Nos. 25-5185, 25-5189, 25-5197

In The United States Court of Appeals for the Ninth Circuit

ARIZONA MINING REFORM COALITION; *et al.*,

Plaintiffs-Appellants,

v.

BROOKE L. ROLLINS, U.S. SECRETARY OF AGRICULTURE, ET AL., *et al.*,

Defendants-Appellees, and

RESOLUTION COPPER MINING LLC,

Intervenor-Defendant-Appellee.

On Appeal from the United States District Court
for the District of Arizona
No. 2:21-cv-00122-PHX-DWL
Hon. Dominic W. Lanza

BRIEF OF *AMICI CURIAE* THE TOWNS OF SUPERIOR, KEARNY, AND MIAMI, ARIZONA, AND MAYOR DEAN HETRICK OF HAYDEN, ARIZONA, IN OPPOSITION TO THE PETITIONS FOR PANEL REHEARING AND REHEARING EN BANC

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SAN CARLOS APACHE TRIBE, a federally recognized Tribe,

Plaintiff-Appellant,

v.

UNITED STATES FOREST SERVICE,
an agency of the U.S. Department of Agriculture, et al.,

Defendants-

Appellees, and

RESOLUTION COPPER MINING LLC,

Intervenor-Defendant-Appellee.

On Appeal from the United States District
Court for the District of Arizona
No. 2:21-cv-00068-PHX-DWL
Hon. Dominic W. Lanza

GOUYEN BROWN LOPEZ, et al.,

Plaintiffs-Appellants,

v.

UNITED STATES OF AMERICA, et al.,

Defendants-

Appellees, and

RESOLUTION COPPER MINING LLC,

Intervenor-Defendant-Appellee.

On Appeal from the United States District
Court for the District of Arizona
No. 2:25-cv-2758-PHX-DWL
Hon. Dominic W. Lanza

RULE 26.1 CORPORATE DISCLOSURE STATEMENT

The undersigned attorneys certify that *amici curiae* the Towns of Superior, Arizona; Kearny, Arizona; and Miami, Arizona, are municipalities organized under the laws of the State of Arizona. Superior, Miami, and Kearny are government entities, not publicly traded, and have no parent corporation. They have no stock, and therefore no publicly held corporation owns ten percent or more of their stock. Mayor Dean Hetrick is an individual filing in his personal capacity.

/s/ Grady J. Block
Grady J. Block

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IDENTITIES AND INTERESTS OF *AMICI CURIAE*[1]

Amici are primarily neighboring communities of Arizona's Copper Corridor whose economies have long been bound up with mining, and whose futures are tied to the land exchange that the petitions seek to unwind: the Towns of Superior, Kearny, and Miami. One amicus party, Dean Hetrick, the Mayor of Hayden, Arizona, joins in his individual capacity.[2] They submit this brief to supply the one perspective that the parties cannot: that of communities whose futures are tied to the land exchange the petitions seek to unwind. The Government will defend its administrative process; Resolution will defend its transaction. Neither can speak for small towns of the Copper Corridor that spent nearly a decade negotiating to ensure this project would strengthen, rather than strain, the communities that host it—and that now hold concrete, vested interests in the completed exchange. *Amici's* voice is focused and non-duplicative: it addresses the equities of the extraordinary relief petitioners seek and leaves the merits to the parties.

By way of example, the Town of Superior's experience illustrates what is at

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[1] No party's counsel authored the brief in whole or in part; no party or any party's counsel contributed money that was intended to fund preparing or submitting the brief; and no person—other than the amici curiae, their members, or their counsel—contributed money that was intended to fund preparing or submitting the brief. Further, all parties have consented to the filing of this brief.

[2] For ease of reference, *amici* are collectively referred to as "the Towns" throughout this brief. The phrase "the Town," singular, is used to reference Superior, specifically.

stake for all of the Copper Corridor communities. Founded around the Silver Queen Mine in 1875 and sustained by the Magma Mine from 1910 until its closure in 1996, the Town has lived the full arc of the boom-bust cycle. The closure brought massive job losses, population exodus, and boarded-up businesses; and Superior has spent the decades since pursuing diversification—an industrial park, housing, airport enhancements, recreation—in service of its vision of becoming "a town with a mine, not a mining town." Besich Decl. ¶¶ 3–4 (Dkt. 99.2, Ex. A).

That experience taught caution, not boosterism. When Resolution proposed its project with Superior as the host community, the Town approached it warily, *id.* ¶ 6—and the first Draft Environmental Impact Statement validated the wariness, projecting that the project would cost Superior $650,000 more each year than it returned. *Id.* ¶ 7. Superior responded by negotiating: through the Community Working Group established in 2012 and nearly a decade of engagement, the Town converted that projected liability into binding compacts securing jobs, investment, education funding, infrastructure, and environmental mitigation. *Id.* ¶¶ 8–10. And Congress paired the exchange with an authorization for Superior to acquire 545 acres of adjacent federal land—the answer to the geographic constraint that has long limited the Town's growth. 16 U.S.C. § 539p(h); Besich Decl. ¶¶ 11–14.

Amici appeared together before the panel in support of Appellees. Dkt. 99.2. They return at this stage because the relief that petitioners seek—rescission of the

completed exchange—would forfeit the benefits that these communities have negotiated or stand to share, and the acquisition that Congress authorized for Superior. *Amici* respectfully submit that this on-the-ground perspective will assist the Court in deciding whether the petitions warrant the extraordinary step of en banc review.

INTRODUCTION AND SUMMARY OF THE ARGUMENT

The petitions ask the en banc Court to take two major leaps. Doctrinally, they seek rehearing of holdings that faithfully apply controlling precedent—*Seven County*'s deference command, settled procedural-statute principles, and the text of the Land Exchange Act—without identifying a genuine conflict in this Court's decisions or an unsettled question of exceptional importance. Fed. R. App. P. 40(b)(2). Practically, they seek to set in motion the rescission of an exchange that Congress directed and that closed, by petitioners' own account, within hours of the panel's decision. San Carlos Pet. 2.

Amici write because the petitions say nothing about who would bear the cost of that step. Superior—the host community—spent nearly a decade converting a projected fiscal loss into binding, negotiated benefits, and holds a congressional authorization to acquire 545 acres of federal land that exists only while the exchange stands. Rescission would strip those vested interests from a non-party that had no role in the timing of the conveyance. By contrast, Appellants present an ordinary

merits disagreement with a unanimous, faithful application of *Seven County*. And the dissent represents merely a dispute over the subsections of a single statute—not a fracture in this Court's decisions or a crisis of title across the West. Finally, the Property Clause commits the disposition of federal land to Congress, which exercised that power here deliberately and specifically; the full court should not be convened to revisit that judgment. The petitions should be denied.

ARGUMENT

I. The relief Petitioners seek would strip vested benefits from the Towns.

Rehearing en banc "is not favored." Fed. R. App. P. 40(c). It is reserved for securing the uniformity of this Court's decisions, *id.* 40(b)(2)(A), or resolving a question of exceptional importance, *id.* 40(b)(2)(D)—not for revisiting a panel's faithful application of controlling law. Nor is the relief that these petitions would set in motion any ordinary correction. By petitioners' own account, "[l]ess than 12 hours after the panel ruled, the United States and Resolution completed the transfer." San Carlos Pet. 2; *see Ariz. Mining Reform Coal. v. U.S. Forest Serv.*, 172 F.4th 641, 666 (9th Cir. 2026) (dissolving the administrative stay). What petitioners ask the full Court to provide is therefore not interim relief preserving the status quo. It is rescission of a consummated conveyance—relief the Tribe itself describes as the power to "void" the transfer. San Carlos Pet. 3. Whatever the scope of this Court's remedial authority, convening the en banc court to take the first step toward

unwinding a completed, congressionally mandated exchange is an extraordinary undertaking. And the petitions say nothing about who would bear its cost. *Amici* file to supply that answer: rescission would not restore a neutral status quo. It would strip vested, bargained-for benefits from communities that spent nearly a decade securing them.

Superior, for example, knows what is at stake because it has lived both halves of the ledger. The Town's fortunes have tracked mining since the Magma Mine sustained it from 1910 until the mine's 1996 closure stripped away jobs, population, and fiscal stability. Besich Decl. ¶¶ 3–4. That history taught Superior not to take a mine on faith—and its caution proved warranted. The first Draft Environmental Impact Statement projected that the project would impose more than $1 million in annual infrastructure and service costs on the Town against only $350,000 in direct revenue: a structural deficit of $650,000 every year. *Id.* ¶ 7.

Superior did not acquiesce in that projection. Through the Community Working Group established in 2012 and nearly a decade of sustained negotiation, the Town converted a documented liability into binding commitments—the 2023 Superior Regional Economic Development Agreement and the March 2024 Good Neighbor Agreement. *Id.* ¶¶ 8–9. Those compacts secure investments that run for the life of the mine: a projected 1,500 direct and 2,200 indirect jobs with ninety-percent local hiring and $270 million in annual compensation; $546 million in yearly

regional procurement; $88–113 million in state and local taxes; apprenticeship and STEM funding, including $1.2 million for robotics programs in the Superior Unified School District; multi-year support for schools, infrastructure, and historic revitalization; and environmental mitigation, including a new campground at Castleberry Ranch designed specifically to offset the loss of the Oak Flat campground. *Id.* ¶ 10. None of this was given. All of it was negotiated, and all of it is tied to the exchange now complete.

Though all of the Copper Corridor towns stand to gain from the transfer, one benefit belongs to Superior alone. The Town occupies roughly two square miles surrounded entirely by federal and state trust lands. Besich Decl. ¶ 11. Being land-locked forecloses obtaining the commercial centers and industrial facilities that a diversified economy requires, and has produced a housing shortage that stifles population and workforce growth. *Id.* ¶ 12. Congress addressed the problem directly: the Land Exchange Act authorizes Superior to purchase 545 acres of adjacent federal land, 16 U.S.C. § 539p(h)—an authorization "expressly contingent on the execution of the main Oak Flat land exchange," with "no other land acquisition methods of this kind . . . currently available." Besich Decl. ¶ 13. The Town has detailed plans for that ground: expansion of the Superior Industrial Park, improvements to the municipal airport, and sustainable housing—the foundation of an economy built to outlast the mine's projected sixty-year life and avoid a repeat of the 1990s collapse.

Id. ¶ 14. The financing, political momentum, and developer commitments that acquisition requires all depend on the project's certainty; prolonged litigation has already made each harder to hold together. *Id.* ¶¶ 15, 17. Each month of renewed uncertainty freezes committed funds for schools, infrastructure, and environmental protections, and fragments the political support a project of this complexity demands. *Id.* ¶¶ 16–17. Granting rehearing in service of rescission would do more than delay Superior's acquisition. Because the authorization is contingent on the exchange itself, unwinding the exchange would re-impose the very constraint Congress acted to relieve—and the window Congress opened could close for good: the authorization has no substitute, and without it Superior "will remain land locked and unable to diversify." *Id.* ¶¶ 13, 18.

These reliance interests are not prospective. The exchange's completion started contractual and statutory clocks that are now running. The first $12 million of a $53.5 million trust benefiting eleven tribes came due within sixty days of the exchange. Peacey Decl. ¶¶ 15, 30. More than $20 million in committed community and environmental investments—water supply, riparian preservation, recreation—became releasable only upon closing. *Id.* ¶¶ 17, 29. Roughly $100 million in budgeted drilling procurement and $250 million in initial underground-development and construction spending, much of it directed to local businesses and contractors under Resolution's documented local-hiring practice, was triggered by the exchange.

Id. ¶¶ 13–14. The region has already endured what suspension looks like: during the prior period of injunction-driven limbo, in addition to the years lost due to a prior legal challenge under RFRA, the project burned $11 million each month simply holding in an operation-ready state while committed funds for schools, infrastructure, and environmental protections stayed frozen. *Id.* ¶ 22; Besich Decl. ¶ 16. Rescission would not merely recreate that limbo. It would impose it on a community that has now, with the exchange complete, finally begun to realize what it bargained for. The petitions emphasize how quickly the parties closed. San Carlos Pet. 2.

Whatever force that carries against the parties, it carries none against Superior: the Town did not set the closing's pace and could not have slowed it. This Court has declined that invitation before. In *Kettle Range Conservation Group v. U.S. Bureau of Land Management*, it refused to undo an executed land exchange once title had vested, reasoning that "equity might not be served by attempting to undo the completed portion of the transaction," and that rescission would "destroy[] the legal entitlements" of those who had acquired rights in reliance on the exchange. 150 F.3d 1083, 1084-85 (9th Cir. 1998). Equity does not charge a bystander with the speed of a transaction it did not control—least of all by stripping the bystander of what a decade of its own work secured.

None of this denies the gravity of what the exchange means for the Tribe and

other religious practitioners. The panel did not deny it either: it recognized the "grave harms to Native religious practice" even as it held that "Congress has chosen to transfer this land." 172 F.4th at 666. Congress weighed those harms when it mandated this exchange, and the question at this stage is correspondingly narrow: whether to convene the full court to take the first step toward rescinding a conveyance that Congress directed and that is now done. En banc review is discretionary and disfavored even when a petition presents a close question, and these petitions do not. *See infra* Parts II–III. Where the criteria of Rule 40(b)(2) are unmet, and the consequences of the extraordinary remedy petitioners seek would fall hardest on a non-party that negotiated for a decade in reliance on an Act of Congress, the equities and the Rule point the same direction. The petitions should be denied.

II. The panel faithfully applied controlling precedent; Appellants present ordinary merits disagreement, not grounds for en banc review.

A petition that identifies no conflict within this Court's decisions and no departure from Supreme Court precedent—only dissatisfaction with where faithful application led—presents nothing for the full court to do. Fed. R. App. P. 40(b)(2). That is all that Appellants offer. On those claims, the panel was unanimous; even the partial dissent begins from agreement that "the Plaintiffs' claims are mostly foreclosed by our precedent and recent Supreme Court rulings." 172 F.4th at 666 (Rawlinson, J., dissenting in part). A unanimous, precedent-bound application of a Supreme Court decision issued the year before is the antithesis of en banc material.

The controlling decision is *Seven County Infrastructure Coalition v. Eagle County*, 605 U.S. 168 (2025). NEPA "is a purely procedural statute." *Id.* at 173. A reviewing court "confirm[s] that the agency has addressed environmental consequences and feasible alternatives as to the relevant project," affords the agency "substantial deference," and does "not micromanage those agency choices so long as they fall within a broad zone of reasonableness." *Id.* at 180, 183. The panel recited that standard and measured each of the six NEPA theories pressed below against it. 172 F.4th at 658–62. Two examples show that what petitioners call abdication was, in reality, straight-forward application of the law.

First, cumulative water impacts. AMRC faulted the FEIS for declining to model the mine's groundwater pumping alongside the impacts of the 275-square-mile Superstition Vistas development. The panel's answer came directly from *Seven County*: NEPA does not obligate an agency to evaluate the effects of a separate development "that might someday be built," even if those effects are "factually foreseeable," 605 U.S. at 187—particularly a project over which the Forest Service "possesses no regulatory authority," *id.* at 188—and "how far to go in considering indirect environmental effects" is the agency's discretionary line to draw, *id.* at 182. The agency, moreover, did analyze the development's water impacts, qualitatively, as to the portions lacking demonstrated water supplies. 172 F.4th at 659–60. That is a rule applied to its facts, not a doctrine extended.

Second, scientific deference. The Tribe asserts that the panel dismissed its expert declarations "in a single conclusory paragraph" and read *Seven County* to demand "extreme deference." San Carlos Pet. 2. The opinion says otherwise. The panel did not decline to look: it found that the FEIS "addressed each of the topics the Tribe highlights"—tailings and pipeline safety, acid rock drainage, and hydrological concerns—and that the Forest Service "directly responded to comments by Plaintiffs' experts regarding the same concerns." 172 F.4th at 661. What remained was "a disagreement with the FEIS's scientific conclusions," the precise setting in which review "must be at its most deferential." *Id.* (citing *Seven County*, 605 U.S. at 182). The Tribe's experts may well disagree with the agency's. But *Seven County* decides who resolves that disagreement, and the panel honored that precedent. Recasting deference as abdication does not convert a merits quarrel into a legal question of exceptional importance.

The consultation claims are more fact-bound still. The panel held that the Land Exchange Act's consultation provisions, 16 U.S.C. § 539p(c)(3), and Section 106 of the NHPA "are procedural statutes like NEPA"—they "do not mandate any particular substantive outcome from the consultation process." 172 F.4th at 663–64 (citing *Muckleshoot Indian Tribe v. U.S. Forest Serv.*, 177 F.3d 800, 805 (9th Cir. 1999)). Reviewing for arbitrariness, the panel found a record of "thorough consultation" conducted "[o]ver the course of two decades," "both electronically and

in person." *Id.* at 664. The Tribe's contrary theory—that reopening consultation in 2021 erased everything that preceded it—was supported by no "case law standing for the idea that re-opening a consultation process negates all pre-reopening consultation efforts," and its grievance reduced to a process that "resulted in a conclusion contrary to the Tribe's hopes." *Id.* A settled doctrinal frame applied to a particular consultation record threatens no uniformity interest and presents no exceptional question.

In the end, Appellants ask the full court to re-weigh an administrative record and re-balance a deference standard that the Supreme Court calibrated just last Term. Rule 40(b)(2) reserves en banc review for genuine conflicts and exceptional questions; a unanimous panel applying controlling precedent presents neither. And granting rehearing on claims like these would invite a petition in every NEPA case that the deferential standard decides—the opposite of the restraint the Rule commands.

III. The remedy for the partial dissent's appraisal disagreement has become extraordinary.

AMRC's petition rests on the partial dissent. It invokes both Rule 40(b)(2) prongs and asks this Court to "issue an Opinion reflecting Judge Rawlinson's correct analysis." AMRC Pet. 1, 18. The Government and Resolution will defend the appraisal on the merits; *amici* address a narrower point. Genuine as the panel's disagreement may be, it satisfies neither prong—and the remedy that the dissent

contemplated has grown far more drastic since it was written.

Start with uniformity. The majority and the dissent did not divide over the holding of *Desert Citizens Against Pollution v. Bisson*, 231 F.3d 1172, 1175 (9th Cir. 2000). They divided over what the United States owned, and what the Land Exchange Act requires. The federal parcel at issue was encumbered by 148 unpatented mining claims giving Resolution "the exclusive right to extract the minerals beneath" it. 172 F.4th at 657. The majority declined to force the company to "pay twice" for its existing rights—saying that would collide with Congress's own command that "[n]othing in this section shall interfere with, limit, or otherwise impair, the unpatented mining claims or rights currently held by Resolution Copper." *Id.* (quoting 16 U.S.C. § 539p(i)(1)(C)); see *id.* at 658 n.3.

The dissent answered with a different reading of the same statute: that 16 U.S.C. § 539p(c)(4)(B)(i)'s incorporation of nationally recognized appraisal standards controls, notwithstanding the preservation clause. *Id.* at 672–73 (Rawlinson, J., dissenting in part). The disagreement concerns the interaction of two subsections of a single statute governing a single congressionally directed exchange. *Desert Citizens* announced no rule for federal land encumbered by mining claims that the authorizing statute expressly preserves; the exchange there proceeded under FLPMA's general framework, with no preservation clause in play. *See* 231 F.3d at 1175. *National Parks & Conservation Ass'n v. Bureau of Land Management* is the

same case in a different posture—another FLPMA exchange proposed by a private developer, faulted for ignoring the transferee's intended landfill use on facts this Court called "virtually identical" to *Desert Citizens*. 606 F.3d 1058, 1067 (9th Cir. 2010). Neither decision asked what the United States owns where Congress itself directs the exchange and expressly preserves the transferee's existing claims. A one-statute question cannot fracture the uniformity of this Court's decisions. And the panel applied *Desert Citizens* in petitioners' favor on redressability, 172 F.4th at 655—hardly the work of a panel at war with that precedent.

AMRC's claim of exceptional importance depends entirely on scale. The decision, it contends, "fundamentally alters the legal regime for valuing federal minerals across the West," and "raises serious questions regarding title to lands across the West." AMRC Pet. 17–18. The opinion will not bear that weight, because AMRC's account omits the feature that did the work: Congress preserved Resolution's existing claims in the authorizing statute itself, and the majority invoked that preservation as evidence that Congress "did not contemplate that the appraisal would include the value of the minerals" beneath the encumbered parcel. 172 F.4th at 657. The trans-West regime AMRC fears for—FLPMA sales and exchanges, AMRC Pet. 17—contains no such clause and remains governed by *Desert Citizens* and *NPCA*. Nothing in the panel's opinion lets a company "zero-out" mineral values "simply [by] fil[ing] mining claims," *id.*; the holding turned on

existing claims that Congress expressly shielded in the very statute directing the exchange. A ruling tethered that tightly to one statute's text decides this exchange. It does not unsettle title across the West.

Then there is the posture. The dissent would have reversed for "entry of a preliminary injunction setting aside [the] land exchange." 172 F.4th at 673 (quoting *Desert Citizens*, 231 F.3d at 1188). When those words were written, that remedy meant pausing a pending transaction. Adopted today, it means rescinding a completed one—with every consequence described in Part I, *supra*, falling on non-parties, Superior first among them. And the mismatch between injury and remedy is stark. AMRC's appraisal claim is, at bottom, about price: value that the taxpayers allegedly left on the table. But the remedy it seeks would strip Superior of benefits that no revised valuation can restore, beginning with the § 539p(h) acquisition that exists only while the exchange stands. Besich Decl. ¶ 13.

The posture compounds the problem. This is an appeal from the denial of a preliminary injunction; even the dissent framed the question as whether AMRC raised "at least serious questions" on a preliminary record. 172 F.4th at 673. En banc review of a fact-bound, preliminary-standard determination would yield the least durable kind of full-court ruling—one issued on likelihood rather than final merits. Denying rehearing forfeits nothing: the valuation question remains fully litigable to final judgment below. Granting it would set in motion costs that cannot be recalled.

A single judge's partial disagreement on a single issue, in an otherwise unanimous opinion, is the ordinary product of appellate adjudication. Where the question is statute-bound, the panel applied controlling law, and the relief sought has only grown more disruptive with time, Rule 40's discretionary judgment points one way: deny.

IV. The Separation of Powers Doctrine and the Property Clause counsel restraint.

The Constitution commits the disposition of federal land to Congress: "The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States." U.S. Const. art. IV, § 3, cl. 2; see *Kleppe v. New Mexico*, 426 U.S. 529, 539 (1976). Congress exercised that power here deliberately and specifically. After an exchange "hotly contested in Congress and in public debate" for many years, it "direct[ed]" the Forest Service to convey Oak Flat to Resolution in return for more than 5,000 acres of conservation land, and it set the terms—consultation, appraisal, environmental review, and the preservation of existing claims—in the statute itself. Pub. L. No. 113-291, § 3003, 128 Stat. 3292, 3732–41 (2014) (codified at 16 U.S.C. § 539p); 172 F.4th at 651.

The panel understood what that allocation of authority means. It did not minimize the cost of Congress's choice; it acknowledged the "grave harms to Native religious practice" the transfer entails. 172 F.4th at 666. But it also recognized the constitutional answer: "Congress has chosen to transfer this land, and Plaintiffs have

not raised any viable challenges to that decision." *Id.* Whether that trade-off was wise is a question the Property Clause assigns to the political branches, where it was debated for a decade and resolved by statute—a statute that also wove Superior's future into the bargain. 16 U.S.C. § 539p(h).

Rehearing en banc cannot change what Congress enacted. It could only substitute a second judicial assessment of an administrative process for the panel's faithful one—at the cost Part I describes, and on petitions that satisfy neither Rule 40(b)(2) ground. Where Congress has spoken this directly, declining the full court's intervention is not abdication. It is the separation of powers working as designed.

CONCLUSION

The panel faithfully applied controlling law. The exchange that Congress directed is complete, and the communities that host it have begun to realize what they spent a decade securing. Nothing in the petitions justifies the extraordinary step of unwinding that. *Amici* respectfully request that the Court deny the petitions for panel rehearing and rehearing en banc.

DATED this the 13th day of July 2026.

Respectfully submitted,

/s/ Grady J. Block

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CERTIFICATE OF SERVICE

I hereby certify that on July 13, 2026, I electronically filed the foregoing *Brief of* Amici Curiae *the Towns of Superior, Kearny, and Miami, Arizona, and Mayor Dean Hetrick of Hayden, Arizona, in Opposition to the Petitions for Panel Rehearing and Rehearing En Banc* with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit via the appellate CM/ECF system, which will serve all registered CM/ECF users.

/s/ Grady J. Block
Grady J. Block

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

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