Nos. 20-35030 & 20-35064

In the United States Court of Appeals
for the Ninth Circuit

State of Washington, et al.
Plaintiffs - Appellees,
v.
Defense Distributed, Second Amendment Foundation, Inc.; Conn Williamson
Defendants - Appellants,
and
U.S. Department of State, et al.,
Defendants.

Appeal from the United States District Court for the
Western District of Washington; No. 2:18-cv-01115-RSL

Appellants' Response to the Order Regarding Appellate Standing

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Summary of the Argument

The Court suggested that it "may lack jurisdiction over these appeals because appellants may lack standing to bring/prosecute these appeals" and called for "a response showing cause why these appeals should not be dismissed for lack of standing." Dkt. 26 at 2. Defense Distributed and SAF submit that the appeal should not be dismissed because (1) Defense Distributed and SAF have appellate standing, giving the Court total appellate jurisdiction, and (2) even if Defense Distributed and SAF lack appellate standing, this Court both has jurisdiction to address the district court's lack of subject-matter jurisdiction and is obligated to exercise it.

"To show standing under Article III, an appealing litigant must demonstrate that it has suffered an actual or imminent injury that is 'fairly traceable' to the judgment below and that could be 'redress[ed] by a favorable ruling.'" *Food Mktg. Inst. v. Argus Leader Media*, 139 S. Ct. 2356, 2362 (2019). Defense Distributed and SAF have appellate standing because this judgment inflicts three such injuries.

First, the district court's judgment confers appellate standing because it vacates the license and Temporary Modification. That error injures Defense Distributed and SAF by nullifying enactments that give them important legal rights—a license specifically addressed to both Defense Distributed and SAF that authorizes First Amendment speech about the Second Amendment, and a regulation permitting both Defense Distributed and SAF's engagement in that same speech.

Because of the errant judgment, these two enactments no longer justify Defense Distributed and SAF's engagement in this speech. Once this Court vacates the district court's judgment, the license and Temporary Modification will no longer be vacated and Defense Distributed and SAF's rights thereunder will be restored.

Second, the district court's judgment confers appellate standing because it purports to "preclude . . . an action for specific performance of the settlement agreement." ER30. That error injures Defense Distributed and SAF by purporting to stop them from suing to enforce the Settlement Agreement—a valuable contract with ongoing obligations to which they are parties. Once this Court vacates the district court's judgment, the errant preclusion decision will have been eliminated.

Third, the district court's judgment confers appellate standing because it holds that Defense Distributed and SAF are necessary parties and refused to dismiss them. That injured Defense Distributed and SAF by forcing them to incur attorney's fees that cannot be recovered so long as the States are considered the prevailing party. Once this Court vacates the district court's judgment, Defense Distributed and SAF will have prevailed and can, on remand, seek an award of attorney's fees against the States for having wrongly roped them into this litigation.

For these three reasons, Defense Distributed and SAF clearly have appellate standing. The Court therefore has total appellate jurisdiction and should address both the district court's jurisdiction to issue the judgment below and its merits.

Alternatively, even if Defense Distributed and SAF lack appellate standing, dismissal cannot occur because the district court lacked subject-matter jurisdiction. Well-established precedent holds that, even if no appellant has standing to assail a district court's judgment *on the merits*, appellate courts always have appellate jurisdiction to address a district court's apparent lack of subject-matter *jurisdiction* and are always obligated to vacate judgments issued without it. *See Arizonans for Official English v. Arizona*, 520 U.S. 43, 66–73 (1997). Defense Distributed's principal brief shows that the district court lacked subject-matter jurisdiction for a litany of reasons, *see* Defense Distributed Br. of Appellants at 35–47, and SAF's principal brief will do so as well. The Court therefore both possesses and must exercise appellate jurisdiction for "the purpose of correcting the error of the lower court in entertaining the suit." *Arizonans for Official English*, 520 U.S. at 73 (quoting *Bender v. Williamsport Area School Dist.*, 475 U.S. 534 (1986)).

Thus, the Court has to exercise jurisdiction over the appeal no matter what. Either it will address both the district court's subject-matter jurisdiction to issue the judgment below *and* the judgment's merits, or just the district court's jurisdiction. In any event, the Court will be evaluating a very substantial set of appellate arguments. The only question is precisely how many. The Court should not dismiss the appeal for want of jurisdiction. It should proceed, and with haste.

Argument

The Court should not dismiss Defense Distributed and SAF's[1] appeals for lack of appellate standing because (1) Defense Distributed and SAF have appellate standing, and (2) even if they do not, the Court still has to issue a decision addressing the district court's lack of subject-matter jurisdiction. Defense Distributed's Appellant's Brief is incorporated here by reference and its Statement of the Case should be reviewed before proceeding to the following arguments.

I. The district court's apparent lack of subject-matter jurisdiction must be determined no matter what.

Defense Distributed and SAF's appellate standing is clear. But a separate basis for appellate jurisdiction is even clearer: the district court's lack of subject-matter jurisdiction. Regardless of whether or not Defense Distributed and SAF have Article III appellate standing, the Court has jurisdiction over the district court's apparent lack of subject-matter jurisdiction and is obliged to exercise it.

Arizonans for Official English v. Arizona, 520 U.S. 43 (1997), upholds the controlling procedural rule. When an appeal contains both (1) an issue of an appellants' standing to appeal, and (2) an issue of the district court's subject-matter

[1] In this filing, "SAF" refers to both the Second Amendment Foundation, Inc. and SAF member Conn Williamson, the appellants in case number 20-35064. SAF's appellate standing is associational and Williamson's is direct. *See* ER9266–9271, 9975–9979 (proof meeting the requirements for associational and direct standing).

jurisdiction, appellate courts need *not* begin with the appellant's standing to appeal. Instead, appellate courts should begin by exercising their always-existing appellate jurisdiction to determine the district court's subject-matter jurisdiction. The Supreme Court held this and did so in *Arizonans for Official English*, 520 U.S. at 66, and the Court should do so here.

This district court's lack of subject-matter jurisdiction is apparent. Defense Distributed's principal brief shows that the States lack several of Article III standing's prerequisites (injury-in-fact, traceability, and redressability), Defense Distributed Br. of Appellants at 35–46, and also that the district court lacked subject-matter jurisdiction because of how the Tucker Act interacts with the APA, *id.* at 47. Furthermore, SAF's forthcoming principal brief will show that the district court lacked subject-matter jurisdiction for additional reasons, such as the zone of interests requirement, a lack of justiciability, and the problem of agency action having been "committed to agency discretion by law" under 5 U.S.C. § 701(a)(2).[2]

Under *Arizonans for Official English*, the Court is not just *allowed* to hold that the district court lacked subject-matter jurisdiction before addressing appellate standing. It is required to do so. *See Arizonans for Official English*, 520 U.S. at 73. For even if appellate standing is missing, that only deprives appellate courts of

[2] All of these jurisdictional points were presented below. *See* Defense Distributed Br. of Appellants at 26–27.

jurisdiction to resolve the underlying case's *merits*. *See id.* A lack of appellate standing to address a judgment's merits *never* deprives an appellate court of appellate jurisdiction to hold that the district court lacked subject-matter jurisdiction. *Id.* Appellate courts always possesses—and must always exercise—appellate jurisdiction for "the purpose of correcting the error of the lower court in entertaining the suit." *Id.* (quoting *Bender v. Williamsport Area School Dist.*, 475 U.S. 534 (1986)).

Hence, the Court undoubtedly has appellate jurisdiction over Defense Distributed and SAF's challenge to the district court's subject-matter jurisdiction. Qualms about Defense Distributed and SAF's appellate standing go not to the existence of *any* appellate jurisdiction, but to the far less impactful question of appellate jurisdiction's *scope*.

At a minimum, the Court will have to perform the obligatory determination of the district court's subject-matter jurisdiction; and if Defense Distributed and SAF are right about having appellate standing, the Court must also address their non-jurisdictional challenges to the judgment below. In no event is dismissal for want of appellate jurisdiction warranted. Given that appellate jurisdiction over several of the appeal's major issues undoubtedly exists, the Court should resume the normal briefing schedule without delay.

II. Defense Distributed and SAF have appellate standing.

"To show standing under Article III, an appealing litigant must demonstrate that it has suffered an actual or imminent injury that is 'fairly traceable' to the judgment below and that could be 'redress[ed] by a favorable ruling.'" *Food Marketing Institute v. Argus Leader Media*, 139 S. Ct. 2356, 2362 (2019). In this posture, the standards for showing standing at summary judgment apply such that any evidence supporting standing must be taken as true. *Didrickson v. U.S. Dep't of Interior*, 982 F.2d 1332, 1340 (9th Cir. 1992). Only one appellant has to meet the test. *See Town of Chester, N.Y. v. Laroe Estates, Inc.*, 137 S. Ct. 1645, 1651 (2017). Here, both Defense Distributed and SAF meet the test for each form of relief sought.

A. An appeal by the government is not required.

The government's failure to appeal from the judgment below does not deprive this Court of appellate jurisdiction because Defense Distributed and SAF rightly brought their own appeals. "While this situation presents an unusual circumstance, it is not one without precedent, and it is well established that the government is not the only party who has standing to defend the validity of federal regulations." *W. Watersheds Project v. Kraayenbrink*, 632 F.3d 472, 482 (9th Cir. 2011).

So long as a private party has appellate standing, the government's failure to appeal is jurisdictionally irrelevant. The rule is well-established both in the Supreme Court, *see, e.g.*, *Food Marketing Institute*, 139 S. Ct. 2356, and in this Court, *see W.*

Watersheds Project, 632 F.3d at 48; *San Luis & Delta-Mendota Water Auth. v. Jewell*, 747 F.3d 581, 645 n.49 (9th Cir. 2014); *Kootenai Tribe of Idaho v. Veneman*, 313 F.3d 1094, 1110 (9th Cir. 2002), *overruled in part on other grounds*, *Wilderness Soc'y v. U.S. Forest Serv.*, 630 F.3d 1173 (9th Cir.2011) (en banc)); *Didrickson*, 982 F.2d at 1339. The rule has an especially important role to play where, as here, the judgment at issue *both* upsets the balance of power within the federal government by violating Article III's boundaries, *see* Defense Distributed Br. of Appellants at 35–47, *and* upsets the balance of power between the state and federal governments by letting states commandeer federal agencies to do their unconstitutional bidding, *see id.* at 48–53.

When the federal government abandons its citizens' interests and refuses to appeal such a decision, private litigants injured in the state-federal crossfire are not to be ignored. *See Bond v. United States*, 564 U.S. 211, 222–23 (2011). If anything, the resulting need for appellate scrutiny is higher than usual. It is certainly no less than if the federal government itself had appealed, for "individuals, too, are protected by the operations of separation of powers and checks and balances; and they are not disabled from relying on those principles in otherwise justiciable cases and controversies." *Id.* at 223. "If the constitutional structure of our Government that protects individual liberty is compromised, individuals who suffer otherwise justiciable injury may object." *Id.* at 223. This is such a case.

B. The judgment injures Defense Distributed and SAF.

Appellate standing's first requirement is that the appealing party have "suffered an actual or imminent injury that is 'fairly traceable' to the judgment below." *Food Mktg. Inst.*, 139 S. Ct. at 2362. In other words, appellate standing does *not* turn on whether the appellant "could have sued the party who prevailed in the district court"; it turns instead on whether the appellant's "interests have been adversely affected by the judgment." *Didrickson*, 982 F.2d at 1338. As to Defense Distributed and SAF, the judgment below meets that test in three ways.

1. Vacating the license and Temporary Modification causes an Article III injury.

First, the district court's judgment injures Defense Distributed and SAF by vacating and declaring unlawful the license and Temporary Modification. The final judgment itself announces this aspect of the decision in no uncertain terms:

> The July 27, 2018, "Temporary Modification of Category I of the United States Munitions List" and letter to Cody R. Wilson, Defense Distributed, and the Second Amendment Foundation were unlawful and are hereby VACATED.

ER1. The resulting Article III injuries to Defense Distributed and SAF are plain.

But for the judgment below, the license—what the district court referred to as the "letter to Cody R. Wilson, Defense Distributed, and the Second Amendment Foundation"—would give Defense Distributed and SAF extremely valuable legal rights regarding publication of *Defense Distributed I* files, which they are each

engaged in. *See generally* Defense Distributed Br. of Appellants at 16–19. The State Department issued the license[3] to both Defense Distributed and SAF by name and defined the files at issue expressly:

> Dear Mr. Wilson, Defense Distributed, and Second Amendment Foundation, Inc.:
>
> This letter is provided in accordance with section 1(c) of the Settlement Agreement in the matter of *Defense Distributed, et al., v. U.S. Department of State, et al.*, No. 15-cv-372-RP (W.D. Tx.) (hereinafter referred to as "*Defense Distributed*"). As used in this letter,
>
> - The phrase "Published Files" means the files described in paragraph 25 of Plaintiffs' Second Amended Complaint in *Defense Distributed*.
> - The phrase "Ghost Gunner Files" means the files described in paragraph 36 of Plaintiffs' Second Amended Complaint in *Defense Distributed*.
> - The phrase "CAD Files" means the files described in paragraph 40 of Plaintiffs' Second Amended Complaint in *Defense Distributed*.

ER14542. Then, apart from Defense Distributed and SAF's constitutional rights to freely publish the *Defense Distributed I* files, the State Department granted Defense Distributed and SAF a separately-enforceable federal legal right to do so. By way of the license, the State Department "approve[d] the Published Files, Ghost Gunner Files, and CAD Files for public release (i.e., unlimited distribution)" and declared that those files are "not subject to the licensing requirements of the ITAR":

> I advise you that for the purposes of ITAR § 125.4(b)(13), the Department of State is a cognizant U.S. government department or agency, and DDTC has authority to issue the requisite approval for public release. To that end, I approve the Published Files, Ghost Gunner Files, and CAD Files for public release (i.e., unlimited distribution). As set forth in ITAR § 125.4(b)(13), technical data approved for public release by the cognizant U.S. government department or agency is not subject to the licensing requirements of the ITAR.

[3] Under this particular regulatory regime, the license at issue is labeled an "other approval." 22 C.F.R. § 120.20. But as understood by free speech jurisprudence, it is undoubtedly a "license."

ER14543. Licenses of this kind constitute cognizable Article III interests both as a matter of law in general, *see, e.g.*, *Barry v. Barchi*, 443 U.S. 55, 64 (1979); *Bell v. Burson*, 402 U.S. 535, 539 (1971), and as a matter of fact on this record.

With respect to the civil rights at issue, this license entails a cognizable Article III interest because it ensures Defense Distributed and SAF's ability to engage in speech free from punishment under the federal regime at issue.[4] Such rights are priceless because their loss is irreparable, *see, e.g.*, *Elrod v. Burns*, 427 U.S. 347, 373 (1976) (plurality op.), and are certainly sufficient to confer Article III standing.[5]

With respect to the economic matters at issue, this license entails a cognizable Article III interest because of its monetary value as a business asset to companies like Defense Distributed. The Article III injury requirement is met by any "financial injury," no matter how substantial, *Food Mktg. Inst.*, 139 S. Ct. at 2362, and evidence shows that this license is worth over $1 million dollars. *See* Ex. A at 1–3.[6]

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[4] Under the ITAR regime, for engaging in this speech without a license, Defense Distributed and SAF face the threat of $1,000,000 fines and their principals face the threat of imprisonment. 22 U.S.C. § 2778(c), (e); 85 Fed. Reg. 2020 (Jan. 14, 2020).

[5] See also *Kootenai Tribe of Idaho v. Veneman*, 313 F.3d 1094 (9th Cir. 2002), which held that, even when the law protects a litigant's interests to some extent, standing exists as to actions that would provide "greater protection." *Id.* at 1109–10.

[6] In this procedural posture, proof in support of appellate standing can be supplied for the first time on appeal. *See, e.g.*, *Sierra Club v. EPA,* 762 F.3d 971, 976 n.4 (9th Cir. 2014); *Ass'n of Pub. Agency Customers v. Bonneville Power Admin.*, 733 F.3d 939, 970 n.5 (9th Cir. 2013).

Many analogous economic impacts have been held sufficient to confer standing. *See, e.g.*, *Monsanto Co. v. Geertson Seed Farms*, 561 U.S. 139, 149–50 (2010) ("petitioners . . . have standing to challenge the part of the District Court's order enjoining partial deregulation"); *Organized Vill. of Kake v. U.S. Dep't of Agric.*, 795 F.3d 956, 963 (9th Cir. 2015) (en banc); *W. Watersheds Project*, 632 F.3d at 483.

All of the key conclusions about the license hold true as to the Temporary Modification, which likewise gives both Defense Distributed and SAF valuable legal rights regarding the publication of *Defense Distributed I* files. *See generally* Defense Distributed Br. of Appellants at 16–19. Like the license, the Temporary Modification expressly addresses the *Defense Distributed I* files. ER662. And like the license, it grants Defense Distributed and SAF an enforceable federal legal right to freely publish the *Defense Distributed I* files by "exclud[ing]" them from United States Munitions List Category I. *Id.* This too gives Defense Distributed and SAF a justification to engage in priceless free speech and this too protects Defense Distributed's substantial economic interest in *Defense Distributed I* file publications.

By declaring the license and Temporary Modification unlawful and vacating them, ER1, the district court's judgment completely deprives Defense Distributed and SAF of their many legal benefits. This deprivation constitutes an Article III

injury that impacts Defense Distributed and SAF presently and will continue to impact them for all of the foreseeable future.

Appellate standing can be based on this injury alone. But there are more.

2. The preclusion holding causes an Article III injury.

Second, the district court's judgment injures Defense Distributed and SAF by purporting to "preclude . . . an action for specific performance of the settlement agreement." ER30. This decision occurred in the order denying Defense Distributed and SAF's Rule 12(c) motion to dismiss, *id.*, an interlocutory decision that merged into the final judgment and is now appealable. *See, e.g.*, *Am. Ironworks & Erectors, Inc. v. N. Am. Const. Corp.*, 248 F.3d 892, 897 (9th Cir. 2001).

The resulting Article III injury to Defense Distributed and SAF is again plain. The Settlement Agreement is a contract between the State Department, Defense Distributed, and SAF that all sides must perform in good faith. *See* Defense Distributed Br. of Appellants at 16–19; Appellants' Response to Appellees' Motion to Dismiss at 8–9. But the State Department has failed to perform all of its obligations and the resulting cause of action for specific performance is a cognizable Article III interest. *See, e.g.*, *Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 428 (1982). By purporting to "preclude . . . an action for specific performance of the settlement agreement," ER30, the district court's judgment jeopardizes that and injures Defense Distributed and SAF.

This aspect of the district court's decision cannot be disregarded as a nullity. Though the district court's preclusion announcement was dicta and erroneous, Defense Distributed Br. of Appellants at 53–56, it is nonetheless a ruling with enough meaningful force to confer standing. In the words of *Camreta v. Greene*, 563 U.S. 692 (2011), the district court's preclusion analysis confers standing because it has "a significant future effect on . . . conduct" and was "self-consciously designed to produce this effect, by establishing controlling law and preventing invocations of [contrary positions] in later cases." *Id.* at 704–05.

The States want to have it both ways. *See* Plaintiff-Appellee States' Motion to Dismiss Appeal as Moot at 14. They want the case's Settlement Agreement implications to have supplied an Article III controversy below, where they prevailed, but *not* supply an Article III controversy here, where they are bound to lose. *See id.* They want the Court to hold that the case's Settlement Agreement implications are somehow substantial enough to justify "necessary party" status below but not substantial enough to justify appellate standing here. *See id.* The Court rejected such reasoning in *Didrickson v. U.S. Dep't of Interior*, 982 F.2d 1332, 1338 (9th Cir. 1992), and should do so again here.

If this case's Settlement Agreement implications *were* enough to justify making Defense Distributed and SAF "necessary parties" below, then they necessarily remain substantial enough to establish Defense Distributed and SAF's

appellate standing. And if this case's Settlement Agreement implications were *not* enough to justify making Defense Distributed and SAF necessary parties below, the answer is *not* to dismiss this appeal for lack of standing—a Catch-22 that would strand erroneously-joined parties with no appellate remedy whatsoever. The answer is to exercise appellate jurisdiction and reverse the district court for having wrongly roped Defense Distributed and SAF into the case. *See Didrickson*, 982 F.2d at 1338.

3. The lost attorney's fees are an Article III injury.

Third, the district court's judgment injures Defense Distributed and SAF by forcing them to participate in the action as "necessary parties," ER27–31, and letting the States ultimately prevail, ER1. These rulings caused Defense Distributed and SAF to incur substantial attorney's fees, which cannot be recovered so long as the States are considered the prevailing party. *See* 28 U.S.C. § 2412. If the Rule 12(c) motion had been granted instead of denied, Defense Distributed and SAF would have been spared this expense in the first instance; and if the States' claims had been rejected, Defense Distributed and SAF could have at least recovered their fees after the fact. But because of the judgment below, their litigation costs are sunk.

C. A favorable appellate ruling will redress all three injuries.

The second appellate standing requirement is that the injury "could be 'redress[ed] by a favorable ruling.'" *Food Mktg. Inst. v. Argus Leader Media*, 139 S. Ct. 2356, 2362 (2019). All three of the injuries here meet this requirement.

First, a favorable appellate ruling will redress the injury inflicted by the judgment's vacatur of the license and Temporary Modification. Once this Court vacates the district court's judgment, the license and Temporary Modification will no longer be vacated and Defense Distributed and SAF's rights thereunder will be restored. That clearly satisfies the redressability requirement. *See Monsanto Co. v. Geertson Seed Farms*, 561 U.S. 139, 150 (2010) ("Because that injury is caused by the very remedial order that petitioners challenge on appeal, it would be redressed by a favorable ruling from this Court."); *Food Mktg. Inst.*, 139 S. Ct. at 2362 (similar); *Kootenai Tribe of Idaho*, 313 F.3d at 110 ("This 'injury' would be redressed by a decision of this Court lifting the injunction and allowing the [enjoined agency action] to have force.").[7]

Second, a favorable appellate ruling will redress the injury inflicted by the district court's supposed decision to "preclude . . . an action for specific performance of the settlement agreement." ER30. That error injures Defense Distributed and

[7] This is *not* a case in which injuries would cease only after appellate relief is awarded *and* the federal government goes on to exercise its discretion in particular ways. Once this Court issues the relief that Defense Distributed and SAF request, their injuries will cease immediately and automatically, without the need for more agency action. *See, e.g.*, *Kootenai Tribe of Idaho v. Veneman*, 313 F.3d 1094, 1110 (9th Cir. 2002), *abrogated on other grounds by Wilderness Soc. v. U.S. Forest Serv.*, 630 F.3d 1173 (9th Cir. 2011) (en banc); *W. Watersheds Project v. Kraayenbri*nk, 632 F.3d 472, 483 (9th Cir. 2011). And as was recognized in *Bennett v. Spear*, 520 U.S. 154 (1997), standing exists where, as here, the decision at issue "alters the legal regime" that an agency will act under henceforth. *Id.* at 169.

SAF by purporting to stop them from suing to enforce the Settlement Agreement. Once this Court vacates the district court's judgment, the errant preclusion decision will have been eliminated. That too clearly satisfies the redressability requirement. *See, e.g., Food Mktg. Inst.*, 139 S. Ct. at 2362; *Monsanto Co.*, 561 U.S. at 150.

Third, a favorable appellate ruling will redress the injury regarding Defense Distributed and SAF's right to seek attorney's fees. Once this Court vacates the district court's judgment—either because the States lacked standing or because their claims are meritless—the States will have lost "prevailing" party status and Defense Distributed and SAF will have the right, on remand in the district court, to seek an award of attorney's fees. *See* 28 U.S.C. § 2412; *B.E. Tech., L.L.C. v. Facebook, Inc.*, 940 F.3d 675, 679 (Fed. Cir. 2019) ("a defendant can be deemed a prevailing party even if the case is dismissed on procedural grounds rather than on the merits"). Redressability is once again clearly satisfied. *See, e.g., Food Mktg. Inst.*, 139 S. Ct. at 2362; *Monsanto Co.*, 561 U.S. at 150.

"A reversal here thus would ensure exactly the relief [each of the Appellants] requests." *Food Mktg. Inst.*, 139 S. Ct. at 2362. "That is enough to satisfy Article III." *Id.* Appellate standing's redressability requirement is satisfied in full.

Conclusion

The Court should not dismiss these appeals for lack of standing. It should exercise appellate jurisdiction without delay, beginning with an order resuming the briefing schedule. If any doubt about this exists, the Court should invite the Solicitor General of the United States to file a brief as *amicus curiae* on the issue of whether this Court has appellate jurisdiction to hold, as the federal government argued below, that the district court lacked subject-matter jurisdiction.

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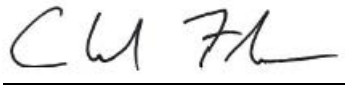
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Exhibit A

DECLARATION OF CODY WILSON

I, Cody Wilson, declare:

1. I am a citizen of the United States and a resident of Texas.

2. I co-founded Defense Distributed, a Texas corporation headquartered in Austin, Texas, and I am presently the Director of the company.

3. Defense Distributed was organized and is operated for the purpose of defending the civil liberty of popular access to arms guaranteed by the United States Constitution through facilitating global access to, and the collaborative production of, information and knowledge related to the three-dimensional ("3D") printing of arms; and to publish and distribute, at no cost to the public, such information and knowledge on the Internet in promotion of the public interest.

4. In furtherance of its purpose, Defense Distributed maintains DEFCAD.com, a publicly available website for the hosting of 3D computer-assisted drawing files and other files concerning firearms (the "subject files") in the public domain.

5. The primary source of income for DEFCAD.com comes from voluntary donations by persons interested in downloading the subject files and from advertisers.

6. The annual income for DEFCAD.com from donations and advertising exceeds $75,000 a year.

7. Pursuant to current regulations, the State Department requires a license to publish the subject files and other technical data about firearms that are controlled by the Arms Export

Control Act ("AECA").

8. Violations of the AECA are punishable by fines of over $1,000,000 and up to 20 years in prison per violation. Violations of the AECA can also result in the loss of export privileges, and other penalties.

9. Without a State Department license authorizing publication of the subject files, Defense Distributed is unable to publish the subject files without the threat of significant fines and other penalties under the AECA.

10. From May 5, 2015 to July 27, 2018, Defense Distributed invested substantial time, resources, and money pursuing a lawsuit against the State Department that challenged the State Department license requirement.

11. On July 27, 2018, the State Department issued Defense Distributed a license to publish the files as part of a settlement reached in the lawsuit.

12. The licenses authorizes Defense Distributed to publish the subject files at DEFCAD.com.

13. The license is valuable personal property.

14. Defense Distributed's title to the property is derived from the Acting Deputy Assistant Secretary of State for Defense Trade Controls, who issued the license.

15. The license can be used for valuable purposes by Defense Distributed, its assignees, and successors.

16. I understand that, upon requisite notification(s) to the State Department, the State Department license is transferrable to persons that may purchase Defense Distributed and to other successors in interest.

17. Considering the penalties for violations of the AECA; the amount of time, resources, and money that Defense Distributed spent to obtain the license; the right to engage in activities authorized by the license; and considering the likely value of the license to persons that may purchase or otherwise acquire Defense Distributed, I estimate the value of the license at over $1,000,000.

I declare under penalty of perjury that the foregoing is true and correct.

This the 26th day of August, 2018.

Cody Wilson