14-2710-cr

IN THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

United States of America,

Appellant,

v.

Gilberto Valle, AKA Sealed Defendant 1,

Defendant-Appellee,

Michael Vanhise, AKA Sealed Defendant 1, Robert Christopher Asch, AKA Chris, Richard Meltz, AKA Rick,

Defendants.

On Appeal from the United States District Court
for the Southern District of New York

BRIEF OF *AMICI CURIAE* ELECTRONIC FRONTIER FOUNDATION, CENTER FOR DEMOCRACY & TECHNOLOGY, MARION B. BRECHNER FIRST AMENDMENT PROJECT, NATIONAL COALITION AGAINST CENSORSHIP, PENNSYLVANIA CENTER FOR THE FIRST AMENDMENT, AND LAW PROFESSORS IN SUPPORT OF DEFENDANT-APPELLEE GILBERTO VALLE

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CORPORATE DISCLOSURE STATEMENT

Amici Curiae the Electronic Frontier Foundation, Center for Democracy & Technology, Marion B. Brechner First Amendment Project, National Coalition Against Censorship, and Pennsylvania Center for the First Amendment state that they do not have a parent corporation and that no publicly held company owns 10 percent or more of their stock.

Dated: March 20, 2015

By: */s/Eugene Volokh*
Eugene Volokh

Counsel for Amici Curiae

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INTEREST OF *AMICI CURIAE*[1]

The Electronic Frontier Foundation, Center for Democracy & Technology, Marion B. Brechner First Amendment Project, National Coalition Against Censorship, Pennsylvania Center for the First Amendment, and law professors—experts in the First Amendment and Internet law—respectfully submit this brief in support of Defendant-Appellee Gilberto Valle, urging affirmance of the district court's decision to reverse Mr. Valle's conspiracy conviction.

The Electronic Frontier Foundation ("EFF") is a non-profit, member-supported civil liberties organization working to protect consumer interests, innovation, and free expression in the digital world. With over 25,000 active donors and dues-paying members, EFF represents the interests of technology users in both court cases and broader policy debates surrounding the application of law in the digital age, and publishes a comprehensive archive of digital civil liberties

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[1] No party or party's counsel has authored this brief in whole or in part, or contributed money that was intended to fund preparing or submitting the brief. No person has contributed money that was intended to fund preparing or submitting the brief, except that UCLA School of Law paid the expenses involved in filing this brief. All parties have consented to the filing of this brief.

information at http://www.eff.org. As part of its mission, EFF has served as counsel or *amicus* in key cases addressing the application of law to the Internet and other new technologies. EFF is particularly interested in the First Amendment rights of Internet users and views the protections provided by the First Amendment as vital to the promotion of a robustly democratic society.

The Center for Democracy & Technology ("CDT") is a non-profit public interest organization that advocates on free speech and other civil liberties issues affecting the Internet and associated technologies. CDT represents the public's interest in an open Internet that promotes the constitutional and democratic values of free expression, privacy, and individual liberty. CDT has participated as amicus curiae in a number of cases involving First Amendment rights and freedom of expression on the Internet.

The Marion B. Brechner First Amendment Project is a nonprofit, nonpartisan organization located at the University of Florida in Gainesville, Florida. Directed by attorney Clay Calvert, the Project is dedicated to contemporary issues of freedom of expression, including current cases and controversies affecting freedom of information and

access to information, freedom of speech, freedom of press, freedom of petition, and freedom of thought. The Project's director has published scholarly articles on both thought crimes and true threats, two subjects at issue in this case.

The National Coalition Against Censorship ("NCAC") is an alliance of more than 50 national nonprofit educational, professional, labor, artistic, religious, and civil liberties groups united in their commitment to freedom of expression. (The positions advocated in this brief do not necessarily reflect the views of each of its member organizations.) Since its founding in 1974, NCAC has advocated for robust protections for First Amendment rights, which are essential to individual liberty and representative democracy. Independent appellate review provides a critical safeguard for First Amendment rights, especially in cases like this involving controversial or unpopular speech.

The Pennsylvania Center for the First Amendment ("PaCFA") was established by The Pennsylvania State University in 1992 to promote awareness and understanding of the principles of free expression to the scholarly community, the media and the general public. Directed by attorney Robert D. Richards, the PaCFA's members publish books and

scholarly articles on First Amendment topics. The PaCFA regularly tracks issues related to free expression, and research generated from those projects is presented at national conferences and in law journals. The Center also regularly participates as amicus curiae in First Amendment cases.

The following legal scholars—who have diverse expertise on First Amendment and Internet law—also join this brief, in their individual capacities, as *amici*: [2]

- Clay Calvert is Professor and Brechner Eminent Scholar in Mass Communication at the University of Florida in Gainesville, where he also directs the Marion B. Brechner First Amendment Project. He teaches both undergraduate and graduate-level courses on communications law and media law issues. Professor Calvert has authored or co-authored more than 120 published law journal articles on freedom of expression-related topics. He is co-author, along with Don R. Pember, of the market-leading undergraduate media law textbook, *Mass Media Law*, 19th Edition (McGraw-Hill), and is author of the book

[2] The titles of the listed scholars are given for affiliation purposes only.

Voyeur Nation: Media, Privacy, and Peering in Modern Culture (Westview Press). Professor Calvert received his J.D. Order of the Coif from the University of the Pacific's McGeorge School of Law and later earned a Ph.D. in Communication from Stanford University, where he also completed his undergraduate work in Communication, earning a B.A. with Distinction. He is a member of the State Bar of California and the Bar of the Supreme Court of the United States.

- Nadine Strossen is the John Marshall Harlan II Professor of Law at New York Law School.

- Jeffrey Vagle is a Lecturer in Law and the Executive Director of the Center for Technology, Innovation and Competition at University of Pennsylvania Law School and is also an Affiliate Scholar at Stanford University Law School's Center for Internet and Society.

INTRODUCTION

The First Amendment does not protect speech uttered as part of a conspiracy to commit a crime; nor does it protect speech that solicits the commission of a crime, speech that intentionally incites imminent and likely criminal action, speech that truly threatens crime, or speech that falls within another First Amendment exception. But both the Supreme

Court and this Court have held that to determine whether speech indeed falls within such an exception, a court must independently review a jury verdict rather than simply defer to the jury's conclusions.

"[I]n cases raising First Amendment issues . . . an appellate court has an obligation to 'make an independent examination of the whole record' in order to make sure that 'the judgment does not constitute a forbidden intrusion on the field of free expression.'" *Bose Corp. v. Consumers Union of U.S., Inc.*, 466 U.S. 485, 499 (1984); *see also DiBella v. Hopkins*, 403 F.3d 102, 116 (2d Cir. 2005). And this independent review is especially important in controversial cases such as this one, because it "assures that the suppression of protected speech—particularly unpopular or controversial speech—is not insulated from close scrutiny." *Planned Parenthood Ass'n v. Chicago Transit Auth.*, 767 F.2d 1225, 1229 (7th Cir. 1985); *see also Joe Conte Toyota, Inc. v. Louisiana Motor Vehicle Comm'n*, 24 F.3d 754, 756 (5th Cir. 1994). The appellate court's "independent examination of the whole record," *Bose*, 466 U.S. at 499, ensures that a case's ugly facts do not create bad law.

Just as courts independently review determinations of whether speech constitutes libel, incitement, or obscenity, this Court should independently review determinations made in conspiracy cases such as this one, where the question is whether the speech is truly conspiratorial or rather simply fantasy. Thus, instead of deferring to the jury's verdict, as the government asks, *see* Gov't Br. 30-31, this Court should independently determine whether the speech in this case falls within the conspiracy exception to the First Amendment. And applying such independent review should lead to a conclusion that the speech in this case was indeed fantasy, rather than true conspiracy.

ARGUMENT

I. Context Must Be Taken Into Account to Determine Whether Truly Conspiratorial Speech, Like Solicitation or Incitement to Commit Crime, Constitutes an Unprotected Category of Speech

Speech that expresses agreement to engage in criminal acts—the speech punished by conspiracy law—is constitutionally unprotected. As the Supreme Court noted in *United States v. Williams*, 553 U.S. 285, 298 (2008), "[m]any long established criminal proscriptions—such as laws against conspiracy, incitement, and solicitation—criminalize speech . . . that is intended to induce or commence illegal activities."

Conspiratorial speech, then, like solicitation and incitement, constitutes either (1) its own First Amendment exception, or (2) speech within the broader First Amendment exception for "speech integral to criminal conduct." *See United States v. Stevens*, 559 U.S. 460, 468-69 (2010).

The First Amendment exceptions for solicitation, incitement, libel, true threats, and conspiracy, of course, focus on what the speech means in context. For example, facially threatening speech is punishable only when it is a "true threat," rather than a statement that in context is not to be taken seriously or literally. *United States v. Watts*, 394 U.S. 705, 708 (1969) (internal quotation marks omitted). Similarly, facially false speech about people is treated as libel only when it is likely to be taken seriously, and not when it is hyperbolic, fantastical, or satirical. *See, e.g.*, *Greenbelt Coop. Publ'g Assn., Inc. v. Bresler*, 398 U.S. 6, 11-13 (1970) (hyperbole); *Pring v. Penthouse Int'l, Ltd.*, 695 F.2d 438, 440, 442-43 (10th Cir. 1982) (fantasy); *New Times, Inc. v. Isaacks*, 146 S.W.3d 144 (Tex. 2004) (satire); *Garvelink v. Detroit News*, 522 N.W.2d 883, 885-86 (Mich. Ct. App. 1994) (satire); *State v. Metzinger*, 2015 WL 790463, *9 (Mo. Ct. App. Feb. 24, 2015) (facetious "trash talking").

Likewise, allegedly conspiratorial statements should be punishable only if they relate to a "true conspiracy."

The Supreme Court's decision in *Watts* offers a helpful analogy. In that case, Watts was convicted of threatening the President after saying at a political rally, "If they ever make me carry a rifle the first man I want to get in my sights is L.B.J." 394 U.S. at 706. In assessing whether this qualified as a true threat, the Supreme Court looked closely at the context in which the speech was given, rather than merely deferring to the jury's verdict. *Id.* at 708. In doing so, the Court recognized that the broad context of the statement lent itself to speech that was "inexact." *Id.* The Court also looked to "the reaction of the listeners," ultimately concluding that the statement was just "a kind of very crude offensive method of stating a political opposition to the President," rather than a true threat. *Id.* (internal quotation marks omitted).

This Court should apply the same sort of analysis here to determine whether the speech in this case was truly conspiratorial, as opposed to just a "very crude offensive method" of expressing a fantasy. *See id.* Consistent with *Watts*, this Court must independently consider the broader context of the speech, rather than merely deferring to the

jury's verdict as requested by the government. And as noted by the district court, that broader context includes the government's concession that the "vast majority" of Valle's online chats involved "fantasy role-play" over the Internet and that there was no physical world evidence that Valle ever intended to take "concrete steps" to carry out these lurid fantasies. *See United States v. Valle*, 301 F.R.D. 53, 88-89 (S.D.N.Y. 2014).

II. In Order to Preserve First Amendment Rights, a Finding That Ambiguous Speech Fits Within the Conspiracy Exception Should Be Subjected to Independent Appellate Review

Even when a particular speech restriction is substantively constitutional, the Supreme Court has required independent appellate review of jury decisions about whether particular speech falls within that exception. "The requirement of independent appellate review" "reflects a deeply held conviction that judges . . . must exercise such review in order to preserve" First Amendment rights. *Bose Corp.*, 466 U.S. at 510-11.

The question of whether speech fits within a First Amendment exception "is not merely a question for the trier of fact." *Id.* at 511. Rather, "[j]udges, as expositors of the Constitution, must independently

decide whether the evidence in the record is sufficient to cross the constitutional threshold[.]" *Id.* And this is true for district court judges deciding whether a jury verdict should be set aside, as well as for appellate judges making the same decision. *See, e.g.*, *Crowder v. Housing Authority*, 990 F.2d 586, 594 n.15 (11th Cir. 1993); *Masson v. New Yorker Magazine*, 832 F. Supp. 1350, 1355 (N.D. Cal. 1993); *Guccione v. Hustler Magazine, Inc.*, 632 F. Supp. 313, 317 (S.D.N.Y. 1986), *rev'd on other grounds*, 800 F.2d 298 (2d Cir. 1986).

The Supreme Court held this in *Bose* with regard to libel: though a properly defined libel law is *substantively* constitutional, the Court held, decisions whether speech was indeed said with "actual malice" must be subject to the procedural safeguard of independent review. *Id.* at 502. But this application to libel is just a special case of the general rule, under which the Court has required independent appellate review whenever a statement is said to fit within some substantively valid speech restriction. *See, e.g.*, *Street v. New York*, 394 U. S. 576, 592 (1969) (applying independent appellate review to determine whether speech qualified as fighting words); *Hess v. Indiana*, 414 U.S. 105, 108-109 (1973) (per curiam) (likewise, as to incitement); *Jenkins v. Georgia*,

418 U.S. 153, 159-161 (1974) (obscenity); *New York v. Ferber*, 458 U.S. 747, 774 n.28 (1982) (child pornography); *Illinois ex rel. Madigan v. Telemarketing Associates, Inc.*, 538 U.S. 600, 602 (2003) (fraud); *Snyder v. Phelps*, 131 S. Ct. 1207, 1216 (2011) (speech on matters of private concern that might lead to intentional infliction of emotional distress liability); *Peel v. Attorney Registration & Disciplinary Comm'n*, 496 U.S. 91, 108 (1990) (plurality) (misleading commercial speech); *id.* at 111-17 (Marshall, J., concurring) (misleading commercial speech); *Pennekamp v. Florida*, 328 U.S. 331, 335 (1946) (speech that poses a clear and present danger of interfering with judicial proceedings); *Turner Broadcasting System, Inc. v. FCC*, 114 S. Ct. 2445, 2471 (1994) (speech restricted under a content-neutral speech restriction). This applies not only to review of a district court's findings of fact, but also to review of a jury's findings. *See, e.g.*, *New York Times Co. v. Sullivan*, 376 U.S. 254, 285 (1964) (stating, in an appeal from a jury verdict, that "[w]e must 'make an independent examination of the whole record' so as to assure ourselves that the judgment does not constitute a forbidden intrusion on the field of free expression") (citation omitted).

This Court has likewise followed the Supreme Court's lead requiring independent appellate review of determinations that speech falls within a First Amendment exception.[3] As this Court stated in *Guiles ex rel. Guiles v. Marineau*, 461 F.3d 320, 324 (2d Cir. 2006), when an "appeal concerns allegations of abridgement of free speech rights," this Court "do[es] not defer to the district court's findings of fact." "Instead, in First Amendment cases we make an independent and searching inquiry of the entire record, since we are obliged to conduct a 'fresh examination of crucial facts . . . so as to assure ourselves that [the lower court's] judgment does not constitute a forbidden intrusion on the field of free expression.'" *Id.* (quoting *Hurley v. Irish-Am. Gay, Lesbian & Bisexual Group*, 515 U.S. 557, 567-68 (1995)); *see also Bery v. City of*

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[3] *See, e.g.*, *Safelite Group, Inc. v. Jepsen*, 764 F.3d 258, 261 (2d Cir. 2014) (applying independent appellate review to determine whether a statement fit within the permissible boundaries of compelled commercial speech); *Clear Channel Outdoor, Inc. v. City of New York*, 594 F.3d 94, 103 (2d Cir. 2010) (commercial advertising on signs); *Guiles*, 461 F.3d at 324 (allegedly disruptive student speech in public schools); *DiBella*, 403 F.3d at 116 (libel); *Bronx Household of Faith v. Bd. of Ed. of City of New York*, 331 F.3d 342, 348 (2d Cir. 2003) (speech in a limited public forum); *New York ex rel. Spitzer v. Operation Rescue National*, 273 F.3d 184, 193-95 (2d Cir. 2001) (speech outside abortion clinics).

New York, 97 F.3d 689, 693 (2d Cir. 1996) ("[W]e are required to make an independent examination of the record as a whole without deference to the factual findings of the trial court.").

Such an independent examination is especially important when the speech is controversial, and a jury's decision about the speech may be unduly influenced by this controversial character. "Independent appellate review of . . . facts [in First Amendment cases] assures that the suppression of protected speech—particularly unpopular or controversial speech—is not insulated from close scrutiny by the straightforward application of the clearly-erroneous rule." *Planned Parenthood*, 767 F.2d at 1229; *see also Joe Conte Toyota*, 24 F.3d at 756.

And such an independent examination applies even in cases where the speaker's mental state is at issue. Indeed, *Bose* and *Sullivan* both applied independent appellate review to the question whether the defendant spoke with "actual malice." *Bose*, 466 U.S. at 487; *Sullivan*, 376 U.S. at 285-86.

The government's argument in favor of great deference to the jury, *see* Gov't Br. 30-31, is thus inapt in a case such as this one. To be sure, even independent review gives some deference to a juror's credibility

judgments that are based on observing witness demeanor. But "[a]lthough credibility determinations are reviewed under the clearly-erroneous standard because the trier of fact has had the 'opportunity to observe the demeanor of the witnesses,'" a court applying independent review must "examine for itself the statements in issue and the circumstances under which they were made to see . . . whether they are of a character which the principles of the First Amendment . . . protect." *Harte-Hanks Communications, Inc. v. Connaughton*, 491 U.S. 657, 688 (1989) (internal quotations and citations omitted).

Here, neither Valle nor his alleged coconspirators testified, so there was no demeanor to observe. Instead, the question is whether Valle's particular written statements fit within a First Amendment exception. And the independent review cases cited above show that this question must be answered without excessively deferring to the jury's decision to convict. In this case, to determine whether Valle's statements fit within the First Amendment exception for true conspiracy, this Court must independently examine the statements, in context, to determine whether they fit within the conspiracy exception to the First Amendment.

One opinion from this Court has expressed uncertainty about whether independent appellate review applies to "true threats" cases. *United States v. Turner*, 720 F.3d 411, 419 (2d Cir. 2013). But the great majority of courts to have addressed the issue (including the supreme court of a state in this Circuit, Connecticut) have indeed concluded that the First Amendment requires independent appellate review in threats cases—understandably, since such review is applied to the other First Amendment exceptions as well. *See United States v. Bly*, 510 F.3d 453, 457–58 (4th Cir. 2007); *United States v. Hanna*, 293 F.3d 1080, 1088 (9th Cir. 2002); *In re George T.*, 93 P.3d 1007, 1014-15 (Cal. 2004); *People v. Stanley*, 170 P.3d 782, 790 (Colo. Ct. App. 2007); *State v. DeLoreto*, 827 A.2d 671, 679 (Conn. 2003); *Brewington v. State*, 7 N.E.3d 946, 955 (Ind. 2014); *Galloway v. State*, 781 A.2d 851, 888 (Md. Ct. App. 2001); *State v. Barth*, 702 N.W.2d 1, 4 (N.D. 2005); *State v. Johnston*, 127 P.3d 707, 712 (Wash. 2006).

Moreover, in one of the two cases *Turner* relied on for not applying independent review, *United States v. Jeffries*, 692 F.3d 473, 481 (6th Cir. 2012), the defendant had failed to ask the court to apply such

review.[4] In the other, *United States v. Parr*, 545 F.3d 491, 496-97 (7th Cir. 2008), independent review was only briefly mentioned in the opening brief and was not mentioned in the reply brief.[5] Nor did *Parr* include any discussion of *Bose* or the independent review doctrine.

In the words of the California Supreme Court in *In re George T.*, "[i]ndependent review is particularly important in the threats context because it is a type of speech that is subject to categorical exclusion from First Amendment protection, similar to obscenity, fighting words, and incitement of imminent lawless action." 93 P.3d at 1015. "'What is a threat must be distinguished from what is constitutionally protected speech.'" *Id.* (quoting *Watts,* 394 U.S. at 707). Applying independent appellate review in true threats cases is thus (a) the approach

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[4] Brief of Defendant/Appellant Franklin D. Jeffries, II, No. 11-5722, 2011 WL 6146331 (6th Cir. Dec. 5, 2011); Reply Brief of Defendant/Appellant Franklin D. Jeffries, II, No. 11-5722, 2012 WL 900859 (6th Cir. Mar. 7, 2012).

[5] Brief of Plaintiff-Appellee/Cross-Appellant Steven J. Parr, Nos. 06-3300 & 06-3457, at 15 (7th Cir. Feb. 21, 2007), available at https://ia601506.us.archive.org/15/items/063300PARRBriefFinal22007_20150320/06-3300%20PARR%20brief%20final%202%2020%2007.pdf; Reply Brief of Plaintiff-Appellee/Cross-Appellant Steven J. Parr, Nos. 06-3300 & 06-3457 (7th Cir. Apr. 23, 2007), available at https://ia601506.us.archive.org/18/items/PARRReplyBriefDraftFINAL/PARR%20-%20reply%20brief%20draft%20FINAL.pdf.

supported by the great bulk of the appellate precedent, (b) the approach consistent with all the appellate precedent that has squarely confronted the question, and (c) the approach consistent with the Supreme Court's application of independent review to the other First Amendment exceptions.

And there is no reason to apply this principle—which applies to all the other First Amendment exceptions—any differently in a case involving alleged conspiratorial speech. That is particularly true when it comes to speech involving "fantasy role-play" over the Internet, where independent appellate review is crucial to ensure that juries do not convict people solely on the basis of even offensive and ugly Internet discussions about their fantasies. *See Valle*, 301 F.R.D. at 88-89.

III. Independent Appellate Review Is Also Routinely Applied in Deciding Whether Speech Was Serious and Literal, or Was Instead Fictional, Satirical, or Hyperbolic

Courts routinely apply independent appellate review in cases where there is a question whether a statement is to be taken seriously. Thus, for instance, courts have applied *Bose* independent appellate review in threats cases, among other things to determine whether a statement really was a threat as opposed to fiction, *In re George T.*, 93

P.3d at 1014-15, or "idle talk," "merely jokes," or "hyperbole," *State v. Schaler*, 236 P.3d 858, 862-63 (Wash. 2010). Likewise, courts have applied such review in defamation cases, to determine (among other things) whether a statement really was reasonably seen as a factual assertion or was instead properly understood to be hyperbole, fiction, sarcasm, or satire. *See, e.g.*, *Greenbelt Cooperative Publishing*, 398 U.S. at 11-13 (hyperbole); *Pring*, 695 F.2d at 442-43 (fiction) (applying *Greenbelt*); *Garvelink*, 522 N.W.2d at 885-86 (satire).

It follows that the same independent appellate review should apply to judgments whether speech falls within the exception for conspiracy. As noted above, the Supreme Court has treated "laws against conspiracy, incitement, and solicitation" as on par with each other for First Amendment purposes. *See Williams*, 553 U.S. at 298. Incitement cases require independent appellate review. *See, e.g.*, *Hess*, 414 U.S. at 108-09; *Herceg v. Hustler Magazine, Inc.*, 814 F.2d 1017, 1021 (5th Cir. 1987); *Yakubowicz v. Paramount Pictures Corp.*, 536 N.E.2d 1067, 1071 (Mass. 1989). Cases involving other forms of speech integral to criminal conduct, such as child pornography, require independent appellate review. *See Stevens*, 559 U.S. at 471 (noting that

the child pornography exception is a special case of the speech-integral-to-criminal-conduct exception). Conspiracy cases thus require such independent appellate review as well.

To be sure, in the overwhelming majority of conspiracy cases, independent appellate review would prove straightforward. In most cases, unlike in this one, there is no claim that speech expressing an agreement is pure fantasy; few people fantasize online about entering into a mundane criminal conspiracy. But when, as in this case, there is real reason to believe that a statement might have been understood by both speaker and listener as fantasy rather than as a serious agreement, independent review is needed to make sure that the speech was indeed constitutionally unprotected. And in this case, independent review should lead to the conclusion that no reasonable juror could find beyond a reasonable doubt that the speech here related to a "true conspiracy," for the reasons given by the District Court."

CONCLUSION

For the foregoing reasons, *amici* requests that this Court affirm the decision below.

Dated: March 20, 2015

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE WITH RULE 32

1. This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because this brief contains 3,916 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii); and

2. 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 Word 2010 in 14-point Century Schoolbook.

Dated: March 20, 2015

s/ Eugene Volokh
Eugene Volokh

Counsel for *Amici Curiae*

CERTIFICATE OF FILING AND SERVICE

I hereby certify that on March 20, 2015, a true and correct copy of the foregoing Brief of *Amici Curiae* the Electronic Frontier Foundation, Center for Democracy & Technology, Marion B. Brechner First Amendment Project, National Coalition Against Censorship, Pennsylvania Center for the First Amendment, and law professors in Support of Defendant-Appellee Gilberto Valle was served on all counsel of record in this appeal via CM/ECF pursuant to Second Circuit Rule 25.1(h)(1)-(2).

Dated: March 20, 2015

s/ Eugene Volokh
Eugene Volokh

Counsel for *Amici Curiae*