the harboring of illegal aliens. And, of course, New Jersey has no reserved police power to make laws that are in logical contradiction to valid federal laws.

Lastly, no presumption against preemption can salvage the District Court's ruling, both because any such presumption is *ipso facto* surmounted by a showing of conflict-obstacle preemption and because no such presumption even applies when, as here, a state intrudes into an area of traditional federal concern.

ARGUMENT

I. THE IMMIGRANT TRUST DIRECTIVE IS OBSTACLE PREEMPTED.

It is well-established that the federal government has "broad, undoubted power over the subject of immigration and the status of aliens." *Arizona v. United States*, 567 U.S. 387, 394 (2012). Through enactment of the Immigration and Nationality Act (the "INA"), Congress manifested its intent that state and local officials play a role in federal regulation of immigration. *See, e.g.*, 8 U.S.C. §

1357(d) (contemplating cooperation between the Attorney General and state and local law enforcement officers with respect to aliens arrested on charges relating to controlled substances); 8 U.S.C. § 1103(a)(11)(B) (granting the Attorney General the authority to work with state and local governments regarding alien detention). Because part II.B of the Immigrant Trust Directive prohibits state and local law enforcement officials from sharing identity and release information regarding removable aliens with the federal government, it is conflict preempted and should be struck down by this Court.

The Supremacy Clause provides that federal law "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. Thus, Congress has the power to preempt state and local laws: "The Supremacy Clause provides a clear rule . . . Under this principle, Congress has the power to pre-empt state law." *Arizona v. United States*, 567 U.S. 387, 399 (2012). As this Court has explained, "[t]he pre-emption doctrine is a necessary outgrowth of the Supremacy Clause. It ensures that when Congress either expresses or implies an intent to preclude certain state or local legislation, offending enactments cannot stand." *Lozano v. City of Hazleton*, 620 F.3d 170, 203 (3d Cir. 2010); *see also Holk v. Snapple Bev. Corp.*, 575 F.3d 329, 334 (3d Cir. 2009). ("The preemption doctrine is rooted in Article VI of the United States Constitution . . . Under the Supremacy

Clause, federal law may preempt state law where any of the three forms of preemption doctrine may be properly applied.").

Preemption may be either express or implied, with implied preemption including both field preemption and conflict preemption. *Lozano v. City of Hazelton*, 724 F.3d 297, 302 (3d Cir. 2013) (citing *Gade v. Nat'l Solid Wastes Mgmt. Ass'n*, 505 U.S. 88, 98 (1992)). Conflict preemption can occur in two ways: where "compliance with both federal and state regulations is a physical impossibility," or "where the challenged state law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." *Lozano*, 724 F.3d at 303 (citing *Arizona*, 567 U.S. at 300) (internal quotation citations omitted). "If the purpose of the act cannot be otherwise accomplished—if its operation within its chosen field else must be frustrated and its provisions be refused their natural effect—the state law must yield to the regulation of Congress within the sphere of its delegated power." *Savage v. Jones*, 225 U.S. 501, 533 (1912). The judgment of courts about what constitutes an unconstitutional impediment to federal law is "informed by examining the federal statute as a whole and identifying its purpose and intended effects." *Crosby v. Nat'l Foreign Trade Council*, 530 U.S. 363, 374 n.8 (2000); *see also Gade, supra*. ("Our ultimate task in any pre-emption case is to determine whether state regulation is consistent with the structure and purpose of the statute as a whole."); *see also Deweese v. AMTRAK*, 590 F.3d 239, 246 (3d Cir.

2009) ("In analyzing a potential conflict between federal and state law, we must be guided . . . by the rule that the purpose of Congress is the ultimate touchstone in every preemption case.") (internal quotations omitted).

The doctrine of obstacle preemption emerged from the necessity of state and federal sovereignties to work cooperatively in order for our federal system to function properly. As the U.S. Court of Appeals for the Second Circuit has explained:

> A system of dual sovereignties cannot work without informed, extensive, and cooperative interaction of a voluntary nature between sovereign systems for the mutual benefit of each system. The operation of dual sovereigns thus involves mutual dependencies as well as differing political and policy goals. Without the Constitution, each sovereign could, to a degree, hold the other hostage by selectively withholding voluntary cooperation as to a particular program(s). The potential for deadlock thus inheres in dual sovereignties, but the Constitution has resolved that problem with the Supremacy Clause, which bars states from taking actions that frustrate federal laws and regulatory schemes.

City of New York v. United States, 179 F.3d 29, 35 (2d Cir. 1999) (internal citations omitted).

The Immigrant Trust Directive is a direct obstacle to the federal government's ability to administer and enforce federal immigration law. It was enacted specifically to end cooperation by New Jersey law enforcement with federal immigration officials—a purpose that is clearly and explicitly at odds with the federal

government's mission to enforce this country's immigration laws. State of New Jersey, Attorney General Law Enforcement Directive No. 2018-6 v2.0.

The Immigrant Trust Directive explicitly prohibits New Jersey law enforcement officers from "[p]articipating in civil immigration enforcement operations." *Id.* § II.B(1). It additionally limits New Jersey law enforcement officials by barring them from "inquir[ing] about the immigration status of any individual," except where such inquiry is relevant to a criminal investigation. *Id.* at § II.A(2). Also, under the Immigrant Trust Directive, state and local law enforcement officials are barred from sharing "personal information" about aliens, such as their work or home address, with federal immigration authorities, unless such information is publicly available. *Id.* at § II.C(2). Finally, despite the fact that federal officials have the power to act without a warrant with respect to detainers, the Immigrant Trust Directive blocks federal immigration officials from using detainers by requiring "a valid judicial warrant or other court order" for the transfer of an alien to immigration authorities. *Id;* 8 U.S.C. § 1357(a).

Thus, under the Immigrant Trust Directive, if federal immigration officers ask when an alien in local custody will be released, or for that alien's home or work address, local officials who would otherwise be perfectly willing to provide that information are barred from doing so. In many cases, if a federal immigration officer seeks to assume custody of an alien from local officials, local officials who would

otherwise be perfectly willing to transfer such alien to federal custody may not do so. The result is that deportable criminal aliens are released back into communities where they continue to evade removal and likely commit further crimes, secure in the knowledge that they will not be turned over to federal officials.

One explicit purpose of federal immigration law is that criminal aliens, after serving their sentences, be detained by federal authorities and deported. *See* 8 U.S.C. § 1231(a)(4)(A) (prohibiting federal immigration enforcement from "remov[ing] an alien who is sentenced to imprisonment until the alien is released from imprisonment."). Out of respect for the state sovereigns' criminal-law systems, the federal sovereign thus defers its unquestioned power to remove these criminal aliens until the aliens first have served their state sentences. The Immigrant Trust Directive is specifically designed to frustrate this federal accommodation and is therefore an obstacle to Congress's purposes in federal immigration law. *See Arizona*, 567 U.S. at 399-400 (state law is preempted "where the challenged state law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.") (internal quotations omitted); *Farnia v. Nokia, Inc.*, 625 F.3d 97, 122 (3d Cir. 2010) ("Conflict preemption exists . . . where state law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.") (internal quotations omitted). It is hard to fathom how federal immigration officials can arrest removable criminal aliens upon completion of their

prison sentences when the state refuses to tell them when those sentences will be complete.

Nevertheless, the District Court denied that the Immigrant Trust Directive is a "true" obstacle, finding instead that it is merely an "inconvenience" to the federal government. *Cty. of Ocean v. Grewal*, No. 19-18083, 2020 U.S. Dist. LEXIS 133903, at *49-50 (D.N.J. July 29, 2020) (App. A50). The District Court further found that there could be no obstacle in this case because the Immigrant Trust Directive was "a clear exercise of the State's police power to regulate the conduct of its own law enforcement agencies" and reflected New Jersey's goal to "strengthen the relationship between its communities and police, and shore up more effective enforcement of state criminal law." *Id.* at 42-43.

The flaw in the District Court's opinion is readily apparent: the court erroneously presupposed that the Immigrant Trust Directive was within the police powers of the state and thus could not be obstacle-preempted. *Id.*

This holding both flies in the face of reality and is foreclosed by the Tenth Amendment. Many cities and officials would assist the federal government, as shown by the filing of this case by Plaintiffs-Appellants, were they not blocked from doing so by New Jersey through the Immigrant Trust Directive. Without the Immigrant Trust Directive, these officers would have been permitted to cooperate with federal immigration officials and Congress's purposes would have been

achieved more fully than they have been. Thus, the Immigrant Trust Directive, operating as a but-for cause, has diminished the accomplishment of Congress's purposes, and thus stands as an obstacle to them.

Further, while it is true that state inaction cannot be preempted, New Jersey took an active step by enacting state law that is an explicit prohibition on cooperating with federal immigration law enforcement. Had New Jersey simply decided to be inactive, it would not have passed any law regarding the actions of its officers, either to compel or forbid cooperation with federal law enforcement, and Plaintiffs-Appellants would have been free to continue their voluntary cooperation with federal immigration officials. New Jersey rejected this passive course.

In reaching its clearly erroneous holding, the District Court failed to understand the relation between the Supremacy Clause and the Tenth Amendment, and even the Tenth Amendment itself. The Tenth Amendment establishes the method to determine which powers are reserved to the states by the Constitution:

> The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

U.S. Const. amend. X.

Thus, the Constitution sets forth a clear procedure that requires a determination of whether the Constitution delegates a particular power to the federal government and whether the Constitution prohibits the states from exercising that

power. The Tenth Amendment only reserves a given power to the states where both questions are answered in the negative.

The Supreme Court has acted consistently with this rubric in its anticommandeering cases. The anticommandeering principle arises from the structure of the Constitution and the principle, assumed in the Constitution, that governments govern the people and not other governments, which together imply that the power to commandeer states is not delegated to the federal government by the Constitution. *See generally New York v. United States*, 505 U.S. 144, 165 (1992) ("[T]he Framers explicitly chose a Constitution that confers upon Congress the power to regulate individuals, not States. As we have seen, the Court has consistently respected this choice."); *Printz v. United States*, 521 U.S. 898, 919 (1997) ("[T]he Framers rejected the concept of a central government that would act upon and through the States, and instead designed a system in which the state and federal governments would exercise concurrent authority over the people—who were, in Hamilton's words, the only proper objects of government.") (internal citation omitted).

By contrast, the District Court simply rejected the rubric spelled out in the Tenth Amendment. Had the District Court followed the proper method of decision, it would have asked whether a power to make laws that stand as obstacles to the purposes of federal laws is prohibited to the states. Of course, it is well-established

that that power is prohibited to the states by the Supremacy Clause, as interpreted by the Supreme Court's obstacle preemption cases. *See, e.g.*, *Murphy v. NCAA*, 138 S. Ct. 1461, 1476 (2018) ("[T]he Constitution indirectly restricts the States by granting certain legislative powers to Congress, see Art. I, §8, while providing in the Supremacy Clause that federal law is the 'supreme Law of the Land . . . any Thing in the Constitution or Laws of any State to the Contrary notwithstanding', Art. VI, cl. 2."). Because the states are prohibited from enacting laws that are obstacles to federal aims, the power to issue the Immigrant Trust Directive is not reserved to the states by the Tenth Amendment and is therefore not a permissible exercise of state police power. *See Fellner v. Tri-Union Seafoods, L.L.C.*, 539 F.3d 237, 242 (3d Cir. 2008) ("The doctrine of federal preemption is rooted in the Supremacy Clause . . . which invalidates state laws that interfere with, or are contrary to federal law.") (internal quotations omitted). In other words, the District Court put the cart of reservation of states' powers before the horse of preemption. Here, it is the issue of preemption that must be decided before it can be determined whether the power at issue has been reserved to the states by the Tenth Amendment.

II. THE IMMIGRANT TRUST DIRECTIVE IS OTHERWISE CONFLICT PREEMPTED.

In addition to preemption due to creating an obstacle to federal law, the Immigrant Trust Directive is additionally conflict preempted because it commands state and local officers to commit harboring in violation of federal criminal law.

Thus, the Immigrant Trust Directive creates a conflict that makes it impossible for these state and local officers to comply with both federal and state law.

Title II, Chapter 8, § 274 of the INA contains what are known as the "anti-harboring" provisions, which in pertinent part provide:

> **Bringing in and Harboring Certain Aliens**
>
> **(a) Criminal Penalties.–**
>
> (1)(A) Any person who–
>
> (iii) knowing or in reckless disregard of the fact that an alien has come to, entered, or remains in the United States in violation of law, conceals, or harbors, or shields from detection, or attempts to conceal, harbor, or shield from detection, such alien in any place, including any building or any means of transportation; . . .
>
> (v) (I) engages in any conspiracy to commit any of the preceding acts, or (II) aids or abets the commission of any of the preceding acts, shall be punished as provided in subparagraph (B).
>
> (B) A person who violates subparagraph (A) shall, for each alien in respect to whom such a violation occurs–
>
> (ii) in the case of a violation of subparagraph (A)(ii), (iii), (iv), or (v)(II), be fined under title 18, United States Code, imprisoned not more than five years, or both . . . .

8 U.S.C. § 1324.

The INA defines "person" as used in Title II as "an individual or an organization." 8 U.S.C. § 1101(b)(3). "The term 'organization' means, but is not limited to, an organization, corporation, company, partnership, association, trust, foundation or fund; and includes a group of persons, whether or not incorporated,

permanently or temporarily associated together with joint action on any subject or subjects." 8 U.S.C. § 1101(a)(28). Thus, §1324, in addition to applying to the individual officers involved, applies to municipal corporations and unincorporated areas alike, which, under the broad definition of the INA, are organizations, and thus persons.

Because the Immigrant Trust Directive prevents state and local law enforcement from providing information or cooperation to federal immigration officials, it compels such law enforcement officers to "conceal[], harbor[], or shield[] from detection" aliens in "any place, including any building" (or attempt to do so), in violation of 8 U.S.C. § 1324(a)(1)(a)(iii). For example, when Immigration and Customs Enforcement ("ICE") requests the release date of an illegal alien from a local jail and the local authorities refuse to comply, those local authorities are thereafter, at any given moment during the remainder of the alien's confinement, concealing from ICE whether the alien is inside or outside the jail, thereby "conceal[ing]" such alien's presence "in . . . a[] building." The Immigrant Trust Directive has even more drastic impacts in cases where ICE agents arrive at a local jail to assume custody of an illegal alien and the local officers refuse entry or refuse to transfer custody in compliance with the Directive. By preventing the alien from being taken out of the jail, local officials are "harbor[ing]" the alien "in . . . a[] building." Even if ICE does not provide local officials with requisite knowledge of

an alien's unlawful presence, Form I-274A from ICE includes a probable cause determination by the U.S. Department of Homeland Security that the alien is removable, thereby making local law enforcement's noncompliance in "reckless disregard" of the alien's unlawful presence. *See United States v. Ozcelik*, 527 F.3d 88, 100 (3d Cir. 2008) ("[T]he terms "shielding," "harboring," and "concealing" under § 1324 encompass conduct tending to substantially facilitate a alien's remaining in the United States illegally and to prevent government authorities from detecting the alien's unlawful presence.") (internal citation omitted). Accordingly, the Immigrant Trust Directive commands local law enforcement to violate the federal anti-harboring statute.

As with conflict-obstacle preemption, here the Tenth Amendment does not protect the Immigrant Trust Directive from conflict-impossibility preemption. Quite obviously, nothing in the Tenth Amendment reserves to the states the power to make laws that are in logical contradiction to valid federal laws, such as the anti-harboring statute.

III. NO PRESUMPTION AGAINST PREEMPTION PROTECTS THE IMMIGRANT TRUST DIRECTIVE.

Based on balancing concerns under federalism—if not on the straightforward text of the Tenth Amendment—the Supreme Court has employed a presumption against preemption in some cases. *See, e.g., Meditronic, Inc. v. Lohr*, 518 U.S. 470, 485 (1996) ("In all pre-emption cases . . . we start with the assumption that the

historic police powers of the States were not to be superseded . . . unless that was the clear and manifest purpose of Congress."). But any such presumption is easily overcome here. First, the leading case that established the presumption held that, in cases of obstacle preemption, the presumption is *ipso facto* surmounted. *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947) ("[W]e start with the assumption that the historic police powers of the States were not to be superseded by the Federal Act unless that was the clear and manifest purpose of Congress. Such a purpose may be evidenced in several ways . . . [For example,] the state policy may produce a result that is inconsistent with the objective of the federal statute.") (internal citations omitted); *see also Crosby v. Nat'l Foreign Trade Council*, 530 U.S. 363, 374 n.8 (2000) ("Assuming, *arguendo*, that some presumption against preemption is appropriate, we conclude, based on our analysis below, that the state Act presents a sufficient obstacle to the full accomplishment of Congress's objectives under the federal Act to find it preempted.").

Second, "an 'assumption' of nonpreemption is not [even] triggered when the State regulates in an area where there has been a history of significant federal presence." *United States v. Locke*, 529 U.S. 89, 108 (2000) (quoting *Rice*, *supra*); *see also Buckman Co. v. Plaintiff's Legal Comm.*, 531 U.S. 341, 347-48 (2001) (finding that the presumption against preemption did not apply to fraud on the Federal Drug Administration because it is not an area of traditional state regulation).

The question of what happens to deportable aliens has always and quintessentially been in the purview of the federal government. *See, e.g., Arizona*, 567 U.S. at 394 (recognizing that the federal government "has broad, undoubted power over the subject of immigration and the status of aliens") (citing *Toll v. Moreno*, 458 U.S. 1, 11 (1982)). There is no traditional state power to decide this question, and certainly not to decide it inconsistently with how the federal government has decided it. *Toll*, 458 U.S. at 11 ("Under the Constitution the states are granted no such powers"). Because New Jersey has intruded into immigration—an area of exclusive federal power—no presumption against preemption can even be applied in this case.

CONCLUSION

For the foregoing reasons, the judgment of the District Court should be reversed.

Dated: December 16, 2020

Respectfully submitted,

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COMBINED CERTIFICATE OF COMPLIANCE

The undersigned counsel certifies compliance of the accompanying brief with the following requirements of the FEDERAL RULES OF APPELLATE PROCEDURE and the Local Rules of this Court.

1. Pursuant to Local Rule 28.3(d), counsel for *amicus curiae* is a member of this Court's bar.

2. This brief complies with the type-volume limitation of FED. R. APP. P. 32(a)(7)(B) and 29(c)(5) because:

This brief contains 4,215 words, including footnotes, but excluding the parts of the brief exempted by FED. R. APP. P. 32(a)(7)(B)(iii).

3. This brief complies with the typeface requirements of FED. R. APP. P. 32(a)(5) and the type style requirements of FED. R. APP. P. 32(a)(6) because:

This brief has been prepared in a proportionally spaced typeface using Microsoft Word 2016 in Times New Roman 14-point font.

4. Pursuant to Local Rule 31.1(c), (1) the electronic submission of this document is an exact copy of the corresponding paper document to be filed with the Court; and (2) the document has been scanned for viruses with Norton 360 (version 22.20.5.39), the most recent version of a commercial virus-scanning program, and is free of viruses.

Dated: December 16, 2020

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CERTIFICATE OF SERVICE

I hereby certify that on December 16, 2020, I electronically filed the foregoing brief – as an exhibit to the accompanying motion for leave to file – with the Clerk of the Court for the United States Court of Appeals for the Third Circuit by using the appellate CM/ECF system. Participants in the case are registered CM/ECF users, and service will be accomplished by the appellate CM/ECF system.

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