REDACTED VERSION OF BRIEF FILED UNDER SEAL
SUBJECT TO PROTECTIVE ORDER IN CASE NO. 18-9533 (10TH CIR.)

Appeal No. 18-9533

IN THE
UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

Renewable Fuels Association, et al.,

Petitioners,

v.

U.S. Environmental Protection Agency,

Respondent, and

HollyFrontier Refining & Marketing, LLC, et al.,

Intervenor-Respondents.

ON PETITION FOR REVIEW OF FINAL AGENCY ACTIONS OF THE U.S. ENVIRONMENTAL PROTECTION AGENCY

INTERVENOR-RESPONDENT WYNNEWOOD REFINING COMPANY, LLC'S PETITION FOR REHEARING *EN BANC*

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TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page

CASES

STATUTES

TABLE OF AUTHORITIES
(continued)

Page

RULES

REGULATIONS

TABLE OF AUTHORITIES
(continued)

Page

OTHER AUTHORITIES

INTRODUCTION

I. RULE 35(b) STATEMENT

In accordance with Fed. R. App. P. 35(b) and 10th Cir. R. 35.1, Intervenor-Respondent Wynnewood Refining Company, LLC ("Wynnewood") respectfully petitions for rehearing *en banc* of the January 24, 2020 panel decision ("Panel Decision"). Rehearing *en banc* is warranted under both prongs of Fed. R. App. P. 35(b)(1).

First, this case involves questions of exceptional importance. Fed. R. App. P. 35(b)(1)(B). Does the Clean Air Act require small refineries to have *consistently* received exemptions from the Renewable Fuel Standard ("RFS") in *all* prior years to be eligible for exemptions in future years when compliance would cause them "disproportionate economic hardship"? The Panel Decision—which answers this question in the affirmative—contradicts the language and structure of the statute, which *increases* renewable fuel volume mandates year after year and allows small refineries to petition for exemptions "at any time" from the *escalating* compliance burden. 42 U.S.C. §§ 7545(o)(2)(B)(i), 7545(o)(9)(B)(i).

The answer to this question has real-world consequences that small refineries are already feeling. The nationwide price of RFS compliance credits—Renewable Identification Numbers ("RINs")—*tripled* after the Panel Decision was published. The Panel Decision callously admonishes small refineries to "figure[] out" how to

achieve annual compliance or decide "whether it ma[kes] sense to … remain in the market." Slip Op. at 72, 74. For small refineries like Wynnewood, which can never achieve compliance on their own and will forever be hostage to the volatile RIN market, this ruling is a death knell. By foreclosing access to future exemptions, the Panel Decision will force Wynnewood and eleven other Tenth Circuit refineries out of business—eliminating thousands of high-paying jobs, depriving state and local governments of millions in tax revenue, and devastating the rural communities that depend on them. That is not what Congress intended.

The panel's determination of standing also involves questions of exceptional importance. The Panel Decision found standing based on alleged impacts to ethanol demand and prices "in the aggregate" from "48 small refinery exemption extensions granted overall for 2016 and 2017." Slip Op. at 43–44. This conclusion falls far short of showing that the three small refinery exemptions at issue, by themselves, harmed Petitioners.

Second, rehearing *en banc* is necessary to secure and maintain uniformity of this Court's decisions. Fed. R. App. P. 35(b)(1)(A). The result of the Panel Decision conflicts with this Court's decision in *Sinclair Wyoming Refining Co. v. EPA*, 887 F.3d 986 (10th Cir. 2017), which overturned EPA's denial of two small refinery exemption petitions for the 2014 compliance year, even though neither of those refineries had previously received an exemption for 2013, *see id.* at 989–90, 996,

999. The Panel Decision also conflicts with the Fourth Circuit's decision in *Ergon-West Virginia, Inc. v. EPA*, 896 F.3d 600 (4th Cir. 2018), which overturned EPA's denial of an exemption for 2016, even though that refinery had previously been denied an exemption for 2014 and 2015, *see id.* at 607, 613.

II. STATUTORY AND REGULATORY BACKGROUND

Created under the Energy Policy Act of 2005, Pub. L. No. 109-58, § 1501(a), 119 Stat. 594, 1067-76 (2005), and expanded under the Energy Independence and Security Act of 2007, Pub. L. No. 110-140, § 202, 121 Stat. 1492, 1521-28 (2007), the RFS program requires that renewable fuels—such as ethanol and biodiesel—be blended into petroleum-based transportation fuels—gasoline and diesel—sold in the United States. Congress set escalating annual targets for the nationwide volume of renewable fuels to be blended by "obligated parties," which EPA currently defines as refiners and importers of gasoline and diesel. 42 U.S.C. § 7545(o)(2)(B)(i); 40 C.F.R. § 80.1406. Each obligated party calculates its own share of the nationwide volume—the party's Renewable Volume Obligation ("RVO")—based on an annual rulemaking in which EPA sets a percentage standard reflecting the ratio between renewable fuel volume and non-renewable gasoline and diesel volume. 42 U.S.C. § 7545(o)(3)(B)(ii); 40 C.F.R. §§ 80.1405-07.

Each year, an obligated party must demonstrate compliance with its RVO by acquiring RINs. 42 U.S.C. § 7545(o)(5); 40 C.F.R. § 80.1427. RINs are created

when renewable fuel (like ethanol) is manufactured. 40 C.F.R. § 80.1426. Until renewable fuel is blended into gasoline or diesel, RINs remain "assigned" to the physical volume of renewable fuel. *Id.* § 80.1428. RINs "separate" when renewable fuel is blended with transportation fuel, *id.* § 80.1429(b), and "separated" RINs can then be traded or sold, 42 U.S.C. § 7545(o)(5). Thus, obligated parties can acquire RINs by (1) blending renewable fuel into transportation fuel they produce or import, or (2) buying separated RINs from others on an open, unregulated market. 40 C.F.R. § 80.1426.

Small refineries[1] like Wynnewood do not have facilities or capital to invest in blending infrastructure. They are often configured in ways—or located in regions—that preclude them from blending transportation fuel to meet their RVO, meaning they must rely on the secondary RIN market for RFS compliance. REC2_694.[2] As the Department of Energy ("DOE") explained in a study Congress ordered on the impact of the RFS on small refineries ("the 2011 Study"):

> Large refiners have options available on a scale well beyond those available to smaller refiners. Large integrated refiners can more easily obtain financing for blending facilities, generate options, accommodate their needs efficiently and shift emphasis from one sector to another as opportunities indicate … As a result, RFS[]

[1] A "small refinery" is one with an average annual crude oil throughput of 75,000 barrels per day or fewer. 42 U.S.C. § 7545(o)(1)(K).

[2] Record citations are to the administrative record EPA filed with its Respondents' Brief. *See* Doc. Nos. 010110142580 (Vol. I), 010110142581 (Vol. II).

> compliance costs for the larger refiner may be a small part of overall operating costs.
>
> Small companies are more limited in their options. They face a number of challenges and access to capital is generally limited or not available. Even when capital is available, they may have to choose between making substantial investments in blending and investing in other needed facilities to improve operating efficiencies to remain competitive.
>
> The cost for small refiners to comply with the RFS[] requirements can be substantial. … Their limited product slates coupled with an inability to blend renewable fuels means that many of the small refiners must enter the market to buy RINs. The cost to meet their individual RVO makes this aspect the most significant cost of compliance.

REC1_515.

Of course, "Congress was aware the RFS Program might disproportionately impact small refineries because of the inherent scale advantages of large refineries." *Sinclair*, 887 F.3d at 989. Congress created a three-tier exemption process for small refineries. *See id.*; 42 U.S.C. §§ 7545(o)(9)(A)-(B); 40 C.F.R. § 80.1441(e)(2). First, the statute temporarily exempted all small refineries from RFS compliance from 2006 through 2010 ("the blanket exemption"). 42 U.S.C. § 7545(o)(9)(A).

Second, Congress directed DOE to study whether RFS compliance would impose disproportionate economic hardship on small refineries and directed EPA to exempt such refineries for at least two additional years. *Id.* DOE completed its first study in 2009 and concluded that the blanket exemption should not be extended for

anyone. REC1_489. Dissatisfied with the initial report, Congress ordered DOE to conduct a new study, *see Sinclair*, 887 F.3d at 989 n.2, which DOE completed in 2011. REC1_483–582. In the 2011 Study, DOE found that certain small refineries would suffer disproportionate economic hardship, and EPA extended the blanket exemption for those refineries through 2012. *Id.*

Third, after the five-year blanket exemption (or its two-year extension) ended, Congress provided that a "small refinery may ***at any time*** petition [EPA] for an extension of [the blanket exemption] for the reason of disproportionate economic hardship." 42 U.S.C. § 7545(o)(9)(B)(i) (emphasis added).

III. PROCEDURAL HISTORY

Wynnewood is an "obligated party" that owns and operates a small crude oil refinery in rural Oklahoma. REC2_687–88. EPA granted Wynnewood's petition for a small refinery exemption ("SRE") for the 2017 compliance year. REC2_733–41. Advocacy groups for the renewable fuels industry (the "Biofuels Coalition") petitioned for review. Wynnewood and two other small refineries intervened.

The Panel Decision vacated EPA's grant of Wynnewood's 2017 exemption. The Panel Decision interpreted the word "extension" in the RFS statute to mean that, even though the statute permits "a small refinery [to] *submit* a hardship petition at any time," the petition cannot be "*granted*" unless the small refinery has "submitted meritorious hardship petitions each year" and "consistently received an exemption"

since the blanket exemption for all small refineries expired after 2010. Slip Op. at 6, 72, 76. Because the most recent SRE Wynnewood had received was for 2012, the panel determined its petition for 2017 was "improvidently granted." *Id.* at 79.

ARGUMENT

I. REHEARING *EN BANC* SHOULD BE GRANTED ON THE ISSUE OF SMALL REFINERIES' ELIGIBILITY FOR EXEMPTIONS.

A. The Panel Decision is inconsistent with the language and structure of the RFS Statute.

The Clean Air Act ("CAA") permits small refineries to petition EPA "at any time … for an extension" of the blanket exemption. 42 U.S.C. § 7545(o)(9)(B)(i). Since the blanket exemption ended, EPA has consistently interpreted and applied this provision to grant hardship relief to small refineries on a case-by-case basis "at any time"—*i.e.*, for any year in which "disproportionate economic hardship" would result from RFS compliance. *Id.* However, the Panel Decision interprets the word "extension" to mean "an increase in the length of time" or "to add to something in order to make it bigger or longer." Slip Op. at 70. Therefore, the panel concludes, "a small refinery which did not seek or receive an exemption in prior years is ineligible for an extension, because at that point there is nothing to prolong, enlarge, or add to." *Id.* at 71.

The Panel Decision does violence to the RFS statute and congressional intent for several reasons. First, nothing in the statute requires the panel's conclusion that the relief Congress provided in § 7545(o)(9)(B) is temporary or otherwise time-

limited. Congress only used the word "temporary" to describe the blanket exemption in § 7545(o)(9)(A), titled "Temporary exemption." In contrast, Congress invited small refineries to petition "at any time" for an exemption under § 7545(o)(9)(B), titled "Petitions based on disproportionate economic hardship."

Second, the Panel Decision violates the "fundamental canon of statutory construction that the words of a statute must be read in their context and with a view to their place in the overall statutory scheme." *E.g.*, *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 133 (2000). A court's task is "to construe statutes, not isolated provisions." *King v. Burwell*, 135 S. Ct. 2480, 2489 (2015).

Viewed in its statutory context, "extension" in § 7545(o)(9)(B)(i) means "to grant" or "to make available." There are two plausible meanings of "extension"—(1) "an increase in the length of time" or (2) "an offer 'to make available (as a fund or privilege).'" *Field v. Mans*, 157 F.3d 35, 43 (1st Cir. 1998) (quoting *Webster's Third New Int'l Dictionary* 804 (1971)). The Panel Decision adopted the first definition *without even mentioning* the second. *See* Slip Op. at 69–71. But the second definition makes more sense because it gives effect to *all* the language in the statute and is more consistent with the structure of the RFS program.

For example, small refineries can apply for "an extension"—*i.e.*, a grant—of the blanket exemption "at any time." 42 U.S.C. § 7545 (o)(9)(B)(i). Read naturally, the word "any" has an expansive meaning, *Ali v. Fed. Bureau of Prisons*, 552 U.S.

214, 214 (2008), suggesting Congress did not intend to place temporal limitations on eligibility for hardship relief. When the Panel Decision remarks that, "even if a small refinery can *submit* a hardship at any time, it does not follow that every single petition can be *granted*," Slip Op. at 76, it deprives the phrase "at any time" of any significant meaning.

Moreover, a "small refinery" is one with an average aggregate daily crude oil throughput below 75,000 barrels per day "for a calendar year." *Id.* § 7545(o)(1)(K). Defining "small refinery" based on throughput "for a calendar year" reflects Congress' intent that eligibility for exemptions can change annually. Indeed, EPA regulations state that "to qualify for an extension of its small refinery exemption, a refinery must meet the definition of 'small refinery' … for the most recent full calendar year prior to seeking an extension and must be projected to meet the definition … for the year or years for which an exemption is sought." 40 C.F.R. § 80.1441(e)(2)(iii).

Third, the Panel Decision misunderstands the RFS program's structure and the need for SREs. The panel wrongly assumed that Congress intended to "funnel[] small refineries toward compliance over time," reasoning that "once a small refinery figures out how to put itself into a position of annual compliance, that refinery is no longer a candidate for extending (really 'renewing' or 'restarting') its exemption."

Slip Op. at 72. But the RFS program is not like other regulatory schemes where compliance is achieved by a specific date—*e.g.*, installing a pollution control device.

The annual and escalating nature of the volume mandates means that small refineries not only face repeated RFS compliance obligations each year, but those obligations substantially *increase* each year. *See* 42 U.S.C. § 7545(o)(2). Congress created the hardship exemption in § 7545(o)(9)(B) as a safety valve—not an off-ramp—for small refineries that face "disproportionate economic hardship" due to *escalating* compliance obligations. There is no support for the panel's assertion that Congress intended to force small refineries either to comply or *go out of business*. *See* Slip Op. at 74 ("[A] small refinery in 2016 or 2017 had many years to ponder operational issues and compliance costs, including whether it made sense to enter into *or remain in the market* in light of the statute's challenging renewable fuels mandate." (emphasis added).)

The Panel Decision also ignores the market-based nature of the RFS program. Congress required obligated parties to acquire RINs to show RFS compliance. *Id.* § 7545(o)(5). The 2011 Study found that small refineries generally cannot afford to invest in blending infrastructure; when they "enter the market to buy RINs" that are "far more expensive than those that may be generated through blending, *this will lead to disproportionate economic hardship*." REC1_494–95, 515 (emphasis added). As annual volume mandates increase, blending opportunities become

scarcer, imposing even more "significant economic hardship" on small refineries that must purchase RINs to achieve compliance. REC1_509–10.

Therefore, Congress directed EPA to consider the 2011 Study's findings and "other economic factors" in evaluating hardship petitions. *Id.* § 7545(o)(9)(B)(ii). Congress understood that, given the *increasing* volume mandates, the potential for disproportionate economic hardship to small refineries would grow more acute after the blanket exemption expired. Accordingly, Congress permitted EPA "to extend" the exemption to small refineries "at any time," and it directed EPA to consider the 2011 Study's findings and "other economic factors" to determine whether, in light of *contemporary* market conditions, hardship relief for particular small refineries is warranted.

In sum, recognizing that "extension" contemplates the ongoing availability of small refinery hardship relief is consistent with the statute's language and structure, gives meaning to all its terms, and accounts for the dynamic, market-based nature of the RFS program. The Panel Decision should have adopted the plausible meaning of "extension" EPA espoused. EPA Br. 29, Wynnewood Br. 32; HollyFrontier Br. 36–37. Under *Skidmore v. Swift & Co.*, 323 U.S. 134, 140 (1944), this interpretation has the "power to persuade," *Sinclair*, 887 F.3d at 990–93, and the panel should have deferred to EPA.

B. The Panel Decision conflicts with this Court's decision in *Sinclair* and the Fourth Circuit's decision in *Ergon-West Virginia*.

While the "continuity requirement" was not explicitly addressed by the Court in *Sinclair*, the result of that decision directly conflicts with the Panel Decision. Both refineries in *Sinclair* received the five-year blanket exemption "until 2011" (*i.e.*, through 2010) and the two-year extension of that exemption "until 2013" (*i.e.*, through 2012). *Sinclair*, 887 F.3d at 989-90. The refineries "then petitioned the EPA to extend their small-refinery exemptions, arguing that both refineries would continue to suffer 'disproportionate economic hardship' under the RFS Program." *Id.* at 990. "EPA denied Sinclair's petitions" after 2012. *Id.* However, the *Sinclair* decision only addressed hardship petitions for the 2014 compliance year. *See id.* at 996, 1000. Consequently, the *Sinclair* Court overturned EPA's denial of two SRE petitions for 2014, even though neither of those refineries had previously received an exemption for 2013. *See id.* at 999.

Moreover, the *Sinclair* Court's discussion of SREs indicates it did not believe a continuity requirement existed. *Sinclair* notes that small refineries can apply for hardship relief "'at any time'" and describes the "relevant question" in the statute as "whether a refinery will suffer 'disproportionate economic hardship' if it is required to participate in the RFS Program *for a given year*[.]" *Id.* at 993 (emphasis added).

The Panel Decision likewise conflicts with the result of the Fourth Circuit's decision in *Ergon*, which overturned EPA's denial of an exemption for 2016 despite

expressly noting that the refinery had been denied an exemption for 2014 and 2015. 896 F.3d at 607, 613.

C. The Panel Decision will put small refineries in the Tenth Circuit out of business.

The practical effect of the Panel Decision is to exclude Wynnewood—and eleven other small refineries in the Tenth Circuit—from *ever* being eligible again for hardship relief. Refineries that did not apply for exemptions in every year after the blanket exemption expired, or that were denied relief in at least one year, are prohibited from obtaining future relief. SREs are mission-critical for refineries like Wynnewood. Because it lacks sufficient blending infrastructure, Wynnewood must purchase RINs to meet its RVO.[3] The 2017 exemption at issue relieved Wynnewood of [redacted] in RFS compliance costs, which were solely attributable to RIN purchases.[4] REC2_706. But the Panel Decision precludes Wynnewood from SRE eligibility merely because it was not continuously exempt after 2012.

The inequity of this situation is compounded by the fact that, before 2017, EPA denied hardship relief to small refineries (including Wynnewood) based on a

[3] Given Wynnewood's disproportionately high diesel production, its rural location that necessitates shipping most of its fuel by pipelines (which prohibit blended fuel), and its inability to pass through RIN costs to customers, Wynnewood—and many small refineries like it—can never self-satisfy its RVO. Wynnewood Br. 13-14.

[4] Wynnewood's RIN-related costs for 2017 [redacted] REC2_688-89.

reading of the statute this very Court found impermissible. *See Sinclair*, 887 F.3d 986. In *Sinclair*, EPA argued that, to prove "disproportionate economic hardship," a small refinery must establish that RFS compliance would existentially threaten the refinery's long-term viability. *Id.* at 995–96. This Court disagreed, finding EPA's interpretation too narrow: "EPA's equation of 'hardship' and 'viability' improperly transforms Congress's statutory text into something far beyond what Congress plausibly intended." *Id.* at 997. Ironically (and perversely), the Panel Decision *penalizes* refineries with gaps in their exemption histories caused by what this Court held was EPA's impermissibly stringent standard.

The Panel Decision will cripple small refineries. RFS volume mandates are continuing to increase.[5] RIN prices tripled after the Panel Decision.[6] Prices and demand for crude oil and gasoline have cratered due to the COVID-19 pandemic, causing a 95 percent drop in refining margins.[7] In short, small refineries will have

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[5] *Compare Renewable Fuel Standard Program: Standards for 2020 and Biomass-Based Diesel Volume for 2021 and Other Changes*, 85 Fed. Reg. 7,016, 7,018 (Feb. 6, 2020) (20.04 billion-gallon renewable fuel mandate for 2020) *to Renewable Fuel Standard Program: Standards for 2014, 2015, and 2016 and Biomass-Based Diesel Volume for 2017; Final Rule*, 80 Fed. Reg. 77,420, 77,422 (Dec. 14, 2015) (16.93 billion-gallon renewable fuel mandate for 2016).

[6] *See* U.S. EPA, *RIN Trades and Price Information* (last updated Mar. 10, 2020), https://www.epa.gov/fuels-registration-reporting-and-compliance-help/rin-trades-and-price-information (increase of D6 (ethanol) RINs from $0.06 to $0.20 between January 20 and February 24, 2020).

[7] *See, e.g.*, Reuters, *U.S. Gasoline Refining Profits Slump to 2008 Levels Amid Coronavirus Fears*, N.Y. TIMES (Mar. 16, 2020), https://www.nytimes.com/reuters/2020/03/16/business/16reuters-global-oil-gasoline-margins.html.

to purchase *more* RINs at *higher* prices to meet *increasing* RVOs when there will be an historic *decrease* in demand for—and margins on—their fuel. These are exactly the type of circumstances DOE indicated would cause disproportionate economic hardship. REC1_494–94, 509–10, 515. The Panel Decision abolishes EPA's ability to grant hardship relief to small refineries precisely when they will need it most.

II. REHEARING *EN BANC* SHOULD BE GRANTED ON THE ISSUE OF THE BIOFUELS COALITION'S STANDING TO SUE.

The Panel Decision rejected Intervenors' position that the Biofuels Coalition lacked standing. Slip Op. at 38–51. The panel credited the Biofuels Coalition's argument that exemptions reduce overall market demand for ethanol and thereby reduce revenues paid to its members. *Id.* at 5-6, 43-44. The panel "assum[ed]" that, upon remand, EPA could require retirement of the allegedly improperly reinstated RINs and thus "[a] favorable judicial decision is likely to redress at least some of this injury." *Id.* at 5-6, 55.

The Panel Decision ignores the long-standing requirement that injury must be traceable *to the defendant's conduct*. *Nova Health Sys. v. Gandy*, 416 F.3d 1149, 1156 (10th Cir. 2005). Rather than trace their alleged injury to the three exemptions challenged in this case, the Biofuels Coalition's "economist bases []his conclusion on an industry-wide analysis of the effects of the 48 small refinery exemption extensions granted overall" over multiple years. Slip Op. at 43. "[W]here injury is alleged to occur within a market context, the concepts of causation and redressability

become particularly nebulous and subject to contradictory, and frequently unprovable, analyses." *Common Cause v. Dep't of Energy*, 702 F.2d 245, 251 (D.C. Cir. 1983).

The Biofuels Coalition failed to establish "specific facts," without the "benefit of any inference," showing injury by a preponderance of the evidence from the three challenged exemptions. *N. Laramie Range All. v. FERC*, 733 F.3d 1030, 1034 (10th Cir. 2013). The Biofuels Coalition relied solely on inferences to allege carryover RINs available *to Intervenors* lowered *nationwide* RIN prices, which weakened incentives to blend renewable fuel and resulted in less revenue for its members. Wynnewood Br. 26–27 (citing Cooper Decl. ¶¶ 17-19). These inferences are rebutted by evidence that carryover RINs from prior SREs did not reduce ethanol demand in 2018. HollyFrontier Br., Decl. of Brian Carron at ¶ 11. Indeed, ethanol production *increased* from 2017 to 2018. *Id.*

Even if the Biofuels Coalition suffered injury, this Court cannot redress it. A party must show that "a favorable court judgment is likely to relieve the party's injury." *WildEarth Guardians v. Pub. Serv. Co. of Colo.*, 690 F.3d 1174, 1182 (10th Cir. 2012). Mere "speculati[on]" is insufficient. *Nova Health*, 416 F.3d at 1154. Intervenors argued that a favorable order would not affect the market because all reinstated RINs were for 2017 or earlier, and RINs expire after two years. Here, the panel improperly speculated that "RIN[s] may have ongoing effects as a result of the

carryover process," and that EPA "likely" would "address[] the contested 2016-2017 RINs." Slip Op. at 52–53; *see* HollyFrontier Response Br. 17; Wynnewood Response Br. 28-29. This is textbook "nebulous" "speculation."

CONCLUSION

For the foregoing reasons, Wynnewood respectfully requests that rehearing *en banc* be GRANTED.

DATED: March 24, 2020

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing brief were served today, this 24th day of March, 2019, through the Court's ECF system on all registered counsel.

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CERTIFICATE OF COMPLIANCE

Pursuant to FED. R. APP. P. 32(g)(1), the undersigned hereby certifies:

1. This petition complies with the type-volume limitation of FED. R. APP. P. 35(b)(2) because, excluding the parts of the document exempted by FED. R. APP. P. 32(f) and 10th Cir. R. 32(B), this document contains 3,883 words.

2. This petition complies with the typeface requirements of FED. R. APP. P. 32(a)(5) and 10th Cir. R. 32(B) 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 2016 in 14-point font size and Times New Roman font.

Dated: March 24, 2020

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CERTIFICATE OF DIGITAL SUBMISSION

With respect to the foregoing petition, I hereby certify that:

1. All required privacy redactions have been made per 10th CIR. R. 25.5;

2. If required to file additional hard copies, that the ECF submission is an exact copy of those documents; and

3. The digital submission has been scanned for viruses with the most recent version of a commercial virus scanning program, Malwarebytes 3.6.1, and according to the program is free of viruses.

Dated: March 24, 2020

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