Nos. 15-15754, 15-15857

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

HAVASUPAI TRIBE, GRAND CANYON TRUST, CENTER FOR BIOLOGICAL DIVERSITY, SIERRA CLUB,
Plaintiffs-Appellants,

v.

HEATHER C. PROVENCIO, KAIBAB NATIONAL FOREST SUPERVISOR, UNITED STATES FOREST SERVICE,
Federal Defendants-Appellees,

and

ENERGY FUELS RESOURCES, ET AL.,
Defendant-Intervenors-Appellees.

Appeal from the U.S. District Court
for the District of Arizona, No. 13-8045-DGC

FEDERAL DEFENDANTS-APPELLEES' OPPOSITION TO PLAINTIFFS-APPELLANTS' PETITION FOR REHEARING EN BANC

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INTRODUCTION AND SUMMARY OF ARGUMENT

The Grand Canyon Trust, Center for Biological Diversity, and the Sierra Club (collectively, "the Trust") challenge the operation of a 17.4-acre uranium mine ("Canyon Mine") located on the Kaibab National Forest in Arizona and operated by Defendant-Intervenors ("Energy Fuels"). The Forest Service, an agency in the U.S. Department of Agriculture, approved Canyon Mine's plan of operations in 1988. The Havasupai Tribe unsuccessfully challenged the approval at that time. *Havasupai Tribe v. United States*, 752 F. Supp. 1471 (D. Ariz. 1990) ("*Havasupai I*"), *aff'd*, 943 F.2d 32 (9th Cir. 1991) ("*Havasupai II*").

Energy Fuels put Canyon Mine into standby status in the 1990s. In 2012, the U.S. Department of the Interior withdrew lands where Canyon Mine is located from the Mining Law of 1872, 30 U.S.C. §§ 22-54, subject to valid existing rights, for a 20-year period. The Forest Service prepared a mineral report documenting its opinion that the mining claims underlying Canyon Mine were valid existing rights under the Mining Law. The Trust challenged the Forest Service's conclusion, asserting that the agency did not adequately consider the costs of environmental compliance when it assessed the validity of the mining claims.

The panel ruled that the Trust lacks prudential standing under the Administrative Procedure Act ("APA") because the Trust's challenge to the Forest Service's determination that Energy Fuels possesses valid existing rights arises under

the Mining Law, but the Trust's environmental interests in preventing mining do not fall within that statute's zone of interests.

The Trust seeks rehearing en banc on the ground that the panel's decision conflicts with decisions holding that the Federal Land Policy and Management Act's ("FLPMA") zone of interests includes environmental interests. The Trust also contends that it need not establish a property interest to bring its challenge under the Mining Law, and that its petition raises a question of exceptional national importance.

The petition does not satisfy Rule 35's standard for en banc review. Contrary to the Trust's assertion, the panel's decision did not opine on the zone of interests protected by FLPMA; instead, the decision correctly held that the Trust's challenge derives from the Mining Law. The panel's decision that such law protects only those "with competing interests in public land that are, or are akin, to property rights" (and not the interests asserted by the Trust) is correct and entirely consistent with relevant precedent. Slip op. at 23. Finally, the decision does not present a question of exceptional importance because it is bound to the unique circumstances of this case.

STATEMENT

Mining on National Forests. The Mining Law authorizes "location" of mining claims on many federal lands. 30 U.S.C. § 22. A valid mining claim—including a "discovery" of a "valuable mineral deposit"—confers the "right of possession and enjoyment" of the claimed lands, though the government retains title. *Id.* §§ 22, 23, 26; *United States v. Locke*, 471 U.S. 84, 86 (1985). Mineral deposits subject to the Mining

Law are considered "valuable" if they can be "extracted, removed and marketed at a profit," and if "a person of ordinary prudence would be justified" spending time and money, "with a reasonable" chance of "developing a valuable mine." *United States v. Coleman*, 390 U.S. 599, 601-03 (1968) (citation omitted); ER711; ER743.[1]

The Mining Law applies to National Forests System lands reserved from the public domain by 16 U.S.C. §§ 482 and 478. *See United States v. Weiss*, 642 F.2d 296, 299 (9th Cir. 1981). The Forest Service must approve mining plans of operations that will likely cause significant surface disturbance. 36 C.F.R. §§ 228.4(a)(3), 228.5(a); SER90-92. Such plans contemplate that operators may temporarily suspend operations. 36 C.F.R. §§ 228.4(c)(3), 228.10. Prior to approving plans of operations, the Forest Service must comply with various statutes, including the National Environmental Policy Act ("NEPA") and the National Historic Preservation Act ("NHPA").

FLPMA generally authorizes Interior to make "[w]ithdrawals of lands" from the Mining Law. 43 U.S.C. § 1714; *see also id.* § 1714(i) (providing that Interior may withdraw lands managed by the Forest Service only with the Service's consent). Any withdrawal, however, is "subject to valid existing rights." FLPMA, Pub. L. No. 94-579, § 701(h), 90 Stat. 2743, 2786 (1976) (codified at 43 U.S.C. § 1701 note). Valid mining claims under the Mining Law are considered valid existing rights not subject to

[1] The Excerpts of Record and Supplemental Excerpts of Record filed with the merits briefs in this appeal are cited as "ER___" and "SER___", respectively.

FLPMA withdrawals. By policy, the Forest Service verifies mining claim validity before authorizing *new* mine plans on withdrawn lands. ER711; ER729-31; ER742-43.

The government or other person "claim[ing] title to or an interest in land adverse to" a mining claim may challenge the claim's validity under the Mining Law. 43 C.F.R. § 4.450-1; SER444-510. To determine whether the government will make such a challenge, the government will conduct an on-the-ground examination of the mining claim and document its findings in a mineral report stating whether the Mining Law's requirements are satisfied, including whether there is a discovery of a valuable mineral deposit. *Locke*, 471 U.S. at 87-89. If the government's opinion is that the mining claim is not valid under the Mining Law, a contest proceeding will be held to determine whether to declare the mining claim void. 43 C.F.R. § 4.451; ER744.

Canyon Mine. In 1984, Energy Fuels' predecessor submitted a proposed plan of operations for Canyon Mine. SER87-88. In 1988, after extensively considering environmental and cultural resources impacts, the Forest Service approved the plan of operations. SER76; SER128-29; SER163-65; SER305-19; SER320-429. The district court and this Court affirmed that approval. *Havasupai I*, 752 F. Supp. at 1485-1505; *Havasupai II*, 943 F.2d at 33-34. Energy Fuel's predecessors began operations, but later put the mine into standby status. ER232; ER158-59; ER296. The approved plan remains in effect.

In January 2012, Interior withdrew the lands underlying Canyon Mine from the Mining Law, subject to valid existing rights, for 20 years. 77 Fed. Reg. 2317-01, 2563-

66 (2012); SER1001; SER998; SER1009; *Nat'l Mining Assoc. v. Zinke*, 877 F.3d 845, 866 (9th Cir. 2017) (rejecting challenge to withdrawal), *petition for cert. filed*, No. 17-1286 (U.S. Mar. 9, 2018). In withdrawing the area, Interior acknowledged that Canyon Mine's operations were already approved and assumed that some mining would continue. SER1002-04; SER878.

When Energy Fuels notified the Forest Service of its intent to resume operations, the agency reviewed the scope of the approved plan of operations and its prior environmental and cultural resources analysis. Because Canyon Mine was not a new operation, no statute or regulation required the agency to assess whether the mining claims were valid under the Mining Law before operations resumed. The agency nevertheless took a cautious approach and assessed the validity of the mining claims. ER227-52; ER179-224; ER158-59. That assessment satisfied the Forest Service that Energy Fuels had "valid existing rights that were established prior to the mineral withdrawal," ER231, and that nothing prevented Energy Fuels from resuming operations under the approved plan, ER179-87.

Procedural History. The Trust challenged the Forest Service's decision in March 2013. ER96-101. The district court rejected that challenge on the ground that the Trust sought to protect environmental interests falling outside those protected by the Mining Law. ER16-20. The Trust appealed. ER53-58.

The panel affirmed the district court's "thorough and well-reasoned order rejecting [the plaintiffs'] challenges." Slip op. at 6. The panel agreed with the Trust

that "FLPMA allows the Secretary [of Interior] to take environmental concerns into account" when making withdrawals, but ultimately rejected the Trust's argument that FLPMA formed the basis of its challenge to the agency's determination. *Id.* at 21. To wit, "the central issue in this case is not the FLPMA's broad grant of withdrawal authority to the Secretary of the Interior, but its requirement that any withdrawal must be 'subject to valid existing rights.'" *Id.* (citing 43 U.S.C. § 1701 note). Whether the mining claims underlying Canyon Mine constitute such valid rights is "define[d]" "by the Mining Law," which protects those with "economic interests"—in particular "those with competing interests in public land that are, or are akin to, property rights"—not the environmental interests of the Trust. *Id.*

The Trust petitioned for rehearing en banc, and the panel ordered this response. The Havasupai Tribe also petitioned for rehearing en banc on its NHPA claims, but the panel did not order a response to that petition.

ARGUMENT

The petition for rehearing en banc should be denied. The panel's decision is correct, does not conflict with any decision of the Supreme Court or of this Court, and raises no issues of exceptional importance. *See* Fed. R. App. P. 35(b).

I. The panel's dismissal of the Trust's challenge is correct and does not conflict with any Supreme Court or other appellate decision.

The Trust contends (at 6-12) that the panel erred in dismissing its challenge to the agency's assessment of whether the mining claims underlying Canyon Mine were

valid rights. It argues that its challenge derives from an alleged violation of FLPMA, and that such challenge should be resolved on the merits because FLPMA protects its environmental interests. The Trust next argues that to the extent its challenge falls under the Mining Law, the challenge should be resolved on the merits because the Mining Law protects the Trust's interests in preventing mining. The panel correctly rejected both of these arguments in holding that the Trust's challenge to the sufficiency of the agency's analysis derives from the Mining Law, which does not protect environmental groups' interests in preventing mining. Slip op. at 20-23.

A. FLPMA does not form the legal basis of the Trust's challenge.

To bring an APA claim, the Trust must show that the interests it seeks to protect "fall[] within the 'zone of interests' sought to be protected by the statutory provision whose violation forms the *legal basis* for [the] complaint." *Lujan v. National Wildlife Federation*, 497 U.S. 871, 883 (1990) (emphasis added).

The Trust's ability to challenge the determination that the mining claims were valid under the Mining Law is determined "by reference to the particular provision of law upon which the plaintiff relies." *Bennett v. Spear*, 520 U.S. 154, 175-76 (1997). While it is true that the court may also look at other statutory provisions, those provisions must still inform the "gravamen of the complaint." *Air Courier Conf. v. Am. Postal Workers*, 498 U.S. 517, 528-29 (1991).

The Trust alleges (at 8) that the agency incorrectly determined that the mining claims were valid rights exempt from the withdrawal. Resolution of this issue depends

entirely on whether the mining claims were valid under *the Mining Law* at the time the land was withdrawn—that is, whether the uranium deposit in the mining claims could be "extracted, removed and marketed at a profit," and whether a prudent person would justifiably spend time and money, "with a reasonable" chance of "developing a valuable mine." *Coleman*, 390 U.S. at 601-03; slip op. at 22 (citing 30 U.S.C. § 22). If, hypothetically, the Court were to find that the agency erroneously assessed the validity of the mining claims, the error would result in a remand to reapply only the Mining Law. Even the Trust acknowledges that the "valuable mineral deposit" test "has been developed through the courts and the federal agencies *under the Mining Law*." Pet. at 9 (emphasis added).

In contrast, FLPMA has no bearing on whether the mining claims were valid rights; the Mining Law alone authorizes disposal of the minerals here. *See* slip op. at 21 ("FLPMA does not define what [valid existing] rights are or how they are determined."). The provisions cited by the Trust (at 7-9, 11) simply direct Interior (not the Forest Service) to manage land for multiple uses and grant Interior authority to withdraw land from the Mining Law, subject to valid existing rights. *See* 43 U.S.C. §§ 1714(a), 1702(j), 1701(a)(6), 1701(a)(8).

The Trust asserts (at 8) that its challenge derives from FLPMA because the withdrawal exempts valid existing rights, and thus the agency conducted its analysis to comply with the withdrawal. This argument misses the mark. None of the provisions

of FLPMA on which the Trust relies governs National Forest System lands; those provisions simply do not apply to challenges to actions by the Forest Service.

In any event, the Forest Service was not required to analyze the validity of the mining claims here. There are no regulations or policies that require the Forest Service to prepare a mineral report where, as here, the approval of a mine plan predates the withdrawal of the relevant lands. *Cf.* ER729-30, ER742 (mineral exams required before approving new plans in withdrawn areas); 43 C.F.R. § 3809.100 (Interior—not Forest Service—regulations) Not even the withdrawal decision required the Forest Service to prepare a mineral report. SER1003. Where neither FLPMA nor the withdrawal required the Forest Service to examine the validity of the mining claims, it cannot be said that the agency's analysis violates those provisions.[2] Even if the withdrawal required the agency to conduct the mineral exam, this requirement would not change the nature of the Trust's challenge, which (as explained above) derives from the Mining Law. To accept the Trust's contention that FLPMA is the "relevant statute" where FLPMA has no bearing on the Trust's claim and did not require the agency to make the challenged determination would "deprive the zone-of-interests

[2] The "cross-reference" canon discussed by amicus (at 6-8) is irrelevant. FLPMA's withdrawal provision does not expressly incorporate 30 U.S.C. § 22 by reference, *see United States v. Head*, 552 F.3d 640, 645 (7th Cir. 2009) (discussing canon), *superseded by statute as stated in United States v. Anderson*, 583 F.3d 504, 510 (7th Cir. 2009). Moreover, the question here is not *what* a statute means but rather *which* statute forms the core of the Trust's claim.

test of virtually all meaning." *Air Courier*, 498 U.S. at 529 (discussing *Clarke v. Securities Indus. Assoc.*, 479 U.S. 388 (1987)).

No precedent directly answers the question whether the Trust's challenge derives from FLPMA or from the Mining Law. The Trust suggests (at 2, 9-12) that the panel's decision conflicts with cases holding that FLPMA protects recreational and aesthetic interests, but those cases are irrelevant. No party disputes that FLPMA protects those (and other) interests. The panel in fact "agree[d] that the FLPMA allows the Secretary to take environmental concerns into account." Slip op. at 21. It went on to hold, however, that the Trust could not invoke FLPMA's zone of interests to bring its Mining Law challenge. *Id.* Accordingly, the panel's decision does not conflict with the line of cases holding that FLPMA protects "aesthetic and recreational interests" in public lands. *Desert Citizens Against Pollution v. Bisson*, 231 F.3d 1172, 1179 (9th Cir. 2000).[3]

B. The Trust's interests do not fall within the Mining Law's zone of interests.

If (as explained in the previous section) the Trust's claim necessarily derives from the Mining Law, 30 U.S.C. § 22, then the Trust must show its injuries are within the zone of interests protected by that law. *Bennett*, 520 U.S. at 1175-76. The panel

[3] The Trust also cites (at 12) *Perkins v. Bergland*, 608 F.2d 803, 805 (9th Cir. 1979), which held that FLPMA favors judicial review of "public land adjudication decisions" (there, grazing permits). The Forest Service's determination is not a FLPMA "public land adjudication decision." *See* Forest Service Response Br. at 3-7, 19-30; Slip op. at 14-20.

correctly held that the Mining Law does not protect an interest in *preventing* mining, which is precisely the Trust's interest here. In so holding, the panel ruled in accord with the Tenth Circuit's holding that the Mining Law's zone of interests does not include "recreational and environmental interests." *High Country Citizens All. v. Clarke*, 454 F.3d 1177, 1185 (10th Cir. 2006).

The Mining Law authorizes exploration, development, and purchase of "valuable mineral deposits in lands belonging to the United States." 30 U.S.C. § 22. The "valuable mineral deposit" provision was not designed to limit mining or regulate land use, as the Trust suggests (at 14-15). To the contrary, the law's "obvious intent was to reward and encourage the discovery of minerals that are valuable in an economic sense," *Coleman*, 390 U.S. at 602, ultimately to encourage development that would result in a "prosperous west" and "stimulate the national treasury," *High Country*, 454 F.3d at 1185. "At its core, the 1872 Mining Law was about ensuring the settled expectations of the emerging mining corporations" by allowing miners to obtain title to land in which they had "invest[ed] the necessary time and capital" in developing. *Id.* at 1185-86. Therefore, the only types of challenges to mining-claim-validity determinations envisioned by the Mining Law and by Interior's implementing regulations are those brought by the government or by parties "claim[ing] title to or an interest in land adverse to" the claimant. 43 C.F.R. § 4.450-1; SER455-57; *High Country*, 454 F.3d at 1186-92 (discussing cases); *Steel v. Smelting Co.*, 106 U.S. 447, 451

(1882) (disallowing collateral attacks on patents brought by third parties lacking an ownership interest).

The Trust admits it has no property interests adverse to the mining claims of Energy Fuels. It instead seeks to prevent mining to serve recreational and environmental interests. *See* Pet. at 12, 17. These interests "were not paramount at the time Congress sought to develop the economy through mining." *High Country*, 454 F.3d at 1185. The Mining Law is unsurprisingly devoid of any reference to those interests. For these reasons, the panel correctly held that the Mining Law "confers rights on those who have an economically defined interest in extracting a resource from public lands" and, arguably, on "others with competing claims" "that are, or are akin to property rights"—not on those seeking to protect environmental interests. Slip op. at 22-23.

This decision does not plough new ground. It is consistent with a decision of the Tenth Circuit and is solidly situated in precedent prohibiting similar third-party collateral challenges. *See High Country*, 454 F.3d at 1186-92 (rejecting environmental groups' challenge to mineral patent); *Raypath v. Anchorage*, 544 F.2d 1019, 1021 (9th Cir. 1976) (rejecting third party's challenge to a landowner's use of patented land); *Steel*, 106 U.S. at 450-51 (third parties who do not allege an ownership interest may not challenge the patent); *St. Louis Smelting Co. v. Kemp*, 104 U.S. 636, 647, 651 (1881) (same).

The Trust attempts (at 14-16) to cast the Mining Law as regulating both mining and non-mining land *uses*. This spin has no basis in either the text or history of the statute. Nor is the Trust aided by *Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians v. Patchak*, 567 U.S. 209, 225 (2012), *cited in* Pet. at 15. *Patchak* addressed a statute providing Interior with authority to take land into trust for tribes and requiring the agency to consider "potential conflicts of land use that may arise" from acquisitions. *Id.* at 226. In light of the statute's charge to consider land use, the Court permitted a neighboring landowner who objected to the proposed use to challenge the acquisition. *Id.* There is no such similar language in the Mining Law. *See* 30 U.S.C. §§ 22, 26, 30. If anything, surface uses—including recreational and aesthetic uses—are considered subservient to mining and may not interfere therewith. *See* 16 U.S.C. §§ 482, 478; 30 U.S.C. § 612; *Weiss*, 642 F.2d at 299; *United States v. Curtis-Nevada Mines*, 611 F.2d 1277, 1284-85 (9th Cir. 1980).

It does not matter, as the Trust suggests (at 9), that the agency considered the costs of complying with environmental statutes in assessing whether the mining claims were valid. Consideration of those operating costs served only to determine whether operations would be profitable—a key factor for the validity of a mining claim—and not to protect broader environmental interests. *Cf. Okanogan Highlands All. v. Williams*, 236 F.3d 468 (9th Cir. 2000) (Organic Act did not require the Forest Service to select the most environmentally-preferable mining plan).

The other cases cited by the Trust (at 12-13) are in fact consistent with the panel's decision. *See Nat'l Credit Union Admin v. First Nat'l Bank*, 522 U.S. 479, 488-94 (1998) (business competitors may challenge actions taken under commercial statutes that are adverse to their financial interests because those statutes are designed to protect similar—if competing—financial interests); *Nat'l Wildlife Fed'n v. Burford*, 871 F.2d 849, 853 (9th Cir. 1989) (statute's purpose was to ensure coal development in an environmentally-sound manner and expressly required consideration of environmental impacts and mitigation); *Pit River v. BLM*, 793 F.3d 1147, 1149-50 (9th Cir. 2015) (statute expressly requires NEPA and NHPA review before lease renewal); *Bennett*, 520 U.S. at 176 (parties with economic interests may sue under Endangered Species Act because it requires consideration of "commercial data"). The interests protected by the statutes in those cases had a clear and express link to the interests of the plaintiffs.

By contrast, the Trust's interests in *preventing* mining are directly opposed to the Mining Law's interest in *promoting* mining. As the panel observed, slip op. at 23, its holding is consistent with this Court's extensive precedent restricting plaintiffs with purely economic interests from bringing NEPA challenges. *See, e.g., Ashley Creek Phosphate v. Norton*, 420 F.3d 934, 940 (9th Cir. 2005); *Ranchers Cattlemen Action Legal Fund v. U.S. Dep't of Agric.*, 415 F.3d 1078, 1103 (9th Cir. 2005). Embracing the Trust's approach would undermine that precedent, potentially enabling challenges from

"plaintiffs whose suits are more likely to frustrate than to further statutory objectives." *Nev. Land Action Ass'n v. Forest Serv.*, 8 F.3d 713, 716 (9th Cir. 1993).[4]

The panel adopted the better approach that is consistent with the precedent of this Court and others: the Mining Law protects "the interests of others with competing claims" including "rival prospectors, of course, but also the United States, which holds title to the land and can authorize others to use it for purposes to the extent it does not interfere with mining." Slip op. at 22-23 (*citing Curtis-Nev. Mines*, 611 F.2d at 1283). "At bottom, the Mining Law protects those with competing interests in public land that are, or are akin to, property rights." *Id.* at 23. The Trust's interests in preventing mining are so "inconsistent with the purposes implicit in the statute that it cannot reasonably be assumed that Congress intended to permit the suit." *Patchak*, 567 U.S. at 225 (internal quotation marks omitted).

II. The decision presents no issue of exceptional national importance.

The panel's decision does not warrant further review because it is fact bound and limited to claims at issue in this case. The Forest Service approved Canyon Mine's plan in 1988. The plan was reviewed and affirmed by this Court then. *Havasupai II*, 943 F.2d at 34. The Forest Service voluntarily conducted a mineral exam to satisfy itself that the mining claims were valid and ultimately found that nothing prevented

[4] The competitor-standing doctrine discussed by amicus (at 10-12) would, as the panel found, permit third parties with competing interests akin to property rights to sue—not parties like the Trust with interests directly opposed to the interests advanced by the statute.

Energy Fuels from continuing operations under the approved plan. Against this backdrop—and following well-settled law precluding third parties from bringing Mining Law challenges—the panel held that the Trust may not challenge the agency's finding that the mining claims were valid under the Mining Law.

The decision is limited to the type of challenge and interests asserted by the Trust in this case. The panel did not opine on other statutes' zones of interests, on potential challenges to newly-approved mining plans, or on other non-mining sorts of "valid existing rights." Consequently, the decision does not bar the Trust from seeking review of future decisions authorizing mining operations (or other uses). As the panel noted, the Trust's interests are protected by NEPA and other environmental statutes, with which federal agencies must comply before authorizing mining plans. Slip op. at 23. If any new plans of operations are approved, the Trust may seek review of the approval decisions at that time. *See, e.g., Wilderness Soc. v. Dombeck*, 168 F.3d 367, 375 (9th Cir. 1999) (reviewing newly-approved plan of operations in an area withdrawn under the Wilderness Act). And contrary to the Trust's assertion (at 17), there are only three other mines inside the withdrawal that, like Canyon Mine, had mine plans with approvals pre-dating the withdrawal. SER1000. Of those, at the time of the withdrawal, one was being prepared for reclamation, one was partially mined, and the other was allowed to proceed under this Court's decision in *Ctr. for Biological Diversity v. Salazar*, 706 F.3d 1085, 1093-96 (9th Cir. 2013). The decision presents no issue of exceptional national importance.

CONCLUSION

For the foregoing reasons, the petition for rehearing en banc should be denied.

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CERTIFICATE OF COMPLIANCE WITH NINTH CIRCUIT RULES 35-4 AND 40-1

I hereby certify, pursuant to Circuit Rule 35-4 and 40-1, that the foregoing opposition to the petition for rehearing en banc is prepared in a format, type face, and type style that complies with Fed. R. App. P. 32(a)(4)-(6) and does not exceed 4,200 words.

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CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of April, 2018, I electronically filed the foregoing opposition to the petition for rehearing en banc with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system. I also certify that the foregoing document is being served this day on all counsel of record via transmission of Notice of Electronic Filing generated by CM/ECF.

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