Alan Schlosser (CSB# 49957)
Novella Y. Coleman (CSB# 281632)
ACLU FOUNDATION OF NORTHERN CALIFORNIA
39 Drumm St., San Francisco, CA 94111
Telephone: (415) 621-2493
Facsimile: (415) 255-8437
Email: aschlosser@aclunc.org
ncoleman@aclunc.org

Attorneys for Amicus Curiae

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

United States of America, Plaintiff, v. Ivan Speed; David Madlock; Matthew Mumphrey; Latonya Carey; Crystal Anthony; Darell Powell; Darlene Rouse; Acacia McNeal; Anita Dixon; Aaron Matthews; Nijah Reed; Tiana Reddic; Tiffany Cross; and Sholanda Adams, Defendants.	Case No. CR 14-643 EMC **Brief of Amicus Curiae in Support of Defendants' Motion to Compel Discovery on Selective Prosecution and Enforcement** **Date:** **February 9, 2016** **Time:** **10:00 a.m.** **Judge:** **Hon. Edward M. Chen** **Courtroom:** **5**

Table of Contents

TABLE OF AUTHORITIES

Page

FEDERAL CASES

FEDERAL STATUTES

Page

OTHER AUTHORITIES

Page

I. INTRODUCTION

Defendants are among thirty-seven individuals, all black, who have been targeted by the San Francisco Police Department (SFPD), the Drug Enforcement Agency (DEA) and the United Sates Attorneys' Office for the Northern District, working together as a taskforce, who conducted an undercover drug operation focusing on low-level street drug dealers in San Francisco's Tenderloin neighborhood. These individuals have all been charged in federal court in San Francisco where they face a mandatory-minimum prison sentence under 21 U.S.C. § 860. Because of evidence of selective enforcement and prosecution, the defendants intend to file a motion to dismiss. Currently before this Court is Defendants' motion for discovery for their selective enforcement and prosecution claims.

It is undisputed that enforcement of the drug laws has been plagued with racial disparities. "More than 50 percent of people in federal prisons are incarcerated for drug law violations," and 77 percent of those people are black or Latino.[1] These disparities exist notwithstanding the fact that whites and blacks use and sell drugs at similar rates.[2] Some studies have shown that whites are more likely than blacks to sell drugs and about as likely to consume them.[3] As recognized by a Presidential Task Force report, "for 'too many poor citizens and people of color, arrest and imprisonment have become an inevitable and seemingly unavoidable part of the American experience.'"[4]

The dispositive question before this Court on this motion for discovery is whether Defendants have provided "*some evidence*" of discriminatory purpose and "*some evidenc*e that

---

[1] *The Drug War, Mass Incarceration, and Race*, Drug Policy Alliance, June 2015, http://www.drugpolicy.org/sites/default/files/DPA_Fact_Sheet_Drug_War_Mass_Incarceration_and_Race_June2015.pdf.

[2] *Results from the 2013 National Survey on Drug Use and Health: Summary of National Findings*, U.S. Dep't of Health & Human Servs., Sept. 2014, at 26, http://www.samhsa.gov/data/sites/default/files/NSDUHresultsPDFWHTML2013/Web/NSDUHresults2013.pdf; Michelle Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness* 97 (The New Press 2010).

[3] Jonathan Rothwell, *How the War on Drugs Damages Black Social Mobility*, http://www.brookings.edu/blogs/social-mobility-memos/posts/2014/09/30-war-on-drugs-black-social-mobility-rothwell.

[4] *Final Report of the President's Task Force on 21st Century Policing*, Washington, D.C.: Office of Community Oriented Policing, 2015, at 9 & n.7, http://www.cops.usdoj.gov/pdf/taskforce/taskforce_finalreport.pdf.

similarly situated defendants of other races could have been prosecuted, but were not." *United States v. Armstrong*, 517 U.S. 456, 469 (2006) (emphasis added). Defendants do not have to prove the merits of their underlying claim. Amicus is familiar with the evidence that Defendants are submitting to this Court in support of their motion. The picture painted by this showing is stark and unmistakable – in a small urban neighborhood where blacks constitute about half of the persons dealing drugs in plain sight of the police and the prosecutors, a prosecutor-launched sting operation for low-level drug dealers resulted in 37 arrests, all of them black. Amicus believes that defendants have met the tests set out in *U.S v. Armstrong* and agree with the arguments set forth in Defendants' motion papers.

This amicus brief will limit itself to two issues that we believe are relevant to the Court's determination. First, the government's position – that selective enforcement by law enforcement officers who are not prosecutors falls outside the scope of a motion to dismiss criminal charges – is contrary to the weight of the case law and in conflict with policies and practices that have been widely acknowledged as critical to alleviate the problem of racial disparities in the criminal justice system. In the seminal case of *Yick Wo v. Hopkins*, 118 U.S. 356 (1886), the Supreme Court made it clear that courts have the power and the duty to dismiss criminal charges and prosecutions that are the result of a biased application of the law based on race. In *Yick Wo*, the racial disparity that was condemned by the Court was not attributable to the local prosecutors, but the Court still granted habeas relief. The power to dismiss criminal charges must apply to selective enforcement of the law by law enforcement as well as selective prosecution by prosecutors if courts are going to have the power to enforce the central command of the Fourteenth Amendment – to prohibit the application of the law "with an evil eye and unequal hand, so as to make unjust and illegal discriminations between persons in similar circumstances." *Yick Wo*, 118 U.S. at 373-74.

Second, this Court must not accept at face value the government's claim that declarations submitted by the individual prosecutors – asserting that race played no part in their individual charging decisions – constitutes an insurmountable barrier to Defendants' motion for discovery for their selective prosecution claim. The government's position fails to take into account

"implicit bias" that can motivate decision-makers when it comes to race, a factor that has been well-documented by social scientists and recognized by courts considering similar equal protection claims.

II. ARGUMENT

A. Defendants are Entitled to Discovery Concerning Racially Selective Enforcement of the Law as Part of Their Motion to Dismiss.

It is beyond dispute that the Equal Protection Clause "prohibits selective enforcement of the law based on considerations such as race." *Whren v. United States*, 517 U.S. 806, 813 (1996). Amicus curiae's position is that dismissal of the criminal charges is an appropriate remedy when Defendants are charged with crimes as the result of race-based applications of the law by government officials, even if those officials are not the prosecutors. Given the fundamental equal protection rights that are potentially at issue when 37 black men and women are targeted by law enforcement and brought into a federal court for low level drug offenses, this Court should not slam the courthouse door shut to their request for discovery, a result that is not compelled by binding precedent and is in fact inconsistent with the weight of authority.

1. The Weight of Authority Supports the Court's Consideration of a Selective Enforcement Claim in a Motion to Dismiss in a Criminal Proceeding.

In *Yick Wo v. Hopkins*, 118 U.S. at 368, 374, the Court vacated criminal convictions because they were the result of selective enforcement of the law. The San Francisco ordinance required a permit from the board of supervisors to operate a laundry in a wooden building. *Id*. at 366, 368. The two petitioners and 200 other Chinese nationals were denied permits while 80 others who were not Chinese subjects were granted permits. *Id*. at 374. The Court found that the "actual operation" of the law violated the defendants' constitutional rights because it was "administ[ered] so exclusively against a particular class of persons." *Id*. at 373. The Court held that the "discrimination is therefore illegal, and the public administration which enforces it is a denial of the equal protection of the laws, and a violation of the fourteenth amendment of the constitution." *Id*. It was the board of supervisors, and not the prosecutor, that administered the law in a racially discriminatory manner, yet the Court invalidated the convictions. 118 U.S. at 373-74. *Yick Wo v. Hopkins* "teach[es] that although the government is permitted 'the conscious exercise

of some selectivity' in the enforcement of its criminal laws, any 'systematic discrimination' in enforcement, or 'unjust and illegal discrimination between persons in similar circumstances' violates the equal protection clause, *and renders the prosecution invalid.*" *United States v. Berrigan*, 482 F.2d 171, 173, 174 (3rd Cir. 1973) (internal citations omitted) (emphasis added).

There are **no** United States Supreme Court or Ninth Circuit decisions which directly address the question of whether selective enforcement can be grounds for dismissal of a criminal case, or, more relevant to the instant motion addressing whether presenting "some evidence" of such a claim can support a motion for discovery.[5] Numerous courts in other Circuits have considered and decided selective enforcement claims as part of a motion to dismiss criminal charges. While some of these courts have rejected the defendants' motions for discovery and to dismiss, *none of these courts took the extreme position that the government is taking in this case – that the only remedy for selective enforcement for a criminal defendant is a civil suit for damages*.

In *United States v. Turner*, 104 F.3d 1180, 1183 (9th Cir. 1997), the defendants were, as in the instant case, arrested as a result of a joint federal-local drug enforcement task force. In granting their motion for discovery, the district court focused on the evidence showing that "the FBI in Los Angeles and the Los Angeles Police Department" had targeted minorities. *Id*. at 1183-84. While the Ninth Circuit disagreed with the district court's determination that there was sufficient evidence to establish selective enforcement, the Court clearly considered evidence of selective enforcement to be within the scope of the motion for discovery. *Id*. at 1184-85.

The Seventh Circuit has been quite clear that both selective enforcement *and* selective prosecution are legitimate claims of a motion to dismiss: "Barlow complains not of selective prosecution, but of racial profiling, a selective law enforcement tactic. *But the same analysis governs both types of claims*: *a defendant seeking discovery on a selective enforcement claim must meet the same 'ordinary equal protection standards' that* Armstrong *outlines for selective*

[5] The "some evidence" test that the *Armstrong* Court required for the granting of a discovery motion in a criminal case is "less stringent" than the standard for establishing a prima facie case on the merits of the selective enforcement/prosecution motion. *United States v. James*, 257 F. 3d 1173, 1178 (10th Cir. 2001); *accord United States v. Jones*, 159 F. 3d 969, 978 (6th Cir. 10998) ("Obviously a defendant need not prove his case in order to justify discovery on an issue."); *see also United States v. Tuitt*, 68 F. Supp. 2d 4, 10 (D. Mass. 1999).

prosecution claims." *United States v. Barlow*, 310 F.3d 1007, 1010 (7th Cir. 2002) (emphasis added). This directly contradicts the United States' position here that a selective enforcement claim can only be remedied in a civil suit.

In *United States v. James*, 257 F.3d 1173, 1176 (10th Cir. 2001), the court considered a motion to dismiss in the context of another joint drug investigation. The Tenth Circuit set out the standard for its consideration of a claim of selective enforcement by law enforcement officials:

> If such a claim is based on the investigative phase of the prosecution, however, the defendants must instead make a credible showing that a similarly-situated individual of another race *could have been, but was not, arrested or referred for federal prosecution for the offense for which the defendant was arrested and referred.*

Id. at 1179 (emphasis added). This is exactly the showing that Defendants seek to make, and the government seeks to bar, in the instant case. *See also United States v. Alcarez-Arellano*, 441 F.3d 1252, 1264 (10th Cir. 2006) (in considering defendant's "selective-enforcement motion to dismiss" based on police traffic stops, the court held that the elements in a selective prosecution motion to dismiss are "essentially the same for a *selective–enforcement* claim") (emphasis in original).

In *United States v. Jones*, 159 F.3d 969 (6th Cir. 1998), the Sixth Circuit found that the defendant had presented "some evidence" of discrimination sufficient to grant his discovery motion. The evidence that the court primarily relied on was the "racially motivated" actions of the "arresting local law enforcement officers." *Id*. at 975, 977; *see also United States v. Bell*, 86 F.3d 820, 823 (8th Cir. 1996) (holding that defendant had not met his burden of establishing "racially selective law enforcement" by local police officers).

The United States' argument that selective enforcement cannot be considered on this motion for discovery is simply an invitation to this Court to ignore this line of authority. Particularly in view of the centrality of the problem of racial bias in the criminal justice system, this Court should not engraft a new limitation on the scope of a criminal defendant's ability to raise claims of racial bias, one that goes beyond the holdings of Supreme Court and Ninth Circuit precedents.

2. The Judicial Role in Addressing the Problem of Racial Bias in the Criminal Justice System

While equal protection, like all constitutional rights, is intended to protect individuals, courts have always recognized and taken into account the unique and devastating history and societal impact of racial discrimination, particularly against blacks. This is particularly true when the case arises in the context of the criminal justice system. From the perspective of the individual arrested, the targeted race, and the society at large, the evils of selective enforcement of the law and selective prosecution are the same. *See Marshall v. Columbia Lea Regional Hospital,* 345 F. 3d 1157, 1167 (10th Cir. 2003) ("Racially selective law enforcement violates this nation's constitutional values at the most fundamental level; indeed unequal application of criminal law to white and black persons was one of the central evils addressed by the framers of the Fourteenth Amendment."). To preserve "ordinary equal protection" values, the judicial system must provide at least some breathing room for discovery in cases that provide "some evidence" of selective enforcement.

This case particularly demonstrates why racially biased actions by law enforcement officers should not be deemed irrelevant and outside the scope of a motion for discovery. Here, the line between the prosecutors and the other members of the Operation Safe Schools team is blurred. In a declaration submitted earlier in this case, Assistant United States Attorney (AUSA) Hasib acknowledged that this investigation was "my idea" and based on his own personal knowledge of the Tenderloin where he works, attended law school and has resided. Declaration of S. Waqar Hasib in Support of United States' Motion Seeking Ruling on Defendants' Claims of Selective Enforcement and Selective Prosecution ECF Doc. 51-5 at 1:13-20 (Hasib Decl.). He also stated that he supervised the law enforcement agents implementing the Operation in the Tenderloin. *Id*. at 2:22-3:3.

The Fourteenth Amendment's original purpose was to achieve the "freedom of the slave race, the security and firm establishment of that freedom, and the protection of the newly-made freeman and citizen from the oppressions of those who had formerly exercised unlimited dominion over him." *Slaughter-House Cases*, 83 U.S. 36, 71 (1872). While the days of slavery

and official Jim Crow are thankfully behind us, racial bias remains a persistent and pervasive part of this country's reality. And the criminal justice system in particular has been singled out by courts and commentators and social scientists as an institution that is infected with racism and racial disparities. "Statistics at the community and national level show the cumulative impact of racial disparity through each decision point in the criminal justice system. Decisions made at one stage contribute to increasing disparities at subsequent stages."[6]

These racial disparities have manifested themselves in particular in drug enforcement policies and practices.[7] The cumulative and devastating impact of racially discriminatory enforcement of drug laws has led to a now widely accepted phenomena of "mass incarceration" of people of color, primarily blacks, with such dire and intractable consequences that it has been labeled "The New Jim Crow" by one commentator.[8] Once a person is convicted and "labeled a felon, he or she is ushered into a parallel universe in which discrimination, stigma, and exclusion are perfectly legal and privileges of citizenship such as voting and jury service are off-limits."[9] While mass incarceration is towards the end point of the system, racially discriminatory enforcement of the drug laws marks the entry point for a disproportionate number of blacks into the criminal justice system.[10]

These studies of racial bias have also noted a concomitant but equally important phenomenon—that the actual and perceived racially disparate treatment of people of color has led to a sharp drop in confidence and trust in the criminal justice system among persons and communities of color.[11] This is not surprising; as the Ninth Circuit noted in its *en banc* decision in

---

[6] *Reducing Racial Disparity in the Criminal Justice System*, The Sentencing Project, 2008, at 2, http://www.sentencingproject.org/doc/publications/rd_reducingracialdisparity.pdf; *see also The Growth of Incarceration in the United States: Exploring Causes and Consequences*, National Research Council, 2014, at 93-94.

[7] Jessica Eaglin and Danyelle Solomon, *Reducing Racial and Ethnic Disparities in Jails: Recommendations for Local Practice*, Brennan Center for Justice, June 25, 2015, at 17-18, https://www.brennancenter.org/publication/reducing-racial-and-ethnic-disparities-jails-recommendations-local-practice.

[8] Michelle Alexander, "*The New Jim Crow: Mass Incarceration in the Age of Color Blindness* (The New Press 2010).

[9] Alexander, *supra*, at 92.

[10] Alexander, *supra*, at 180.

[11] *See, e.g.*, United States Dep't of Justice, Civil Rights Division, *Investigation of the Ferguson Police Department*, Mar. 4, 2015, at 79-81, http://www.justice.gov/sites/default/files/opa/press-

United States v. Montero-Camargo, 208 F. 3d 1122, 1134 (9th Cir. 2000), with respect to race-based traffic stops: "Such stops also send a clear message that those who are not white enjoy a lesser degree of constitutional protection – that they are in effect assumed to be potential criminals first and individuals second."

This lack of trust presents serious roadblocks to successful policing strategies. In the Introduction to the *President's Task Force Interim Report*, President Obama directly addressed the problem created by this lack of trust and sense of unfairness in communities of color: "It's not just a problem for some, it's not just a problem for a particular community or a particular demographic. It means that we are not as strong as a country as we can be. And when applied to the criminal justice system, it means we're not as effective in fighting crime as we could be."[12]

San Francisco's progressive tradition has not inoculated the City against racial disparities which are manifested in in these disturbing trends and stark statistics. A recent study by the Hayward Burns Institute found that black adults were 7.1 times as likely as whites to be arrested; 11 times as likely to be booked into county jail; and 10.3 times as likely to be convicted.[13]

Defendants' discovery motion should be considered in light of these social realities of race, racism and the criminal justice system. This Court must of course apply the controlling precedents, but should do so while recognizing the need to preserve avenues (including judicial avenues) for scrutiny when there is "some evidence" that racism (whether explicit or implied) is operating to deny persons equal protection of the laws

The impact of a racially discriminatory prosecution is not just felt by the defendants, but by their community and society at large. *Chin v. Runnels*, 343 F. Supp. 2d 891, 900 (N.D. Cal. 2004) (Breyer, J.) (history of racial bias in the selection of grand juries and grand jury forepersons is not just a "personalized stigmatic injury [to a criminal defendant]…. but also constitutes '[a]n injury to society, as well as the stigmatization and prejudice directed against a distinct group'").

---

releases/attachments/2015/03/04/ferguson_police_department_report.pdf.

[12] *Interim Report of the President's Task Force on 21st Century Policing*, Washington, D.C.: Office of Community Oriented Policing, 2015, at 1, http://www.cops.usdoj.gov/pdf/taskforce/interim_tf_report.pdf.

[13] *San Francisco Justice Reinvestment Initiative: Racial and Ethnic Disparities Analysis for the Reentry Council*, 2015, at 4-5.

Selective enforcement of the law based on race can "send the underlying message to all our citizens that those who are not white are judged by the color of their skin alone." *Montero-Camargo,* 208 F.3d at 1134.

This is a case where 37 black persons are brought to court as Tenderloin drug dealers, and the defense has presented some evidence that similarly situated non-blacks have been treated differently. That this Court should permit some discovery *is not judicial interference with the criminal justice system - it is a recognition of the judiciary's highest duty*: "Courts can take no better measure to assure that laws will be just than to require that laws be equal in operation." *Railway Express Agency v. People of State of New York,* 336 U.S. 106, 112-113 (1949 (Jackson, J. *concurring*).[14] While the courts cannot solve this problem, and must adhere to controlling precedent, it is critical that courts not unnecessarily circumscribe their limited but critical role as one "decision point" in the criminal justice system where disproportionate treatment on the basis of race can be addressed.

B. To Obtain Discovery for a Selective Prosecution Claim, Defendants Do Not Need to Prove that the Prosecutors in This Case are Lying in Their Declarations About Their Lack of Racial Motivation.

The prosecutors in this case submitted declarations that they did not take race into account in their prosecutorial charging decisions. The government takes the position that these statements are an insurmountable barrier to a selective prosecution discovery motion because it means that defendants can only establish discriminatory purpose by showing that the AUSAs are "racists and perjurers." United States' motion, ECF Doc. 51 at 10:14-15.[15] This argument, however, relies on

---

[14] The government's argument that a Section 1983 civil damages action is the only remedy for a selective enforcement equal protection violation is not an adequate response. *Cf.* United States' motion, ECF Doc. 51, at 2:21-5. The possibility of a damages award cannot undo the stigmatic harms resulting from the racially discriminatory enforcement of the laws, and in particular incarceration that is the consequence of selective enforcement based on race. If the individuals are convicted, then they are subject to criminal sentences and collateral consequences that similarly situated individuals of other races will be able to avoid. Furthermore, the realities of civil rights litigation insure that its protections are afforded only to the hardy few – those who can find and retain a civil attorney, overcome the barriers built into the system to protect individual officers and governmental entities from damages (such as qualified immunity and proving an official policy or custom), and the costs and length of civil proceedings.

[15] Under "the ordinary equal protection principles" that apply to this motion, Defendants "need not prove that the challenged action rested solely on racially discriminatory purposes, or even that a discriminatory purpose was the dominant or primary one." *Floyd v. City of New York,* 959 F.

the false assumption that self-reports about racial bias are accurate and must be accepted at face value by this Court.

This assumption ignores a "growing body of social science [that] recognizes the pervasiveness of unconscious racial and ethnic stereotyping and group bias." *Chin*, 343 F. Supp. 2d at 906. "These unconscious processes can lead to biased perceptions and decision-making even in the absence of conscious animus or prejudice against any particular group." *Id*. at 906; *see Gonzalez –Rivera v. INS*, 22 F.3d 1441, 1450 (9th Cir. 1994) ("racial stereotypes often infect our decision-making process only subconsciously"); *see also* Charles R. Lawrence III, *The Id, the Ego, and Equal Protection: Reckoning with Unconscious Racism*, 39 Stan. L. Rev. 317, 354 (1987).

"The stereotype of Black Americans as violent and criminal has been documented by social psychologists for almost 60 years."[16] For example, one study showed that when police officers were exposed to crime-related words, they paid more attention to black male faces, meaning they were more likely to initially look at black male faces and to continue to look, and they were also more likely to falsely identify a face that was more stereotypically black.[17] And when police officers were asked, "Who looks criminal?" they chose more black faces than white faces.[18] Another study found that when people were asked to envision a drug user, 95% of respondents pictured a black drug user while only 5% imagined other racial groups.[19] It flies in the face of this social reality that a motion seeking discovery about racial bias can be eviscerated simply by assertions by individual prosecutors that they were not acting based on racial biases.[20]

Supp. 2d 540, 571 (S.D.N.Y. 2013 internal citations and quotations omitted). "Rather, plaintiffs must prove that 'a discriminatory purpose has been *a* motivating factor' in the challenged action." *Id*.; *see Village of Arlington Heights v. Metropolitan Hous. Dev. Corp.* 429 U.S. 252 264-65 (1977).

[16] Jennifer Eberhardt et al., *Seeing Black: Race, Crime, and Visual Processing*, 87 J. Personality & Soc. Psychol. 6, at 876 (2004), www-psych.stanford.edu/~mcslab/PublicationPDFs/Seeing black.pdf (collecting sources).

[17] *Id*. at 878, 885-88.

[18] *Id*. at 878, 888-89.

[19] Alexander, *supra*, at 103.

[20] "People over-estimate their ability to control their judgments and feelings, even when they know they are using biased processes to make decisions, they believe their decisions are 'objective' and untainted by bias." Andrea A. Curcio, *Addressing Barriers to Cultural Sensibility: Lessons from Social Cognition Theory*, 15 Nev. L.J. 537, 554 (2015).

Although prevented from doing so by the narrow standard of review in the federal habeas context, Judge Breyer in the *Chin* case went out of his way to note that, if he were reviewing this case *de novo,* and in light of the fact there was some evidence suggesting implicit bias in the selection of the grand jury foreperson, "it would have been appropriate to further scrutinize the motivations that lay behind the criteria applied." *Chin*, 343 F. Supp. 2d at 908. This Court now has the opportunity to "further scrutinize" the assertions of the prosecutors that they were not motivated by racial bias in their charging decisions. This is especially important in that a supervisory AUSA asserted that the Operation was "my idea" and that the Operation "was first implemented under my supervision in the Tenderloin." Hasib Decl. ECF Doc. 51-5 at 1:3, 2:22-23.

The question of whether implicit and racial stereotypes were "at least a part of" the decision-making, is not a question that should be left unexplored. To deny discovery in a case such as this is to shut out claims that go to the heart of Equal Protection of the Laws and the judicial duty "to require that laws be equal in operation." *Ry. Exp. Agency v. People*, 336 U.S. 106, 112-13 (1949) (Jackson, J., concurring).

III. CONCLUSION

For the foregoing reasons, this Court should grant Defendants' motion for discovery in this matter.

Dated: December 2, 2015

ACLU Foundation of Northern California, Inc.

By: /s/ Alan L. Schlosser

By: /s/ Novella Y. Coleman

Alan Schlosser
Novella Y. Coleman
Attorneys for Amicus Curiae
American Civil Liberties Union of Northern California

Certificate of Service

The undersigned hereby certifies that all counsel of record who are deemed to have consented to electronic service were served the 2nd day of December, 2015, with a copy of American Civil Liberties Union of Northern California's **Brief of Amicus Curiae in Support of Defendants' Motion to Compel Discovery on Selective Prosecution and Enforcement** via the Court's CM/ECF system, application to file the amicus brief and proposed order. I certify that all parties in this case are represented by counsel who are CM/ECF participants.

Dated: December 2, 2015

Respectfully submitted,
Alan L. Schlosser
Novella Y. Coleman
American Civil Liberties Union Foundation of Northern California, Inc.

/s/ Novella Y. Coleman
Novella Y. Coleman
Attorneys for Amicus Curiae
American Civil Liberties Union of Northern California