

No. 18-17382

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

METROPCS California, LLC,

Plaintiff-Appellee,

v.

MICHAEL PICKER; MARTHA GUZMAN ACEVES; CARLA
PETERMAN; LIANE RANDOLPH; CLIFFORD
RECHTSCHAFFEN

Defendants-Appellants.

On Appeal from the United States District Court
for the Northern District of California
in Case No. 3:17-cv-05959-SI
Hon. Susan Illston

**AMICUS CURIAE BRIEF IN SUPPORT OF APPELLEE METROPCS
CALIFORNIA, LLC BY ASIAN AMERICANS ADVANCING JUSTICE |
AAJC, AND MULTICULTURAL MEDIA, TELECOM AND INTERNET
COUNCIL**

[All Parties Have Consented Pursuant to FRAP 29(a)]

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1, *Amici* hereby certifies that the Asian Americans Advancing Justice | AAJC has no parent corporations and no publicly held corporation owns 10% or more of the stock of any of the *Amici*.

Dated: July 25, 2019

Respectfully Submitted,

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I. INTRODUCTION AND INTEREST OF AMICI CURIAE

The California Public Utilities Commission’s (“CPUC”) methodology for assessing surcharges will increase the cost of prepaid wireless services, a cost that will likely be borne—disproportionately—by lower-income, minority communities. Due to a lack of financial resources, lower-income, minority communities must often forgo fixed home broadband service, and instead rely heavily on internet-enabled smartphones. In many cases, smartphones provide their only access to necessities like education, employment opportunities, and health care. For those who are financially strapped, pre-paid wireless service provides a cheaper option. Low-income communities (of whom many are persons of color), are particularly sensitive to subtle prices increases; any increase in cost, particularly in the form of state fees, threatens to cut-off significant numbers of low-income people and people of color from vital services.

Asian Americans Advancing Justice | AAJC (“Advancing Justice-AAJC”) submits this amicus curiae brief in support of the Order and Judgment of the United States District Court for the Northern District of California in favor of Plaintiff MetroPCS California, LLC (“MetroPCS”). The Northern District’s Order correctly holds that: (a) the California Prepaid Mobile Telephony Services Surcharge Collection Act (enacted by Assembly Bill No. 1717, Chapter 885, Statutes 2014, Perea) (the “Prepaid Collection Act”), conflicts—in its entirety—

with federal law, and therefore is preempted and unconstitutional; and (b) CPUC Resolutions T-17542, T-17568, and T-17579 (collectively, the “Contested Resolutions”) implementing the PCA conflict with federal law, and are therefore preempted and unconstitutional.

II. IDENTITY OF *AMICI CURIAE*

Advancing Justice-AAJC is a national 501 (c)(3) nonprofit founded in 1991 in Washington, D.C. Advancing Justice-AAJC is dedicated to civil and human rights for Asian Americans and to promoting a fair and equitable society.

Advancing Justice-AAJC provides the growing Asian American community with multilingual resources, community education, and public policy and civil rights advocacy. In the communications field, Advancing Justice-AAJC promotes access to critical technology, services, and media for the Asian American communities.

In the instant proceeding, Advancing Justice-AAJC seeks to protect the ability of Asian American and other disadvantaged communities, to access broadband resources, which may be negatively and disproportionately impacted by the unlawful surcharge that Commission seeks to impose on the interstate revenue of pre-paid service providers.

Advancing Justice-AAJC is joined as a signatory to its brief by Multicultural Media, Telecom and Internet Council (“MMTC”). MMTC was established in 1986 as a national nonprofit organization dedicated to promoting and preserving equal

opportunity and civil rights in the mass media, telecommunications, and broadcast industries. MMTC performs civil rights advocacy; conducts research and analysis, particularly in the area of broadband access and broadband adoption for people of color and other vulnerable populations; and regularly participates in FCC rulemaking proceedings affecting these issues. Consistent with its mission, MMTC supports efforts to close the digital divide and bring broadband access to more people of color and other vulnerable populations.

MMTC believes that the Commission's methodology for assessing surcharges will increase the cost of prepaid wireless services, a cost that will likely be borne disproportionately by lower-income, minority communities and harm the many Americans who remain on the wrong side of the digital divide. MMTC has a demonstrated interest in the outcome of this case to protect the interests of those citizens, mostly minorities and economically disadvantaged persons who have limited or no access to broadband services at home and therefore rely heavily on internet-enabled devices.

III. ARGUMENT

A. Prepaid Wireless Phones Can Help Bridge the Digital Divide Disproportionately Impacting Low-Income, Minority Communities.

Access to broadband internet is severely limited for low-income communities of color. Cost and limited access to credit are key obstacles to home broadband internet for many low-income minority households. But, as dependency

on internet-based services grow, these communities often turn to their phones for internet access; indeed, their phones are often the only access to broadband. And, as cost and access to credit remain obstacles, prepaid wireless plans, which are often cheaper and more readily accessible than postpaid wireless plans, are a popular choice.

1. *Data Shows That Low-Income Communities of Color Are Most Likely to Lack Access to Broadband.*

More than ever, fast and reliable internet access has become integral to our lives. However, as recently as 2019, the FCC reported that over 21 million Americans still lack fixed terrestrial broadband at speeds of 25 Mbps/3 Mbps.¹ Pew Research analysis of Census data finds that the lowest-income households have the lowest home broadband subscription rates.² There is a widening gap between those who can access broadband internet and those who cannot; indeed, in 2012, the high cost of home internet was the second most cited reason that households did not subscribe to home internet and,³ since 2015, it has been the primary reason.⁴ Among households that gave up home internet by 2012, 43%

¹ FCC, *2019 Broadband Deployment Report*, <https://docs.fcc.gov/public/attachments/FCC-19-44A1.pdf>, 2 (adopted May 8, 2019).

² John B. Horrigan, Pew Research Center, *Fact Tank, The Numbers Behind the Broadband 'Homework Gap,'* <http://www.pewresearch.org/fact-tank/2015/04/20/the-numbers-behind-the-broadband-homework-gap/> (accessed July 25, 2019).

³ U.S. Dept. of Com., NTIA, *Exploring the Digital Nation: Embracing the Mobile Internet*, <http://www.ntia.doc.gov/report/2014/exploring-digital-nation-embracing-mobile-internet> (accessed July 25, 2019).

⁴ John B. Horrigan and Maeve Duggan, Pew Research Center, *Home Broadband 2015*, <http://www.pewinternet.org/2015/12/21/home-broadband-2015/> (accessed July 25, 2019); Pew Research Center, *Mobile Technology and Home Broadband 2019, 37% of Americans now go online mostly using a smartphone, and these devices are increasingly cited as a reason for not having high-speed internet connection at home*,

cited cost as the explanation for relinquishing home service.⁵ For such households, high costs and low income present significant barriers to home internet use.⁶

From a household income standpoint, as of 2018, roughly one-third (31.4%) of households with children ages 6 to 17 and whose incomes fall below \$50,000 did not have a high-speed internet connection at home, compared with only 8.4% among those with income of \$50,000 or greater.⁷ This digital gap is even more pronounced at income levels at or below \$30,000, where roughly 56% of American adults do not have home broadband.⁸ These income thresholds represent serious barriers to broadband adoption, especially for minority households whose median income falls below \$50,000. Indeed, the income of minority-headed households continues to trail that of white households. Based on 2014 U.S. Census data, the median income for black and Hispanic households was \$43,300, compared with \$63,600 among white households.⁹

https://www.pewinternet.org/wp-content/uploads/sites/9/2019/06/PI_2019.06.13_Mobile-Technology-and-Home-Broadband_FINAL2.pdf. (accessed July 25, 2019)

⁵ U.S. Dept. of Com., NTIA, *Exploring the Digital Nation: Embracing the Mobile Internet*, <http://www.ntia.doc.gov/report/2014/exploring-digital-nation-embracing-mobile-internet> (accessed July 25, 2019).

⁶ *Id.*

⁷ John B. Horrigan, Pew Research Center, *Fact Tank, The Numbers Behind the Broadband 'Homework Gap,'* <http://www.pewresearch.org/fact-tank/2015/04/20/the-numbers-behind-the-broadband-homework-gap/> (accessed July 25, 2019).

⁸ Monica Anderson, Pew Research Center, *Mobile Technology and Home Broadband 2019, 37% of Americans now go online mostly using a smartphone, and these devices are increasingly cited as a reason for not having high-speed internet connection at home*, https://www.pewinternet.org/wp-content/uploads/sites/9/2019/06/PI_2019.06.13_Mobile-Technology-and-Home-Broadband_FINAL2.pdf (accessed July 25, 2019).

⁹ Pew Research, *On Views of Race and Inequality, Blacks and Whites Are Worlds Apart*, <http://www.pewsocialtrends.org/2016/06/27/on-views-of-race-and-inequality-blacks-and-whites-are-worlds-apart/> (accessed July 25, 2019).

Significantly, as of 2015, home broadband adoption peaked—idling at 67% of Americans, down from 70% in 2013.¹⁰ The plateau in home internet adoption coincides with an increase in “smartphone-only” adults—those adults who have internet-capable phones, but without home broadband service.¹¹ Unsurprisingly, however, those without home high-speed service—two-thirds of non-adopters—are much more likely now than in the past to view the lack of home broadband as a major disadvantage when it comes to accessing government services, searching for employment, following the news, education, and learning about health.¹²

Specifically in California, communities of color were more likely to not be connected to the Internet or were connected only via a smart phone. Only six percent of White households in California were not connected to the Internet at all and only five percent of White households were connected to the Internet only through a smartphone.¹³ Whereas 12 percent of African American households were not connected to the internet at all and seven percent were connected only through their smartphone.¹⁴ And 14 percent of Latino households were not connected to the Internet at all, and 18 percent were connected only through a smartphone.¹⁵

¹⁰ John B. Horrigan and Maeve Duggan, Pew Research Center, *Home Broadband 2015*, <http://www.pewinternet.org/2015/12/21/home-broadband-2015/> (accessed July 25, 2019).

¹¹ *Id.*

¹² *Id.*

¹³ Mark DiCamillo, Institute of Governmental Studies, University of California, Berkeley, *Internet Connectivity and the “Digital Divide” in California – 2019*, Table 4a, <https://escholarship.org/uc/item/7rj7p5vw> (accessed July 25, 2019).

¹⁴ *Id.*

¹⁵ *Id.*

Finally, a whopping 22 percent of Asian American households lacked internet connection entirely and six percent only had internet access via their smart phones.¹⁶ Thus, any surcharge on broadband access will disproportionately impact communities of color.

2. *Low-income Americans Are Increasingly Using Phones to Access the Internet.*

With home broadband adoption flat-lining among low-income, minority communities, internet-enabled smartphones are increasingly critical to this demographic, and often the only pathway to resources primarily accessible online. Indeed, low-income, minority communities have become increasingly smartphone-dependent as a means of bridging the broadband gap at home. Pew Research reports that as of 2019, 17% of Americans are smartphone-only, a share that has nearly doubled from 2013.¹⁷ Further, as of early 2019, 26% of adults living in households earning less than \$30,000 a year were smartphone-dependent internet users.¹⁸ This represents a substantial increase from 12% in 2013.¹⁹ In contrast, only 5% of those living in households earning \$100,000 or more fell into this category

¹⁶ Mark DiCamillo, Institute of Governmental Studies, University of California, Berkeley, *Internet Connectivity and the “Digital Divide” in California – 2019*, Table 4a, <https://escholarship.org/uc/item/7rj7p5vw> (accessed July 25, 2019).

¹⁷ Monica Anderson, Pew Research Center, *Mobile Technology and Home Broadband 2019, 37% of Americans now go online mostly using a smartphone, and these devices are increasingly cited as a reason for not having high-speed internet connection at home*, https://www.pewinternet.org/wp-content/uploads/sites/9/2019/06/PI_2019.06.13_Mobile-Technology-and-Home-Broadband_FINAL2.pdf. (accessed July 25, 2019).

¹⁸ Monica Anderson, Madhumitha Kumar, Pew Research Center, *Fact Tank, Digital Divide Persists Even As Lower-Income Americans Make Gains In Tech Adoption*, <https://www.pewresearch.org/fact-tank/2019/05/07/digital-divide-persists-even-as-lower-income-americans-make-gains-in-tech-adoption/>(accessed July 25, 2019).

¹⁹ *Id.*

in 2019.²⁰ Often, it is the smartphone-dependent group experiences the most issues with consistent and reliable internet service.

Concomitantly, in California, renters use smartphones to access Internet far more than homeowners.²¹ Similarly, 30 percent of households with income under \$20,000 do not have access to the Internet at all, and another 18 percent access it only through their smartphones.²²

3. *Prepaid Wireless Plans Offer Low-Income Communities Accessibility to Broadband.*

Millions of low-income, minority communities have to give up their phone plans because of the high cost of smartphone ownership. Notably, in 2015, 23% of smartphone owners cancelled their service for a period of time because of financial inability—a figure that swells to 44% for those smartphone owners with an annual household income of less than \$30,000.²³ The most vulnerable, however, are smartphone-dependent Americans who have limited options for going online other than their cell phone, nearly 50% of whom have had to allow their service to lapse due to financial hardship.²⁴ Indeed, in California, of those who are not connected to

²⁰ Monica Anderson, Madhumitha Kumar, Pew Research Center, *Fact Tank, Digital Divide Persists Even As Lower-Income Americans Make Gains In Tech Adoption*, <https://www.pewresearch.org/fact-tank/2019/05/07/digital-divide-persists-even-as-lower-income-americans-make-gains-in-tech-adoption/> (accessed July 25, 2019).

²¹ Mark DiCamillo, Institute of Governmental Studies, University of California, Berkeley, *Internet Connectivity and the “Digital Divide” in California – 2019*, Table 4e, <https://escholarship.org/uc/item/7rj7p5vw> (accessed July 25, 2019) (showing that four percent of homeowners access internet only through their smartphones, where as 15% of renters use their smartphones to connect to the internet).

²² *Id.*

²³ Aaron Smith, Pew Research Center, *Internet and Technology, U.S. Smartphone Use in 2015*, <http://www.pewinternet.org/2015/04/01/us-smartphone-use-in-2015/> (accessed July 25, 2019).

²⁴ *Id.*

the internet, over 50 percent reported the high cost as the reason for having no internet connectivity at home.²⁵ Despite the instability in internet access for this group of smartphone users, they are in many ways, in the most need.

In light of this financial instability, it is unsurprising that prepaid wireless phones are a popular option in the low-income community. Prepaid phones are a “lifeline for low-income consumers and people with bad credit.”²⁶ This is because prepaid plans help low-income individuals and families control their budget and avoid costly unanticipated additional charges.²⁷ Overall, “[p]repaid service has come into its own because of a trio of customer-friendly factors: The cost sometimes is less than half that of a traditional billed service; there's no restrictive contract or hefty early-cancellation fee; and some high-end providers offer smartphones with unlimited Internet, text and roaming capabilities that weren't available previously.”²⁸ In sum, prepaid wireless plans are helping low-income communities access broadband internet services.

²⁵ Mark DiCamillo, Institute of Governmental Studies, University of California, Berkeley, *Internet Connectivity and the “Digital Divide” in California – 2019*, Table 6, <https://escholarship.org/uc/item/7rj7p5vw> (accessed July 25, 2019).

²⁶ Marc Lifsher, Los Angeles Times, *More Cellphone Users Switch to Prepaid Plans*, <http://articles.latimes.com/2013/feb/19/business/la-fi-0220-prepaid-cellphone-boom-20130220> (accessed July 25, 2019).

²⁷ Bruce Wilkinson, Nielson, *What’s Driving The Growth of Pre-Paid Cell Phones*, <http://www.nielsen.com/us/en/insights/news/2010/whats-driving-the-growth-of-pre-paid-cell-phones.html> (accessed July 25, 2019); *see also*, Consumer Reports, *Cell Phones & Service, Cell Phone & Service Buying Guide*, <https://www.consumerreports.org/cro/cell-phones-services/buying-guide/index.htm> (prepaid plans have lower monthly bills) (accessed July 25, 2019).

²⁸ Marc Lifsher, Los Angeles Times, *More Cellphone Users Switch to Prepaid Plans*, <http://articles.latimes.com/2013/feb/19/business/la-fi-0220-prepaid-cellphone-boom-20130220> (accessed July 25, 2019).

B. Broadband Access Provides Substantial Benefits to Low-Income Communities.

Access to broadband internet has become an essential component for the social and economic mobility of low-income communities and persons of color. In big and small ways, broadband internet positively impacts how Americans access everyday necessities. As a basic matter, “fixed services allow consumers to view high definition video for larger screens and download and share large files, while mobile broadband powers smartphones, wearable devices, mobile health monitoring, video suitable for smaller screens and countless location-based services.”²⁹ Nonetheless, some key services and utilities accessed by Americans on their phones include:

- 62% ... look up information about a health condition.
- 57% ... do online banking.
- 44% ... look up real estate listings or other information about a place to live.
- 43% ... look up information about a job.
- 40% ... look up government services or information.
- 30% ... take a class or get educational content.
- 18% ... submit a job application.³⁰

²⁹ FCC, *2016 Broadband Progress Report*, https://apps.fcc.gov/edocs_public/attachmatch/FCC-16-6A1.pdf, 16 (adopted Jan. 28, 2016).

³⁰ Aaron Smith, Pew Research Center, *U.S. Smartphone Use In 2015, Chapter Two: Usage and Attitudes Toward Smartphones*, <http://www.pewinternet.org/2015/04/01/chapter-two-usage-and-attitudes-toward-smartphones/#job%20seeking> (accessed July 25, 2019).

Indeed, in California, those without connection to the internet or who are only connected through their smartphones, feel most disadvantaged when trying to help their children with schoolwork (45 percent), in improving career prospects (24 percent), in banking (22 percent), accessing government benefits (22 percent), and in discovering job opportunities (22 percent).³¹

For many low-income individuals, access to these types of services and utilities is often *only* available through their smartphones as they are less likely to have broadband at home. Perhaps, among the most critical of these services are education and employment opportunities, especially when it comes to socioeconomic mobility.

1. *A Lack of Broadband Access Widens the Gap in Educational Opportunities.*

The FCC has found that mobile broadband access is increasingly commonplace for real-time educational courses.³² Reports show that access to broadband internet is needed to do schoolwork; as many as “7 in 10 teachers assign homework that requires access to broadband.”³³ Yet some five million students, most of whom are from low-income communities of color, do not have broadband

³¹ Mark DiCamillo, Institute of Governmental Studies, University of California, Berkeley, *Internet Connectivity and the “Digital Divide” in California – 2019*, Table 8, <https://escholarship.org/uc/item/7rj7p5vw> (accessed July 25, 2019).

³² See *Id.* at 25.

³³ See e.g., Jessica Rosenworcel, The Aspen Institute, *Millions Of Children Can’t Do Their Homework Because They Don’t Have Access To Broadband Internet*, <https://www.aspeninstitute.org/blog-posts/the-homework-gap/> (accessed July 25, 2019).

access at home.³⁴ These “low-income children—who are four times less likely to have access to broadband at home than their middle- and upper-income counterparts—are particularly vulnerable to the long-term detrimental effects of constrained access to technology-enriched education.”³⁵ While far from ideal, having even limited broadband access via prepaid smartphones can help bridge this gap.

2. *Access to Employment is Increasingly Dependent on Broadband.*

Similarly, internet access has become increasingly critical for low-income, people of color to find employment. Lower-income and smartphone-dependent subscribers are especially likely to use only smartphones as an employment resource.³⁶ As Pew Research Center reports:

Compared with smartphone owners from households earning \$75,000 or more per year, smartphone owners from households earning less than \$30,000 annually are nearly twice as likely to use their phone to look for information about a job—and more than four times as likely to use their phone to actually submit a job application. Just 7% of smartphone owners from higher income households have applied for a job using their phone

³⁴ John B. Horrigan, Pew Research Center, *Fact Tank, The Numbers Behind the Broadband ‘Homework Gap,’* <http://www.pewresearch.org/fact-tank/2015/04/20/the-numbers-behind-the-broadband-homework-gap/> (accessed July 25, 2019).

³⁵ U.S. Dept. Housing and Urban Development, *Evidence Matters, Digital Inequality and Low-Income Households,* <https://www.huduser.gov/portal/periodicals/em/fall16/highlight2.html> (accessed July 25, 2019).

³⁶ Aaron Smith, Pew Research Center, *Internet and Technology, U.S. Smartphone Use in 2015,* <http://www.pewinternet.org/2015/04/01/us-smartphone-use-in-2015/> (accessed July 25, 2019).

in the last year, but 32% of smartphone owners from lower-income households have done so.³⁷

Similarly, approximately 63% of smartphone-dependent users have accessed job information on their phone, and 39% have used their phone to submit a job application.³⁸ Significantly, many of the largest employers of low-income workers have migrated to an online-only job application process. Indeed, “more than 80 percent of Fortune 500 companies post job openings only online and require online applications. Many of those companies, such as Wal-Mart and Target, are major employers of lower-income workers.”³⁹

Thus, in order to achieve upward mobility, whether through education, employment, or accessing government services,⁴⁰ access to broadband internet is a necessity for low-income, minority communities. And, as discussed herein, this broadband access is most often lacking in these very communities. As such, additional costs associated with accessing broadband internet serves to further widen socioeconomic gaps in our society.

³⁷ Aaron Smith, Pew Research Center, *Internet and Technology, U.S. Smartphone Use in 2015*, <http://www.pewinternet.org/2015/04/01/us-smartphone-use-in-2015/> (accessed July 25, 2019).

³⁸ *Id.*

³⁹ U.S. Dept. Housing and Urban Development, *Featured Article, Understanding the Broadband Access Gap*, https://www.huduser.gov/portal/pdredge/pdr_edge_featd_article_100614.html (accessed July 25, 2019).

⁴⁰ See, e.g., Darrell M. West and Jack Karsten, Brookings, *Rural And Urban America Divided By Broadband Access*, <https://www.brookings.edu/blog/techtank/2016/07/18/rural-and-urban-america-divided-by-broadband-access/> (“From Social Security to FAFSA, government services are transitioning to online access. Tax forms and services are being increasingly streamlined through online portals and tools, and with limited broadband speed, rural America may struggle to access these services.”) (accessed July 25, 2019).

C. **The CPUC's Increased Surcharge Will Negatively Impact Broadband Access for Low-Income, Minority Communities.**

The CPUC's methodology for assessing surcharges on prepaid wireless service will likely increase costs for lower-income Americans to access mobile broadband. As described in MetroPCS's Second Amended Complaint, "if MetroPCS does not itself absorb the unlawfully inflated surcharge burden, it would be forced to either increase the cost of service or offer consumers less for the same price." And low-income, minority subscribers of prepaid wireless will be hit the hardest. Indeed, the Office of Governmental Affairs previously notified the CPUC regarding the income disparity among prepaid and postpaid subscribers, and the disproportionate impact price-increases would have on prepaid customers. In an April 8, 2014 letter to the CPUC from the Office of Governmental Affairs, the then Director stated the following regarding AB 1717:

Moreover, the bill **creates an inequitable disparity between prepaid and postpaid consumers, thus disproportionately affecting low-income consumers and minorities.** Additional costs will likely be made up by prepaid consumers, as the MTS surcharge would have to be set equivalently higher to pay for this fee to the retailers. Prepaid consumers are more likely than postpaid consumers to be low-income and from minority communities.⁴¹

⁴¹ Ltr. from Lynn Sadler, Dir., Office of Governmental Affairs, to The Commission, *AB 1717 (Perea) – Telecommunications: prepaid mobile telephone services: state surcharge and fees: local charges collection*, 6 (Apr. 8, 2014) (Emphasis in original) (available at: www.cpuc.ca.gov/WorkArea/DownloadAsset.aspx?id=7018).

Prepaid wireless phone subscribers are among the most cost sensitive consumers of mobile broadband. Should MetroPCS and other prepaid wireless carriers pass on to their subscribers the cost of this increased surcharge liability, prepaid wireless subscribers—which are largely composed of low-income and minority consumers—may have difficulty maintaining their service, which will negatively impact their ability to access internet-necessary services.

IV. CONCLUSION

Amici respectfully urge the Court to affirm the District Court’s Order holding that the PCA is preempted by federal law in its entirety, the 2017 and 2018 CPUC resolutions are preempted, and enjoining Defendants from imposing surcharges on any revenues that MetroPCS and other carriers derive from providing interstate prepaid wireless services, including mobile broadband service.

Dated: July 25, 2019

Respectfully Submitted,

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Asian Americans Advancing Justice |
AAJC

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

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9th Cir. Case Number(s) 18-17382

I am the attorney or self-represented party.

This brief contains 2594 words, excluding the items exempted by Fed. R. App. P. 32(f). The brief's type size and typeface comply with Fed. R. App. P. 32(a)(5) and (6).

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Signature /s/ Jeffrey S. Raskin Date July 25, 2019
(use "s/[typed name]" to sign electronically-filed documents)

**CERTIFICATE OF SERVICE FOR ELECTRONIC FILING
FOR CASE NO. 18-17382**

I hereby certify that I electronically filed the foregoing Amicus Brief, in the appeal of Case. No. 18-17382, on July 25, 2019 with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit using the Appellate Electronic Filing system.

Dated: July 25, 2019

/s/ Jeffrey S. Raskin
Jeffrey S. Raskin