

No. 24-6576

**IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

JEFFREY POWERS, et al.,

Plaintiffs-Appellees,

v.

DOUGLAS A. COLLINS, et al.,

Defendants-Appellants

On Appeal from the United States District Court
for the Central District of California

**RESPONSE OF PLAINTIFFS-APPELLEES
TO PETITION FOR REHEARING EN BANC**

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INTRODUCTION

In a last-ditch attempt to upend relief that the Department of Veterans Affairs (“VA”) concededly owes to unhoused and disabled veterans in Los Angeles, the Government’s Petition for Rehearing (the “Petition”) offers speculation that the judgment—already narrowed substantially on appeal—would impose crushing burdens on federal agencies. The Petition ignores the uncontested record below and the Executive Branch’s stated commitment to provide even *more expansive* relief than that ordered here.

After a four-week trial in 2024, the District Court ordered the VA to build, within six years, 1,800 units of supportive housing on or near the VA’s main medical campus in West Los Angeles (the “Grounds”). The housing would serve a class of around 3,000 unhoused veterans with serious mental illness (“SMI”) or traumatic brain injuries (“TBI”), largely incurred in combat, who rely almost exclusively on the Grounds for VA-administered healthcare. Reflecting the dire reality faced by class members, the District Court also ordered the immediate construction of 750 units of temporary housing.

That class-wide relief was premised on two claims under the Rehabilitation Act, 29 U.S.C. § 794(a), both amply supported by the evidentiary record and later affirmed by the Panel: (1) the VA’s continued failure to provide supportive housing denies class members “meaningful access” to their VA-administered healthcare, and (2) that same failure places class members at serious risk of “institutionalization” in temporary housing, emergency departments, psychiatric institutions, and jails just to receive the healthcare that they need (and to which they are entitled). *See* Dkt. 126 (Panel Opinion,

hereafter “Op.”) at 37–43 (citing *Alexander v. Choate*, 469 U.S. 287, 301 (1985); *Olmstead v. L.C. ex rel. Zimring*, 527 U.S. 581 (1999)). Although it affirmed judgment against the VA on the Rehabilitation Act claims, the Panel reversed the judgment against HUD, reversed a charitable-trust theory of liability and vacated portions of the injunction premised on that theory, and set aside other remedies that it determined exceeded the scope of the Administrative Procedure Act. The Government did not contest any of the District Court’s extensive factual findings.

The relief affirmed on appeal was no surprise to the VA. Even before this case arose, the VA—pursuant to its earlier settlement of a related lawsuit—had promised to build 1,200 units of supportive housing on the Grounds by 2030. Op. at 16–17. And in 2021, Congress, by the West Los Angeles VA Campus Improvement Act, cleared the way to fund “construction” relating to “temporary or permanent supportive housing for homeless or at-risk veterans and their families.” Pub. L. No. 117-18, § (2)(a).

Then, during the pendency of this appeal, the President issued Executive Order 14296, *Keeping Promises to Veterans and Establishing a National Center for Warrior Independence*, 90 Fed. Reg. 20,369 (May 9, 2025) (“EO”). The EO reprimands the VA for “fail[ing] veterans when they needed help most,” and cites the West LA Grounds as “indicative of this failure.” EO § 1. To remedy that failure, the EO directs the Secretary to “present an action plan” to the President within 120 days for “hous[ing] up to 6,000 homeless veterans” on the Grounds by 2028. *Id.* § 2.

There is no reason to grant rehearing in this case. The Petition identifies no conflict with Supreme Court or Ninth Circuit precedent. It instead asks the Court to revisit (though not reverse) factual findings made after a four-week bench trial that the Panel already reviewed under the appropriately deferential standards, and offers legal arguments that the Government either expressly disclaimed or waived before the Panel.

Nor does this case present a question of “exceptional importance.” Whatever disagreements the Government presses now, the Executive Branch has already committed to implementing the very type of relief ordered here. En banc review would resolve no urgent doctrinal question nor change anything on the ground. At most, rehearing would give the VA leverage to resist and delay providing severely disabled unhoused veterans the very relief the President has already ordered it to implement.

ARGUMENT

Rehearing is unwarranted because the Petition identifies no conflict with Supreme Court or Ninth Circuit law, raises issues the Government expressly disclaimed as “not presented” in their merits briefing or otherwise failed to raise below, and seeks only to relitigate fact-bound issues decided after a four-week bench trial.

I. The Government’s Belated Contention that the Rehabilitation Act Offers No Private Right of Action Does Not Support Rehearing.

The Petition’s principal argument is that the Rehabilitation Act does not authorize private suits challenging a federal agency’s program administration, and that the

Ninth Circuit stands alone in holding otherwise. Pet. at 7–10.¹ That contention fails because it was expressly waived before the Panel and rests on an illusory “circuit split.”

The Ninth Circuit “generally decline[s]” to address issues raised for the first time in a petition for rehearing. *United States v. Hernandez-Estrada*, 749 F.3d 1154, 1159 (9th Cir. 2014) (en banc). The requirement of timely presentation reflects “sound policy”: it “sets the scope of the lawsuit, thereby preventing piecemeal litigation and consequent waste of the time of both trial and appellate courts.” *Partenweederei, MS Belgrano v. Weigel*, 313 F.2d 423, 425 (9th Cir. 1962). While the Court may depart from that rule in exceptional circumstances,² it will not do so if there is “reason to believe that the litigant ‘deliberately chose, for reasons of strategy,’ not to assert the claim at the appropriate time.” *Escobar Ruiz v. I.N.S.*, 813 F.2d 283, 286 (9th Cir. 1987) (quoting *Partenweederei*, 313 F.2d at 425). Where, as here, a party intentionally relinquishes or abandons a known right, that right is waived and not subject to review. *United States v. Olano*, 507 U.S. 725, 733 (1993); *United States v. Perez*, 116 F.3d 840, 845 (9th Cir. 1997).

Here, the Government knowingly and expressly waived any argument that Section 504 provides no private right of action. In its briefing, the Government stated the

¹ “Pet. at ___” citations refer to the Petition’s internal pagination.

² These include where an intervening change in law makes a new issue unavoidable, see *Jeffries v. Wood*, 114 F.3d 1484, 1493–99 (9th Cir. 1997) (en banc), where a “solid wall of Circuit authority” made the argument genuinely futile, see *Costa v. Desert Palace, Inc.*, 299 F.3d 838, 864 (9th Cir. 2002) (en banc) (citation omitted), *aff’d*, 539 U.S. 90 (2003), or where the issue was surfaced in a way that generated meaningful adversarial development, see *Hernandez-Estrada*, 749 F.3d at 1160.

Panel should address its private-right argument “in an appropriate case”—i.e., not this one. Appellant’s Br., Dkt. 58.1 at 30 n.2. The Government now flatly admits this argument was “not presented here,” but was merely a “suggest[ion].” Pet. at 10. That the Government now wishes to rely on an argument it previously acknowledged but refused to make is no grounds for rehearing. *See Partenweederei*, 313 F.2d at 425 (finding “no persuasive reason for making an exception” to the requirement that an argument be first presented to the Panel, where the argument was specifically raised in oral argument before the Panel but the Government explicitly declined to advance it).

The Government nevertheless claims that the Panel’s rejection of its VJRA preclusion argument somehow transformed this appeal into “an appropriate case” to consider the private-right issue. Pet. at 10. But nothing in the Government’s VJRA preclusion argument kept it from timely asserting its private-right-of-action argument. Having made a strategic choice to direct the Panel *away* from the issue, the Government cannot now use rehearing to back the horse it previously rejected. *See, e.g., Slovik v. Yates*, 556 F.3d 747, 753 n.6 (9th Cir. 2009) (declining to address issue not raised “prior to the filing of [a] petition for rehearing”).

Even if the Government had not expressly waived its private-right argument (and it has), there is no circuit split. The First, Second, and Fourth Circuit cases cited by the Government all involve private suits against agencies acting—unlike VA here—in their “regulatory” capacities. *See Cousins v. Sec’y of the U.S. Dep’t of Transp.*, 880 F.2d 603, 605 (1st Cir. 1989) (challenging DOT regulation that barred deaf persons from driving

commercial trucks); *Clark v. Skinner*, 937 F.2d 123, 125 (4th Cir. 1991) (challenging FHWA regulation requiring amputee truck drivers to wear prosthetic devices to drive commercially); *Moya v. U.S. Dep't of Homeland Sec.*, 975 F.3d 120, 128 (2d Cir. 2020) (challenging USCIS policies governing adjudication of disability waivers in citizenship testing requirement). In those contexts, the lack of a private right of action makes sense. As then-Judge Breyer explained in *Cousins*, the Rehabilitation Act “is silent about whether and how a person injured by the government *as regulator* is to enforce the Act against the government” because such “person already has a right to judicial review, as set forth in the APA.” *Cousins*, 880 F.2d at 605.

Neither *Cousins* nor the other Circuit decisions cited by the Government involved the claim, brought here, that a federal agency violated Section 504 by discriminating against disabled individuals in operating its own programs.³ The Ninth Circuit therefore did not reach—indeed, *could not have reached*—“a different conclusion” from those Circuits’ decisions, none of which addressed whether Section 504 authorizes private suits against federal agencies as program operators. Pet. at 9. In fact, in *Doe v. Attorney General*, the Ninth Circuit—after acknowledging the First Circuit’s view that Section 504 does not authorize suits against a federal agency “as regulator”—went on to determine that

³The issue appears only in the District of Columbia cases cited in Pet. at 9, which suggest, at most, a “split among certain [District of Columbia] Judges” on the question. See *Doe A v. Spahn*, 2025 WL 1305360, at *4 (D.D.C. May 6, 2025). See, e.g., *SAI v. Dep't of Homeland Sec.*, 149 F. Supp. 3d 99, 112–13 (D.D.C. 2015).

private enforcement may be available where an agency acts “in its proprietary,” as opposed to “regulatory,” capacity. 941 F.2d 780, 793 (9th Cir. 1991).

There is thus no inter-Circuit conflict between *Doe* and *Cousins*, *Clark*, or *Moya*. *Doe* adopted those cases’ core regulatory limitation and addressed an issue they did not raise nor reach. Nor did the Ninth Circuit later repudiate *Doe* in *J.L. v. Social Sec. Admin.*, 971 F.2d 260 (9th Cir. 1992). *See* Pet. at 9–10. Rather, *J.L.* described “the proprietary/regulatory dichotomy” as a “nonbinding indicator of whether the APA should provide the dominant paradigm for” deciding a different question: whether “prudential exhaustion” should be required “before resort to the courts.” 971 F.2d at 270–71. The *J.L.* Court reasoned that, in the particular context of that case, exhaustion was an “appropriate prerequisite” because “[t]he primary relief sought by all plaintiffs” was “a change in agency practices” unrelated to the agency’s provision of services in its proprietary capacity. *Id.* There is thus no conflict between this case and *J.L.*

The Petition’s statutory construction arguments likewise fail. *See* Pet. at 8. Section 504(a) creates a substantive right: no otherwise qualified individual with a disability “shall ... be subjected to discrimination” under “any program or activity conducted by any Executive agency” 29 U.S.C. § 794(a). This construction mirrors the “‘rights-creating’ language” the Supreme Court has found implicative of private rights-of-action under other statutes. *See Alexander v. Sandoval*, 532 U.S. 275, 288–89 (2001). That Section 505 also provides that “[t]he remedies, procedures, and rights set forth in Title VI of the Civil Rights Act . . . shall be available to any person aggrieved by any act or failure

to act by any recipient of Federal assistance or Federal provider of such assistance.” 29 U.S.C. § 794a(a)(2), does not withdraw Section 504’s substantive grant. *See Nat’l Ass’n of the Deaf v. Trump*, 486 F. Supp. 3d 45, 57 (D.D.C. 2020) (rejecting the government’s withdrawal-by-implication argument and finding private right of action).⁴ Treating Section 505 as foreclosing judicial review would nullify Congress’s 1978 amendment extending Section 504’s prohibition on discrimination to federal programs—an interpretation courts must avoid. *See TRW Inc. v. Andrews*, 534 U.S. 19, 31 (2001).

II. The Panel’s Review of the District Court’s Merits and Class Certification Rulings Does Not Warrant En Banc Rehearing.

To warrant en banc rehearing, a case must raise (1) a pressing doctrinal conflict or (2) one or more questions of “exceptional importance.” Fed. R. App. P. 40(b)(2)–(c). Neither exists here. As detailed below, each of the Panel’s rulings reflects the application of settled law to the extensive record developed in the District Court. And while the Government suggests something extraordinary in the portion of injunctive relief that was affirmed by the Panel (Pet. at 2), that suggestion is belied by the Government’s concession that it already intends to work—pursuant to the EO, and independent of the judgment here—“to provide Campus housing well beyond what the district court ordered.” *Id.* The Government cannot credibly argue that the scope of relief ordered here raises questions of “exceptional importance” when the President’s own position is

⁴ Indeed, where Congress intended purely administrative enforcement, it said so expressly. *See, e.g.*, 29 U.S.C. §§ 791, 793. Section 504 contains no such limitation.

that the Government must do far more than the injunction requires. Were the VA to carry out the EO, the District Court’s order would be subsumed by the Government’s own ambitions. But in the more probable event that VA maintains its decades-long track record of broken promises, then EO notwithstanding, the judgment will be the only enforceable backstop for the 3,000 veterans in this class to receive immediate and long-term housing to access their healthcare. The ordered relief is therefore not moot. If the Government thinks otherwise, the proper forum for that claim is the District Court, not this Circuit en banc.

A. The Panel Applied Settled Law in Affirming the Judgment That Plaintiffs Lack “Meaningful Access” to Their Healthcare Benefits.

The Panel applied settled law to the evidentiary record in affirming that the VA’s failure to provide supportive housing to class members denied them “meaningful access” to on-site healthcare benefits. Op. at 39–41 (citing *Alexander*, 469 U.S. at 301 (under Section 504, “an otherwise qualified handicapped individual must be provided with meaningful access to the benefit” offered)).⁵ As the Panel recounted, “the district court found that Plaintiffs—disabled veterans with SMI or TBI—require access to on-site healthcare at the Campus; yet without permanent supportive housing on or near the Campus, Plaintiffs are unable to access such treatment,” and thus lack ““meaningful

⁵ Although the Petition nowhere acknowledges it, the Panel reversed the District Court’s judgment against HUD on Plaintiffs’ meaningful access and *Olmstead* claims. Op. at 44.

access’ to their healthcare.” Op. at 40. The Panel concluded that “[t]he evidence in the record supports the district court’s findings.” *Id.* at 40–41 (summarizing evidence).

The Government now argues that “the panel—like the district court—ignored that discrimination is actionable under Section 504 only when it occurs ‘solely by reason of’ disability.” Pet. at 11 (quoting 29 U.S.C. § 794(a)). If the Panel “ignored” this argument, it is because the Government failed to raise it. *See* Appellants’ Br., Dkt. 58.1 at 41–44 (nowhere mentioning the “solely by reason of” language on which the Government now relies). The Government’s change of tune has led to its taking directly conflicting positions. In its Panel briefing, the Government conceded that Plaintiff “Laurieann Wright, who lives far from Campus and whose physical disabilities make it difficult to travel, could be understood to lack meaningful access to on-Campus services.” *Id.* at 42. It acknowledged that “‘the stress associated with traveling to’ Campus could ‘be an insurmountable barrier’ to treatment there,” and that Ms. Wright could have received accommodations from the VA if she had only pressed “her Rehabilitation Act claim through the proper administrative channels.” *Id.* at 43 (quoting VA’s draft Master Plan and stating “VA contests none of this”). Now, however, the Government claims that Ms. Wright’s testimony “refutes” her meaningful access claim, because “barriers in reaching the Campus ... do not add up to a Section 504 violation” under the Government’s new reading of the statute. Pet. at 11–12. Again, for the reasons set forth above, the en banc Court should not accept the Government’s invitation to consider this argument for the first time on rehearing, nor accept the Government’s shifting positions.

In any event, it is the Government’s late-stage reading of the statute that departs from precedent, not the Panel’s understanding. As this Court previously summarized: “The Supreme Court has held that section 504 guarantees meaningful access to programs or activities receiving federal financial assistance for otherwise qualified handicapped individuals. To assure meaningful access, reasonable accommodations in the program ... may have to be made.” *Bonner v. Lewis*, 857 F.2d 559, 561 (9th Cir. 1988) (cleaned up). Here, the District Court found—and the evidence supports—that Plaintiffs, because of their SMI and TBI, lack meaningful access to the healthcare benefits they require; that they can obtain that healthcare only at the Grounds; and that on-campus supportive housing is necessary to afford them such access. Op. at 39–40; 1-ER-122–130.

The Panel’s faithful application of precedent does not raise the Government’s specter that the Social Security Administration may someday be ordered to construct field offices in the backyard of every disabled individual. *See* Pet. at 13. The record showed that veterans with SMI and TBI, scattered over five counties, including Los Angeles, needed on-campus supportive housing to meaningfully access their VA healthcare benefits on the Grounds. It does not follow that a disabled individual must be found to lack meaningful access to social security benefits just because they may need to submit their application at an inconveniently located field office. Contrary to the Government’s speculation, nothing in the Panel’s decision transforms Section 504

into a mandate requiring federal agencies to eliminate all disadvantage created by disability. *See Alexander*, 469 U.S. at 301; *Se. Cmty. Coll. v. Davis*, 442 U.S. 397, 410–12 (1979).

B. The Panel Applied Settled Law in Concluding That Plaintiffs Established Liability under *Olmstead*.

The Panel also applied settled law to the evidentiary record when it affirmed the judgment on Plaintiffs’ *Olmstead* claim. As the Panel explained, “[t]o prove an *Olmstead* claim, ‘a plaintiff need only show that the challenged [agency] action creates a serious risk of institutionalization.’” Op. at 42 (quoting *M.R. v. Dreyfus*, 697 F.3d 706, 734 (9th Cir. 2012)). Plaintiffs made that showing here: “[T]he district court properly held that the VA violated the Rehabilitation Act by not providing class members their disability healthcare benefits ‘in the most integrated setting appropriate to their needs,’ placing ‘unhoused veterans at risk of institutionalization.’” *Id.* In particular, “the VA’s failure to provide supportive housing puts veterans in a never-ending cycle of jail and hospitalization,” and “veterans are forced to either accept institutionalization or go without services.” *Id.* (citing *Olmstead*, 527 U.S. at 597).

The Government argues that class members who are jailed or hospitalized are not “‘institutionalized’ in the relevant sense” under *Olmstead* because they are not “segregated from the community ‘solely by reason of [their] disability.’” Pet. at 15. But that wholly ignores the factual record, which shows that absent supportive housing at or near the Grounds, class members “experience an institutional circuit of temporary housing, emergency departments, psychiatric institutions, and jails” in order to receive

healthcare, and that “[p]roviding permanent supportive housing reduces” that cycle. 1-ER-129. The record thus confirms that without supportive housing, Plaintiffs face a risk of institutionalization *because of* their disability.

The Government’s second argument against the *Olmstead* theory relies on *Townsend*’s proscription against requiring an agency to create “new programs” to offer otherwise “unprovided services to assist disabled persons.” *Townsend v. Quasim*, 328 F.3d 511, 518 (9th Cir. 2003); Pet. at 16. As in *Townsend*, however, the Government’s claim about supposedly additional services “fails to account for the fact that the [VA] is already providing those very same services.” *Townsend*, 328 F.3d at 517. Here, the District Court determined—based on the evidence—that the VA “already provide[s], and plan[s] to provide some Permanent Supportive Housing” for class members, 1-ER-84, and the question was whether to increase the “amount, speed [of construction], and quality” of that housing. *Id.* *Townsend* is therefore inapposite and does not revive the “fundamental alteration” defense the Panel rejected. *See* Op. at 57–59.

Nor, as the Government hazards, will the Panel’s decision somehow force Medicare to pay for GLP-1 drugs to treat obesity. Pet. at 16. Nothing in the Panel’s logic requires an agency to adopt any and all interventions that might reduce hospitalizations. The Panel’s decision simply affirms that, when the trier of fact finds that certain modifications to existing services can avoid unnecessary institutionalization, *Olmstead* requires making those modifications within reasonable limits.

C. The Panel Applied Settled Law in Affirming Class Certification.

Finally, the Government argues that individual circumstances precluded commonality and that the Panel relied on “abrogated” circuit precedent in holding otherwise. Pet. at 17–21. Both arguments lack merit.

The Panel correctly recognized that Rule 23’s commonality requirement is satisfied when class members’ claims “depend upon a common contention ... of such a nature that it is capable of classwide resolution.” *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011). What matters is “the capacity of a class-wide proceeding to generate common *answers* apt to drive the resolution of the litigation.” *Id.* (citations omitted). Here, the class is unhoused veterans with SMI or TBI in LA County. 1-ER-205. Plaintiffs’ claims rest on the VA’s failure to provide supportive housing, which systemically discriminates against and denies them meaningful access to their benefits, creating a serious risk of institutionalization. Op. at 38–39. The evidence the District Court considered to generate the “common answers” contemplated by Rule 23 included the VA’s policies, the structure of services offered, and expert and fact testimony about the interrelationship of disability, homelessness, and access. *See* 1-ER-122–130.

This is not among the category of cases rejected by *Wal-Mart*, which involved decentralized and discretionary decisions requiring individualized proof of why particular supervisors acted the way they did. 564 U.S. at 352–56. Plaintiffs here challenge a *systemwide* failure to provide a particular accommodation for a defined class of disabled veterans. Op. at 38–39. The Government’s attempt to contrast “the challenges” faced

by Plaintiff Wright with those of the four other named Plaintiffs “who already live on campus” thus misses the point. Pet. at 18. That some named Plaintiffs obtained housing through ad hoc means largely constructed *during the pendency of this lawsuit* (e.g., tiny sheds, tents, or the limited supply of temporary or transitional housing on the Grounds), does not render class members differently situated with respect to the systemic denial of housing. Plaintiff Johnson’s testimony proves the theory: Since living on the Grounds, he has received regular visits from his nurse, doctors, and healthcare workers, who previously “could not find him” when he was unhoused. Op. at 41. Nor do the unique distance-related challenges faced by Plaintiff Wright defeat commonality; they instead reflect the reality that the same systemic failure can manifest differently depending on where the VA places a given veteran.

This Circuit’s case law after *Wal-Mart* recognizes commonality where plaintiffs challenge such “systemic failures” and seek uniform injunctive relief. *Id.* at 38.⁶ See, e.g., *Armstrong v. Davis*, 275 F.3d 849, 868 (9th Cir. 2001); *Payan v. Los Angeles Cmty. Coll. Dist.*, 11 F.4th 729, 733–38 (9th Cir. 2021) (distinguishing individualized accommodations from modifications that “improve systemic accessibility”). The Government’s reliance on *Mark H. v. Hamamoto*, 620 F.3d 1090 (9th Cir. 2010), to argue that class remedies in

⁶The Government’s assertion that the Panel relied “on abrogated circuit precedent” by citing *Armstrong* grossly misstates the law. Pet. at 21. As the Panel recognized, Op. at 37, *Armstrong* was overruled “on other grounds” by *Johnson v. California*, 543 U.S. 499, 500 (2005). *Johnson* clarified what level of scrutiny applies to certain racial equal protection claims, *id.* at 509–15; *Johnson* says nothing about Rule 23 or commonality. *Armstrong* remains the law of the Circuit.

disability rights cases always require individualized inquiries is thus misplaced. Pet. at 19. *Mark H.* emphasized the importance of “individualized analysis of the disabled individual’s circumstances and the [requested] accommodation” because the claims therein turned on unique educational needs of two individual children (not a class)—namely, whether the Hawaii Department of Education provided each with autism-specific services in their Individualized Education Programs. *Mark H.*, 620 at 1093–94, 1098 (citation omitted). Far from establishing a categorical rule that disability discrimination claims can never proceed on a class basis, the “individualized” language in *Mark H.* simply reflects the nature of the plaintiffs’ claims in that case.

Finally, the Government’s attempt to import “universal injunction” rhetoric to argue that any injunction must be no “broader than necessary,” and therefore cannot operate on a class basis, should be rejected. Pet. at 20. This case involves a certified Rule 23 class after trial findings of discrimination. Op. at 37–43. The Panel affirmed relief tailored to that class and grounded in those findings. The Government’s bid to collapse class relief into a “universal injunction” is no basis for rehearing.

CONCLUSION

The Petition should be denied.

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UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Form 11. Certificate of Compliance for Petitions for Rehearing/Responses

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I am the attorney or self-represented party.

I certify that pursuant to Circuit Rule 40-1, the attached petition for panel rehearing/petition for rehearing en banc/response to petition is *(select one)*:

- Prepared in a format, typeface, and type style that complies with Fed. R. App. P. 32(a)(4)-(6) and **contains the following number of words:** .
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