Appeal No. 23-35288

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

RACHEL G. DAMIANO; KATIE S. MEDART,
Plaintiffs-Appellants,

v.

GRANTS PASS SCHOOL DISTRICT NO. 7, et al.,
Defendants-Appellees.

On Appeal from the United States District Court
For the District of Oregon
No. 1:21-cv-00859-CL / Hon. Mark D. Clarke

BRIEF OF *AMICUS CURIAE* DEFENSE OF FREEDOM INSTITUTE FOR POLICY STUDIES, INC. IN SUPPORT OF PLAINTIFFS-APPELLANTS

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INTEREST OF AMICUS CURIAE[1]

The Defense of Freedom Institute for Policy Studies, Inc. ("DFI") is a nonprofit, nonpartisan 501(c)(3) institute dedicated to defending and advancing freedom and opportunity for every American family, student, entrepreneur, and worker, and to protecting the civil and constitutional rights of Americans at school and in the workplace. Founded in 2021 by former senior leaders of the U.S. Department of Education who are experts in education law and policy and related constitutional and civil rights matters, DFI places a particular focus on protecting students, faculty, and staff in state-supported schools, colleges, and universities from the dangers to First Amendment rights posed by the conduct of the school district at issue in this case.

[1] Pursuant to Fed. R. App. P. 29(a)(4)(E), counsel for amicus curiae certifies that no counsel for a party authored this brief in whole or in part, and that no party or counsel for a party, or any other person besides amicus curiae, its members, or its counsel made a monetary contribution intended to fund the preparation or submission of this brief. All parties participating in this litigation have received proper notice of the filing of this brief, and have granted written consent to the filing of this brief directly to counsel for amicus curiae.

SUMMARY OF ARGUMENT

At the heart of this lawsuit is Plaintiffs' 17-minute video, "I Resolve Movement: Response to Gender Identity Policies" (March 25, 2021), https://tinyurl.com/tr3ycrfd, (the "Video"). Citing *Pickering v. Bd. of Educ.*, 391 U.S. 563 (1968), the Court dismissed Plaintiffs' First Amendment claims based on its summary judgment finding that the Video had caused a substantial disturbance in the learning environment at the Grants Pass School District ("GPSD"). Watching the Video, it is hard to understand how it could reasonably be interpreted to have done so.

Moreover, speech like the Video enjoys the highest level of constitutional protection and, under *Pickering*, Defendants faced an uphill battle to prevail on summary judgment. The Court allowed Defendants to elevate garden variety challenges (e.g., friction among co-workers) and the ordinary vicissitudes of life in an open, pluralistic democracy (e.g., being exposed to views you disagree with) into a "disturbance" justifying infringement. However, the most critical undisputed fact is that, as Defendants concede, school operations

continued without interruption, the Video notwithstanding. This should end the matter.

Even assuming some disturbance occurred, it was not proximately caused by Plaintiffs' speech, but by the actions of others who were upset by that speech. Backlash against ideas that some members of a community disagree with does not justify restricting the First Amendment rights of those expressing such ideas.

Finally, public schools are nurseries of democracy and, as such, they have a significant interest in protecting speech like the Video. This interest far outweighs GPSD's interest in avoiding administrative hassles like those Defendants complain of here. Schools should help children like the GPSD middle schoolers develop proper habits of mind – including tolerance for ideas they disagree with – for when they later become adults. Students, and society at large, are disserved when schools fail to do so.

Reviewing the summary judgment decision de novo, this Court should order that judgment be entered for Plaintiffs on their First Amendment claims as a matter of law or, at the least, remand for further proceedings.

ARGUMENT

I. THE PAUCITY OF EVIDENCE ON SUMMARY JUDGMENT DOES NOT OVERCOME THE HEIGHTENED FIRST AMENDMENT PROTECTION OF SPEECH LIKE THE VIDEO.

Under *Pickering*, courts apply "a sliding scale in which the 'state's burden in justifying a particular [adverse employment action] varies depending upon the nature of the employee's protected expression.'" *Moser v. Las Vegas Metro. Police Dep't.*, 984 F.3d 900, 906 (9th Cir. 2021). The more directly that the speech at issue deals with matters of public concern, the higher the showing of disruption a government employer must make. *See Dodge v. Evergreen Sch. Dist. #114*, 56 F.4th 767, 782 (9th Cir. 2022) ("'The more tightly the First Amendment embraces the speech the more vigorous a showing of disruption must be made.'") (internal citations omitted); *Hernandez v. City of Phoenix*, 43 F.4th 966, 977 (9th Cir. 2022) ("The more substantially an employee's speech involves matters of public concern, the weightier the government employer's interest must be in preventing disruption of the workplace or impairment of the employer's mission").

The Video falls squarely within the embrace of the First Amendment. As the Video explains, the impetus for creating it was, in

large part, the lack of a consistent GPSD policy for handling issues regarding transgender students. *Video*, https://tinyurl.com/tr3ycrfd, at 6:23-6:57. In the Video, Plaintiffs suggest policies regarding, for example, the use of school bathrooms and locker rooms by transgender students. Such topics would seem to be at the apex of protected speech by school personnel.

Transgender issues are of relatively recent vintage in the educational context and, as shown by the community backlash both for and against the Video, 1-ER-2, 13-14, no social consensus regarding them yet exists; instead, many different and conflicting opinions about matters like proper pronoun use now vie for a place in the marketplace of ideas. Limiting the rights of teachers to participate in the public conversation about such matters would deprive the marketplace of a valuable voice, which further weighs against Defendants' action. *See Hernandez*, 43 F.4th at 977 ("The First Amendment interests at stake in this context have as much to do with the public's right to hear what an employee has to say about government operations as with the employee's right to speak freely").

The instant case is unusual in that the First Amendment is most commonly invoked to protect speech that a majority of the community finds provocative or inflammatory. *See, e.g., Mahanoy Area Sch. Dist. v. B.L.*, 141 S. Ct. 2038, 2043 (2021). By contrast, the Video is remarkably anodyne.

In it, Plaintiffs sit on a couch and speak in calm, friendly tones and, using evenhanded language, describe various federal, state, and local policy efforts relating to transgender issues. Plaintiffs offer their opinions and stress repeatedly that they encourage tolerance and respect for all students, stating that they want to "give voice and honor all sides" and to help schools and teachers "work together with the family" of students who are on a "gender identity journey." *Video,* https://tinyurl.com/tr3ycrfd, at 9:30-9:41; 13:09-13:14.

The considerable support for Plaintiffs after their termination shows that their views do not upset many members of the school community. If anything, Plaintiffs' approach in the Video is the kind of civil discourse that should be encouraged, regardless of one's views on the substance of the policy debate.

The Court grossly mischaracterized the Video as "advocating to reduce rights of transgender students." 1-ER-18. The Court cited nothing in the Video or elsewhere that would support this assertion, nor did it identify the rights it maintained were at risk. In any event, merely proposing policies such as pronoun use consistent with biological sex is not "advocating to reduce rights of transgender students" any more than a contrary position seeks to reduce rights of students who are not transgender. It is telling that the Court resorted to distorting the Video to reach its conclusion.

II. THE SUMMARY JUDGMENT RECORD SHOWED LITTLE MORE THAN DISAGREEMENT WITH THE VIDEO, NOT A "SUBSTANTIAL DISRUPTION" OF SCHOOL OPERATIONS.

A. Any Disruption At GPSD Was Not Substantial.

All disturbances are not created equal, and the degree that results from protected speech is critical to deciding when the government's interest in preventing disruption justifies First Amendment infringement. The standard is not whether someone somewhere somehow claims some offense or discomfort. Rather, in the educational context, there must be an occurrence that "'substantially interfere[s] with the work of the school or impinge[s] upon the rights of other

students.'" *B.L.*, 141 S. Ct. at 2044 (quoting *Tinker v. Des Moines*, 393 U.S. 503, 509 (1969)); *see also Dodge*, 56 F.4th at 782 ("Speech that outrages or upsets co-workers without evidence of 'any actual injury' to school operations does not constitute a disruption.") (internal citations omitted); *Settlegoode v. Portland Pub. Schs.*, 371 F.3d 503, 513 (9th Cir. 2004) ("When balancing interests [in promoting workplace efficiency] under the [*Pickering*] test, defendants must show '"actual injury to . . . legitimate interests beyond the "disruption that necessarily accompanies" such speech.'" (quoting *Keyser Sacramento City Unified School Dist.,* 265 F.3d 741, 749 (9th Cir. 2001)).

Support for the finding that "substantial disruption" occurred at GPSD was weak and does not satisfy the standard required by the First Amendment. Most significantly, **missing from the summary judgment record is any evidence of real, actual disruption of school operations,** such as classes being cancelled. In fact, Defendants conceded that notwithstanding complaints about the Video, GPSD continued to function, teachers were still able to do their jobs, and students still got their schoolwork done. 2-ER-81-82, 151. Similarly, there is no evidence of individual staff members, students, or others suffering anything

beyond the normal friction encountered in a workplace or school, or as a consequence of living in a pluralistic, democratic society. As in *Dodge*, "while some [members of the school community] may have been outraged or offended by [Plaintiffs'] political expression, no evidence of actual or tangible disruption to school operations has been presented." 56 F.4th at 783.

The Court identified the evidence it relied on to find a substantial disturbance as follows:

> [1] The District claims that it received nearly 100 complaints about Plaintiffs' conduct. . . . .
>
> [2] Students staged protests.
>
> [3] Administrators had to spend significant time responding to these issues.
>
> [4] Other teachers and staff were offended or upset by Plaintiffs' conduct, particularly in promoting their video at school during school hours, thus harming the working relationship between school staff.

1-ER-12-13. Examined closely, the four items fail to excuse Defendants' First Amendment violation.

First, the Opinion reveals little about the nature of the complaints or the complainants, including whether they are members of the GPSD community or have any other local connection. After watching

Plaintiffs' Video, it is hard not to wonder whether complainants or others upset by it actually watched it themselves, or just relied on the descriptions of others; complaints made without ever having watched the Video cannot be fairly attributed to Plaintiffs, and should be ignored. Because social media now makes it so easy to manufacture outrage (or even just its appearance), some skepticism and further inquiry by the Court was warranted before summary dismissal. And, in any event, that the complaints did not materially disrupt school operations remains unrefuted.

The Court itself later acknowledged that the number of complaints was in genuine dispute, but maintained that the correct number was not material because the existence of a substantial disturbance was undisputed. *Id.* at 13 ("However, regardless of whether the complaints numbered in the range of 10-20 or closer to 100, the fact that Plaintiffs' speech caused a disturbance on campus between staff, students, and community members is undisputed and well documented"). In other words, the Court both relied on and dismissed the significance of this piece of evidence in making its finding.

Second, the Court provides no details about student protests or, again, how they adversely affected GPSD operations. If anything, it is ironic for Defendants to rely on students exercising their *Tinker* rights as justification for violating the First Amendment rights of their teachers.

Third, school administrators spending time executing job duties like handling complaints about teachers or mediating differences among staff members is unremarkable. All workplaces have some friction among employees, but this does not constitute substantial disruption where, as here, operations continue without interruption. *See Dodge*, 56 F.4th at 783 ("That some may not like the political message being conveyed is par for the course and cannot itself be a basis for finding disruption of a kind that outweighs the speaker's First Amendment rights. Therefore, [the school's] asserted administrative interest in preventing disruption among staff does not outweigh [a teacher's] right to free speech."); *Moser*, 984 F.3d at 910 ("Even where the [government] employer provides evidence for negative reaction to speech, courts require evidence that it will disrupt the workplace"). Infringement of First Amendment rights "cannot be justified on the ground that . . . the

State's interest in administrative convenience is sufficiently important." *Ams. For Prosperity Found. v. Bonta*, 141 S. Ct. 2373, 2389 (2021).

Besides the four items of evidence, the Court also noted that GPSD employees claimed to "believe[] that students would no longer feel safe with Plaintiffs at school." 1-ER-14, n.1. However, there is no testimony or other evidence to that effect from any student, and it is unclear exactly who would feel "unsafe" with Plaintiffs at school or the basis for their fear. There is no evidence from any transgender student specifically of fear or a lack of safety, or even of being upset or offended by the Video.

Similarly, Defendants submitted no evidence of derogatory, disrespectful, hostile, frightening, or similar behavior by Plaintiffs towards transgender students or anyone else. There is no whiff of incitement of violence or risk to the physical safety of transgender students or anyone else. Nor is there evidence of property damage, cancelled classes, or other examples of real disruption.

Although a proper learning environment requires that students feel comfortable and secure, the legal analysis under *Pickering* does not stop when the government mentions "child safety," without more.

Pickering requires evidence beyond vague, generalized allegations about unidentified students feeling somehow unsafe, which is all that Defendants offer here.

Disagreement also does not alone constitute disruption. Citizens who are passionate about certain social issues may become upset when others do not share their deeply-held views; under the First Amendment, however, their upset does not warrant limiting the others' right to express disagreement with them. Backlash against ideas that some members of a community disagree with does not justify infringing upon the First Amendment rights of those holding such ideas.

To the extent the Video is considered critical of Defendants' transgender policies, that too does not justify infringement of Plaintiffs' rights:

> It is highly doubtful . . . that an adverse reaction of those who are the subject of criticism could sustain a finding of actual injury. It is the nature of criticism that few welcome it and even fewer recognize it as justified. Nevertheless, receiving criticism – even unjust criticism – with grace is part of the job of being a public servant, and if unhappiness with criticism causes job disruption, this may be the fault of those being criticized rather than those doing the criticizing.

Settlegoode, 371 F.3d at 514 n.8. Under *Pickering*, the strength of First Amendment protection does not vary with the thickness of a government employer's skin.

It has become far too common today to object to categories of speech as so inherently misguided that they must be silenced altogether. The alleged disturbance at GPSD seems to be part of such a trend and if the First Amendment is to have force or meaning, this Court must call a halt to it.

B. When Presented With Similar Evidentiary Records In Other Cases, This Court Has Rejected Allegations of Substantial Disturbance.

The record presented by Defendants and relied on by the Court is similar to that in other cases where, performing a *Pickering* analysis, this Court has rejected allegations of substantial disruption.

In *Dodge*, the plaintiff was a teacher who the school had threatened with disciplinary action if he wore a "MAGA" hat to teacher-only training sessions. This Court stated that "disagreement with a disfavored political stance or controversial viewpoint, by itself, is not a valid reason to curtail expression of that viewpoint at a public school." 56 F.4th at 786. This was true even where there was "evidence that

teachers and staff felt "'intimidated,' 'shock[ed],' 'upset,' 'angry,' 'scared,' 'frustrated,' and 'didn't feel safe'" after learning about [the plaintiff's] MAGA hat." *Id.*, at 782. Importantly in *Dodge*, there was "no evidence that [the] hat 'interfered with [the plaintiff's] ability to perform h[is] job or the regular operation' of the school, or that its presence injured any of the school's legitimate interests 'beyond the "disruption that necessarily accompanies" [controversial] speech.'" *Dodge*, 56 F.4th at 782 (internal citations omitted).

Dodge requires that a school district present evidence of actual, tangible disruption of school operations resulting directly from the speech at issue before it can restrict First Amendment rights. Defendants failed to make such a showing here and, even though *Dodge* is a recent case from this Circuit directly on point, the Opinion does not mention it.[2]

Similarly, in *Settlegoode*, the school refused to renew the contract of a teacher of disabled students who had written a ten-page letter to

[2] Although *Dodge* was decided after summary judgment briefing in this case was complete, Plaintiffs brought it to the specific attention of the Court through supplemental briefing. *See* Amended Notice of New Authority, Damiano et al. v. Grants Pass School District No. 7 et al., No. 1:21-0085. 9 CL (D. Or. March 29, 2023, ECF. No. 96).

her supervisor expressing concern about the quality of programs for such students. This Court noted that "[s]everal teachers said they were hurt or upset by [the plaintiff's] letter, as one would expect in these circumstances, but there was no evidence that the letter had a 'devastating effect . . . on the cohesion of the . . . teachers [of disabled students],' as the magistrate judge found." 371 F.3d at 514. Further, "[n]othing in [the school principal's] testimony . . . offered details of injury to the district, such as impaired discipline or control by superiors, conflicts between co-workers or interference with [the plaintiff's] performance of her duties – factors we generally consider when deciding whether actual injury occurred." *Id.*, at 515-16. As in *Settlegoode*, Defendants here "never described any actual injury" to GPSD. *Id.*, at 514.

Finally, in a recent case involving student speech, the Supreme Court stated,

> [F]or the State in person of a school to justify prohibition of a particular expression of opinion, it must be able to show that its action was caused by something more than the mere desire to avoid the discomfort and unpleasantness that always accompany an unpopular viewpoint. . . . Simple 'undifferentiated fear or apprehension . . . is not enough to overcome the right of free expression.'

B.L., 141 S. Ct. at 2048 (quoting *Tinker*, 393 U.S. at 508). *B.L.* involved a student making off-campus and posting on social media a video directing obscenities at the school's cheerleader squad. The Court held that the stir created on campus by the video was not a "substantial disruption" to the learning environment. *B.L.*, 141 S. Ct. at 2047-48. Similarly, the backlash to Plaintiffs' Video did not meet the "demanding standard" for prohibiting their particular expression of opinion. *See id.*, at 2048.

III. THE VIDEO WAS NOT THE LEGAL CAUSE OF ANY SUBSTANTIAL DISTURBANCE.

Assuming, *arguendo*, that GPSD operations were substantially disrupted, the issue remains whether Plaintiffs' speech caused it.

As with the evidence of complaints that it both relied on and dismissed on the way to finding a substantial disturbance, the Court eventually decided that specifics regarding causation were immaterial:

> [W]hether the disturbance was 'caused' by Plaintiffs' speech or by the staff, student, and community reaction to the speech is a distinction without a difference. In either case, Plaintiffs' speech was still the catalyzing factor. In other words, 'but for' the Plaintiffs' conduct, there would have been no community backlash.

1-ER-13. This cause-in-fact analysis ignores the actions of third parties occurring between the Video and the "community backlash," as well as the legal requirements for a finding of causation.

Obviously, but for the Video, there would have been no reaction to it. However, a simple "but for" finding alone should not be sufficient to restrict protected speech. To justify their violation of the First Amendment, Defendants needed to establish not only cause in fact, but also that the Video was a legal, proximate cause of the disturbance. *See Hernandez v. Skinner*, 969 F.3d 930, 942 (9th Cir. 2020); *Mendez v. City of Los Angeles*, 897 F.3d 1067, 1076 (9th Cir. 2018); *OSU Student Alliance v. Ray*, 699 F.3d 1053, 1072 n.12 (9th Cir. 2012). The same level of causal proof that a plaintiff must satisfy to recover on a constitutional tort – namely, both cause in fact and proximate cause -- should also be required from a government employer before it can restrict employee free speech rights.

"The proximate cause question asks whether the [subject] conduct is closely enough tied to the injury that it makes sense to hold the defendant legally responsible for the injury." *Mendez*, 897 F.3d at 1076 (internal citations omitted). Similarly, to avoid liability for a First

Amendment violation under *Pickering*, Defendants must show that the Video was so closely tied to the (purported) disturbance that it makes sense to hold Plaintiffs responsible for it.

If someone other than Plaintiffs more directly caused the disturbance that Defendants rely on, that is not legitimate basis for restricting Plaintiffs' speech rights. Particularly concerning is the evidence that Defendants themselves participated in the disruption they then relied on under *Pickering*. 1-ER-14. Plaintiffs should also not be made responsible for complaints that were made without ever having watched the Video or based on a misunderstanding of it. Any resultant disturbance would, at most, be only loosely tied to Plaintiffs' speech.

Proximate cause "'depend[s] on whether the conduct has been so significant and important a cause that the defendant should be legally responsible.' . . . The Supreme Court has observed that '[p]roximate cause is often explicated in terms of foreseeability or the scope of the risk created by the predicate conduct.'" *Mendez*, 897 F.3d at 1076 (citations omitted).

That fairly anodyne political speech like the Video would create some substantial disturbance to GPSD operations was not reasonably

foreseeable. As shown by the community backlash against Plaintiffs' termination, views like those expressed on the Video in fact enjoy considerable support. Moreover, most Americans still show respect and tolerance for views different from their own and Plaintiffs should not have had to self-censor because of the possibility of disrespectful or intolerant audience members. Similarly, the scope of risk to school operations presented by the Video was minimal, as borne out by the undisputed fact that operations were not disrupted.

Intolerance and overreaction to constitutionally-protected speech should not mean that the speech caused disruption as a legal matter:

> Of course, abiding the Constitution's commitment to the freedom of speech means all of us will encounter ideas we consider "unattractive," "misguided, or even hurtful[.]" **But tolerance, not coercion, is our Nation's answer**. The First Amendment envisions the United States as a rich and complex place where all persons are free to think and speak as they wish, not as the government demands.

303 Creative LLC v. Elenis, 143 S. Ct. 2298, 2321-22 (2023) (citations omitted) (emphasis added). Holding a speaker legally responsible under *Pickering* for disruption only indirectly caused by her speech would undermine these constitutional values.

Again, social media make it relatively easy to generate the appearance of widespread opposition to any political or social position. The authenticity of such opposition must be closely examined before it can be cited as justification for a constitutional violation. Otherwise, courts incentivize those who disagree with certain speech to gin up opposition in order to get the government to suppress that speech.

Finally, although some individuals were upset and offended by the Video, there is no evidence that Plaintiffs' **non-speech** conduct caused any such reaction. The Opinion makes a few, passing references to Plaintiffs' promoting the Video during work hours and the like, *see* 1-ER- 3, 13, 23, but that conduct is not cited as causing a disruption in GPSD operations. And, again, there is nothing in the record reflecting derogatory or other nasty conduct by Plaintiffs towards students (transgender or not), colleagues, or anyone else.

IV. AS NURSERIES OF DEMOCRACY, PUBLIC SCHOOLS HAVE AN INTEREST IN PROTECTING SPEECH THAT OUTWEIGHS THEIR INTEREST IN MINIMIZING ADMINISTRATIVE HASSLES.

More concerning than the disruption that may accompany discussion of any controversial topic is the lesson taught to students by actions like those of Defendants.

The Supreme Court has made clear that "learning how to tolerate speech . . . of all kinds is part of learning how to live in a pluralistic society, a trait of character essential to a tolerant citizenry." *Kennedy v. Bremerton Sch. Dist.*, 142 S. Ct. 2407, 2430 (2022) (quotations omitted). Public schools play a critical role in developing such character traits in children. Middle school students, as well as society at large, are poorly served if instead of remembering that only "sticks and stones" can hurt them, the students try to cancel language they don't like.

As "the nurseries of democracy," public schools have a constitutional interest in protecting unpopular speech that far outweighs their interest in avoiding administrative hassles. *See B.L.*, 141 S. Ct. at 2046. Teachers and other adults serve as proper role models by showing tolerance of views with which they disagree, and respect for individuals holding such views. In fact, the Video itself exemplifies for students the respectful, open-minded, tolerant approach that is essential for participatory democracy, irrespective of one's position on transgender issues.

Such habits of a robust mind are essential for living in a society like ours. When faced with ideas they disagree with, students must be

able to respond in a thoughtful, constructive manner, rather than becoming overwhelmed with fear or shock, unable to function and forced to seek refuge.

Along with constitutional rights like free speech come constitutional obligations like mutual respect and tolerance for views with which one disagrees. Reminders of constitutional duties as well as rights are especially important today. Currently there exists a pernicious tendency in our society to claim offense or injury instead of responding constructively to speech with which one disagrees. Some participants in this trend go so far as to claim that words with which they disagree constitute "violence" and, even further, some rely on the disagreeable words to justify actual violence against their speaker. *See* Jonathan Turley, *"Your Speech is Violence": The Left's New Mantra to Justify Campus Violence*, THE HILL, (June 3, 2023), https://tinyurl.com/5n82kvj5. This Court should remind Defendants of their interest in developing proper habits of mind early in life, which will prevent the development later of closed mindsets that are corrosive to democracy.

CONCLUSION

This Court should enter judgment for Plaintiffs on their First Amendment claims as a matter of law or, alternatively, remand for trial.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitations of Fed. R. App. P. 29(a)(5) and 29(a)(7), because this brief contains 4,410 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f).

This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32, because this brief has been prepared in a proportionally spaced typeface using Microsoft 365 Apps for Business, 14 point Century.

Dated: September 13, 2023

THE ALVAREZ FIRM

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on September 13, 2023.

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

Dated: September 13, 2023

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