

JOSÉ A. CABRANES, *Circuit Judge*, dissenting from the order denying rehearing *en banc*:

I write separately simply to underscore that the issues at hand are of “exceptional importance” and surely deserve further appellate review. Fed. R. App. P. 35(a)(2). The denial of *en banc* review in this case is a signal that the matter can and should be reviewed by the Supreme Court.