No. 19-1990

IN THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

INTERNATIONAL REFUGEE ASSISTANCE PROJECT, on behalf of itself and its clients; HIAS, INC., on behalf of itself and its clients; MIDDLE EAST STUDIES ASSOCIATION OF NORTH AMERICA, INC., on behalf of itself and its members; ARAB AMERICAN ASSOCIATION OF NEW YORK, on behalf of itself and its clients; YEMENI-AMERICAN MERCHANTS ASSOCIATION, on behalf of itself and its members; IRAP JOHN DOE #4; IRAP JOHN DOE #5; IRAP JANE DOE #2; MUHAMMED METEAB; MOHAMAD MASHTA; GRANNAZ AMIRJAMSHIDI; SHAPOUR SHIRANI; AFSANEH KHAZAELI; IRANIAN ALLIANCES ACROSS BORDERS; IAAB JANE DOE #1; IAAB JANE DOE #3; IAAB JANE DOE #5; IAAB JOHN DOE #6; IRANIAN STUDENTS' FOUNDATION, Iranian Alliances Across Borders Affiliate at the University of Maryland College Park; EBLAL ZAKZOK; FAHED MUQBIL; ZAKZOK JANE DOE #1; ZAKZOK JANE DOE #2

Plaintiffs – Appellees,

v.

DONALD J. TRUMP, in his official capacity as President of the United States; UNITED STATES DEPARTMENT OF HOMELAND SECURITY; UNITED STATES DEPARTMENT OF STATE; OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE; KEVIN K. McALEENAN, in his official capacity as Acting Secretary of Homeland Security; MICHAEL R. POMPEO, in his official capacity as Secretary of State; JOSEPH MAGUIRE, in his official capacity as Acting Director of National Intelligence; MARK A. MORGAN, in his official capacity as Senior Official Performing the Functions and Duties of the Commissioner of U.S. Customs and Border Protection; KENNETH T. CUCCINELLI, in his official capacity as Acting Director of U.S. Citizenship and Immigration Services; WILLIAM P. BARR, in his official capacity as Attorney General of the United States,

Defendants – Appellants.

United States District Court
for the District of Maryland, Southern Division
(8:17-cv-00361-TDC; 8:17-cv-02921-TDC; 1:17-cv-02969-TDC)

PETITION FOR REHEARING EN BANC

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TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

Cases

Other Authorities

INTRODUCTION AND RULE 35 STATEMENT

Plaintiffs allege that the President's "travel ban" unconstitutionally discriminates on the basis of religion because the President issued the ban to fulfill a campaign promise to prevent Muslims from entering the United States. These cases have twice been before the en banc Court, and twice the Court held that Plaintiffs were entitled to a preliminary injunction because they had shown, even without the benefit of discovery, that they were likely to prevail on their constitutional claims.[1]

After the Supreme Court held that another group of plaintiffs was not entitled to a preliminary injunction, *see Trump v. Hawaii*, 138 S. Ct. 2392 (2018), the government moved to dismiss these cases for failure to state a claim. The district court denied the government's motion to dismiss on the constitutional claims because the allegations in Plaintiffs' complaint satisfied the minimal "plausibility" pleading threshold that applies on a motion to dismiss, and because denial of a preliminary injunction does not prevent a plaintiff from litigating a claim on the merits.

A panel of this Court reversed. The panel did not address whether the allegations in Plaintiffs' complaints stated a plausible basis for relief. Instead, the

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[1] *See Int'l Refugee Assistance Project v. Trump* (*IRAP I*), 857 F.3d 554 (4th Cir. 2017) (en banc); *Int'l Refugee Assistance Project v. Trump* (*IRAP II*), 883 F.3d 233 (4th Cir. 2018) (en banc).

panel concluded that *Hawaii* requires dismissal of Plaintiffs' claims because the Supreme Court did not merely hold that the *Hawaii* plaintiffs were unlikely to succeed on the merits of their claims. It definitively adjudicated the claims in *Hawaii* and in these cases, too. The panel also concluded that *Hawaii* rejected the en banc Court's reading of *Kleindienst v. Mandel*, 408 U.S. 753 (1972), in favor of the narrower standard advanced in the *IRAP I* and *IRAP II* dissents.

The panel's decision warrants further review because it conflicts with decisions of the Supreme Court, this Court, and other courts of appeals. Contrary to the panel's ruling, these decisions have held that the denial of a preliminary injunction does not foreclose litigation of a claim on the merits; that, even under rational-basis review, a court should review the allegations in the complaint to decide whether they state a plausible basis for relief; and that, under *Mandel*, a court may look behind the face of executive action where, as here, there are specific allegations that the action was taken in bad faith.

The panel's ruling also warrants further review given the exceptional importance of these cases. Plaintiffs have suffered unimaginable harm from prolonged separation from their families and loved ones, which they allege is caused by unlawful executive action. No court has reviewed the allegations in their complaints and concluded that they failed to plead plausible constitutional violations. Instead, Plaintiffs have been denied the chance to prove their claims on a

full evidentiary record because they (and the *Hawaii* plaintiffs) sought preliminary injunctive relief, which ultimately was not granted.

This Court has observed that "[a] litigant applying for a preliminary injunction should seldom be required . . . to forego discovery in order to seek emergency relief." *Gellman v. State of Md.*, 538 F.2d 603, 604 (4th Cir. 1976). Yet that is what happened here. En banc review is warranted to prevent that result.

BACKGROUND

In September 2017, President Donald J. Trump issued Proclamation No. 9645, 82 Fed. Reg. 45,161 (Sept. 27, 2017), which marked his third attempt to prevent immigrants and nonimmigrants from a list of Muslim-majority countries from coming to the United States. This Proclamation sought to fulfill a campaign promise for "a total and complete shutdown of Muslims entering the United States." JA145. It implemented the desired Muslim ban by barring entry of people from certain "territories" because, in the President's words, "people don't want me to say Muslim." JA65, 208. Plaintiffs swiftly challenged the Proclamation as unconstitutional.

The district court granted a preliminary injunction on the ground that the Plaintiffs were likely to succeed on their claim that the Proclamation violates the Establishment Clause. This Court, sitting en banc, affirmed that preliminary

injunction, *IRAP II*, 883 F.3d at 274, just as it had done when reviewing a preliminary injunction against a prior version of the ban, *IRAP I*, 857 F.3d at 572.

Following this Court's decision in *IRAP II*, the Supreme Court reviewed the grant of a preliminary injunction in a similar lawsuit challenging the Proclamation, reversed the preliminary-injunction order because the plaintiffs had "not demonstrated a likelihood of success on the merits," and remanded for further proceedings. *Hawaii*, 138 S. Ct. at 2392, 2423.

After these cases were remanded in light of *Hawaii*, the government moved to dismiss, arguing that *Hawaii* "foreclosed" Plaintiffs' constitutional claims. JA258. The district court denied the government's motion to dismiss as to Plaintiffs' constitutional claims, holding that "Plaintiffs have put forward factual allegations sufficient to show that the Proclamation is not rationally related to the legitimate national security and information-sharing justifications identified in the Proclamation and therefore that it was motivated only by an illegitimate hostility to Muslims." JA269. The district court reasoned that *Hawaii* is "not dispositive" because of the different standards governing motions for preliminary injunctions and motions to dismiss. JA269. The court also noted that the complaint asserted additional facts that were not available at the time of *Hawaii*, and that the Court therefore did not consider. JA271.

The district court certified its order for interlocutory appeal—despite concluding that the traditional grounds for certifying an appeal were not met—based on the standard articulated in *In re Trump*, 928 F.3d 360, 368-72 (4th Cir. 2019), which has since been overruled, 958 F.3d 274 (4th Cir. 2020) (en banc). JA286.

The panel reversed and ordered that Plaintiffs' complaints be dismissed with prejudice. *Int'l Refugee Assistance Project v. Trump* (*IRAP III*), 961 F.3d 635, 640 (4th Cir. 2020). The panel held that Plaintiffs' claims must be dismissed based on the Supreme Court's decision in *Hawaii*. *Id.* at 640, 654. The panel reached that result under both rational-basis review and the standard set forth in *Mandel*. *Id.* at 648.

ARGUMENT

I. The Panel's Ruling That Plaintiffs Fail to State Constitutional Claims Under Rational-Basis Review Warrants En Banc Review.

The panel held that the district court "erred as a matter of law" in concluding that Plaintiffs plausibly alleged that the Proclamation lacked a rational basis. *Id.* at 653. The panel reasoned that, even though *Hawaii* considered claims in the preliminary injunction context, "the rational basis finding was not stated on a 'likelihood basis'" and therefore "definitively" resolved that the Court must accept the national security justifications on the face of the Proclamation. *Id.* The panel then explained that Plaintiffs could not "possibly" succeed on their claims because "it is possible to 'discern a relationship' between the Proclamation's entry restrictions and

'legitimate state interests.'" *Id.* at 654 (quoting *Hawaii*, 138 S. Ct. at 2420-21). The panel's reasoning and conclusions are inconsistent with Supreme Court and Circuit precedent.

A. The Panel's Treatment of *Hawaii* as Dispositive of Plaintiffs' Claims Conflicts with Supreme Court and Circuit Precedent.

The panel offered two reasons why *Hawaii* foreclosed further litigation of Plaintiffs' claims under rational-basis review: (1) in the panel's view, the reasoning in *Hawaii* extended beyond the Supreme Court's likelihood-of-success holding in that specific case and definitively resolved the constitutionality of the Proclamation; and (2) no amount of discovery could change the result in a trial on the merits because, given the deferential nature of rational-basis review, a law that appears rational based on a limited evidentiary record is necessarily rational on a full evidentiary record. Both reasons conflict with Supreme Court and Circuit precedent.

1. The panel erred in reading *Hawaii* as definitively resolving the claims in that case. The Supreme Court has long made clear that "it is generally inappropriate for a federal court at the preliminary-injunction stage to give a final judgment on the merits." *Univ. of Tex. v. Camenisch*, 451 U.S. 390, 395 (1981). This Court has held

that a plaintiff seeking a "preliminary injunction should seldom be required . . . to forego discovery in order to seek emergency relief." *Gellman*, 538 F.2d at 604.[2]

Contrary to the panel's view, *Hawaii* did not depart from this precedent by deciding the merits of the claims at the preliminary-injunction stage. The panel reasoned that "while it is true that the Court's *holding* in *Hawaii* was that the plaintiffs there had failed to show 'that they [were] likely to succeed on the merits of their claims,' the *reason* for that holding was the Court's predicate unconditional conclusion that the Proclamation 'survive[s] rational basis review.'" *IRAP III*, 961 F.3d at 653 (alterations in original). But the Supreme Court's reasoning, like its holding, was necessarily dependent on its review of the limited evidentiary record before it. The Court examined that preliminary record and explained which inferences were, in its view, supported and which inferences were not. *Hawaii*, 138 S. Ct. at 2421–23. By assessing the Proclamation's legality based on record evidence, the Court demonstrated that a different record could mean a different outcome.

To support its view that *Hawaii*'s reasoning was not limited to the preliminary record before the Court, the panel stated that "[t]he *Hawaii* Court held that the

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[2] These cases acknowledge that, in some circumstances, a court may combine the preliminary-injunction hearing with a trial on the merits, but the court must give notice of its intent to do so. *Camenisch*, 451 U.S. at 395; *Gellman*, 538 F.2d at 604. Neither the *Hawaii* plaintiffs nor Plaintiffs here received such notice.

government had 'set forth a sufficient national security justification to survive rational basis review.'" *IRAP III*, 961 F.3d at 639 (quoting *Hawaii*, 138 S. Ct. at 2423). Indeed, the panel invoked this same partial quotation four times to support its view that the Supreme Court's reasoning was not restricted to the limited record before it. *Id.* at 639, 645, 647, 653. But the full sentence reads: "*Under these circumstances*, the Government has set forth a sufficient national security justification to survive rational basis review," *Hawaii*, 138 S. Ct. at 2423 (emphasis added). Just two sentences later, the Court stated its holding as limited to the motion before it: "We simply hold today that plaintiffs have not demonstrated a likelihood of success on the merits of their constitutional claim." *Id*.

The panel's view that the Supreme Court intended to foreclose further litigation in *Hawaii* also conflicts with the Court's disposition of the appeal. Rather than instructing the lower courts to dismiss the claims, as it frequently does, the Supreme Court remanded the case for further proceedings, observing that "[t]he case now returns to the lower courts for such further proceedings as may be appropriate." *Hawaii*, 138 S. Ct. at 2423. *Compare id.*, *with*, *e.g.*, *Rucho v. Common Cause*, 139 S. Ct. 2484, 2508 (2019) ("[T]he cases are remanded with instructions to dismiss . . . ."); *Republic of Philippines v. Pimentel*, 553 U.S. 851, 873 (2008) (same). Justice Kennedy, who joined the majority opinion, also wrote separately to note that "[w]hether judicial proceedings may properly continue in this case in light of the

substantial deference that is and must be accorded to the Executive in the conduct of foreign affairs, and in light of today's decision, is a matter to be addressed in the first instance on remand." *Hawaii*, 138 S. Ct. at 2424 (Kennedy, J., concurring). These statements would make no sense if the Court had definitively resolved the claims.

2. The panel also erred in concluding that rational-basis review is so deferential that a law appearing rational based on a limited evidentiary record would necessarily be rational on a full record. The Supreme Court has long made clear that rational-basis review is conducted on an evidentiary record. *See, e.g.*, *United States v. Carolene Prods. Co.*, 304 U.S. 144, 153 (1938) ("Where the existence of a rational basis for legislation whose constitutionality is attacked depends upon facts beyond the sphere of judicial notice, such facts may properly be made the subject of judicial inquiry . . . .").

Numerous courts of appeals have recognized—in direct conflict with the panel's view here—that a law may appear rational before a full evidentiary record is developed, but that this initial appearance of rationality can be refuted based on a full evidentiary record. *See, e.g.*, *St. Joseph Abbey v. Castille*, 712 F.3d 215, 223 (5th Cir. 2013) (noting plaintiffs may "negate a seemingly plausible basis for the law by adducing evidence of irrationality"); *Lazy Y Ranch Ltd. v. Behrens*, 546 F.3d 580, 590-91 (9th Cir. 2008) (rejecting the government's argument that a plausible basis for a law "necessarily defeats" the plaintiff's claim at the motion-to-dismiss stage,

because the plaintiff must be allowed "to rebut the facts underlying defendants' asserted rationale"); *Dias v. City & Cty. of Denver*, 567 F.3d 1169, 1183-84 (10th Cir. 2009) (reversing dismissal of a claim under Rule 12(b)(6) because "without drawing factual inferences against the plaintiffs, the district court could not conclude at this early stage in the case that the [challenged government action] was rational as a matter of law"); *Keenon v. Conlisk*, 507 F.2d 1259, 1261 (7th Cir. 1974) (holding that "it was improper to dismiss the complaint without considering any evidence" that a government policy lacked a rational basis).

Nor is it appropriate to conclude as a matter of law that a fully developed record could not lead to a different outcome here. For example, Plaintiffs contend that the worldwide review process was not a legitimate national-security measure, but rather a pretextual exercise intended to achieve the President's preferred outcome. Plaintiffs point to the fact that the worldwide review culminated in a report that purportedly analyzed the practices of more than 200 countries, and yet was only 17 pages long. The Supreme Court considered this evidence but declined to infer a lack of thoroughness in the worldwide review process based on the number of pages in the report. *See Hawaii*, 138 S. Ct. at 2421. But additional discovery—such as, for example, review of the report—could provide other information about the review process that would prove the lack of thoroughness.

B. The Panel's Decision Conflicts with the Court's Decision in *Giarratano*.

In *Giarratano v. Johnson*, this Court addressed how to apply the liberal Rule 12(b)(6) pleading standard to constitutional claims subject to rational-basis review. The Court observed that "[t]he rational basis standard, of course, cannot defeat the plaintiff's benefit of the broad Rule 12(b)(6) standard." 521 F.3d 298, 303 (4th Cir. 2008) (citation omitted). The Court explained that the Rule 12(b)(6) standard is "procedural, and simply allows the plaintiff to progress beyond the pleadings and obtain discovery, while the rational basis standard is the substantive burden that the plaintiff will ultimately have to meet to prevail." *Id.* Even when the ultimate merits will be evaluated under the rational-basis standard, this Court held, a motion to dismiss must be denied "if relief could be granted under any set of facts that could be proved consistent with the allegations." *Id*. (citation omitted).

The district court applied *Giarratano* in holding that Plaintiffs plausibly alleged that the Proclamation is unconstitutional under rational-basis review. JA262. On appeal, the parties extensively briefed the district court's application of *Giarratano*. *See* Appellee Br. 15, 32-35; Gov't Reply Br. 10-11. Yet the panel never even mentioned *Giarratano*, much less attempted to reconcile its decision with that circuit precedent.

The panel's decision and *Giarratano* cannot be reconciled. The panel did not give Plaintiffs the benefit of the liberal pleading standard. Indeed, the panel treated

Plaintiffs' allegations as irrelevant, never even mentioning them. Rather than relying on cases applying the Rule 12(b)(6) standard, the panel instead cited only cases—*Hawaii*, 138 S. Ct. 2392; *FCC v. Beach Commc'ns*, 508 U.S. 307 (1993); and *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432 (1985)—that addressed the standard for prevailing on the ultimate merits of a rational-basis claim. The panel then hypothesized whether, given the preliminary-injunction ruling in *Hawaii*, Plaintiffs could possibly develop evidence that would support a ruling on the merits that the Proclamation failed rational-basis review.

That approach conflicts not only with *Giarratano*, but also with *Ashcroft v. Iqbal*, 556 U.S. 662 (2009), and *Bell Atl. Corp. v. Twombly*, 550 U.S. 544 (2007). Those cases hold that a claim survives a motion to dismiss as long as it is supported by allegations that "state a claim to relief that is plausible on its face." *Iqbal*, 556 U.S. at 678. This plausibility standard "does not impose a probability requirement at the pleading stage." *Twombly*, 550 U.S. at 556. On the contrary, "a well-pleaded complaint may proceed even if it strikes a savvy judge that actual proof of those facts is improbable, and that a recovery is very remote and unlikely." *Id.* (quotation marks and citations omitted).[3]

[3] Even if a rational relationship between a government action and a legitimate state interest appears possible, a plaintiff may still seek discovery to negate that appearance of a rational basis. *See* pp. 9-10 *supra*.

In short, the district court correctly held that a preliminary-injunction ruling does not foreclose litigation of claims on the merits, and analyzed Plaintiffs' allegations to determine whether they plausibly alleged a constitutional violation. The panel's treatment of Plaintiffs' allegations as irrelevant and a preliminary-injunction ruling as dispositive of the entire case warrants en banc review.

II. The Panel's Ruling That *Mandel* Bars Plaintiffs' Claims Warrants En Banc Review.

The panel's alternative holding that Plaintiffs' claims fail under *Mandel* also warrants further review. The panel treated the *Mandel* standard as distinct from rational-basis review because, in applying rational-basis review, a court may look beyond the face of the document that embodies the challenged executive action, whereas the panel construed *Mandel* as limiting a court's review to the face of that document. That approach conflicts with the many decisions, including by this Court, that have looked behind the face of executive action in applying *Mandel*.

The panel interpreted *Mandel*—under which an executive action is upheld if it is "facially legitimate and bona fide," 408 U.S. at 770—as more deferential to the government than rational-basis review. Indeed, in the panel's view, executive action must be upheld under *Mandel* even if it is irrational and taken in bad faith, as long as the Executive has the foresight not to include written statements demonstrating the irrationality and bad faith in the document embodying the action. That view directly conflicts with this Court's decision in *Johnson v. Whitehead*, 647 F.3d 120,

127 (4th Cir. 2011), in which the Court held that the *Mandel* standard requires the court to apply rational-basis review. The Supreme Court has also equated *Mandel* to rational-basis review, *Sessions v. Morales-Santana*, 137 S. Ct. 1678, 1693 (2017) (describing *Mandel* standard as "minimal scrutiny (rational-basis review)"), as have other courts of appeals, *see Ablang v. Reno*, 52 F.3d 801, 804 (9th Cir. 1995); *Azizi v. Thornburgh*, 908 F.2d 1130, 1133 n.2 (2d Cir. 1990).

In limiting its review to the face of the Proclamation, the panel declined to follow Justice Kennedy's controlling concurrence in *Kerry v. Din*, 576 U.S. 86, 102-06 (2015). That opinion explained that when there is a particularized showing of bad faith, a court may "look behind" the executive action under *Mandel*. *Id.* at 105.

By not following the *Din* concurrence, the panel departed from decisions of this Court and other courts of appeals. This Court, sitting en banc in these cases, has twice held that the "bona fide" prong of *Mandel* "must be read through the lens of Justice Kennedy's opinion in *Kerry v. Din*," and thus a court may look behind the executive action when a plaintiff plausibly alleges that the Executive acted in bad faith. *IRAP II*, 883 F.3d at 264 & n.12; *IRAP I*, 857 F.3d at 590-91.[4] Other courts have taken the same approach. *See Cardenas v. United States*, 826 F.3d 1164, 1171-

[4] Although the Supreme Court vacated the *IRAP II* decision, the parts of that decision not addressed by *Hawaii* remain persuasive authority. *See U.S. Dep't of Health & Human Servs. v. Fed. Labor Relations Auth.*, 983 F.2d 578, 582 (4th Cir. 1992).

72 (9th Cir. 2016) (*Din* concurrence controls the *Mandel* inquiry); *Am. Acad. of Religion v. Napolitano*, 573 F.3d 115, 126 (2d Cir. 2009) (applying *Mandel* by analyzing whether plaintiff alleged bad faith).

The panel viewed *Hawaii* as supporting its narrow reading of *Mandel*. *IRAP III*, 961 F.3d at 650-51. But the *Hawaii* Court explicitly stated that it was "not defin[ing] the precise contours" of the *Mandel* standard, and it "assume[d] that [it] may look behind the face of the Proclamation to the extent of applying rational basis review." 138 S. Ct. at 2420. Far from rejecting the *Din* concurrence, the Supreme Court explained the *Mandel* standard by repeatedly citing that opinion. *See id.* at 2419. *Hawaii* thus reinforces that the *Din* concurrence correctly explains the *Mandel* standard.

The panel's narrow interpretation of *Mandel* will have grave consequences for future cases decided under that standard, because it will immunize government decisions for which there is clear evidence of bad faith. The panel was wrong to jettison the en banc Court's view of *Mandel*. Under that interpretation, executive action will be upheld in the overwhelming majority of cases because it is the rare case in which a plaintiff can make particularized allegations that the Executive has acted in bad faith. *IRAP II*, 883 F.3d at 264-65. These cases present that rare circumstance. *Id.* In contrast, under the panel's interpretation of *Mandel*, this Court will *always* uphold executive action, because the government will never admit to

acting in bad faith on the face of official action. The Court should grant en banc review to ensure that this Court's reading of *Mandel* does not categorically bar any meaningful review of executive actions taken in bad faith.

III. En Banc Review Is Warranted Because This Case Presents Issues of Exceptional Importance.

For the last three years, the Proclamation has imposed an indefinite ban on more than 150 million people, the vast majority of whom are Muslim. JA164, 168. This ban inflicts serious harm on many U.S. citizens and lawful permanent residents whose relatives, including spouses, parents, and children, are unable to enter the United States because of the Proclamation. JA113. Plaintiffs have suffered irreparable harm and urgently seek family reunification that the Proclamation prevents: Plaintiffs include individuals who are ill or have gravely ill relatives, as well as plaintiffs who fear that their loved ones will be forced to return to countries where they face serious danger. JA113, 150-51, 222, 226. The Proclamation also causes U.S. citizens and residents to feel singled out and condemned by the message that the Proclamation sends of disapproval and hostility toward Muslims. JA111-12, 106-07, 113, 224.

This Court, sitting en banc, has twice rejected the panel's view of *Mandel* and held that Plaintiffs were likely to succeed on the merits of their claims. While *Hawaii* represents a different prediction of success based on preliminary facts, it cannot be read to resolve the Proclamation's legality under the additional facts that discovery

will yield. Plaintiffs here plausibly allege that the Proclamation is not a rational national-security measure but rather an unconstitutional effort to discriminate based on religion. They should be allowed to prove those claims.

CONCLUSION

The Court should grant this petition for en banc review.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I hereby certify that this petition complies with the type-face requirements of Federal Rule of Appellate Procedure 32(a)(5) because it uses 14-point Times New Roman, and it complies with the type-volume limitation of Federal Rule of Appellate Procedure 32(b)(2)(a) because it contains 3,894 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f).

s/ Mark W. Mosier
Mark W. Mosier

CERTIFICATE OF SERVICE

I hereby certify that on July 23, 2020, I electronically filed the foregoing Petition for Rehearing En Banc with the Clerk of Court for the U.S. Court of Appeals for the Fourth Circuit by using the Court's CM/ECF system. Participants in the case are registered CM/ECF users, and service will be accomplished by the appellate CM/ECF system.

s/ Mark W. Mosier
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