No. 16-3397

In the United States Court of Appeals
FOR THE SEVENTH CIRCUIT

BRENDAN DASSEY,
PETITIONER-APPELLEE,

v.

MICHAEL A. DITTMANN,
RESPONDENT-APPELLANT

On Appeal From The United States District Court
For The Eastern District Of Wisconsin, Case No. 14-cv-1310,
The Honorable William E. Duffin, Magistrate Judge

RESPONDENT-APPELLANT'S PETITION FOR REHEARING OR REHEARING EN BANC

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RULE 35(B)(1) STATEMENT AND INTRODUCTION

The State respectfully requests rehearing, as well as rehearing en banc, pursuant to Federal Rule of Appellate Procedure 35, for two reasons.

The panel majority has rewritten the rules for juvenile interrogations, in multiple, "significant" ways, Dkt.43:105, 116–23 (Hamilton, J., dissenting),[1] "conflict[ing]" with numerous decisions from the Supreme Court, this Court, and other courts of appeals, Fed. R. App. P. 35(a)(1) & (2), (b)(1)(A) & (B); *see Mitchell v. JCG Indus., Inc.*, 753 F.3d 695, 699 (7th Cir. 2014) (Posner, J., concurring) ("intracircuit or [ ] intercircuit conflict[s]" warrant en banc review). The panel majority also "depart[ed] from a string of [this Court's] habeas decisions involving confessions by juveniles who were denied relief despite being subjected to far greater pressures than [Brendan] Dassey was." Dis.121–22 (collecting cases). These inter- and intra-circuit conflicts "involve[ ] question[s] of exceptional importance," Fed. R. App. P. 35(a)(2), because they will make the work of law enforcement "considerably more difficult," Dis.107, 122.

Even worse, the majority "br[oke] [this] new ground" in a federal habeas case, plainly "depart[ing] from AEDPA deference." Dis.107, 111. Both this Court and the Supreme Court have reversed panel decisions for violating AEDPA. *See, e.g.*, *Gardner v. Barnett*, 199 F.3d 915 (7th Cir. 1999) (en banc); *Woods v. Etherton*, 136 S. Ct. 1149

[1] The Required Short Appendix filed with the State's Opening Brief is cited as "RSA."; the Separate Appendix as "SA."; this Court's Docket as "Dkt."; the District Court Record as "R."; the panel majority's opinion (Dkt.43) as "Op."; and Judge Hamilton's dissent hereinafter as "Dis."

(2016). The majority held that the confession here was so clearly involuntary that "no reasonable court could [disagree]," Op.41, despite the fact that "no Supreme Court case, no case decided in this circuit, and indeed no case cited by the parties or the majority has found a confession involuntary on facts resembling these, even where the subject is a juvenile," Dis.110, and despite a powerful dissent. This Court should rehear the case to restore the comity that is owed to state courts under AEDPA. *Woods v. Donald*, 135 S. Ct. 1372, 1376 (2015).

STATEMENT

"Brendan Dassey confessed on videotape that he raped Teresa Halbach, helped his uncle murder her, and then burned her body in a fire pit." Dis.105. As Dassey described, he "got the mail" after school and went to deliver "a[n] envelope . . . with [his uncle Steven Avery's] name on it." SA.54. As he approached Avery's trailer, he "could hear" someone "[s]creaming" "help me." SA.50–51. He knocked, and Avery answered the door "all sweaty." SA.58. Avery explained that Teresa was "chained up [to] the bed" and that he had "[r]aped her." SA.49, 112. Avery invited Dassey in, showed him Teresa's "naked body," SA.61, and "asked [ ] if [he] wanted [to] fuck the girl," SA.112. Dassey "wanted [to] see how [sex] felt," SA.153, so he too raped Teresa, for about "[f]ive minutes," while Avery watched and while Teresa "cr[ied]" and told him "not to do it," SA.64–65. Avery then "stabbed her" and "choked her," SA.67–68, and Dassey, following Avery's instructions, "[c]ut her" "[o]n her throat," SA.75. After that, they "tied her up," SA.70–71, and took her into the garage, where Avery shot her "[i]n the head, stomach, and heart," SA.81, 86. They carried her outside and

"thr[ew] her on" a fire. SA.88. Avery and Dassey then "t[ook] [Teresa's] jeep down in the pit" and "covered it with branches and [a] hood." SA.122. They "burn[ed]" the "bedsheets" and Teresa's "clothes," SA.96–97, and used "gas," "paint thinner," and "bleach" to clean up the blood in the garage, SA.98. Dassey confessed to all this, in significantly more detail, Dis.124–25; Opening Br.13–16, 38, during an interview with investigators on March 1, 2006, SA.14.

The investigators first spoke with Dassey at his school two days earlier, based on his cousin's statement that Dassey had lost "about 40 pounds" and would sometimes "start crying [ ] uncontrollably." R.19-18:189–90. They began the discussion by telling Dassey, "You're free to go at anytime." "[Y]ou don't have to answer any questions if you don't want to." R.19-24:2. They repeated that warning halfway through. R.19-24:29. At the end, they cautioned Dassey, "everything you've told us today obviously can be used in court. You understand that, right?" R.19-24:40. And they confirmed that Dassey understood: "[D]id we promise you anything? [Dassey]: That I could leave whenever . . . and I didn't have to answer any questions." R.19-24:38.

Because the audio recording was poor, the investigators asked Dassey's mother if they could conduct a video-recorded interview. She and Dassey agreed. R.19-19:7. The investigators offered to let Dassey's mother sit with him during the interview, but she declined, and Dassey said "he did not care if his mother was there or not." R.19-24:44; 19-19:7; SA.171. The officers Mirandized Dassey, R.19-24:45, even though he was not in custody, R.19-19:9; SA.170, and Dassey repeated what he told them at the school, *see* R.19-19:7–8. At this point, the investigators believed Dassey knew

more, but still assumed he was simply a "witness to something horrific." R.19-19:8–9.

On March 1—the critical day for the issues in this case—the investigators asked Dassey's mother for permission to conduct another interview. SA.14. She agreed, and so did he, so the investigators drove Dassey to the police station. SA.14. They Mirandized him on the way, SA.14, and "reminded [him] of his Miranda rights" before they started asking questions, Op.8; SA.15. They used a "soft room" with "a small couch, two soft chairs and lamps" and offered Dassey "food, drink, and access to a restroom." Op.8. They "spoke in measured tones," "did not threaten Dassey," and did not "use intimidating or coercive language." Dis.108. They "made no specific guarantees," instead warning Dassey, "We can't make any promises." Dis.108; SA.30. During the interview, Dassey "exhibited no signs of physical distress." Dis.108. Rather, he "volunteered specific and incriminating details about what he did, what he saw, what he heard, and even what he smelled." Dis.124–25; Opening Br.13–16, 38. Dassey "resisted several lines of inquiry," giving "substantial reason to find that [his] will was not overborne." Dis.125–26; Opening Br.16–18, 30, 37–38. The interview "lasted about three hours in total," and Dassey admitted to raping Teresa "[f]ifty-four minutes into the conversation." Dis.108–09. In short, Dassey's confession was "the product of a guilty conscience, coaxed rather gently from him with standard, noncoercive investigative techniques." Dis.111.

A jury convicted Dassey of first-degree murder, rape, and mutilation of a corpse based upon compelling evidence of guilt. His confession contained many "vivid[ ]" "details," including "colors, sounds, and smells." Dis.127. He also explained his motivations for raping Teresa—curiosity about "how [sex] felt." Dis.127; SA.153. "[S]ubstantial [physical] evidence . . . corroborate[d] some details," Dis.127, including handcuffs and leg irons in Avery's bedroom, R.19-16:17–18, a bullet fragment with Teresa's blood on it in Avery's garage, R.19-16:62–66, 203–11; 19-17:74–76, and, "the most damning physical evidence," Dis.128, her charred bones, R.19-17:69–70, 74; *see* Opening Br.19–20. Both Avery and Dassey lied to police about the bonfire during the initial investigation, R.19-24:9, which Dassey admitted on the stand, R.19-21:56. Dassey's cousin told investigators that Dassey had confessed to seeing Teresa "pinned up in the bedroom." R.19-18:193–94. Dassey lost significant weight and was seen crying uncontrollably in the months after Teresa's death. R.19-18:189–90. And Dassey acknowledged some involvement to his mother in two recorded phone calls. R.19-21:50, 54; 19-23:57; 19-35.

The Wisconsin trial court held, in a thorough opinion, that Dassey's confession was voluntary. SA.168–78. The Wisconsin Court of Appeals affirmed, adopting the trial court's findings and summarizing the key points. SA.2–4. The court "evaluate[d] [the] confession's voluntariness on the totality of the circumstances . . . balancing [Dassey's] personal characteristics against the police pressures used to induce the statements." SA.3. The court found that the investigators "used normal speaking tones, with no hectoring, threats or promises of leniency," and held that it was "not

coercive" to "encourage honesty" or "profess[ ] to know facts they actually did not have." SA.4.

After a district court granted Dassey's habeas petition, RSA.90, a panel majority of this Court affirmed, holding that "no reasonable court could . . . conclu[de] that Dassey's confession was voluntary." Op.41, 78. The majority held that Dassey's confession had been coerced because the investigators used techniques such as pleas for "honesty," Op.55, "implied promises," Op.83, "fatherly assurances," Op.42, and telling Dassey that they "already knew" what happened, Op.84–86. The panel concluded that each of these techniques contributed to finding the confession involuntary, given Dassey's mental characteristics and age. Op.50, 78–79, 86. The majority also held that AEDPA deference did not require a different conclusion even though no Supreme Court case had found an unconstitutionally coerced confession based upon the above-described techniques, Op.53–54, 101–02, and repeatedly criticized the Wisconsin Court of Appeals for the brevity of its discussion of the confession, Op.28, 34, 43, 48–53.

Judge Hamilton dissented, explaining that the panel's decision both fundamentally changed the law for interrogating juveniles and ran afoul of AEDPA's deferential standards. As he put it, "[t]he Constitution is not offended by such police tactics as encouraging the subject to tell the truth, bluffing about what the police already know, or confronting the subject with . . . the internal contradictions and improbabilities in his story." Dis.107. Even if review had been "de novo," the dissent noted, the majority's holdings would make "police investigations considerably more

difficult." Dis.107. Regardless, the majority "depart[ed] from AEDPA deference" by "judg[ing] [ ] the length of state court opinions," Dis.105, 111, and by ignoring the "substantial room" state courts have to apply fact-sensitive standards, like the totality-of-circumstances voluntariness inquiry, Dis.106.

ARGUMENT

I. The Panel's Decision Rewrites The Law Of Juvenile Interrogations, Conflicts With Decisions Of This Court And Other Courts Of Appeals, And Undermines Law Enforcement In This Circuit

The panel's decision "breaks" "significant" "new doctrinal ground" on when juvenile interrogations are so coercive as to violate the Fifth and Fourteenth Amendments. Dis.116. The opinion warrants en banc review both because it conflicts with decisions of this Court and other courts of appeals, and because it will leave law enforcement "scratching their heads" over how to conduct interrogations. Dis.107, 116–22; *see Mitchell*, 753 F.3d at 699 (Posner, J., concurring).

A. The panel's opinion "calls into question standard interrogation techniques that courts have routinely found permissible, even in cases involving juveniles," thus creating multiple intra- and inter-circuit conflicts. Dis.107, 121–22.

Both this Court and courts around the country have held that it "is not coercive" "merely [to] tell[ ] somebody to tell the truth," even if that "somebody" is a 15-year-old, illiterate defendant with "borderline intellectual functioning." *Etherly v. Davis*, 619 F.3d 654, 658, 663 (7th Cir. 2010); *see United States v. Ballard*, 586 F.2d 1060, 1063 (5th Cir. 1978) ("[e]ncouraging a [16-year-old] to tell the truth"); *see Ceja v. Stewart*, 97 F.3d 1246, 1253 (9th Cir. 1996) ("urging [suspect] to tell the truth");

2 Wayne R. LaFave, et al., Crim. Pro. § 6.2(c) at n.158 (4th ed.) (collecting cases). According to the panel, however, "encouraging honesty" *can* now be "considered coercive when used . . . on [an] intellectually challenged[ ] 16-year-old." Op.21–22, 54–58.[2]

Previously, both this Court and other courts of appeals have held that "lie[s] [by investigators] that relate[ ] to the suspect's connection to the crime [are] the least likely to render a confession involuntary." *United States v. Sturdivant*, 796 F.3d 690, 697 (7th Cir. 2015) (citations omitted) (lies about "DNA evidence"); *see Lucero v. Kerby*, 133 F.3d 1299, 1311 (10th Cir. 1998) ("false statements about fingerprint evidence"); *Evans v. Dowd*, 932 F.2d 739, 742 (8th Cir. 1991) ("untrue suggestions of eyewitnesses"); LaFave, *supra*, § 6.2(c) at nn.125–37; *accord Frazier v. Cupp*, 394 U.S. 731, 739 (1969) ("misrepresent[ations] [about another suspect's] statements"). "Never before has the Supreme Court or this court signaled that police bluffs about what they know may render a confession involuntary." Dis.110. Now, however, "bluffing by police about what they know c[an] render a confession involuntary." Dis.121; *see* Op.84–86.

This Court and courts around the country have held that an "empathetic" or "fatherly manner" by an interrogator "does not rise to a level of psychological manipulation." *Sotelo v. Ind. State Prison*, 850 F.2d 1244, 1249 (7th Cir. 1988); *see Ortiz v.*

[2] And the panel applied this new rule quite strictly. According to the panel, because the investigators did not immediately accept Dassey's first answers to their questions, he must have "learned that 'honesty' meant telling the investigators what[ever] . . . they wanted to hear." Op.55. There is, of course, a simpler explanation: Dassey initially lied, the investigators could tell he was lying, and Dassey, overcome by a "guilty conscience," Dis.111, responded to their pleas for the truth by telling the truth.

Uribe, 671 F.3d 863, 870 (9th Cir. 2011) ("motherly or parental tone"); *United States v. Santos-Garcia*, 313 F.3d 1073, 1079 (8th Cir. 2002) ("sympathetic attitude"); *accord Beckwith v. United States*, 425 U.S. 341, 343–44 (1976) ("friendly and relaxed" conversation). But the panel here held that a "fatherly assurance[ ] [such] as touch[ing] [an interviewee's] knee" is a "coercive technique[ ]." Op.42, 79–80.

Previously, both this Court and courts around the country held that promises of leniency can contribute to an involuntariness finding only if law enforcement *falsely* offers a "*specific* benefit . . . in exchange for [ ] cooperation," *Etherly*, 619 F.3d at 663–64 (emphasis added), amounting to "outright fraud," *Hadley v. Williams*, 368 F.3d 747, 749 (7th Cir. 2004); *see* Dis.117; *United States v. Rodebaugh*, 798 F.3d 1281, 1293 (10th Cir. 2015) ("vague and non-committal" "assurance[s]") (citations omitted); *United States v. Stokes*, 631 F.3d 802, 808 (6th Cir. 2011) ("promise to inform the prosecutor of cooperation"); LaFave, *supra,* § 6.2(c) at nn.104–05, 111–17 and text. Now, however, even if law enforcement "never ma[kes] [an] explicit and specific promise of leniency," they can still cross an unknowable constitutional line through the "effect" of "implied promises," Op.83, on the "subjective perception of the suspect," Dis.119. And a court can now find "implied promises," Op.83, even if, as here, investigators Mirandize the suspect and tell the suspect, in the clearest terms possible, that they "*can't make any promises*," Dis.108 (emphasis added).[3]

[3] Even putting the Miranda warnings and disclaimer aside, there is no plausible argument that Dassey understood any of the investigators' statements as a "specific" promise. Indeed, in the first interview on February 27, the investigators made multiple statements remarkably similar to the alleged promises on March 1, *e.g.*, R.19-24:5, 10, 13, 29, and then

This Court previously recognized—based on a direct holding from the Supreme Court—that "a sixteen-year-old [can] make a statement intelligently and voluntarily, even without the presence of a friendly adult." *Ruvalcaba v. Chandler*, 416 F.3d 555, 561 (7th Cir. 2005) (citing *Fare v. Michael C.*, 442 U.S. 707, 725 (1979)). Now, however, the rule is that, at least in some cases, 16-year-olds "need[ ] an adult ally to explain the consequences of [a] Miranda waiver or [ ] confession," or to "remind [them] not to guess at answers." Op.102. This new rule is also quite stringent. For the majority, it is not enough that the investigators themselves repeatedly reminded Dassey not to guess at answers, *see* SA.33 ("don't guess"); SA.29 ("don't make anything up"); Opening Br.12 (listing more examples), or that Dassey *testified at trial*, R.19-21:42, and said during the interview, SA.15, that he understood his Miranda rights and stated that he understood the consequences of a waiver, R.19-24:40 (Investigator: "[E]verything you've told us today obviously can be used in court. You understand that, right?" Dassey: "Yeah"), even without an "adult ally."

Previously, "there [was] only one [voluntariness] test" "for juveniles and [ ] for adults" alike, *Bridges v. Chambers*, 447 F.3d 994, 997 (7th Cir. 2006), which weighed "the totality of all the surrounding circumstances—both the characteristics of the accused and the details of the interrogation," *Schneckloth v. Bustamonte*, 412 U.S. 218, 226 (1973). Now, however, there is apparently a different test for juveniles. The Wisconsin Court of Appeals clearly articulated the Supreme Court's test—"We evaluate

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asked Dassey, "did we promise you anything?" R.19-24:38. Dassey responded, "Yeah . . . [t]hat I could leave [ ] whenever I wanted and I didn't have to answer any questions." R.19-24:38.

a confession's voluntariness on the totality of the circumstances, . . . balancing [ ] the defendant's personal characteristics against the police pressures used to induce the statements," SA.3—yet the majority held, "[i]n short," that "the state appellate court did not *identify* the correct test *at all*." Op.23 (emphases added).

Perhaps the most telling evidence of the extent to which the panel rewrote the law is the lack of *any* "case . . . f[inding] a confession involuntary on facts resembling these." Dis.110. The district court wrote a 91-page opinion, the panel a 104-page opinion, and Dassey submitted a 56-page brief, yet none identify a *single* analogous case, from *any* court, anywhere, ever (even on de novo review). Dis.119 n.2. At oral argument, Judge Hamilton asked Dassey's counsel "to identify . . . *any* [similar] case." Dissent 119 n.2. Counsel cited only *A.M. v. Butler*, 360 F.3d 787 (7th Cir. 2004), a case so "readily distinguishable" that it only "illustrates how much of a stretch Dassey's claim is," Dissent 119 n.2. *A.M.* involved an *11-year-old suspect* who was *illegally* arrested and subjected to an un-Mirandized, custodial interrogation, during which police allegedly "pounded on his knees, told him his fingerprints were on the murder weapon, and said that if he confessed, God and the police would forgive him and he could go home in time for his brother's birthday party." 360 F.3d at 792, 794, 797; *see also id.* at 801 (Easterbrook, J., dissenting).

B. The panel's reimagined framework for juvenile interviews puts law enforcement in a straitjacket, making investigations "considerably more difficult." Dis.107. Police often need to interview teenagers; 16-year-olds sometimes commit violent

crimes—as Dassey did here—or they might be important witnesses, as the investigators assumed of Dassey until he confessed. R.19-19:9. If police believe a teenager is lying, *see* Dis.107 ("Few wrongdoers are eager to own up to crimes as serious as Dassey's."), the *least coercive* response is to express disbelief and ask for the truth. Yet, according to the majority, doing so can be considered a veiled threat that coerces a teenager into telling police "what[ever] . . . they want[ ] to hear." Op.55. So "what," exactly, "should police do" if a teenage interviewee is not immediately and completely truthful? Dis.107.

The panel's suggestion that law enforcement must do more to determine whether a minor is "someone who need[s] an adult ally," Op.102, will also leave police "scratching their heads," Dis.122. Here, the investigators did all they could—they asked for consent from both Dassey and his mother, multiple times, R.19-19:7, SA.14, offered to let his mother participate, R.19-24:44; 19-19:7; SA.171, read, restated, and reiterated Miranda warnings, multiple times, R.19-24:2, 29, 40, 45; SA.14, 28, and confirmed that Dassey understood them, multiple times, R.19-24:38, 45, SA.14, 28. *See supra* pp. 3, 10.

II. The Panel's Decision Flouts AEDPA's Deferential Standards

These dramatic changes in the law are all the more problematic given that this is a federal habeas case. AEDPA relief may only be granted if a state court unreasonably applies "the holdings of [Supreme Court] decisions." *White v. Woodall*, 134 S. Ct. 1697, 1699 (2014) (citations omitted); 28 U.S.C. § 2254(d). But, of course, "[n]o Supreme Court precedent compels" *any* of the panel's new rules discussed above.

Dis.106. AEDPA also requires an error so clear that no "fairminded jurist[ ] could disagree." *Harrington v. Richter*, 562 U.S. 86, 101 (2011) (citations omitted).

Instead of citing any analogous decision from the Supreme Court, as AEDPA requires, the majority wrote that "other cases can only act as broad guideposts" because voluntariness depends on the "unique characteristics of both the defendant and the interrogation." Op.36. But, as Judge Hamilton explained, "[t]hat is exactly . . . why . . . habeas relief must be denied." Dis.106. AEDPA's standards are normally "difficult to meet," *Burt v. Titlow*, 134 S. Ct. 10, 16 (2013) (citations omitted), and state courts have *even more* "leeway" to apply "ad hoc, fact-sensitive balancing test[s]," like the totality-of-the-circumstances test for voluntariness, *O'Quinn v. Spiller*, 806 F.3d 974, 977 (7th Cir. 2015); *Yarborough v. Alvarado*, 541 U.S. 652, 664 (2004); *see* Opening Br.34. Put differently, "[t]he more a state court's decision depends on weighing a host of factors as part of the totality of the circumstances, the harder it is to show that the decision was 'contrary to, or involved an unreasonable application of, clearly established Federal law.'" Dis.106 (quoting 28 U.S.C. § 2254(d)(1)). The Wisconsin Court of Appeals' "weighing of factors" is "a subject on which reasonable minds could differ." *Hardaway v. Young*, 302 F.3d 757, 767 (7th Cir. 2002).

The panel also violated AEDPA by attacking the Wisconsin Court of Appeals for "address[ing] the voluntariness of the confession in two short paragraphs," including by launching a *five-page* attack on this point. Op.48–53; *see also* Op.28 ("state appellate court listed Dassey's age, education and IQ, but it never . . . evaluated those factors"); Op.34 ("Although it mentioned Dassey's age and low IQ it never made any

assessment about how the interrogation techniques could have affected a person with these characteristics."); Op.40 (finding "no [ ] evidence" that "the state court" "considered a totality of the circumstances"); Op.43 (faulting the state court for not "mention[ing]" certain interactions). By taking this approach, the panel violated the Supreme Court's clear instruction that federal courts may "not judge the length or brevity of opinions issued by state courts." Dis.114. Federal courts simply "have no power to tell state courts how they must write their opinions." *Johnson v. Williams*, 133 S. Ct. 1088, 1095 (2013) (citations omitted). As Judge Hamilton correctly explained, "AEDPA deference still applies when a state court offers no reasons, facially defective reasons, or incomplete reasons for its decision." Dis.114; *accord Harrington*, 562 U.S. at 102.

In any event, the majority's characterization of the Wisconsin Court of Appeals' opinion is patently unfair. The Wisconsin Court of Appeals explicitly "[b]ased" its conclusion on the trial court's "findings." SA.4. And the trial court's opinion was thorough, quoting many of the same statements as the majority. *Compare* SA.174 (quoting "honesty is the only thing that will set you free"), *with* Op.50, 54, 56, 81, 83 (same); *compare* SA.174 (quoting "honesty here is the thing that's going to help you."), *with* Op.82 (same); *compare* SA.176 (quoting "[we] are both in your corner. We're on your side," and "I can[ ] go to bat for you"), *with* Op.55, 79 (same). Appellate courts, including this Court, regularly adopt lower courts' analyses. *E.g.*, *Methodist Health Servs. Corp. v. OSF Healthcare Sys.*, No. 16-3791, 2017 WL 2485844, at *1 (7th Cir. June 9, 2017) ("[W]e have nothing to add to the [district court's] discussion."). The Wisconsin

Court of Appeals here adopted the trial court's findings and summarized the most important factors, SA.2–4, as was its prerogative, Dis.105.

CONCLUSION

The petition for rehearing or rehearing en banc should be granted.

Dated: July 5, 2017

Respectfully Submitted,

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CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rule of Appellate Procedure 32(g), I certify the following:

This petition for rehearing or rehearing en banc complies with the type-volume limitation of Federal Rule of Appellate Procedure 35(b)(2)(A) because it contains 3,900 words, excluding the parts exempted by Federal Rule of Appellate Procedure 32(f).

This petition complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5), (c) and Circuit Rule 32(b), and the type style requirements of Federal Rule of Appellate Procedure 32(a)(6), because this petition has been prepared in a proportionately spaced typeface using the 2013 version of Microsoft Word in 12-point Century Schoolbook font.

Dated: July 5, 2017

/s/ Luke N. Berg
LUKE N. BERG

CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of July, 2017, I filed the foregoing with the Clerk of the Court using the CM/ECF System, which will send notice of such filing to all registered CM/ECF users.

Dated: July 5, 2017

/s/ Luke N. Berg
LUKE N. BERG