No. 21-15295

United States Court of Appeals for the Ninth Circuit

APACHE STRONGHOLD,
PLAINTIFF-APPELLANT,

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. 21-CV-00050
HON. STEPHEN P. LOGAN, PRESIDING

BRIEF OF 38 RELIGIOUS AND TRIBAL ORGANIZATIONS AS *AMICI CURIAE* IN SUPPORT OF PETITION FOR REHEARING EN BANC BEFORE THE FULL COURT

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure, each *amicus*, by and through its undersigned counsel, hereby certifies that it has no parent corporation and that no publicly held corporation owns 10% or more of its stock.

s/ *Christopher Mills*
Christopher Mills

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INTEREST OF *AMICI CURIAE*

Amici have diverse religious beliefs but are united in their view that all sincere religious believers should be protected under the Religious Freedom Restoration Act (RFRA). Because the en banc panel majority decision will disproportionately discriminate against Native American religious beliefs, both Native American tribal *amici* and diverse other faith *amici* have a significant interest in ensuring that the Court gives RFRA its full textual protections. The full Court should consider this vital question of religious liberty, on which multiple en banc panels have disagreed and whose answer will have a major ongoing effect in cases within the Ninth Circuit. *Amici* include:[1]

Dorothy Day Catholic Worker, Washington DC is a house of hospitality inspired by the Catholic Worker vision of community solidarity and Gospel nonviolence. It accompanies and supports the rights of marginalized communities who are resisting historical, structural and corporate violence.

Ignatian Solidarity Network is a national social justice education and advocacy organization inspired by the spirituality of Saint Ignatius of Loyola and Catholic Social Thought. ISN has over 100 member institutions in 34 U.S. states and hosts the largest annual Catholic social justice gathering in the nation.

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[1] All parties consented. No party's counsel authored this brief. No one other than *amici* or their counsel contributed money for it.

The **Episcopal Diocese of Eastern Oregon** comprises most of the State of Oregon, stretching from the Cascade Mountains east to Idaho. It is a Diocese deeply committed to the restoration of Indigenous rights.

The **Rochester Friends Meeting** is affiliated with the Friends General Conference and draws attendance from southeastern Minnesota and beyond. Members are active in a statewide initiative for Indigenous Land Return; several Friends have spent time at Oak Flat in solidarity with Apache Stronghold.

Shepherd of the Hills, UCC is an open and affirming church with ministries that service the disadvantaged, is a founding member of the Valley Interfaith Project, and is an immigrant welcoming church. It strongly feels that the imposition on and destruction of the sacred lands of indigenous brothers for profit violates the nature of followers of all faiths and in its case, Christians.

Granite Peak Unitarian Universalist Congregation (Prescott, AZ) is impassioned with social justice and stands behind Apache Stronghold.

Zao MKE Church (Milwaukee, WI) is a Jesus Rooted, Justice Centered, Radically Inclusive congregation.

First Church UCC Phoenix is a diverse, progressive Christian community whose faith compels it to love others unconditionally as Jesus did. Valuing, respecting and serving all cultures, languages and traditions, it partners with other communities, speaks truth to power, and takes risks, seeking justice for everyone.

The **Southwest Conference of the United Church of Christ** is the regional body that provides support to UCC congregations and clergy within Arizona, New Mexico, and El Paso, Texas. It calls on followers of Christ to embody God's unconditional justice and love in the ways we live out every day.

The National Council of Jewish Women (NCJW) is a grassroots organization of volunteers and advocates who, inspired by Jewish values, strive for social justice by improving the quality of life for women, children, and families and by safeguarding individual rights and freedoms. *Amicus Curiae*, the **NCJW (Arizona Section) Inc.** (NCJW-AZ), is one of NCJW's more than 50 affiliates nationwide.

Bartimaeus Cooperative Ministries (BCM) is an ecumenical Christian nonprofit organization based in Ventura, CA, whose mission for the last 25 years has been education, advocacy, publishing and organizing at the intersection of faith and justice. One of its central foci is on reparative justice relative to historical and continuing harms to Indigenous communities and ecological habitats.

Founded in 1880, **First Congregational United Church of Christ of Albuquerque** is the oldest Protestant church in New Mexico. As a Racial Justice church, it is committed to be allies with indigenous siblings in challenging race-based injustice in all its manifestations and believes that Indigenous peoples should be able to exercise the same religious freedom that we as Christians are able to practice

Shalom Mennonite Fellowship (Tucson, AZ) is a Christian church that seeks to follow Jesus, to live in peace and justice, and to repair harm done by our faith. Therefore, it supports Apache Stronghold in the struggle to protect Oak Flat.

St. Mark's Presbyterian Church (Tucson, AZ) is a community of Christians committed to working toward justice and wellbeing for all God's people and creation.

American Indian Movement Cleveland Autonomous Network is an Ohio unincorporated nonprofit association that advocates for Indigenous rights, and strives to provide education and social service for Native Peoples in northeast Ohio. Cleveland AIM has been supporting Indigenous Peoples since 1970.

People of Red Mountain are a grassroots Indigenous organization fighting to protect sacred homelands from lithium mining in Northern Nevada.

New Mexico & El Paso Region Interfaith Power and Light believes that active care of the natural world is integral to spiritual life and social justice. As a small grassroots organization, it helps mobilize and equip local people of faith and faith communities to work for climate justice through education and outreach, religious inspiration, sustainable practices, and policy advocacy.

Desert Palm United Church of Christ is a progressive faith community in Tempe, AZ. It is affiliated with the Southwest Conference of the United Church of Christ, which is part of the larger, national UCC.

Ratzon Center for Healing and Resistance supports the spiritual, social, and philosophical needs of the queer Jewish community in Pittsburgh. It believes in collective liberation and stand in solidarity with all people resisting state violence, colonization, and forced displacement.

Indigenous Lifeways is a New Mexico-based indigenous women-led nonprofit dedicated to restoring the health and balance for all people and our environment by utilizing traditional knowledge and wisdom, respectful land-based practices, ceremonies, and a deep understanding of the dynamics and peoples of our communities. It has nearly 40 years of experience in safeguarding sacred sites and upholding indigenous traditional knowledge as a cornerstone of indigenous identity and sovereignty.

Confederated Villages of Lisjan Nation

Wellington United Church of Christ (Chicago IL)

Grace St. Paul's Episcopal Church is honored to have hosted Apache Stronghold on numerous occasions and believes Oak Flat is sacred land that must be preserved in its natural state to protect its sacredness.

The Society of the Sacred Heart is an international community of women in the Catholic Church. Known as the Religious of the Sacred Heart, RSCJ carry out the service of education through the work of teaching and formation, pastoral

ministry and spiritual direction, human development and the promotion of justice, peace and the integrity of creation.

Community House Church of Washington, DC is a lay-led congregation without any official affiliation with any denomination. Members come from many Christian traditions.

Chiricahua Apache National Order Mission and Alliance is primarily a religious non-profit centered in Monticello, New Mexico within its ancestral home-lands, created to protect, preserve, practice, advance, and celebrate the sacred religion and culture of the Chiricahua Nde (Apache), and do so in ceremonies, gatherings, and other traditional forms on and off Chiricahua Apache lands.

Pax Christi New York State is a state chapter of Pax Christi USA, a member of Pax Christi International, the Catholic Peace Movement named for the Peace of Christ. Through prayer, study, and action, it is dedicated to promoting peace with justice in all its manifestations according to Gospel nonviolence and Catholic Social Teaching.

Nefesh LA

United Women in Faith

St. Paul's Episcopal Church (Ft. Collins, CO)

Beyt Tikkun: A Synagogue without Walls

Franciscan Action Network is a 501(c)3 faith-based advocacy organization, based in Washington DC, that brings a Franciscan moral voice to public policy issues.

The community of faith at **First Christian Church** (Disciples of Christ), Tucson, AZ is part of the Christian Church (Disciples of Christ) and its call to be "a movement for wholeness in a fragmented world."

Coalition to Dismantle the Doctrine of Discovery

University Presbyterian Church (Tempe, AZ)

Community Christian Church is a fellowship of believers, seeking to live the way Jesus taught us, by loving God and loving our neighbors.

Arizona Faith Network is an interfaith organization dedicated to bringing people together to promote peace and understanding through interfaith education and dialogue as well as healing of the world through collaborative social action.

Community Peacemaker Teams is an international non-profit organization that builds partnerships to transform violence and oppression. It has accompanied Apache Stronghold at Oak Flat since May 2023.

INTRODUCTION

The Religious Freedom Restoration Act forbids the government from "substantially burden[ing] a person's exercise of religion" unless it satisfies strict scrutiny. 42 U.S.C. § 2000bb-1(a). RFRA does not define "substantial burden," and in *Navajo v. United States*, an en banc panel of this Court tried to answer this question by holding that a "substantial burden" results only when the government "coerce[s] [individuals] to act contrary to their religious beliefs by the threat of civil or criminal sanctions" or "force[s] [them] to choose between following the tenets of their religion and receiving a governmental benefit." 535 F.3d 1058, 1070 (9th Cir. 2008).

A majority of the en banc panel here overruled *Navajo* and broadened RFRA's application. That majority held that strict scrutiny under RFRA applies if the government "(1) requires the plaintiff to participate in an activity prohibited by a sincerely held religious belief, (2) prevents the plaintiff from participating in an activity motivated by a sincerely held religious belief, or (3) places considerable pressure on the plaintiff to violate a sincerely held religious belief." Nelson Op. 106; *see* Per Curiam Op. 10. Because the federal government's action here will prevent the Western Apaches from engaging in religious practices at *Chí'chil Biłdagoteel*, a sacred site for multiple tribes, the outcome of this case should have been straightforward.

But a different majority refused to give RFRA its plain meaning, adding atextual limitations on "substantial burden" specifically for this case. This majority

reasoned that "substantial burden" is limited by the Supreme Court's ruling in *Lyng v. Northwest Indian Cemetery Protective Association*, which held that the Free Exercise Clause does not prohibit the government from "incidentally" burdening religious practice while managing its internal affairs. 485 U.S. 439 (1988); *see* Collins Op. 50–51. Under this standard, the government would be largely exempt from scrutiny in only one context—when preventing religious exercise on government property.

This limitation of RFRA threatens significant consequences for religious exercise, especially by adherents to minority faiths. Native Americans in particular place special emphasis on physical land in religious practice. Because of questionable land transfers by the federal government, most Native American sacred sites are under federal control. Exempting government land (or other "internal") decisions from RFRA's scope would uniquely harm Native American religious exercise. And adding atextual limitations to RFRA undermines its religious protections of all believers, a consequence of great concern to *amici*.

The en banc panel majority's holding is also legally unsound. RFRA has no textual exclusion when the government is limiting religious exercise in some managerial capacity. Instead, RFRA applies whenever the government imposes a "substantial burden." And as Judge Nelson's opinion agreed, "the ordinary meaning of 'substantial burden'" easily covers situations like this, where by "selling the land,

the government is preventing the Apache's [religious] participation." Nelson Op. 107. Nothing in *Lyng* affects how the public would have understood RFRA's "substantial burden," for *Lyng* does not mention the term. Plus, as the Supreme Court has repeatedly explained—including in *Employment Division v. Smith*, just a few years before RFRA's enactment—*Lyng* was about a law considered to be neutral and generally applicable, so the decision had no need to focus on the question of burden. Penumbras of *Lyng* hinted at in later separate writings are not a sound basis to limit RFRA's expansive text. The en banc panel's error on a major legal question with massive importance to Native Americans, *amici*, and all religious people confirms that full Court review is needed.

ARGUMENT

I. The en banc panel's "substantial burden" interpretation will disproportionately discriminate against Native American religious beliefs.

Under the en banc majority's definition of "substantial burden," many worshippers will see their religious exercise limited—especially Native Americans. Native American beliefs place a great emphasis on geographic location, with many "natural sites [being] viewed as living supernatural beings." Joshua A. Edwards, *Yellow Snow on Sacred Sites: A Failed Application of the Religious Freedom Restoration Act*, 34 Am. Indian L. Rev. 151, 165 (2009). As Christians go to churches and Muslims go to mosques, Native American worshippers visit natural sites to partake in religious rituals. *See* Rayanne J. Griffin, *Sacred Site Protection Against a*

Backdrop of Religious Intolerance, 31 Tulsa L.J. 395, 397 (1995) (noting that Native American sacred sites are the "equivalent of churches, temples or synagogues" (quoting S. Rep. No. 411, 103d Cong., 2d Sess. 2 (1994)).

But because of the federal government's long history of "divestiture of land" from Native Americans, "their most sacred sites are completely within the government's control." Stephanie Hall Barclay & Michalyn Steele, *Rethinking Protections for Indigenous Sacred Sites*, 134 Harv. L. Rev. 1294, 1301 (2021). These sites are unique, leaving Native Americans without adequate alternative areas to engage in religious exercise. So while a Buddhist or a Jew may attend another temple or synagogue—and their places of worship are not generally on public lands—many Native Americans have no other options. "Without access to particular sites, essential practice of native religion may not be merely burdened, but effectively prohibited altogether." *Id.*

Yet the en banc majority held that "it is not enough . . . to show that the Government's management of its own land and internal affairs will have the practical consequence of 'preventing' a religious exercise." Collins Op. 30. Members of the en banc majority seemed to acknowledge that this holding particularly infringes Native Americans' religious practices. *E.g.*, VanDyke Op. 162 ("only *some* religions would benefit"); Nelson Op. 111. One response—that ruling for the Apache Stronghold would somehow discriminate against *other* religions—misses the point.

Limiting RFRA as the majority decision did uniquely harms particular religious beliefs. What matters to RFRA is the burden imposed by the government, not the distribution of religious practices and their manifestations among all the religions. RFRA addresses those substantial burdens, whether they be many for a particular religion or few.

By analogy, the Supreme Court's ruling in *Trinity Lutheran Church of Columbia, Inc. v. Comer* vindicated the religious exercise rights of a Lutheran church that operated a preschool and daycare. 582 U.S. 449 (2017). It did not thereby discriminate against religions that happened not to build playgrounds or operate preschools, for those religions faced no similar harm from the government action. If other government actions infringed on those other religions' exercise rights, then they too should have valid claims in those cases. And if not, then all the better—we should celebrate the free exercise of religion rather than enable the government to impose more restrictions in pursuit of equal burdensomeness.

Of course, while Native Americans face particular dangers of having their religious exercises burdened thanks to the en banc panel's decision, adherents of other religions are threatened too. "American Indians are not the only people who hold certain places sacred and seek to use them for religions purposes. Our federal public lands contain thousands of Catholic missions, historic Mormon sites, bible camps, and other places used for religion." Kristen A. Carpenter, *Old Ground and New*

Directions at Sacred Sites on the Western Landscape, 83 Denv. U. L. Rev. 981, 984 (2006).

According to Judge Nelson, this Court "has issued opinions more hostile to religion than any other court in the country." Op. 113 n.1. Unfortunately, the en banc majority's opinion echoes that long hostility by excluding certain substantial burdens from RFRA's scope. "[I]t is hard to see any reason in principle or practicality why the government should have to tailor its health and safety laws to conform to the diversity of religious belief, but should not have to tailor its management of public lands." *Employment Division v. Smith*, 494 U.S. 872, 885 n.2 (1990). As shown next, that exclusion has no basis in RFRA. And because that exclusion works harm on all religious adherents—especially Native Americans with deep connections to sacred sites on public lands—the full Court should rehear this case.

II. The en banc panel departed from RFRA's textual meaning.

Full Court reconsideration is also necessary to correct the en banc panel's legal error in imposing atextual limitations on RFRA. The key portion of the en banc panel's reasoning was that "[a]s a decision about the scope of the term 'prohibiting,' *Lyng* defines the outer bounds of what counts as a cognizable substantial burden imposed by the government." Collins Op. 46. That, according to the en banc majority, "is plainly how Justice O'Connor['s separate opinion in *Smith*] viewed *Lyng*," "and the *Smith* majority did not disagree." *Id.* Thus, reasoned the majority, "[w]hen

Congress copied the 'substantial burden' phrase into RFRA, it must be understood as having similarly adopted the limits that *Lyng* placed on what counts as a governmental imposition of a substantial burden on religious exercise." *Id.*

So, on the en banc majority's telling, Congress in RFRA meant to import an unordinary meaning of "substantial burden" because *Smith* (an opinion that RFRA expressly *repudiates*) did not disagree with a minority opinion's characterization of *Lyng* (an opinion that does not mention "substantial burden") as limiting the Free Exercise Clause's definition of "prohibiting" (a term that does not appear in RFRA). This contorted rationale is inconsistent with RFRA's text, context, and history.

Start with text. As one panel majority correctly held, "preventing access to religious exercise is an example of substantial burden." Per Curiam Op. 10. So, as Judge Nelson agreed, "the ordinary meaning of 'substantial burden' suggests that in selling the land, the government is preventing the Apaches participation by restricting their access to the land." Op. 107. That this "restriction" is complete destruction of the Apaches' sacred lands makes the burden on religious exercise hard to dispute.

Next consider context. Certainly, "if a [phrase] is obviously transplanted from another legal source, whether the common law or other legislation, it brings the old soil with it." *Stokeling v. United States*, 586 U.S. 73, 80 (2019) (cleaned up); *see* Bea Op. 75; *see also* Nelson Op. 139 (preferring to rely on the similar canon that "[i]f a statute uses words or phrases that have already received authoritative

construction . . . they are to be understood according to that construction"); Collins Op. 41-42 (similar). But this "rule of interpretation makes sense . . . only when the new statute contains materially the same phrase as is found in the old [law]" or had been authoritatively construed. *Zimmerman v. Oregon Dep't of Just.*, 170 F.3d 1169, 1181 (9th Cir. 1999).

Here, neither the Free Exercise Clause nor *Lyng* uses the term "substantial burden." In fact, the term appeared only in passing in *any* pre-RFRA Supreme Court decisions, a grand total of three times in two cases. *See Hernandez v. Comm'r*, 490 U.S. 680, 699 (1989); *Jimmy Swaggart Ministries v. Bd. of Equalization of California*, 493 U.S. 378, 384 (1990) (quoting *Hernandez*). The primary opinion for the en banc majority did not mention these cases, seeming to recognize that these passing references provided no authoritative construction of "substantial burden." Indeed, the Supreme Court "has long stressed that the language of an opinion is not always to be parsed as though" it were the "language of a statute." *Brown v. Davenport*, 596 U.S. 118, 141 (2022) (cleaned up).

This minimal usage does not suggest that Congress "obviously transplanted" RFRA's definition of "substantial burden" from *Lyng*—which again, did not use that phrase. "[R]espect for past judgments also means respecting their limits," *id.*: the Supreme Court's "opinions dispose of discrete cases and controversies and they must be read with a careful eye to context." *Nat'l Pork Producers Council v. Ross*,

598 U.S. 356, 373–74 (2023). The en banc panel's effort to "override a lawful congressional command" "on the basis of a handful of sentences extracted from decisions that had no reason to pass on th[is]" interpretive question is fundamentally flawed. *Davenport*, 596 U.S. at 141; *contra* Nelson Op. 142 (asserting that *Lyng* "directly controls" interpretation of a statute that did not exist as to a phrase that appears nowhere in *Lyng* (or the *Smith* majority or hardly anywhere else)).

Moreover, other RFRA provisions show that Congress knew how to incorporate decisional law when it wanted to—and did not do so for *Lyng*. Several panel opinions said that RFRA "instructs courts to look to 'prior Federal court rulings.' 42 U.S.C. § 2000bb(a)(5)," and "*Lyng* is such a prior federal court ruling." Nelson Op. 142 n.8; *see also* Bea Op. 61 n.5. But that provision endorses only "the compelling interest test as set forth in prior Federal court rulings," 42 U.S.C. § 2000bb(a)(5), which is separate from the question of burden. *E.g.*, *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 726 (2014). RFRA sought "to restore the compelling interest test as set forth in *Sherbert v. Verner*, 374 U.S. 398 (1963) and *Wisconsin v. Yoder*, 406 U.S. 205 (1972)." 42 U.S.C. § 2000bb(b)(1).

That Congress knew how to define RFRA's provisions by reference to prior law and chose not to do so with respect to "substantial burden" and *Lyng* provides more evidence that the en banc panel majority was mistaken. *Cf. Jama v. Immigr. & Customs Enf't*, 543 U.S. 335, 341 (2005) ("We do not lightly assume that Congress

has omitted from its adopted text requirements that it nonetheless intends to apply, and our reluctance is even greater when Congress has shown elsewhere in the same statute that it knows how to make such a requirement manifest."); *Ysleta Del Sur Pueblo v. Texas*, 596 U.S. 685, 704 (2022) ("Congress knows exactly how to adopt into federal law the terms of another writing or resolution when it wishes.").

The en banc panel finally erred in its understanding of *Lyng* itself. Even if that decision were somehow relevant to RFRA's interpretation—and setting aside that it did not involve the complete destruction of a sacred site—it is not a decision about substantial burdens. Instead, it considered the law there to be neutral and of general applicability, and is thus merely a precursor to *Smith*. *Lyng* emphasized that "[t]he Constitution does not permit government to discriminate against religions that treat particular physical sites as sacred." 485 U.S. at 453. But it found no such discrimination, holding that any repercussions for Native American religious exercises were "incidental." *Id.* at 450. That is the same language used a few years later by *Smith* about neutral and generally applicable laws, which prominently relied on *Lyng* to justify its preservation of "[t]he government's ability to enforce generally applicable prohibitions." 494 U.S. at 885; *see id.* at 878 ("merely the incidental effect of a generally applicable and otherwise valid provision").

The en banc panel majority insisted that "the [Supreme] Court has not said, and could not have said, that *Lyng* was *itself* a case involving a neutral and generally

applicable law." Collins Op. 33. But in 2017, the Supreme Court said: "In recent years, when this Court has rejected free exercise challenges, the laws in question have been neutral and generally applicable without regard to religion." *Trinity Lutheran*, 582 U.S. at 460. Its very first example? *Lyng*. Its next example? *Smith*. *Id.* And in 2021, the Supreme Court again explained that *Smith* "drew support for the neutral and generally applicable standard from cases involving internal government affairs"—citing *Lyng*. *Fulton v. City of Philadelphia*, 593 U.S. 522, 536 (2021).

The en banc panel majority might object that the facts of *Lyng* "manifestly would *not* fit the Court's current understanding of a case involving a neutral and generally applicable law." Collins Op. 33. This disregard of the Supreme Court's own explanation of its "understanding" is surprising, particularly from opinions that find their only grounding in the penumbras of separate opinions in repudiated Supreme Court decisions that allegedly snuck their way into RFRA. *E.g.*, Nelson Op. 142 ("The Supreme Court has been clear.").

In any event, what matters for RFRA's interpretation is "the ordinary public meaning of its terms at the time of its enactment." *Bostock v. Clayton Cnty.*, 590 U.S. 644, 654 (2020). So how the Ninth Circuit thinks the Supreme Court would consider the facts of *Lyng* today is irrelevant. In *Smith*, the Court treated *Lyng* as a precedent about neutral laws of general applicability. The majority in *Smith* refused to "distinguish" *Lyng* based on treating the government's "management of public

lands" differently from other "harm[s] [to] the individual's religious interests." 494 U.S. at 886 n.2. The en banc majority panel pointed to no reason to think that, when RFRA was enacted a few years later, the public instead understood *Lyng* to set out a definition of a phrase it never used ("substantial burden") and had no reason to address because the policy was considered neutral and generally applicable.

In short, *Lyng* does not limit the contemporaneous understanding of RFRA's "substantial burden" as encompassing all governmental harms to individuals' religious exercise. The en banc panel's legal error on a question of massive importance to our religious communities calls out for full Court review.

Respectfully submitted,

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APRIL 25, 2024

CERTIFICATE OF COMPLIANCE

I, Christopher Mills, do hereby certify that the foregoing Brief:

1) Complies with the type-volume limit of 9th Cir. R. 29-2(c)(2) because it contains 4,199 words, excluding the parts of the document exempted by Fed. R. App. P. 32(f), as calculated by the word-processing system used to prepare this brief; and,

2) Complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word 365 in 14-point Times New Roman font.

/s *Christopher Mills*
Christopher Mills

Dated: April 25, 2024

CERTIFICATE OF SERVICE

I, Christopher Mills, hereby certify that I filed the foregoing Brief electronically with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit using the appellate CM/ECF system on April 25, 2024. 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.

s/ *Christopher Mills*
Christopher Mills