No. 24-5565

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

CONFEDERATED TRIBES OF THE COLVILLE RESERVATION,
Plaintiff-Appellant,

JOSEPH A. PAKOOTAS, ET AL.,
Plaintiffs,

STATE OF WASHINGTON,
Intervenor-Plaintiff,
v.

TECK COMINCO METALS LTD,
Defendant-Appellee

Appeal from the United States District Court
for the Eastern District of Washington
No. 2:04-cv-0256 (Hon. Stanley A. Bastian)

BRIEF FOR THE NATIONAL MINING ASSOCIATION, AMERICAN EXPLORATION & MINING ASSOCIATION, AND CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA AS *AMICI CURIAE* IN SUPPORT OF APPELLEE'S PETITION FOR REHEARING EN BANC

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rules of Appellate Procedure 26.1 and 29(a)(4)(A), *amici curiae* state as follows:

The National Mining Association (NMA) is a non-profit, tax-exempt organization incorporated in Delaware. NMA has no parent corporation, and no publicly held company has 10% or greater ownership in the NMA.

The American Exploration & Mining Association has no parent corporation that has any outstanding securities owned by the public and there is no corporation that owns more than ten percent of its stock.

The Chamber of Commerce of the United States of America (Chamber) states that it is a non-profit, tax-exempt organization incorporated in the District of Columbia. The Chamber has no parent corporation, and no publicly held company has 10% or greater ownership in the Chamber**.**

Dated: November 13, 2025

s/ William M. Jay
William M. Jay

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INTEREST OF *AMICI CURIAE*[1]

The National Mining Association (NMA), based in Washington, D.C., is a national trade association that serves as the voice of the mining industry. NMA's 250-plus members include producers of most of America's coal, metals, and industrial and agricultural minerals; the manufacturers of mining and mineral processing machinery, equipment and supplies; and the engineering and consulting firms, financial institutions, and other firms serving the mining industry. A core mission of NMA is working with Congress and regulators to advocate for public policies that will help America fully and responsibly utilize its vast natural resources. NMA works to ensure America has secure and reliable supply chains, abundant and affordable energy, and the American-sourced materials necessary for U.S. manufacturing, national security, and economic security, all delivered under world-leading environmental, safety, and labor standards. NMA also participates in litigation on issues of concern to the mining industry.

The American Exploration & Mining Association (AEMA) is a 130-year-old organization with 1,800 members in forty-six states. AEMA's members have been active since the 19th century in the entire mining life cycle, beginning with prospecting and exploration, advancing through development and mineral extraction

[1] No counsel for any party authored this brief in whole or in part and no entity or person, aside from *amici curiae*, their members, or their counsel, made any monetary contribution intended to fund the preparation or submission of this brief.

and processing, and concluding with mine reclamation and closure. More than eighty percent of AEMA's members are small businesses or work for them.

The Chamber is the world's largest business federation. It represents approximately 300,000 direct members and indirectly represents the interests of more than three million companies and professional organizations of every size, in every industry sector, and from every region of the country. An important function of the Chamber is to represent the interests of its members in matters before Congress, the Executive Branch, and the courts. To that end, the Chamber regularly files *amicus curiae* briefs in cases, like this one, that raise issues of concern to the nation's business community.

Amici have a substantial interest in the proper interpretation of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. § 9601 *et seq*., and its provision authorizing natural resource damages. Their membership includes companies that operate facilities on or near tribal lands, as well as companies that have been pursued for liability for natural resource damages. Any business that is a potential target for such liability (now and in the future) has an interest in the outcome of this case, because the theory of natural resource damages advanced by the Confederated Tribes of the Colville Reservation (Colville) and rightly rejected by the district court would threaten liability that is duplicative and highly disproportionate to any concrete injury to natural resources.

Amici seek to promote a predictable, rational, and plain reading of CERCLA—but the Ninth Circuit panel decision does the opposite.

INTRODUCTION AND SUMMARY OF ARGUMENT

A panel of this court has taken the unprecedented step of authorizing a plaintiff to sue under CERCLA for money damages for lost cultural connection to a natural resource. That holding will be profoundly disruptive, in large part because cultural-loss claims can easily eclipse the typical claims CERCLA allows. Consider the damage figures proposed in this case. Colville seeks *$538.6 million* for lost cultural connection to an uncontaminated Upper Columbia River as a whole. By contrast, the State of Washington and Colville *together* claim only about a third of that amount ($177 million) for ecological damages to fish, other organisms, and recreational fishing in that same river. The degree to which claimed cultural damages can outstrip ecological ones shows the dangers of condoning cultural-loss claims under this environmental statute, which is meant to promote the cleanup of hazardous sites and restoration of natural resources.

CERCLA allows "damages for injury to, destruction of, or loss of natural resources," *i.e.*, injury to land, fish, wildlife, biota, air, or water. 42 U.S.C. § 9607(a)(4)(C). Multiple provisions indicate that those damages include only those that address the injury to, destruction of, or loss of *the natural resource*, and not damages to address private or personal injuries, such as second- or even third-order cultural or emotional injuries. First, CERCLA includes in the "damages" allowed "reasonable costs of assessing *such* injury, destruction, or loss resulting from" the

release of hazardous material—referring back to the "injury to, destruction of, or loss *of natural resources*." *Id.* (emphasis added). The damages assessment is thus trained on analyzing the scope of the injury to or loss of the relevant natural resource. Second, damages are available "for use *only* to restore, replace, or acquire the equivalent of" those resources—not to restore a community's culture. *Id.* at § 9607(f)(1). Third, Congress encouraged assessing damages based on "minimal field observation"—an impossible task if cultural injuries were authorized—and authorized regulations that focus on assessing the injury, destruction, or loss of the natural resource and the value of that resource. 42 U.S.C. § 9651(c)(2). CERCLA does not authorize the lost-cultural-connection damages that Colville seeks here.

The principal question that warrants rehearing is whether the natural resource damages CERCLA authorizes include damages for *a lost cultural connection* to the Upper Columbia River. Directing that Colville's claim proceed to trial in this case was erroneous for the further reason that the claim is based on tribal members' subjective perceptions of injury to a natural resource, not on actual damage to specific natural resources. Specifically, Colville contends that it is entitled to damages for injury to the entire Upper Columbia River and Lake Roosevelt because of tribal members' "apprehension" that the river was contaminated—damages that far exceed the alleged harm that contamination may have caused to the specific natural resources injured (primarily fly larvae and other macroinvertebrates in the

river sediment). Allowing claims based on subjective perceptions empowers plaintiffs to inflate their demand to the extraordinary levels seen here, creating massive settlement leverage. The consequences of the panel's holding will be felt nationwide, unexpectedly expanding CERCLA liability and threatening to dry up finite funds meant for restoring natural resources.

The question presented here has particular importance within the Ninth Circuit. A vast amount of public land and natural resources lies within the Ninth Circuit, as do a very significant number of the trustees who can bring natural resources damage claims under CERCLA. A claim for damages for injury to natural resources can be brought by the United States, a State, or an Indian Tribe, and approximately three-fourths of Indian Tribes reside within the Ninth Circuit. *See* Brief *Amici Curiae* of the National Congress of American Indians, Tribal Nations, and Inter-Tribal Organizations ("Tribal Brief in *Cooley*"), *United States v. Cooley*, No. 19-1414, at 9 (U.S. filed Jan. 15, 2021) ("[T]he Ninth Circuit includes over 75 percent of the nation's 574 Indian tribes and encompasses more than 71 million reservation acres, roughly 80 percent of the country's total reservation lands.").

This Court should reverse the panel's unprecedented expansion of this important statute.

ARGUMENT

I. The legal questions in this case are not only exceptionally important nationwide, but are particularly important in the Ninth Circuit.

A panel of this Circuit approved a novel and unlimited theory of CERCLA liability based on Colville's lost-cultural connection claims. This is the first appellate decision to authorize cultural damages, greenlighting an unprecedented expansion of CERCLA. The issue is exceptionally important for at least three reasons. First, it authorizes unbounded liability divorced from ecological harm. Second, it potentially allows select groups to divert funds toward their specific communities at the expense of the public as a whole. Third, it generates enormous settlement pressure for CERCLA claims, which can affect a wide variety of businesses, especially those within the Ninth Circuit.

The panel approved an unbounded theory of damages that sharply diverges from the statutory purpose of remediating ecological harm. Colville seeks damages for "cultural" harms whose remediation does not involve cleanup of contamination or any restoration or replenishment of natural resources. Rather, its claims are based on the "altered relationship between the Colville Tribes community and the natural resources in the Upper Columbia River," which resulted in "discouraged use of natural resources" and "diminished traditional and cultural connections to those resources." 2-ER-170 (citation omitted); 3-ER-348 (expert report opining on "restoration programs" to address "cultural loss due to the widespread apprehension

about the safety and health of the river and beaches"). Colville's measure of cultural damages, which ranges as high as $525 million, includes the cost to build and operate a longhouse and retreat, and to buy back specific land taken from Colville *by the United States government* many years ago—a cultural harm for which the defendant here is not even arguably responsible. 2-ER-175. Colville's lost-cultural connection claim creates liability vastly disproportionate to natural resource injuries: over half a billion dollars, treble the amount of the state *and* tribal claims for damages to benthic organisms, and about *thirty* times the amount of the claim for actual damages to the fishery.

Congress placed a key brake on natural resource damages under CERCLA: they are to be used only for restoring, replacing, or acquiring natural resources, which benefits the public as a whole. 42 U.S.C. § 9607(f)(1). Congress did not authorize CERCLA to be used as "a new font of" recovery for essentially private injuries. *New Mexico v. Gen. Elec. Co.*, 467 F.3d 1223, 1246 (10th Cir. 2006) ("Congress, in enacting CERCLA, intended to provide a vehicle for cleaning up and preserving the environment from the evils of improperly disposed of hazardous substances rather than a new font of law on which private parties could base claims for personal and property injuries.").

The panel unexpectedly discarded these limitations and turned CERCLA into a limitless liability hammer. Not only does the opinion compel any defendant

accused of *environmental* harm to also pay compensation for *cultural* injuries, even those for which it is not remotely responsible, it threatens to expand the scope of permissible recovery to include damages for *any* type of project that advances the plaintiff's culture, even projects with no causal connection to the natural resources damaged.

The opinion exacerbates the problem of disproportionate damages by directing trial on claims based on the *perception* of injury, rather than actual harm sustained by the benthic organisms or fish. Permitting damages claims to rest on perceptions of harm, that are quantified based on cultural impact, substantially expands liability—as the extraordinary amounts at issue in this case demonstrates.

The unprecedented reach of the panel's opinion is magnified by the fact that its invitation to bring lost-cultural-connection claims cannot, as a matter of logic, be confined to tribal trustees alone. After all, every human community can assert an inimitable and ineffable connection to nature. *See* Henry D. Thoreau, Walden (1854) ("Our village life would stagnate if it were not for the unexplored forests and meadows which surround it. We need the tonic of wildness…. We can never have enough of Nature."). Thus, the panel's reasoning opens up ambitious theories of cultural liability to any state and federal trustees willing to bring them. *See, e.g.*, Ashley Taylor, Ryan Strasser & Amy Pritchard Williams, *State attorney general actions: how outside counsel for AGs changes the game*, Reuters (June 30, 2023),

https://www.reuters.com/legal/legalindustry/state-attorney-general-actions-how-outside-counsel-ags-changes-game-2023-06-30/ (noting the incentive for outside counsel representing states on a contingency-fee basis to pursue "novel and aggressive legal theories that could require substantial resources from a defendant to debunk").

Cultural damage claims can potentially siphon scarce resources away from the natural-resource restoration that CERCLA was designed to achieve. Massive damages awards like the one Colville seeks could leave claims for resource restoration near other communities unsatisfied. As this Court pointed out, CERCLA defendants "do not have unlimited financial resources" and cannot simply meet unlimited liability. *Pakootas v. Teck Cominco Metals, Ltd.*, 646 F.3d 1214, 1222 (9th Cir. 2011). "Sometimes the orange is squeezed dry." *Id.* Where all damages claims may need to be satisfied from the same limited pocket, adding a new and boundless type of liability to the mix threatens to divert funds away from restoration of injured natural resources (which benefits all communities) and toward the cultural-injury claims of a single community.

This Court should grant the petition for yet another reason. Authorizing lost-cultural-connection claims allows CERCLA plaintiffs to escalate their damages demands exponentially—and thus generate enormous settlement pressure. The threat of unbounded liability, disproportionate to concrete injury to natural

resources, concerns many businesses that could be targeted with CERCLA claims. CERCLA affects all kinds of businesses, including manufacturing, transportation, real estate, waste management, and countless others.

It is especially important that this Court correctly construe CERCLA's natural resources damages provision. A very substantial portion of public lands and natural resources fall within the Ninth Circuit. More than 90% of federal lands are in Alaska and the 11 contiguous States from the Rockies to the Pacific. *See* Congressional Research Serv., CRS Report 42346, *Federal Land Ownership: Overview and Data* 20, https://www.congress.gov/crs-product/R42346.[2] And the number of natural resource trustees that can bring CERCLA claims (the United States, a State, or Indian Tribe, *see* 42 U.S.C. § 9607(f)) also disproportionately reside within the Ninth Circuit. About 75 percent of the nation's 574 Indian tribes and more than 71 million reservation acres, roughly 80 percent of the country's total reservation lands, are found within the Ninth Circuit. *See* Tribal Brief in *Cooley*, *supra*, at 9.

As a result, CERCLA claims related to public or tribal lands are much more likely to arise within the Ninth Circuit than in other circuits, which means that the panel's rule will have a disproportionate impact on liability for natural resources

[2] These 12 States include the States in the Ninth Circuit (minus Hawaii) plus Colorado, New Mexico, Utah, and Wyoming.

damages under CERCLA. The issues presented in this case therefore merit en banc review.

II. CERCLA does not authorize damages for "lost cultural connection" to natural resources caused by "perceptions" of contamination.

A. CERCLA does not authorize natural resources damages based on perceptions of contamination.

Colville argued below that it can obtain "natural resource damages" for its lost cultural connection to the Upper Columbia River as a result of tribal members' *perception* that the river was contaminated, or their "apprehension" about using the river for that reason. 2-ER-170, 3-ER-348. But CERCLA authorizes damages for actual injuries to natural resources, nothing more. Without any reasoning, the panel ordered that this perceptions-based claim go to trial. The en banc Court should step in to clarify that perceptions-based claims are beyond CERCLA's scope.

CERCLA authorizes "damages for injury to, destruction of, or loss of natural resources." 42 U.S.C. § 9607(a)(4)(C). The statute defines "natural resources" to include "land, fish, wildlife, biota, air, water, ground water, drinking water supplies, and other such resources" owned, controlled, or held in trust by the United States, a state or local government, foreign government, or an Indian tribe. *Id.* § 9601(16).

The ordinary meaning of an "injury" is a concrete harm. *See Injury*, Merriam-Webster's Dictionary (11th ed. 2003) ("hurt, damage, or loss sustained"); *Injury*, Black's Law Dictionary (5th ed. 1979) ("Any wrong or damage done to another,

either in his person, rights, reputation, or property"); *Injury*, Black's Law Dictionary (4th ed. 1957) ("An act which damages, harms, or hurts."). Such a reading is fully consistent with the other harms ("destruction" and "loss") that are paired with it in the statute. *See Destruction*, Black's Law Dictionary (12th ed. 2024) ("The quality, state, or condition of being ruined or annihilated."); *Loss*, Merriam-Webster's Dictionary Online (2025) ("destruction, ruin"; "decrease in amount, magnitude, value, or degree"). Likewise, CERCLA's implementing regulations define "injury" as "a measurable adverse change, either long- or short-term, in the chemical or physical quality or the viability of a natural resource." 43 C.F.R. § 11.14(v).

The statute's use of the term "injury" leaves no room for damages based on *perceptions* of injury rather than actual injury. Assessing money damages for subjective fear, rather than for demonstrable environmental harm, impermissibly expands the statute. CERCLA "liability may not extend beyond the limits of the statute itself." *Burlington N. & Santa Fe Ry. Co. v. United States*, 556 U.S. 599, 610 (2009).

Colville seeks cultural-use damages—separate from ecological and recreational damages—on the premise that "[r]eleases of hazardous substances have altered the relationship between [Colville] and natural resources in the Upper Columbia River" and "discouraged use of natural resources … which includes diminished traditional and cultural connections to those resources." 2-ER-170

(citation omitted). Colville alleges that its members' use of the river was discouraged not by any actual injuries to the natural resources at issue here (benthic organisms and fishing), but from the "perception" that the river—as a whole—was unsafe. 2-ER-170 (citation omitted); 2-ER-171; 2-ER-118 ("CCT members' avoidance of the river is based on Teck's contamination of the river and not specifically the injury its contamination caused to benthos in the sediment."). In Colville's view, "[p]roof of damage … need not specifically tie to the actionable injury." *Id.* In other words, Colville seeks damages for members' perception (even if inaccurate) that the river as a whole was no longer suitable for their accustomed uses. That is entirely distinct from a claim for concrete, demonstrable damage to a natural resource itself—and the latter is all that CERCLA authorizes. .

Although this critical flaw was litigated below and on appeal, the panel, without reasoning, specifically "remand[ed] the case for trial." Op. 20. *Amici* are concerned that the opinion could be read to endorse the cognizability of damages based on *perceptions* of contamination. The en banc court should clarify that this expansive theory falls outside CERCLA's bounds, or at a minimum leave the district court free to address this issue before trial.

B. CERCLA does not authorize "lost cultural connection" claims.

Even if Colville could premise its claim on a perception of harm, its claim fails because it is not based on the "use value" of natural resources. CERCLA does

not directly address how to measure damages to natural resources. But its text and context indicate that such damages do not extend to second or third-order cultural or emotional injuries. *Fischer v. United States*, 603 U.S. 480, 486 (2024) (courts interpreting a federal statute "consider both 'the specific context' in which [the relevant language] appears 'and the broader context of the [law] as a whole.'" (citation omitted)); *United States v. Hansen*, 599 U.S. 762, 775 (2023) (considering the "context of these words—the water in which they swim"); *ZF Auto. US, Inc. v. Luxshare, Ltd.*, 596 U.S. 619, 627 (2022) (refusing to read the word "tribunal" "[s]tanding alone"). The panel erred by reading the term "use" in isolation rather than reading the full phrase—"use value"—in the full context of the statute. *See, e.g.*, *FCC v. AT&T, Inc.*, 562 U.S. 397, 406 (2011) ("[T]wo words together may assume a more particular meaning than those words in isolation.").

Multiple provisions provide critical context for understanding the best meaning of the scope of CERCLA's natural resource damages. As noted, CERCLA provides "damages for injury to, destruction of, or loss of natural resources, including the reasonable costs of assessing *such* injury, destruction, or loss resulting from" a "release" of hazardous substances. 42 U.S.C. § 9607(a)(4)(C) (emphasis added). The damages assessment is thus trained on analyzing the scope of the injury to or loss of the relevant *natural resource*. CERCLA conspicuously does not mention assessing damages for injuries to culture.

Under CERCLA, damages are available "for use *only* to restore, replace, or acquire the equivalent of" those resources—not to restore a community's culture. *Id.* § 9607(f)(1) (emphasis added). Allowing recovery so far afield of the permitted uses would be incongruous. After all, Congress enacted CERCLA "to address 'the serious environmental and health risks posed by industrial pollution' and 'to promote the timely cleanup of hazardous waste sites.'" *Atl. Richfield Co. v. Christian*, 590 U.S. 1, 6 (2020). Allowing federal, state, and tribal trustees to pursue claims for damages to natural resources is fully consistent with that focus on cleanup. Unlike damages for a typical tort or contract injury, which the plaintiff can use however it chooses, CERCLA requires that *these* plaintiffs—natural resource trustees—use natural resource damages "to restore, replace, or acquire the equivalent of [the injured] natural resources." 42 U.S.C. § 9607(f)(1); *Gen. Elec. Co.*, 467 F.3d at 1244; *In re Gold King Mine Release*, 669 F. Supp. 3d 1146, 1155 (D.N.M. 2023) (limitation applies to Indian tribes). So even though (as the panel emphasized, Op. 14) the "measure of damages … shall not be limited by the sums which can be used to restore or replace" natural resources, CERCLA provides significant context for the scope of damages by limiting their use for "restor[ing], replac[ing], or acquir[ing]" natural resources. 42 U.S.C. § 9607(f)(1). Colville's theory of damages for lost-cultural connection, by contrast, has no tie to restoring, replacing,

or acquiring natural resources, especially because it is untethered from actual, measurable injury to a natural resource.

In a separate provision of CERCLA directing the Department of the Interior to promulgate "regulations for the assessment of damages for injury to, destruction of, or loss of natural resources," Congress encouraged assessing damages based on "minimal field observation"—an impossible task if cultural injuries were authorized. 42 U.S.C. § 9651(c)(1), (2). In addition, that provision directs Interior to "identify the best available procedures to determine such damages, including both direct and indirect injury, destruction, or loss," and to "take into consideration factors including, but not limited to, replacement value, use value, and ability of the ecosystem or resource to recover." *Id*. § 9651(c)(2). This provision refers to assessing the injury to *natural resources* or approximating the value of those resources. Neither of those encompasses compensation for cultural injuries. In other words, "use value" is a tool that can be used to put a number on damages to natural resources; it does not authorize damages for a whole new category of injuries.

Nor can Colville fit its lost-cultural-connection claims within the framework of evaluating the "use value," "replacement value," or other similar valuation of the natural resources at issue in this case. *Fischer*, 603 U.S. at 487 ("[A] word is 'given more precise content by the neighboring words with which it is associated.'" (citation omitted)). Colville's lost cultural connection to the river is not due to lost

use of benthic organisms, or to lost opportunities for fishing because of fish consumption advisories. Rather, Colville's lost-cultural-connection claims are allegedly based on the "lost use of an uncontaminated river" as a whole. Opening Br. 9-10. And even assuming that Colville could properly point to the river as a whole as the contaminated entity, the lost "tribal services" that make up its lost-cultural-connection claim are insufficiently connected to use of the river. Colville desires to "restore the primacy of the river in the Tribes' experience," but does not explain what *use* of the river was lost.[3] Opening Br. 11-12, 23-25.

The disconnect between the damages Colville claims and the damages CERCLA authorizes reinforces the point: Colville seeks money for "cultural programs and buildings to enable restoration of cultural attributes, including language programs," and acquisition of land. Opening Br. 12. Colville fails to tie any of those to the lost use of benthic organisms or fishing.

In short, CERCLA does not allow for unbounded liability based on cultural activities that may be based on a sincere but nonetheless subjective feeling about a natural resource. Rather, lost "use" claims are limited to uses that were lost due to

[3] Insofar as Colville points to lost fishing trips, they acknowledge that they have already asserted a "joint claim … with the State for lost fishing trips by the general public" but seek additional damages because, due to their "unique relationship" with the river, the lost fishing trips "impacted the Tribes in ways that are distinct from the general public." Opening Br. 10. Colville thus double-counts the same lost use claims.

the impairment of the specific natural resource that was injured. Under that standard, the district court properly dismissed the Colville's tribal loss claim, which the panel erroneously reversed.

* * *

The panel authorized a new and effectively unlimited theory of liability under CERCLA. That theory runs contrary to CERCLA's text, which embodies a statutory policy of focusing on compensating concrete injury to natural resources. As is further confirmed by the astronomical sums the Tribes' experts generated from them, liability on this theory knows no bounds. The result in many cases will be to leave *less* money available for the actual remediation and replacement of natural resources that was Congress's priority in enacting the statute. This case raises critical questions regarding CERCLA liability that this Court should address en banc, especially because CERCLA cases involving natural resource damages are more likely to arise within the Ninth Circuit given the extent of natural resources and natural-resource trustees within this Circuit.

CONCLUSION

This Court should grant Teck's petition for rehearing en banc to consider the exceptionally important question of CERCLA liability for injury to natural resources.

Dated: November 13, 2025

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limit of Fed. R. App. P. 29(b)(4) and Circuit Rule 29-2(c)(2) because it contains 4,172 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f). This document 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 this document has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point Times New Roman font.

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CERTIFICATE OF SERVICE

I certify that I electronically filed this brief with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on November 13, 2025. I certify that all participants in the case are registered CM/ECF users and service will be accomplished by the CM/ECF system.

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