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Professor Katherine Franke Files Amicus Briefs on Religious Liberty Claims Raised in Federal Prosecutions of Activists in Arizona Who Left Water and Food in Desert for Migrants

By Elizabeth Boylan
November 13, 2018

[Access a .pdf of Professor Franke's Amicus Brief in *United States of America vs. Caitlin Persis Deighan, et al.*](#)

[Access a .pdf of Professor Franke's Amicus Brief in *United States of America vs. Natalee Renee Hoffman, et al.*](#)

On November 13th, Katherine Franke, Sulzbacher Professor of Law, Gender and Sexuality Studies at Columbia University, submitted amicus briefs on behalf of seven scholars of religious liberty law in two cases in which the federal government is prosecuting members of the Tucson-based group [*No More Deaths/No Más Muertes*](#). The defendants are migrants' rights activists who are being prosecuted by the U.S. Department of Justice for leaving water and food for migrants in the Cabrieza Pietra National Wildlife Area, a federally controlled refuge in the Southern Arizona desert that is so hot and dry that the human remains of migrants are frequently found there. The brief provides guidance to the federal court on how to examine the activists' claim that their criminal prosecution by the U.S. Department of Justice substantially burdens their sincere religious belief in the sanctity of human life and that they must come to the aiding people in dire distress. The brief supports neither party in the case but rather seeks to provide the court with the proper framework within which to consider the defendants' motion to dismiss grounded in the Religious Freedom Restoration Act (RFRA).

The brief was signed by Professor **Katherine Franke**, the Sulzbacher Professor of Law, Gender and Sexuality Studies, and Faculty Director of the Public Rights/Private Conscience Project at Columbia University; **Barbara A. Atwood**, the Mary Anne Richey Professor of Law Emerita, and Director of the Family and Juvenile Law Certificate Program at the James E. Rogers College of Law of the University of Arizona; **Caroline Mala Corbin**, a Professor of Law at the University of Miami School of Law; **Shefali Milczarek-Desai**, the Director of the Workers' Rights Clinic at the James E. Rogers College of Law of the University of Arizona; **Micah Schwartzman**, the Joseph W. Dorn Research Professor of Law, and Director of the Karsh Center for Law and Democracy at the University of Virginia School of Law; **Andrew Silverman**, the Joseph M. Livermore Professor of Law Emeritus at the University of Arizona; and **Nelson Tebbe**, a Professor of Law at Cornell University.

“This case raises important questions regarding the use of RFRA as a defense in a criminal prosecution,” said Professor Katherine Franke, the principal author of the brief. “As legal scholars of religious liberty it is our concern that RFRA is interpreted consistently across contexts where sincerely held religious beliefs are substantially burdened by government action. We note in the brief that the Justice Department has taken a position in this case that is much less protective of religious liberty than it has in cases where the underlying issues are more aligned with the administration’s political agenda,” continued Franke.

“Ironically, the arguments made by attorneys working for the Justice Department provide greater protection to bighorn sheep in Southern Arizona than to human beings, whether they be migrants at risk of death or people of faith coming to their aid,” noted Professor Franke.

Last week, Professor Franke submitted an amicus brief on behalf of scholars of religious liberty in *U.S. v. Kelley*, a case in which the federal government is prosecuting Catholic anti-nuclear activists who staged a mock disarmament of nuclear weapons at a Naval installation in Georgia. The activists, members of the group Kings Bay Plowshares, argue that criminal prosecution by the U.S. Department of Justice substantially burdens their sincerely held religious belief that nuclear weapons are evil.