No. 21-35220

IN THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

HEREDITARY CHIEF WILBUR SLOCKISH; CAROL LOGAN; CASCADE GEOGRAPHIC SOCIETY; MOUNT HOOD SACRED LANDS PRESERVATION ALLIANCE,

Plaintiffs-Appellants,

v.

UNITED STATES DEPARTMENT OF TRANSPORTATION, ET AL.,

Defendants-Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF OREGON

BRIEF OF RELIGIOUS LIBERTY LAW SCHOLARS AS *AMICI CURIAE* SUPPORTING PLAINTIFFS-APPELLANTS' PETITION FOR PANEL REHEARING AND REHEARING EN BANC

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February 22, 2022

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IDENTITY AND INTEREST OF *AMICI CURIAE*[1]

Religious liberty law scholars Thomas C. Berg, Alan Brownstein, Angela C. Carmella, Ronald J. Colombo, Richard A. Epstein, David F. Forte, Richard W. Garnett, and Robert P. George submit this brief as *amici curiae* in support of the Plaintiffs-Appellants.[2] *Amici* have studied and written extensively about the exercise of religion under the law in the United States, with particular attention to religious liberty under the religion clauses of the First Amendment, the Religious Freedom Restoration Act ("RFRA"), 42 U.S.C. §§ 2000bb *et seq*., and the Religious Land Use and Institutionalized Persons Act ("RLUIPA"), 42 U.S.C. §§ 2000cc-1 *et seq*. They write to aid the Court in interpreting and applying RFRA.

[1] The parties' counsel consented to this brief. No party or its counsel authored this brief in whole or in part. No one other than *amici* or their counsel, made a monetary contribution to the preparation and submission of this brief.

[2] *Amici*'s full titles and institutional affiliations (for identification purposes only) are listed in an Appendix.

SUMMARY OF ARGUMENT

Plaintiffs-Appellants' petition for panel rehearing and rehearing en banc describes the panel's misapprehension and misapplication of the doctrine of mootness and explains the exceptional importance of the questions involved in this proceeding, including the interpretation and application of the Religious Freedom Restoration Act ("RFRA"). *See* Pet. at 15–18. *Amici* write to expound on the latter point.

This appeal arises in part from the lower court's excessively narrow interpretation of RFRA. Citing precedent from this Court and the Supreme Court, the Magistrate Judge ruled (and the District Court agreed) that religious exercise is not substantially burdened by the permanent and irreversible destruction of a unique and irreplaceable sacred site that is central to the religious observance of members of the Yakama Nation and Grand Ronde tribes. This challenged government action simultaneously destroys a place of worship and denies the opportunity to worship.

The lower court's ruling departs from plain language of RFRA's text, ignores its legislative history, misapprehends the import of RLUIPA's identical language and of precedent interpreting it, and is contrary to the Supreme Court's precedent and the Circuit Courts of Appeals' precedent.

This Court should grant Plaintiffs-Appellants' petition; should correct the lower court's erroneous interpretation of RFRA; and should clarify the scope of

RFRA's "substantial burden" as properly discerned from RFRA's text and demonstrated in binding and persuasive precedent.

ARGUMENT

I. RFRA's text, as confirmed by its legislative history, supports a definition of "substantial burden" more expansive than that used by the District Court.

The Magistrate Judge recommended (and the District Court agreed) that, under RFRA, the government substantially burdens the exercise of religion *only* when it withholds a benefit or imposes a sanction in consequence of a person's religious exercise, *not* when it forcibly prevents religious exercise or destroys the sacred objects or locations necessary for such exercise. *See* 1-ER-102.[3] That interpretation defies not only logic but also RFRA's text and legislative history.

A. The plain meaning of RFRA supports an expansive interpretation of "substantial burden."

RFRA states: "Government shall not substantially burden a person's exercise of religion even if the burden results from a rule of general applicability, except as provided in subsection (b)." 42 U.S.C. § 2000bb-1. RFRA does not define "substantially burden," nor does it impose any limitation on the plain and ordinary meaning of those words. Accordingly, courts look to the words' ordinary meanings. *A-Z Intern. v. Phillips*, 323 F.3d 1141, 1146 (9th Cir. 2003). A "burden" is "[s]omething that hinders or oppresses." Black's Law Dictionary (11th ed. 2019). A

[3] Excerpts of Record will be cited as [#]-ER-[##].

burden is substantial when it is "[c]onsiderable in importance, value, degree, amount, or extent." Am. Heritage Dictionary (5th ed. 2020). Consequently, RFRA prohibits government action that "hinders or oppresses" a person's exercise of religion to a considerable degree or extent. *Navajo Nation v. USFS*, 535 F.3d 1058, 1090 (9th Cir. 2008) (en banc) (Fletcher, J., dissenting).

Notably, RFRA's definition of "exercise of religion" incorporates the definition found in RLUIPA. *See* 42 U.S.C. § 2000bb-2(4). RLUIPA, in turn, defines "religious exercise" to include "any exercise of religion, whether or not compelled by, or central to, a system of religious belief," including "[t]he use . . . of real property for the purpose of religious exercise." *Id*. § 2000cc-5(7)(A)–(B).

Taking these definitions together, the plain and ordinary meaning of RFRA's text prohibits the government from hindering to a considerable degree the use of real property for the purpose of religious exercise. *See Burwell v. Hobby Lobby Stores, Inc*., 573 U.S. 682, 706 (2014) (noting RFRA was enacted "to provide very broad protection for religious liberty."). The District Court's more cramped definition lacks any support in the statutory text.

B. RFRA's legislative history supports an expansive interpretation of "substantial burden."

Although the text of RFRA is unambiguous and requires no resort to legislative history to determine its meaning, such history supports an interpretation of "substantial burden" more expansive than that reached by the District Court.

Congress enacted RFRA in direct response to the Supreme Court's decision in *Employment Division v. Smith*, 494 U.S. 872 (1990). In Congress's view, *Smith* had "virtually eliminated the requirement that the government justify burdens on religious exercise imposed by laws neutral toward religion," *see* 42 U.S.C. § 2000bb(a)(4), and Congress enacted RFRA because "governments should not substantially burden religious exercise without compelling justification," *id.* § 2000bb(a)(3). Thus, RFRA's purpose was to implement Congress's desire that courts require the government to justify substantial burdens placed on religious exercise.

In enacting RFRA, Congress intended to provide a remedy for a variety of government actions it deemed to be substantial burdens on religious exercise. These objectionable actions include not only the withholding of benefits or the impositions of penalties, but also restrictions on land use by religious groups, restriction on religious practices in prisons, and the performance of unconsented procedures violative of religious beliefs. *See* S. REP. 103-111, 8, 1993 U.S.C.C.A.N. 1892, 1897 ("[*Smith*] has created a climate in which the free exercise of religion is jeopardized. . . . Since *Smith* was decided, governments throughout the U.S. have run roughshod over religious conviction. Churches have been zoned even out of commercial areas. Jews have been subjected to autopsies in violation of their families' faith.").

This history confirms what is apparent from RFRA's text. If sanctions against the person (*e.g.*, the threat of a misdemeanor arrest or the withholding of unemployment benefits) are a substantial burden, even more so is the government's use of raw, insuperable force to *prohibit* an entire faith group's religious observances or to *compel* violations of conscience, for example through the destruction of religious property or forced violations of bodily integrity. Penalties and withheld benefits are coercive incentives to be sure, but prohibitions like those challenged here are greater, more fundamental, absolute burdens that deprive believers of any choice and, by the imposition of brute force, compel violations of religious strictures or prevent religious exercise *in toto*.

C. RFRA's purpose confirms this conclusion.

The purpose of the Act supports the textual interpretation described above. RFRA was enacted for two distinct purposes: (1) to restore the compelling interest test set forth in *Sherbert* and *Yoder* and "to guarantee its application in all cases where free exercise of religion is substantially burdened," and (2) "to provide a claim or defense to persons whose religious exercise is substantially burdened by government." 42 U.S.C. § 2000bb. Although the statute expressly purports to restore the compelling interest test outlined in *Sherbert* and *Yoder*, it does not adopt those decisions' definition of substantial burden, nor does it state those decisions' fact patterns are the *only* burdens qualifying as substantial.

II. RFRA and RLUIPA contain and apply the same definition of "substantial burden."

Congress enacted RLUIPA in response to the Supreme Court's decision in *City of Boerne v. Flores*, 521 U.S. 507 (1997), which invalidated RFRA as applied to the States. RLUIPA reimposes the restrictions of RFRA on state and local prisons and on municipal land-use regulations. *Cutter v. Wilkinson*, 544 U.S. 709, 717 (2005).

Given this history, it is unsurprising that RFRA and RLUIPA share many similarities. Most significantly, both RFRA and RLUIPA prohibit government action or policy that creates a substantial burden on the free exercise of religion unless such burden is narrowly tailored and in furtherance of a compelling governmental interest. *See* 42 U.S.C. § 2000bb-1; *id*. § 2000cc; *id*. § 2000cc-1.

In addition, the statutes' texts and binding precedent demonstrate the substantial burden standard in the two statutes is identical. The statutes' texts indicate Congress intended RFRA and RLUIPA to be similarly interpreted. Neither statute expressly defines substantial burden, and as a result, Congress intended the term to be defined in both statutes according to its ordinary meaning. *See Phillips*, 323 F.3d at 1146. Accordingly, a court defining the term *in either* statute will necessarily arrive at the same expansive definition.[4] Further, when Congress

[4] This expansive interpretation is consistent with RLUIPA's construction provision, which requires the Act to "be construed in favor of a broad protection of religious

amended RFRA in 2000, it expressly incorporated RLUIPA's definition of "religious exercise" into RFRA, thus further harmonizing the interpretation of the statutes and ensuring they both protect "the use . . . of real property for the purpose of religious exercise." *See* Pub. L. 106-274, § 7(a)(3), 114 Stat. 803, 807 (2000).

Not surprisingly, then, Supreme Court and Ninth Circuit precedent hold the two statutes impose "the same standard." *Holt v. Hobbs*, 574 U.S. 352, 358 (2015); *Nance v. Miser*, 700 Fed. App'x 629, 630 (9th Cir. 2017). Because the standards are identical, courts routinely rely on RLUIPA cases to interpret RFRA and vice versa. *Holt*, 574 U.S. at 357–58 (RLUIPA case relying on RFRA precedent); *Gonzalez v. O Centro Espirita Beneficente Uniao do Vegetal*, 546 U.S. 418, 436 (2006) (RFRA case relying on RLUIPA precedent). The District Court's ruling concluding otherwise, *see* ER.14–15 n.8, erred.

III. The Magistrate Judge and the District Court erred in applying an excessively narrow definition of "substantial burden," ignoring both RFRA's text and binding precedent.

In recommending and granting summary judgment in the Defendants' favor on the Plaintiffs' RFRA claim, the Magistrate Judge recommended (and the District Court ruled) that the RFRA claim failed because Plaintiffs failed to establish a substantial burden on their religious exercise. 1-ER-95 to -108; 1-ER-89 to -92. In

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exercise, to the maximum extent permitted by [its] terms . . . and the Constitution." 42 U.S.C. § 2000cc-3(g).

reaching this conclusion, the Magistrate Judge (and, by adoption, the District Court) ruled that under *Navajo Nation v. USFS*, 535 F.3d 1058 (9th Cir. 2008), Plaintiffs can establish a substantial burden within the meaning of RFRA *only* when (1) "they are being coerced to act contrary to their religious beliefs under the threat of sanctions," or (2) "a governmental benefit is being conditioned upon conduct that would violate their religious beliefs." 1-ER-102. This holding was incorrect for the reasons described below.[5]

A. The Magistrate Judge's and the District Court's rulings diverge from RFRA's plain language.

The Magistrate Judge's and District Court's rulings are contrary to the text of RFRA. As explained above, the statute's plain language states the government shall not "substantially burden a person's exercise of religion." Applying the ordinary meaning of this term and the statute's definition of exercise of religion, RFRA prohibits the government from hindering or oppressing to a considerable degree a

[5] In addition to the reasons outlined below, the District Court's reliance on *Navajo Nation* also erred by failing to recognize that the government action in this case constitutes de facto coercion. De facto coercion occurs where "the government controls access to worship areas and resources, and it exerts decisive control over individuals' ability to use spaces or worship consistent with theological requirements." Stephanie Hall Barclay and Michalyn Steele, *Rethinking Protections for Indigenous Sacred Sites*, 134 HARV. L. REV. 1294, 1301 (2021). Consequently, even under the *Navajo Nation* test, Plaintiffs-Appellants established a substantial burden through a showing of de facto coercion based on the government's actions on its own land.

person's exercise of religion, including a person's use of real property for religious purposes. The District Court's definition of substantial burden is far narrower than the plain and ordinary meaning of the statutory term and is unduly restrictive.

B. The Magistrate Judge's and District Court's rulings are contrary to precedent.

The Magistrate Judge's and District Court's rulings are contrary to binding and persuasive precedent from the Supreme Court, this Circuit, and other circuits. The Supreme Court has held a wide variety of government actions to be a substantial burden, including actions that would not fit within the District Court's definition. *See, e.g.*, *Tanzin v. Tanvir*, 141 S. Ct. 486, 492 (2020) (describing the destruction of religious property and an autopsy as RFRA violations); *see also Trinity Lutheran Church of Columbia, Inc. v. Comer*, 137 S. Ct. 2012, 2022 (2017) (noting that the Free Exercise Clause protects against even indirect coercion or penalties).

The Magistrate Judge's and District Court's holdings are also contrary to binding authority from within this Circuit interpreting the substantial burdens in the RLUIPA context. For example, this Court has repeatedly defined substantial burden according to its plain meaning and has found a wide variety of government actions to impose a substantial burden on the exercise of religion. *See, e.g.*, *Int'l Church of Foursquare Gospel v. City of San Leandro*, 673 F.3d 1059, 1067 (9th Cir. 2011) (substantial burden when church was prevented from building a place of worship); *Guru Nanak Sikh Soc. of Yuba City v. Cty. of Sutter*, 456 F.3d 978, 988 (9th Cir.

2006) (same regarding denial of a permit to build a temple); *Greene v. Solano Cnty. Jail*, 513 F.3d 982, 988 (9th Cir. 2008) (same regarding refusal to allow inmate to attend worship services); *Warsoldier v. Woodford*, 418 F.3d 989, 996 (9th Cir. 2005) (same regarding forcing inmate to cut his hair).

Further, the Magistrate Judge's and the District Court's holdings conflict with the approach of several other circuit courts, which have all adopted a broader definition of substantial burden than the District Court. The destruction of the Place of Big Big Trees would plainly constitute a substantial burden under any of these approaches.

The Tenth Circuit, for example, has held that government action is a substantial burden in at least three circumstances: (1) when it "significantly inhibit[s] or constrain[s] conduct or expression that manifests some central tenet of a [person's] individual beliefs"; (2) when it "meaningfully curtail[s] a [person's] ability to express adherence to his or her faith"; and (3) when it den[ies] a [person] reasonable opportunities to engage in those activities that are fundamental to a [person's] religion." *Werner v. McCotter*, 49 F.3d 1476, 1480 (10th Cir. 1995).

Since then, the Tenth Circuit has recognized that a wide variety of government action may be substantial burdens and has held that the withholding of a benefit or the threat of sanction are but a floor—not a ceiling—for determining what constitutes a substantial burden. *See, e.g.*, *Yellowbear v. Lampert*, 741 F.3d 48, 51–

52, 55 (10th Cir. 2014) (Gorsuch, J.) (holding government actions that make religious exercise physically impossible "easily" constituted a substantial burden, and noting that "this court has explained that a burden on a religious exercise rises to the level of being 'substantial' when (at the very least) 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 a religious activity motivated by a sincerely held religious belief, or (3) places considerable pressure on the plaintiff to violate a sincerely held religious belief—for example, by presenting an illusory or Hobson's choice where the only realistically possible course of action available to the plaintiff trenches on sincere religious exercise.").

The Eighth Circuit adopted the *Werner* definition of substantial burden in the context of RFRA in *In re Young*, 82 F.3d 1407 (8th Cir. 1996). In defining substantial burden, the Eighth Circuit noted, "It is sufficient that the governmental action in question meaningfully curtails, albeit retroactively, a religious practice of more than minimal significance in a way that is not merely incidental." *In re Young*, 82 F.3d at 1418–19.

The Eleventh Circuit has held that a government action is a substantial burden when it "significantly hamper[s] one's religious practice." *Davila v. Gladden*, 777 F.3d 1198, 1205 (11th Cir. 2015) (quoting *Smith v. Allen*, 502 F.3d 1255, 1277 (11th Cir. 2007).

Under any of these approaches, the destruction of the Place of Big Big Trees constitutes a religious burden, as it unquestionably prevents, curtails, and seriously hampers the abilities of tribe members to exercise their religion. *See Davila*, 777 F.3d at 1205; *In re Young*, 82 F.3d at 1418; *Werner*, 49 F.3d at 1480.

Recently, the Supreme Court and lower courts across the country have concluded that COVID restrictions prohibiting or even severely curtailing religious observances constitute a substantial burden on the exercise of religion under the First Amendment and under RFRA. *See, e.g.*, *Roman Catholic Diocese of Brooklyn v. Cuomo*, 141 S. Ct. 63, 67 (2020) (holding state restrictions that prevented the attendance of "the great majority of those who wish to attend Mass on Sunday or services in a synagogue on Shabbat" "unquestionably constitute[] an irreparable injury" under the First Amendment); *id*. at 72 (Gorsuch, J., concurring) ("Nor may we discount the burden on the faithful who have lived for months under New York's unconstitutional regime unable to attend religious services."); *Agudath Israel of America v. Cuomo*, 983 F.3d 620, 637 (2d Cir. 2020) ("The restrictions challenged here specially and disproportionately burden religious exercise, and thus strike at the very heart of the First Amendment's guarantee of religious liberty."); *Maryville Baptist Church v. Beshear*, 957 F.3d 610, 613 (6th Cir. 2020) ("The Governor's actions substantially burden the congregants' sincerely held religious practices—and plainly so. Religion motivates the worship services. And no one disputes the

Church's sincerity. Orders prohibiting religious gatherings, enforced by police officers telling congregants they violated a criminal law and by officers taking down license plate numbers, amount to a significant burden on worship gatherings."); *Capitol Hill Baptist Church v. Bowser*, 496 F. Supp. 3d 284, 296 (D.D.C. 2020) ("The District has not, as it contends, banned merely 'one method of worship,' but instead has foreclosed the Church's *only* method to exercise its belief in meeting together as a congregation, as its faith requires. Given the District's restrictions, the Church now must choose between violating the law or violating its religious convictions. This constitutes a substantial burden under RFRA.").

To the extent COVID restrictions substantially burden religious exercise by preventing or limiting the size of a religious worship services for a limited period of time, so too the destruction of the Place of Big Big Trees presents a similar—if not exponentially greater—burden by rendering religious worship or exercise at the site fundamentally impossible forever.

C. This case is distinguishable from *Lyng* and *Navajo Nation* and, in any event, those opinions' holdings and reasoning do not and should not be extended to this case.

The District Court and the Magistrate Judge believed their narrow interpretation of RFRA's text was compelled by *Navajo Nation v. USFS*, 535 F.3d 1058 (9th Cir. 2008) and *Lyng v. Northwest Indian Cemetery Protective Association*, 485 U.S. 439 (1988). *See* 1-ER-102 to -103. This proceeding, however, is factually

distinguishable from those cases. Neither of them involved the physical destruction of a sacred site, and both acknowledged that if (as here) the challenged action *had* involved the physical destruction of sacred sites and objects, the outcome would have been different. *Lyng*, 485 U.S. at 454; *Navajo Nation*, 535 F.3d at 1063; *see also Lyng*, 485 U.S. at 453 (noting that if, as here, the challenged action "prohibit[ed] the Indian respondents from *visiting* [the sacred site, it] would raise a different set of constitutional questions.").

Further, *Navajo Nation* did not (as the Magistrate Judge and the District Court ruled) hold that burdens imposed in *Sherbert* and *Yoder* are the *only* burdens qualifying as "substantial." *See* 1-ER-102. Rather, those cases merely set a *minimum* for the degree of oppression necessary to constitute a substantial burden. *See Navajo Nation*, 535 F.3d at 1070 ("Any burden imposed on the exercise of religion *short of* that described by *Sherbert* and *Yoder* is not a 'substantial burden' within the meaning of RFRA . . . .") (emphasis added). Nor should the reasoning of *Navajo Nation* extend to this case, because its application here would conflict with the plain language, purpose, and meaning of RFRA detailed above.

D. This proceeding gives rise to a "substantial burden" under RFRA.

Given the text of RFRA and the authority noted above, the Magistrate Judge and the District Court erred in applying an excessively narrow definition of "substantial burden." Applying the proper definition, the government's challenged

action unquestionably hinders or oppresses religious exercise to a considerable degree. In fact, the government action at issue does not merely inhibit or limit the exercise of religion, it outright denies members of Yakama Nation and Grand Ronde tribes the opportunity to practice their religion by prohibiting religious exercise through the destruction of the site of such religious exercise.

The Place of Big Big Trees was a sacred site to indigenous people "since time immemorial." 5-ER-929. In analyzing Plaintiffs' claims under RFRA, the spiritual importance of the site must not be overlooked. Indeed, some scholars have suggested that the failure to understand the religious practice of Native peoples has contributed to erroneous decisions under RFRA and the First Amendment. *See* Alex Tallchief Skibine, *Towards A Balanced Approach for the Protection of Native American Sacred Sites*, 17 MICH. J. RACE & L. 269, 273 (2012) ("Some have argued that the lack of support for protecting sacred sites stems from a lack of understanding Indian religions. While the degree of understanding among judges and justices may vary, one cannot deny a certain Western-centered aspect in the *Lyng* Court's discussion of the burden on Native American practitioners. Such views, which are also reflected in both the district court and the Ninth Circuit en banc decisions in *Navajo Nation v. United Forest Service*, suggest a lack of understanding about why sacred sites are important to Indian people.").

As the Magistrate Judge recognized, the site was religiously significant to the tribes for multiple reasons. First, the site itself was a place of worship. As one Plaintiff noted, although the site "never had walls, never had a roof, and never had a floor," it was "still just as sacred as a white person's church." 5-ER-916. In destroying this sacred space, the government destroyed a stone altar used in religious ceremonies, cut down old growth trees that offered privacy for sacred rituals, and ultimately removed safe access to the site entirely.

Second, the site itself had unique spiritual importance beyond its status as a place of worship. Perhaps most significantly, the site was a burial ground. The grounds play an integral role in tribe members' eschatology, as the graves are linked to the tribes' understanding of the restoration of the dead. *See, e.g.*, Declaration of Hereditary Chief Wilbur Slockish (ECF No. 146) at 6 ("If the graves of the ancestors who are buried are disturbed," it will be difficult—if not impossible—"for them to become whole again."). Because tribe members have a religious duty to guard such burial sites, the grounds themselves are a component of members' religious practice.

With these purposes in mind, the magnitude of the burden imposed by the government in this case is made more clear, and the burden is nothing short of staggering. Not only has the government eliminated a central place of worship for the tribes, but it also rendered religious practice itself impossible. The government's acts of destruction plainly constitute a substantial burden on the tribes' religious

exercise, and the District Court erred in concluding otherwise. *See Tanzin*, 141 S. Ct. at 492; *International Church of Foursquare Gospel*, 673 F.3d at 1066–70; *Guru Nanak Sikh Soc.*, 456 F.3d at 987–92; *see also Navajo Nation*, 535 F.3d at 1090 (Fletcher, J., dissenting).

CONCLUSION

For the foregoing reasons, *amici* respectfully request this Court grant Plaintiffs-Appellants' petition; correct the lower court's erroneous interpretation of RFRA; and clarify the scope of RFRA's "substantial burden" as properly discerned from RFRA's text and from binding and persuasive precedent.

Respectfully submitted,

s/ Miles E. Coleman

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CERTIFICATE OF COMPLIANCE

I certify that this brief complies with Fed. R. App. P. 32(a)(5) and (6) because it has been prepared in 14-point Times New Roman, a proportionally spaced font.

I further certify that this brief complies with the type-volume limitation of Fed. R. App. P. 29(a)(5) because it contains 4,076 words excluding the parts of the brief exempted under Rule 32(f), according to the count of Microsoft Word.

s/ Miles E. Coleman
MILES E. COLEMAN

CERTIFICATE OF SERVICE

I hereby certify that on February 22, 2022, I electronically filed the foregoing brief with the Clerk of the Court of the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system. Participants in the case are registered CM/ECF users, and service will be accomplished by the appellate CM/ECF system.

s/ Miles E. Coleman