IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 16-16663

MANUEL DE JESUS ORTEGA MELENDRES, *et al.*,

Plaintiffs-Appellees

and

UNITED STATES OF AMERICA,

Intervenor-Plaintiff-Appellee

v.

GERARD A. SHERIDAN,

Movant-Appellant

and

MARICOPA COUNTY,

Defendant

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

UNITED STATES' RESPONSE TO NONPARTY APPELLANT GERARD A. SHERIDAN'S PETITION FOR PANEL REHEARING

INTRODUCTION

In May 2016, the district court found appellant Gerard Sheridan, then a senior official in the Maricopa County Sheriff's Office (MCSO), in civil contempt for violating court orders, including an injunction addressing traffic stops. E.R. 70, 83-87, 100.[1] The court, however, did not impose any sanctions on Sheridan. Subsequently, the district court issued a new injunction mandating, among other things, new internal affairs procedures for MCSO employee misconduct. E.R. 18-44. As a non-party civil contemnor, Sheridan appealed, challenging the new injunction, the underlying findings of civil contempt, and the denial of Sheridan's motion to recuse the district judge and to disqualify the court's monitor. But he also retired from MCSO. As a result, he bears no responsibility for implementing the challenged injunction and is no longer subject to MCSO discipline.

The United States moved to dismiss Sheridan's appeal for lack of standing. On August 3, 2017, a panel of this Court dismissed the appeal, finding that Sheridan lacked standing and that his appeal was moot. The panel explained that

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[1] "Doc." refers to documents filed in the district court by docket number. "Order" refers to the panel's order dismissing Sheridan's appeal. "U.S. Mot." refers to the United States' motion to dismiss this appeal, and "Resp." refers to Sheridan's response to that motion. "Resp. Plf." refers to Sheridan's response to the plaintiffs' motion to dismiss this appeal. "Pet." refers to the petition for panel rehearing. "E.R." refers to parallel citations in the Excerpts of Record filed with appellants' opening brief.

Sheridan "has incurred no personal liability" and, although originally "bound by the judgment insofar as it imposed obligations on the [MSCO], where he was then employed, his subsequent retirement mooted that interest." Order 2. The panel also explained that the asserted reputational harm and purported collateral consequences were insufficient to save his appeal from mootness. Finally, the panel concluded that Sheridan "lacks standing to seek recusal of the district judge and monitor since * * * he has no legally cognizable interest in the litigation at this point." Order 3.

Sheridan now seeks panel rehearing. He asserts that, in finding mootness, the panel "overlooked critical facts" that establish various injuries, including: (1) termination from his adjunct teaching position at Scottsdale Community College; (2) "recent[] deni[al]" of consideration as Chief of Police of Glendale, Arizona; (3) investigations by MCSO and the Arizona Peace Officers Standards and Training Board (AZ POST); and (4) reputational barriers to his aspirations to open a consulting business. Pet. 3-7.

Sheridan's petition should be denied. The "new" facts presented in Sheridan's petition do not establish standing and, even if they did, are not appropriately raised at this late stage. A party cannot simply "reargue his case anew" on rehearing, *United States* v. *Mageno*, 786 F.3d 768, 775 (9th Cir. 2105) (quoting *Anderson* v. *Knox*, 300 F.2d 296, 297 (9th Cir. 1962)), nor can he "seek

rehearing based on evidence that was not previously presented to the panel," *id.* at 775 n.6. See also *Armster* v. *United States Dist. Court for Cent. Dist. of California*, 806 F.2d 1347, 1356-1357 (9th Cir. 1986); C. Wright, A. Miller, & M. Kane, Federal Practice and Procedure § 3986.1 (4th ed.). That is all Sheridan does here. Moreover, none of the alleged harms meets Article III standing requirements that it be "fairly traceable to the challenged action * * * and likely to be redressed by a favorable judicial decision." *Lexmark Intern., Inc.* v. *Static Control Components, Inc.*, 134 S. Ct. 1377, 1386 (2014).

DISCUSSION

A. Sheridan's Petition For Rehearing Does Not Identify Any Part Of The Record Or Any Points Of Law That The Court Overlooked Or Misapprehended

"Panel rehearings are designed as a mechanism for the panel to correct its own errors in the reading of the factual record or the law." *Easley* v. *Reuss*, 532 F.3d 592, 594 (7th Cir. 2008). Therefore, a petition for panel rehearing must address a "point of law or fact that the petitioner believes the court has *overlooked* or *misapprehended*." Fed. R. App. P. 40(a)(2) (emphasis added). Sheridan has not satisfied this standard. He essentially reargues, albeit in more factual detail than he did previously, that he has suffered concrete injury from the district court's harm to his reputation. His new assertions, which incorporate facts outside the record, fail

to show that the injury is traceable to the challenged orders or redressable by this Court.

1. Sheridan Has Failed To Establish Standing Based On The Record

a. When a court considers issues of standing and mootness it must rely, as the panel did here, on the record. Standing "cannot be inferred argumentatively from averments in the pleadings, but rather must affirmatively appear in the record," and "it is the burden of the party who seeks the exercise of jurisdiction in his favor, clearly to allege facts demonstrating that he is a proper party to invoke judicial resolution of the dispute." *Spencer* v. *Kemna*, 523 U.S. 1, 10-11 (1998) (internal quotation marks omitted); see also *Jackson* v. *California Dep't. of Mental Health*, 399 F.3d 1069, 1073 n.4 (9th Cir. 2005) ("[T]he basis for standing must appear in the record.").

In general, appellate courts reject attempts to insert novel or unsubstantiated facts into the record. This is particularly true *after* the appellate court has decided a case. Addressing an analogous situation, this Court has explained that "[c]onsideration of subsequent factual occurrences is * * * beyond the scope of a petition for rehearing." *Armster*, 806 F.2d at 1356-1357 (citation omitted). The Court reasoned that because subsequent occurrences were not part of the record before the panel, a petitioner could not claim that the panel "*overlooked*" them. *Id*. at 1356; Fed. R. App. P. 40(2) (a petition should identify items "the court has

overlooked or misapprehended"). In short, the purpose of a petition for panel rehearing is to correct errors in the decision; it is not a vehicle for revealing previously undisclosed facts in hopes of a better outcome.

b. Sheridan asserts that "this Court overlooked critical facts" and attaches a newly sworn affidavit giving a detailed account of his recent employment experiences. Pet. 3, 11. But Sheridan cannot show the court "overlooked" facts he never presented either to the district court or to this Court. If these purported "additional injuries" were "not contemplated by this Court," it is because Sheridan never previously mentioned them. Pet. 11.

Sheridan had several prior opportunities to present these facts—first in filings before the district court (see Doc. 1987 (attach. 1 in U.S. Mtn. to Dismiss) and Doc. 2061), then in response to the plaintiff's motion to dismiss his appeal (Resp. Plf.), and again in response to the United States' motion to dismiss his appeal (Resp.). But until now he never mentioned the termination of his teaching position, plans to open a consulting business, or aspirations to become Glendale's Police Chief. See Pet. Exh. A 2-4. Sheridan submitted the first of these filings on March 17, 2017, *after* many of the events in Sheridan's affidavit had taken place. See Pet. Exh. A 2 (stating Sheridan's spring semester 2017 classes were cancelled

one week prior to class), 3-4 (citing several years of training and experience that inspired Sheridan's presumably longstanding plans to open a consulting business).[2]

Further, these new factual assertions are supported only by Sheridan's self-serving affidavit, drawn up long after this matter had been initiated, thoroughly briefed (in no fewer than five filings with this Court), and decided. Many of Sheridan's factual assertions—including his purported reasons for cancellation of his law enforcement ethics class, his belief that he was about to be promoted to full-time faculty, and the conversations about a Chief of Police position—are based on nothing but hearsay. Pet. Exh. A 2-3. For others, Sheridan offers no basis, hearsay or otherwise. See Pet. Exh. A 5 (reporting that, "to [his] knowledge," Sheridan has been "placed on a 'Brady List'" in the MCSO). Several facts, such as Sheridan's belief that the district court's actions are responsible for his failure to become Police Chief of Glendale, are pure speculation. Pet. Exh. A 2-3.[3]

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[2] Sheridan does not specify when the reported conversation about becoming Police Chief occurred, except to say it was "recent." Pet. Exh. A 3. Scottsdale Community College, according to press coverage, cancelled Sheridan's class in early January 2017, days after press inquiries about the college's decision to retain him. Joe Dana, 12news.com, "College Rescinds Teaching Offer to Former Arpaio Aid Jerry Sheridan," Jan. 3, 3017, http://www.12news.com/news/local/valley/college-rescinds-teaching-offer-to-former-arpaio-aide-jerry-sheridan/381695845.

[3] These facts are not in the record and the United States cannot ascertain their validity, aside from considering press coverage cited *supra*, note 2.

After a case is decided, this Court will accept new factual arguments only in extremely limited circumstances, *e.g.*, where the district court has corrected an error in the record. Cf. *United States* v. *Mageno*, 786 F.3d 768, 774 (9th Cir. 2015) (even the "discretion to recognize transcription errors at this late date should not be exercised routinely" except under "exceptional circumstances" when "the equities favor doing so"). Sheridan does not identify any record error or "exceptional circumstances." Accordingly, this Court need not, and should not, consider the proffered facts.

2. Sheridan Identifies No New, Controlling Precedent

Sheridan has also not identified new, controlling law. It is true that in rare circumstances a panel will consider new precedent if it suggests "the panel misapprehended the law." *Armster*, 806 F.2d at 1357. And Sheridan purports to cite one such case, *Reyes* v. *Checksmart Fin., LLC*, No. 15-16459, 2017 WL 3142486, at *1 (9th Cir. July 25, 2017); Pet. 12. This Court decided *Reyes* after briefing in this appeal, but before the panel's decision. Aside from being unpublished and nonprecedential under Ninth Circuit Rule 36-3, the case does not establish any legal principle the panel overlooked. It unsurprisingly finds that an employee can sue an employer for constructive discharge. Where an employer causes "loss of employment" there "is certainly an injury in fact." *Ibid*. It does not suggest that the chain of events alleged here—where a court issues findings,

findings contribute to reputational harm, and a poor reputation leads to job loss—establishes standing.

B. The Panel Properly Concluded Reputational Injury Does Not Meet Article III Requirements

In concluding that this appeal is moot, the panel correctly concluded that the "asserted harm to Sheridan's reputation is insufficient to save his appeal from mootness." Order 2.[4] The Court relied on *Jackson* v. *California Dep't of Mental Health*, 399 F.3d 1069, 1075 (9th Cir. 2005). In that case, where appellant sought review of his "adjudication as a sexually violent predator," this Court recognized that certain "[c]ontinuing effects" of the adjudication "may be significant enough to satisfy the injury in fact requirement for standing." *Id*. at 1073. The adjudication, the court acknowledged, "carries with it consequences to his reputation." *Id.* at 1075. But, the Court concluded, that reputational harm was not sufficient to afford standing once Jackson had served his term of confinement, explaining that the "Supreme Court has consistently held that reputation is not a sufficient interest to avoid mootness." *Ibid.* (citing *Spencer*, 523 U.S. at 16 n.8).

[4] Although Sheridan recounts professional harm in greater detail in seeking rehearing, his allegations were presented to the panel. See Resp. Plf. 8 (alleging "Sheridan's professional reputation suffers"), 14-15 (claiming findings "prevent[] Sheridan from seeking future employment"); Resp. 8 (noting "tarnished * * * reputation" harming ability to work in law enforcement), 4 n.8 (asserting desire "to remain in the law enforcement community"), 9 ("What is at stake in this appeal is Sheridan's ability to continue to work in law enforcement.").

This principle holds even if the injury to reputation is a grave one amounting to "moral stigma." *St. Pierre* v. *United States*, 319 U.S. 41, 43 (1943).

If adjudication as a sexually violent predator did not afford Jackson standing, Sheridan's less onerous adjudication as a civil contemnor cannot save his appeal from mootness. Indeed, contempt judgments are not reviewable where there is nothing left but the "lingering effect of" "reputational injury," *Foretich* v. *United States*, 351 F.3d 1198, 1212 (D.C. Cir. 2003), or "embarrassment and humiliation" suffered from contempt, *McDonald's Corp.* v. *Victory Investments*, 727 F.2d 82, 86 (3d Cir. 1984). And even where – unlike here – there is a finding of *criminal* contempt, "the potential danger of moral stigma, in contrast to a possible loss of legal rights, is not sufficient to avoid mootness." *United States* v. *Johnson*, 801 F.2d 597, 600 (2d Cir. 1986); see also *St. Pierre*, 319 U.S. at 43 (case moot despite "moral stigma" and "impair[ment of] his credibility"). It follows that the lesser reputational harm of civil contempt does not establish standing.

The cases Sheridan cites to the contrary do not help him. Pet. 14. Sheridan's alleged harm is far more attenuated than that of the inventor who asserted, under a statute that expressly permits a claim to correct the name of the inventor on a patent, that his reputation was damaged because he was not recognized as the inventor of certain patents. See Pet. 14 (citing *Shukh* v. *Seagate Tech., LLC*, 803 F.3d 659, 663 (Fed. Cir. 2015) (resolving open question whether,

under patent law, reputational injury can give rise to Article III standing to assert claims for correction of inventorship under 35 U.S.C. 256), cert. denied, 136 S. Ct. 2512 (2016). And while this Court mentioned reputational harms in *Walker*, there were other, independent harms: delayed payments, interference with contract, breach of contract, and litigation expenses. *Walker* v. *City of Lakewood*, 272 F.3d 1114, 1124 n.3 (9th Cir. 2001), cert. denied, 535 U.S. 1017 (2002). Neither of these cases undercuts the panel's proper application of *Jackson.*

C. None Of Sheridan's Alleged Harms Are Sufficiently Concrete, Traceable To The Court's Orders, Or Remediable By Court Action

Article III requires a litigant to identify a concrete harm that is both traceable to a challenged action and redressable by a court. *Lexmark Int'l, Inc.*, 134 S. Ct. at 1386. Even if this Court considers the facts that Sheridan claims were "overlooked" (Pet. 3), and looks beyond the general rule rejecting reputational harm as a basis for standing, Sheridan has not shown that the alleged harms are sufficiently concrete, traceable to the court's challenged actions, and likely to be redressed by a favorable decision. Likewise, his alleged injuries from investigations by MCSO and AZ POST fail to meet these criteria. Pet. 3-4.

1. The Alleged Harms Are Speculative

None of the harms Sheridan alleges is sufficiently concrete to establish standing. First, as the panel correctly concluded, the district court's decision imposes "no personal liability, financial or otherwise" on Sheridan. Order 2. Also,

his claims of future harm are speculative. Sheridan fears that MCSO may discipline him and AZ POST may revoke his law enforcement certification, but these decisions have not been made and may never be made. Indeed, because Sheridan is no longer an employee, MCSO *cannot* discipline him. See Doc. 2127 (order confirming MCSO should follow its "standard practice" of not imposing discipline, even where charges are sustained, against a former employee).

Sheridan points to two recent orders from the district court, filed on July 6 and 14, 2017, as new evidence of harm or imminent harm from MCSO. Although both orders were filed before the panel issued its opinion, Sheridan did not bring them to this Court's attention. To the extent the panel may properly consider them at this time, neither suggests concrete injury.

In the first order, the court asked the parties for responses to a question from the independent investigator: "whether he can take into account as one factor that the principle of an investigation has retired and is no longer subject to administrative discipline by the MCSO when assessing whether an investigation is warranted." See Doc. 2076; Doc. 2087 at 1. Sheridan objects that he could not submit an answer to the investigator's question. Pet. 9. But Sheridan suffered no concrete harm from this exclusion. Indeed, in a later order the district court confirmed that even if disciplinary charges are sustained against a former

employee, he will not be disciplined by the MCSO. See Doc. 2127 (confirming a retiree cannot be disciplined).

In the second order, the court reaffirmed that "the discretionary authority" to conduct investigations is "vested solely in [the] Independent Investigator" and the court did not "wish to constrain the independent authority." Doc. 2087, at 1-2. The court further explained that "[i]f, in his sole judgment," the investigator concludes that a similar police agency "would consider whether the expense of an investigation is merited in light of the inability to impose any discipline on a former employee as one factor in determining whether an investigation should proceed, then he is already authorized to do so." Doc. 2087, at 2. This order clarifies that Sheridan's retirement makes him less likely to be investigated and that he cannot be disciplined. Doc. 2087, at 2; see also Doc. 2127, at 1-2.

Sheridan also relies on the possibility that AZ POST may revoke his law enforcement certification. But that is mere speculation. Likewise, the hypothetical fear that the district court might, in the future, send "unwarranted letters to AZ POST or any other investigative bodies regarding Sheridan," is not sufficient to confer standing. Pet. 13. None of these injuries is "actual or imminent." *Lujan* v. *Defenders of Wildlife*, 504 U.S. 555, 560 (1992).

Next, Sheridan's claimed professional losses resulting from alleged reputational injuries, are, for the most part, entirely hypothetical. Even accepting

Sheridan's new assertions as true, there is no way to know that he ever would be hired as a police chief or have a viable business as a professional law enforcement consultant. He presents aspirations, not evidence on these issues.

Finally, Sheridan asserts that he lost his adjunct teaching responsibilities. In rejecting Sheridan's claims, this Court explained that Sheridan "has not identified 'even one such job for which [he] has in fact applied,'" Order 3 (quoting *Sandidge* v. *Washington*, 813 F.2d 1025, 1026 (9th Cir. 1987)). Now, although Sheridan has pointed to a specific job loss, he still must show that the loss was traceable to the court's action and likely redressable by victory in this appeal. As discussed below, he has not done so.

2. Sheridan's Alleged Harms Are Not Fairly Traceable To The Orders He Seeks To Overturn

Even if Sheridan could show that he has suffered injury after the civil contempt finding, he cannot show that the harms are fairly traceable to the challenged orders. In other words, he cannot show his purported losses are "the result of" the injunction or civil contempt order. *City of Los Angeles* v. *Lyons*, 461 U.S. 95, 102 (1983) (internal quotation marks omitted).

First, the causal connection between Sheridan's alleged employment problems and the court's order are tenuous. His diminished reputation, hindering his professional prospects, arises primarily from conduct *he admitted*, his public statements, and the criminal contempt referral (since dismissed and not at issue in

this appeal), rather than the court's orders. Sheridan explicitly consented to a finding of contempt, "acknowledg[ing] and appreciat[ing] that [he] ha[s] violated the Court's orders and that there are consequences for these violations." U.S. Mot. Attach. 2, at 2. Sheridan stipulated that he, as the person "responsible for supervising all of MCSO's operations, failed to communicate the preliminary injunction to subordinate MCSO officers and failed to take any steps to ensure MCSO's compliance with the injunction." Doc. 948-1, at 3.

Sheridan also admitted that, contrary to the court's order, he contacted others at MCSO about efforts to collect video footage improperly withheld in discovery. Doc. 948-1, at 4. He also affirmed that he did not disclose these communications to the court. Doc. 948-1, at 4. As a result of Sheridan violating the court order and effectively warning MCSO employees that videos would be collected, the court found that important evidence was lost or intentionally destroyed. E.R. 108-112. Sheridan's admissions are enough to "taint[]" his "reputation for truthfulness and ethics." Pet. 7. And one of the inevitable consequences of Sheridan's admitted actions is that others may not employ him to teach, consult, or serve as Chief of Police. Indeed, by Sheridan's own account, Scottsdale Community College cancelled his "Ethics and Administration of Justice" class because of "the controversy" involved. Pet. Exh. A 2-3.

Second, the consequences Sheridan fears are traceable to his conduct, and to the other agencies' independent assessment of that conduct, not to the contempt adjudication. AZ POST, a state organization, will take action (potentially revoking Sheridan's law enforcement certification) only after "independent investigations" for "[non]compliance with the standards established pursuant to Arizona Revised Statute and Arizona Administrative Code." Doc. 2009-1.[5] MCSO's internal investigator, as the district court recently emphasized, has broad discretionary authority, which the court will not direct or constrain. Doc. 2087, at 1-2. The court's only connection is that, in consultation with MCSO, it helped establish the post of independent investigator to remedy problems that the court had found in the system. E.R. 226; see also E.R. 69, 146, 257.

And it is not the case that the court has "foreclosed [Sheridan's] ability to even defend himself" in investigations. Pet. 10. MCSO and AZ POST provide procedural protections for Sheridan, as they would any target of an investigation. See Doc. 2009-1. Sheridan may vindicate himself before MCSO and AZ POST and, if he does not succeed, the "resolution 'depends on the unfettered choices

[5] AZ POST referenced Sheridan's *criminal* contempt referral, not the orders challenged here, in announcing its investigation. Order 2; Doc. 2009-1.

made by independent actors not before the courts.'" Order 2 (quoting *Leu* v. *International Boundary Comm'n*, 605 F.3d 693, 695 (9th Cir. 2010), cert. denied, 562 U.S. 1179 (2011)605 F.3d at 695).

3. Success On Appeal Would Not Redress Sheridan's Alleged Harms

Article III requires a potential litigant identify an injury "that is *likely* to be redressed by a favorable decision." *Simon* v. *Eastern Kentucky Welfare Rights Org*., 426 U.S. 26, 38, (1976) (emphasis added). Accordingly, it is not enough for Sheridan to assert that reputational harm, job loss, or investigations "arose only after the district court sent AZ POST a letter about" him. Pet. 12, see also Pet. App. Exh. A, 1-2. He must also show that success on appeal will likely redress this harm.

Because Sheridan's reputational harm largely arises from his own actions, and not the court's, see *supra*, pp. 13-15, overturning the court's orders would have little effect. This Court cannot, in adjudicating this case, order that Sheridan be respected among his law enforcement peers. Nor would reversal halt AZ POST investigations or prevent MCSO from investigating his conduct. Indeed, the dismissal of the criminal contempt referral, which prompted the AZ POST investigation, has not precluded that investigation from continuing.

And finally, if, as he alleges, Sheridan has been harmed by MCSO's putting his name "on a 'Brady list,'" Pet. 7, reversal of civil contempt would not likely

remove him from the list. Placement on such a list presumably means that MCSO has determined certain disclosures are necessary if Sheridan were to testify at a criminal trial. See *Brady* v. *Maryland*, 373 U.S. 83 (1963). Sheridan believes this would hinder his work as a trial consultant. Pet. 7. But this litigation does not govern local or state agencies' independent management of any "Brady list." Pet. 7. Even if the court's order were modified or vacated, MCSO or others may conclude that Sheridan's admitted conduct warrants disclosure in a criminal trial. Sheridan has admitted he violated court orders and withheld information from the court. U.S. Mot. Attach. 2, at 2; Doc. 948-1, at 4. And "*Brady*/*Giglio* information includes material * * * that bears on the credibility of a significant witness." *United States* v. *Blanco*, 392 F.3d 382, 387 (9th Cir. 2004) (internal quotation marks omitted). Indeed, because "the individual prosecutor has a duty" to gather *Brady* material from government actors, "including the police," *Kyles* v. *Whitley*, 514 U.S. 419, 437, (1995), a prosecutor's office, not MCSO, would make any decisions about disclosure, *Leu*, 605 F.3d 693 at 695.

D. Sheridan Has Not Shown The "Exceptional Circumstances" Necessary For A Nonparty Appeal

Nonparties must show "exceptional circumstances" if they wish to appeal. *Hilao* v. *Estate of Marcos*, 393 F.3d 987, 992 (9th Cir. 2004). This Sheridan cannot do. Sheridan simply argues, as he did before the panel decision, that this case is not moot because he participated in the contempt proceedings below and

"equities" weigh in his favor. Pet 3; Resp. 5-7 (quoting *Hilao*, 393 F.3d at 992. But Sheridan cannot show the orders he challenges had any effect on him. He is unlike nonparty contemnors in *United States Catholic Conference* v. *Abortion Rights Mobilization, Inc.*, 487 U.S. 72, 75 (1988), cited by Sheridan, who faced fines for refusal to testify. See Pet. 3. As noted, Sheridan does not face any fines and the district court did not impose any sanctions or remedial liability on Sheridan for his contempt.

CONCLUSION

This Court should deny Sheridan's Petition for Panel Rehearing.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on October 13, 2017, I electronically filed the UNITED STATES' RESPONSE TO NONPARTY APPELLANT GERARD A. SHERIDAN'S PETITION FOR PANEL REHEARING with the United States Court of Appeals for the Ninth Circuit by using the CM/ECF system.

I certify that all participants in this case are registered CM/ECF users, and service will be accomplished by the appellate CM/ECF system.

s/ Thomas E. Chandler
THOMAS E. CHANDLER
Attorney

CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rule of Appellate Procedure 32(g), I certify that the foregoing UNITED STATES' RESPONSE TO NONPARTY APPELLANT GERARD A. SHERIDAN'S PETITION FOR PANEL REHEARING:

(1) complies with Circuit Rule 40-1(a) because it contains 4199 words, excluding the parts exempted by Federal Rule of Appellate Procedure 32(f); and

(2) complies with the typeface requirements of Circuit Rule 32(b), Federal Rule of Appellate Procedure 32(a)(5) and the type style requirements of Federal Rule of Appellate Procedure 32(a)(6) because it has been prepared in a proportionally spaced typeface using Word 2016, in 14-point Times New Roman font.

s/ Thomas E. Chandler
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Dated: October 13, 2017