

No. 13-15227

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

DRAKES BAY OYSTER COMPANY and KEVIN LUNNY,
Plaintiff-Appellants,

v.

SALLY JEWELL, in her official capacity as Secretary,
U.S. Department of the Interior; U.S. DEPARTMENT OF THE INTERIOR;
U.S. NATIONAL PARK SERVICE; and JONATHAN JARVIS, in his official
capacity as Director, U.S. National Park Service,

Defendant-Appellees.

On Appeal from the United States District Court
for the Northern District of California
(Hon. Yvonne Gonzales Rogers, Presiding)
District Court Case No. 12-cv-06134-YGR

**BRIEF OF JORGE MATA AND ISELA MEZA, AMICI CURIAE
IN SUPPORT OF PETITION FOR REHEARING EN BANC**

Paul S. Cohen, SBN: 148371
LEGAL AID OF MARIN
30 N. San Pedro Road, Suite 220
San Rafael, CA 94903
Phone: (415) 492-0230

*Limited Scope Attorneys for Jorge Mata
and Isela Meza, Amici Curiae*

FRAP RULE 29(c)(4) STATEMENT

This brief is filed pursuant to FRAP 29(a) and 29-2(a). All parties have consented to its filing.

Jorge Mata has worked at the oyster farm with his family for 28 years. His wife Veronica has worked at the oyster farm for 24 years and is currently in charge of the shellfish packing operation. His sister Leticia has worked at the oyster farm for 29 years. His grown son Jorge Mata Jr. and his daughter Ruby work part-time at the oyster farm. His youngest child attends West Marin Elementary School in Point Reyes Station, California. Over the many years he has worked at the oyster farm, Mr. Mata has developed specialized skills and become very experienced at growing oysters, setting oyster larvae and complying with seafood safety rules. He is proud to work at the oyster farm where his family is treated with respect, earns a living wage, are able to live and work together and have developed personal relationships with his coworkers and the Lunny family. Mr. Mata and his family stand to lose their jobs, and their respective homes, if the oyster farm is closed.

Isela Meza is Drakes Bay Oyster Company's staff marine biologist. She received a degree in Marine Science, and was trained as an Oceanologist at the University of Mexico, Baja graduating in 2008. Ms. Meza has worked and lived at the oyster farm for five years. Her job entails handling microscopic oyster larvae and ensuring that they "set" and begin to grow properly. Ms. Meza stands to lose her job if the oyster farm is closed.

Counsel for Appellants initially assisted in the drafting of this brief.

BRIEF OF JORGE MATA AND ISELA MEZA, AMICI CURIAE

Closing the oyster farm will hurt real working people and their families. Approximately thirty-one skilled men and women worked full-time—many for decades—at the oyster farm before the government made its decision to deny a renewal of the farm’s lease. Between fifteen and twenty-five individuals, oyster farm workers and their families, continue to work full-time or part-time at the oyster farm and/or live in safe and affordable on-site housing. Collectively, the employees have twelve children that attend the high quality schools of Marin County. This community of workers will be lost if the oyster farm is forced to close.¹

Oyster farming requires specialized skills and compliance with numerous regulatory requirements. The process begins with staff trained in marine biology nurturing microscopic oyster larvae to ensure that they “set” and begin to grow properly. Once they do, workers then gently place the baby oysters in mesh bags, or string them on special tubes, and transport them by boat to the growing areas in Drakes Estero. The process requires that oyster farm workers meticulously follow regulatory protocols designed to avoid disturbing the seals and other wildlife that are thriving in Drakes Estero. For the next several years after they are placed in the growing areas, staff carefully tend the oysters as they mature.

¹ The facts in this brief are drawn generally from the declarations filed in the district court of amicus curiae Jorge Mata (docket no. 81.1), educator James Patterson (docket no. 36), and appellant Kevin Lunny (docket no. 38, paras. 69-74).

When the oysters are ready, staff brings them back to shore where they are prepared for market. Oysters are sold, and often eaten, raw and a consumer can get very sick from eating a bad oyster. To keep consumers safe, staff diligently follows the strict sanitary requirements imposed by the California Department of Public Health and the U.S. Food and Drug Administration. Oysters destined for sale on the half shell must be sorted and cleaned. Canned oysters have to be washed, shucked and processed. It takes years for individual employees to become proficient at their work.

Oyster farm life is a familial endeavor. Many workers live on the same property as the place they work. Co-workers and the employer are considered like family. Oyster farming is often a family affair with men women and children over the age of 16 contribute to supporting the family by working on the oyster farm. Husbands and wives, grandparents and grown grandchildren often work together at the oyster farm. All of the workers reside in the rural areas within a short distance from the oyster farm. They volunteer in the community and participate in the lives of their children at the excellent local schools. The oyster farm community and the region in which they live is their home and perhaps the only home they have known.

If the farm is closed, it is extremely unlikely that the employees will be able to find other jobs in the area where they can put their specialized skills to work. If the workers lose their jobs, they will likely have to pull their children out of the local schools and take lower paying jobs perhaps far away from the community

they call home. Closing the farm will be devastating to these workers and their families.

DATED: October 28, 2013

Respectfully submitted,

LEGAL AID OF MARIN



By: PAUL S. COHEN

Limited Scope Attorneys for Jorge
Mata and Isela Meza, Amici Curiae

CERTIFICATE OF COMPLIANCE

I certify that this brief complies with Fed. R. App. Proc. 32(c) and does not exceed 15 pages.

LEGAL AID OF MARIN

By:


PAUL S. COHEN

Limited Scope Attorneys, for Jorge
Mata and Isela Meza, Amici Curiae

CERTIFICATE OF SERVICE

I certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on October 28, 2013.

I certify that all participants in this case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

LEGAL AID OF MARIN



By: PAUL S. COHEN

Limited Scope Attorneys for Jorge
Mata and Isela Meza, Amici Curiae