CA No. 13-56484

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

CONSUMER FINANCIAL PROTECTION BUREAU,
Plaintiff-Appellee,

v.

CHANCE EDWARD GORDON,
Defendant-Appellant.

On Appeal from the United States District Court
for the Central District of California, No. 2:12-cv-6417
(Honorable Percy Anderson)

CHANCE EDWARD GORDON'S PETITION FOR REHEARING *EN BANC*

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June 27, 2016

STATEMENT OF COUNSEL

I express a belief, based on a reasoned and studied professional judgment, that this proceeding involves the following questions of exceptional importance:

(1) Whether the federal courts possess Article III jurisdiction over a proceeding in which the plaintiff, because it was not authorized to file a lawsuit, lacked standing from the time the complaint was filed through the time the district court granted summary judgment to the plaintiff.

(2) Whether separation-of-powers principles bar a federal agency from retroactively ratifying the results of federal-court litigation filed at the behest of individuals who lacked authority to initiate and prosecute the litigation, when:

(A) Neither the purported ratifier nor the federal agency he headed could have authorized the lawsuit at the time it was filed;

(B) The ratification purports to encompass not only the decision to file suit but also findings of fact and conclusions of law rendered by the federal district judge; and

(C) The ratification did not include any detached and considered judgment regarding the decision to file suit, but rather purported to grant perfunctory approval to "any and all actions" taken by the agency during an 18-month period when the agency lacked a validly appointed Director.

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GROUNDS FOR REHEARING *EN BANC*

Two of the panel's holdings warrant rehearing *en banc*: (1) its ruling that the federal courts possess Article III jurisdiction to hear, and that a federal agency has standing to bring, a court proceeding that all agree was filed at the behest of individuals who lacked authority to initiate and prosecute that litigation; and (2) its ruling permitting post-judgment ratification of the Consumer Financial Protection Bureau's (CFPB) decision to pursue the enforcement action.[1] Both holdings conflict with Supreme Court precedent and create conflicts with the decisions of other federal appeals courts.

The panel correctly recognized that Richard Cordray's January 2012 recess appointment as Director of CFPB was invalid and that no CFPB official possessed the requisite authority to file an enforcement action against Petitioner Chance E. Gordon in July 2012. *Consumer Financial Protection Bureau v. Gordon*, 819 F.3d 1179, slip op. 8 (9th Cir. 2016) (attached). The panel nonetheless affirmed the district court's July 2013 judgment against Gordon, concluding that Cordray (following Senate confirmation) effectively ratified both the lawsuit and the judgment when, in August 2013, he issued a four-sentence notice stating that he "affirm[ed] and ratif[ied] any and all actions I took during" the period between his

[1] This petition is timely filed per the Court's June 6, 2016 order, which directed the parties by June 27, 2016 "to file simultaneous briefs as to whether the Court should rehear this matter en banc."

recess appointment and his Senate confirmation 18 months later.

The panel erred in ruling that the federal courts possessed subject-matter jurisdiction to entertain CFPB's enforcement action. Slip op. 10-17 (rejecting Gordon's contention that the case should be dismissed because CFPB did not possess Article III standing at all times throughout the proceedings). That ruling conflicts with numerous Supreme Court decisions holding that, although the United States possesses unique standing to file lawsuits to enforce federal law, only properly vested "Officers of the United States" are permitted to exercise that authority. Because none of the individuals who made the decision to file suit against Gordon were Officers of the United States or properly appointed by an Officer, they lacked standing to seek enforcement of federal law.

The panel also erred in holding that Cordray remedied the constitutional violation by purporting to ratify the results of the unauthorized litigation. That holding directly conflicts with multiple decisions of the U.S. Supreme Court, which require that, for ratification to be effective, "it is essential that the party ratifying should be able ... to do the act ratified at the time the act was done..." *FEC v. NRA Political Victory Fund*, 513 U.S. 88, 98 (1994) (quoting *Cook v. Tullis*, 85 U.S. 332, 338 (1873)).

The panel's ratification ruling is particularly objectionable because it upheld

Cordray's efforts to ratify not only the unauthorized decision to file suit but also the district court's findings of fact and conclusions of law. There is *no* case-law support for such an expansive understanding of the scope of a federal official's ratification authority.

The panel's endorsement of the perfunctory manner in which Cordray purported to ratify CFPB's actions in this case is also objectionable and conflicts with the holdings of other federal appeals courts. Those courts have held that "[r]atification of previously unauthorized agency action" requires, at a minimum, that "the ratifier must make a detached and considered affirmation of the earlier decision." *Advanced Disposal Services East, Inc. v. NLRB*, 2016 WL 1598607, at *6 (3d Cir., Apr. 21, 2016); *Doolin Sec. Savings Bank, F.S.B. v. Office of Thrift Supervision*, 139 F.3d 203, 213 (D.C. Cir. 1998). Cordray's ratification of CFPB's actions in this case was anything but "detached and considered"; it lumped together every action he had taken in the previous 18 months and did not even concede that ratification was required. Notice of Ratification, 78 Fed. Reg. 53734-02 (Aug. 30, 2013) (hereinafter, "Notice").

COURSE OF PROCEEDINGS AND STATEMENT OF FACTS

President Obama named Cordray the Director of CFPB on January 4, 2012, contending (erroneously, it turns out) that the Senate was in recess that day.

Accordingly, he purported to appoint Cordray pursuant to the Recess Appointments Clause, U.S. Const., art. II, § 2, cl. 3—thereby supposedly postponing any requirement to obtain the Senate's advice and consent for his nomination.

Cordray thereafter purported to authorize the filing of this enforcement action against Gordon on July 18, 2012. The complaint alleged that Gordon engaged in deceptive practices in connection with his provision of mortgage-relief services, in violation of the Consumer Financial Protection Act (CFPA), 12 U.S.C. § 5531, 5536, and various provisions of Regulation O, 16 C.F.R. part 322, *recodified as* 12 C.F.R. part 1015. Gordon vigorously contested the charges and asserted, *inter alia*, that CFPB lacked authority to bring the action. He asserted that CFPB's authority depended on the presence of a validly appointed Director and that Cordray's recess appointment was not valid.

The district court rejected Gordon's defenses and entered summary judgment for CFPB on June 23, 2013, including an $11.4 million monetary award. ER 18-25. Gordon appealed from the final judgment, which included permanent injunctive relief.

President Obama renominated Cordray to head CFPB in 2013, and the Senate confirmed that appointment on July 16, 2013. On August 30, 2013,

Cordray averred that, "to avoid any possible uncertainty," he was ratifying all actions he had taken while serving as a recess appointee.

In addition to his appointment of Cordray to CFPB, President Obama purported to make other recess appointments on January 4, 2012. In June 2014, the U.S. Supreme Court unanimously ruled that the Senate was *not* in recess on January 4, 2012 and thus the recess appointments that day of three individuals to the National Labor Relations Board (NLRB) did not satisfy Article II's Appointments Clause requirements. *NLRB v. Noel Canning*, 134 S. Ct. 2550, 2556-57 (2014). Following that decision, CFPB has ceased defending the validity of Cordray's recess appointment; as the panel noted, CFPB now concedes that the appointment was "invalid." Slip op. 8.

A divided three-judge panel affirmed the district court judgment. The majority rejected Gordon's challenge to CFPB's standing, stating:

> That [CFPB's] director was improperly appointed does not alter the Executive Branch's interest in having federal law enforced. ... While the failure to have a properly confirmed director may raise Article II Appointments Clause issues, it does not implicate our Article III jurisdiction to hear this case.

Slip op. 14.

The Court also rejected Gordon's Article II claims, asserting that Cordray's ratification of CFPB's enforcement action in August 2013 (following Senate

confirmation and his valid appointment as CFPB Director) "cures any Article II deficiency." Slip op. 18.[2] The panel concluded that although Cordray himself was not authorized to file the enforcement action in July 2012, CFPB had authority to do so because Congress granted that authority when it adopted the CFPA. Slip op. 20 (citing 12 U.S.C. § 5564(a)-(b)). It concluded that, given CFPB's statutory authorization, "Cordray's August 2013 ratification, done after he was properly appointed as Director, resolves any Appointments Clause deficiencies." *Ibid*.

Judge Ikuta dissented. Slip op. 33-45. She concluded that the district court was bound to dismiss the action "[b]ecause the plaintiff here lacked executive power and therefore lacked Article III standing." *Id*. at 34. She argued that Cordray's August 2013 purported ratification could not cure the jurisdictional deficiency, noting, "Federal courts have consistently rejected arguments that a later act can cure a lack of standing at the time suit was filed." *Id.* at 43.

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[2] Although the district court had declined to address Gordon's Article II claims (based on the supposedly inadequate development of his four-page argument challenging Cordray's and CFPB's authority to file the enforcement action), the panel exercised its discretion to address the issue. Slip op. 18 n.5. The panel thus did not need to address Gordon's claim that the district court had abused its discretion when it ruled that Gordon had waived the issue. The panel observed, "Gordon undoubtedly raised the argument that Cordray was invalidly appointed under the Appointments Clause and, as a result, the enforcement action against [Gordon] was invalid." *Ibid*.

ARGUMENT

I. The Panel's Article III Standing Analysis Conflicts with Supreme Court and Circuit Precedent, Warranting En Banc Review

CFPB now concedes that Cordray's January 2012 appointment as CFPB Director violated the Appointments Clause and was thus invalid; and that for the ensuing 18 months—the period during which lawyers, at Cordray's direction, successfully pressed claims against Gordon—he lacked any authority to take actions on behalf of CFPB. Yet, the Bureau would have that fact be of no consequence.

The bedrock requirement that a plaintiff must have Article III standing—both at the time an action is filed and "throughout all stages of litigation," *Hollingsworth v. Perry*, 133 S. Ct. 2652, 2661 (2013)—is "inflexible and without exception." *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 95 (1998). Yet, from July 18, 2012, when this civil enforcement action against Gordon commenced, until June 26, 2013, when the district court granted CFPB summary judgment, *no one* before the court was properly vested by the Executive Branch with the necessary power and authority to enforce the CFPA—an absolute prerequisite for executive standing.

The government has never disputed that—at every stage of this litigation

below—CFPB was nothing more than a nascent, faceless entity whose director and subordinate attorneys were "not appointed by a body with proper appointment authority" and "therefore [could] not be considered 'Officers of the United States.'" *United States ex rel. Kelly v. Boeing Co.*, 9 F.3d 743, 757 (9th Cir. 1993). A plaintiff with no lawful executive authority lacks the unique attributes of executive standing by which "duly appointed officers are excepted from the generalized grievance prohibition that private parties face under Article III." Slip op. 11.

Absent any executive authority to enforce federal law, Cordray and his *ultra vires* agents were merely private citizens, who must satisfy the traditional injury-in-fact standing requirement for bringing suit in federal court. *See, e.g.*, *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 573-74 (1992) (a plaintiff "seeking relief that no more directly and tangibly benefits him than it does the public at large does not state an Article III case or controversy"). But the government does not contend—nor can it—that Cordray and his CFPB attorneys sought "a remedy for a personal and tangible harm," *Hollingsworth*, 133 S. Ct. at 2661, an "irreducible" requirement for standing. Accordingly, the private plaintiffs who brought this "enforcement" action could not possibly satisfy the traditional test for Article III standing.

Nor could Cordray and his staff attorneys confer upon themselves "a special license to roam the country in search of governmental wrongdoing" and "reveal [their] discoveries in federal court." *Valley Forge Christian Coll. v. Ams. United for Separation of Church & State*, 454 U.S. 464, 487 (1982). As private litigants, they lacked standing to seek the mere "vindication of the rule of law." *Steel Co.*, 523 U.S. at 106; *see also Lance v. Coffman*, 549 U.S. 437, 439 (2007) (per curiam) ("Our refusal to serve as a forum for generalized grievances has a lengthy pedigree.").

Sweeping aside decades of binding Supreme Court precedent, the panel majority concluded that "it is the Executive Branch, not any particular individual, that has Article III standing." Slip op. 11. That distinction has no basis in the law. It is well settled that "'the President alone and unaided could not execute the laws. He must execute them by the assistance of subordinates.'" *Buckley v. Valeo*, 424 U.S. at 135 (quoting *Myers v. United States*, 272 U.S. 52, 117 (1926)). Accordingly, the "primary responsibility for conducting civil litigation in the courts of the United States for vindicating public rights … may be discharged only by persons who are 'Officers of the United States' within the language of the [Appointments Clause]." *Id.* at 140. As a result, "Article III cannot confer on the executive a power that Article II denies." Tara Leigh Grove, *Standing Outside of*

Article III, 162 U. Pa. L. Rev. 1311, 1334 (2014).

The Executive Branch may not exercise its enforcement power entirely as it pleases. Rather, under the Take Care Clause, the Executive Branch must "take Care that the Laws be *faithfully* executed," U.S. Const. art. II, § 3 (emphasis added). Here, Congress specified that CFPB would be headed by a Director who must be "appointed by the President, by and with the advice and consent of the Senate." 12 U.S.C. § 5491(b)(1)-(2). The statute required that all of CFPB's other inferior officers, in turn, be appointed by that properly appointed Director. *Id.* §§ 5491(b)(5), 5493(a)(1). Thus, when Congress granted CFPB authority to "commence civil action against" anyone who "violates a Federal consumer financial law," *id.* § 5564(a), it did so on the condition that everyone representing CFPB in federal court would be *constitutionally* vested with proper authority to do so.

The panel majority's reasoning thus conflicts with this Court's precedent and other circuits' decisions, which deny the Executive Branch standing to bring suit where, as here, the suit lacked statutory authorization. *See United States v. Mattson*, 600 F.2d 1295, 1300 (9th Cir. 1979) (holding that, absent congressional authorization or "a showing of actual injury," the Executive Branch lacked standing to enforce the constitutional rights of mentally disabled persons confined

to a state facility); *see also United States v. Philadelphia*, 644 F.2d 187, 201 (3d Cir. 1980) ("[W]ithout specific statutory authority[,] … we hold the Attorney General to the same [standing] requirements we demand of a private litigant who brings an action under the Civil Rights Acts."); *United States v. Solomon*, 563 F.2d 1121, 1125-28 (4th Cir. 1977) (holding that the Attorney General lacked standing to sue "in the absence of specific authority," even though the court had "no doubt that the United States has an interest … in the subject matter of the suit").

As Judge Ikuta demonstrated in dissent, nearly all of the authorities on which the panel majority relies have nothing to do with standing. Slip op. 39-43. And the only case the majority cites that addresses executive standing, *United States v. Providence Journal Co.*, 485 U.S. 693 (1988), throws into stark relief the panel's error here. In that case, a special prosecutor filed a certiorari petition "without the authorization of the Solicitor General, and without authorization to appear on behalf of the United States." 485 U.S. at 708. Dismissing the petition, the Supreme Court concluded that "[a]bsent a proper representative of the Government" as a litigant in the suit, "jurisdiction is lacking." *Ibid*. Here, because Cordray and his designees engaged in litigation "without authorization to appear on behalf of the United States," the district court likewise lacked jurisdiction. *See Cetacean Cmty. v. Bush*, 386 F.3d 1169, 1174 (9th Cir. 2004) ("A suit brought by a

plaintiff without Article III standing is not a 'case or controversy,' and an Article III federal court therefore lacks subject matter jurisdiction over the suit.").

II. The Panel Decision Raises Exceptionally Important Questions Warranting *En Banc* Review Regarding the Authority of a Federal Agency to Retroactively Ratify the Results of Litigation that It Was Not Authorized to File

The "separation of powers was not simply an abstract generalization in the minds of the Framers." *Buckley*, 424 U.S. at 124. Rather, it provides "structural protections against abuse of power," whose enforcement the Framers deemed "crucial to preserving liberty." *Free Enterprise Fund v. Public Co. Accounting Oversight Bd.*, 561 U.S. 477, 501 (2012) (citations omitted). One of these important structural protections is the Appointments Clause, U.S. Const., art. II, § 2, cl. 2, which checks executive power by specifying that the President must obtain "the Advice and Consent of the Senate" *before* appointing Officers of the United States.

Yet, if the panel's expansive ratification theory is adopted, the structural protections guaranteed by the Appointments Clause will be rendered illusory. Future Presidents would receive a "free pass" to install executive officials lacking Senatorial confirmation, knowing that any objections could be shunted aside by a perfunctory "ratification" from some future, validly appointed officer. Rehearing

en banc is warranted to address the conflict between the panel's ratification decision and decisions of both the U.S. Supreme Court and other federal appeals courts.

A. A Federal Agency May Not Ratify Acts Undertaken in Its Name if the Agency Would Not Have Been Able to Do Those Acts at the Time the Acts Were Done

While government actors can in some circumstances ratify actions taken in their name without their prior authorization, the Supreme Court has held that such ratification is limited by the longstanding agency-law limitation that "the party ratifying should be able not merely to do the act ratified at the time the act was done, but also at the time the ratification was made." *NRA Political Victory Fund*, 513 U.S. at 98 (emphasis omitted) (quoting *Cook*, 85 U.S. at 338). Because neither Cordray nor anyone else associated with CFPB possessed legal capacity to authorize this enforcement proceeding when it was filed and litigated, Supreme Court precedent bars him from ratifying it later.

NRA Political Victory Fund held that the U.S. Solicitor General could not ratify a Supreme Court certiorari petition filed by the Federal Election Commission (which lacked legal capacity to file such petitions on its own) because, by the time the Solicitor General sought to ratify the filing, he no longer had the right to file a petition—the 90-day petitioning period had expired. *Id.* at 99. The Court

explained the rationale behind that rule as follows: "The intervening rights of third persons cannot be defeated by the ratification." *Id.* at 98. Thus, because no one at CFPB had authority in July 2012 to initiate an enforcement proceeding against Gordon (in this instance, the third party with "intervening rights"), CFPB cannot seek to utilize Cordray's attempted August 30, 2013 ratification to defeat Gordon's rights. *See* Restatement (Third) of Agency § 4.05 (2006) ("A ratification of a transaction is not effective unless it *precedes* the occurrence of circumstances that would cause the ratification to have adverse and inequitable effects on the rights of third parties") (emphasis added); Restatement (Second) of Agency § 84(2) (1958) ("An act which, when done, the purported or intended principal could not have authorized, he cannot ratify...").

The panel held that even though Cordray himself lacked authority to initiate and prosecute this action, CFPB possessed such authority by virtue of Congress's adoption of the CFPA. Slip op. 20. That contention lacks merit. While CFPB existed on paper in 2012, it can litigate only through "designate[d] agents" constitutionally appointed "to represent it in federal court." *Hollingsworth*, 133 S. Ct. at 2664. CFPB is a new federal agency that lacked any duly appointed Officers until after Cordray was validly installed as its Director in July 2013. In the absence

of such Officers, CFPB itself could not in 2012 have authorized the litigation against Gordon that Cordray sought to ratify retroactively.

B. Even if Cordray Could Ratify CFPB's Initial Decision to File Suit Against Gordon, He Lacks Authority to Ratify the District Court's Entry of Judgment Against Gordon

At the time that Cordray sought to ratify CFPB's federal-court enforcement proceeding against Gordon, the district court had already entered final judgment against Gordon—including an $11.4 million monetary award. The panel held that the ratification applied not only to CFPB's decision to file suit but also to the district court's judgment. This expansive interpretation of the ratification doctrine is unprecedented and provides an additional reason to grant *en banc* review.

In several cases, the Supreme Court has permitted the federal government (usually Congress) to ratify an Executive Branch act previously undertaken by officials not authorized to act, where the ratifier *was* so authorized at the time of the initial act. *See, e.g., United States v. Heinszen*, 206 U.S. 370 (1907) (although a Presidential order imposing a duty on goods imported into the Philippines was unauthorized when initially issued, legislation enacted by Congress in 1902—*which it could have enacted at the time of the initial Presidential order*—served to ratify the order). But in none of those cases did the Court uphold ratification of *court decisions* that were by-products of the previously unauthorized

federal action. Indeed, *Heinszen* explicitly limited ratification to events preceding a substantive court ruling in legal proceedings arising out of the prior Executive Branch action. 206 U.S. at 387-88.

Before the panel, CFPB cited two cases to support its view that ratification of a government decision to file a lawsuit can also encompass ratification of the court's rulings in that lawsuit. CFPB Brief at 50 (citing *Bowles v. Wheeler*, 152 F.2d 34 (9th Cir. 1945), and *Rafferty v. Smith Bell Co.*, 257 U.S. 226 (1921)). Neither case supports CFPB's position. Indeed, in both cases lower courts had ruled against the United States; far from seeking to ratify those lower-court rulings, the United States sought to invoke ratification doctrine to *overturn* those decisions.

Nor does harmless-error doctrine support CFPB's effort to uphold a district court judgment issued as a result of a lawsuit that CFPB employees lacked authority to file. Other federal appeals courts have declined to apply harmless-error analysis to alleged separation-of-powers violations because they are "structural" in nature. *See Landry v. FDIC*, 204 F.3d 1125, 1131 (D.C. Cir. 2000) ("[S]eparation of powers is a *structural safeguard* rather than a remedy to be applied only when specific harm, or risk of specific harm, can be identified.") (quoting *Plaut v. Spendthrift Farm, Inc.*, 514 U.S. 211, 239 (1995) (emphasis in original). There is simply no way to accurately predict whether a federal district

court would enter the same, severe judgment if CFPB were to proceed against Gordon a second time. Accordingly, Gordon is entitled to have his defenses evaluated in a proceeding untainted by CFPB's constitutional violations.

In analogous circumstances, involving findings that an appellate court improperly ruled on a case because one of its judges was ineligible to serve, the Supreme Court has never affirmed the ruling based on a harmless-error rationale—*i.e.*, that the panel would have reached the same result if the ineligible judge had not participated. Rather, the Court has required the offending court to deliberate again in the absence of the ineligible judge. *See, e.g., Williams v. Pennsylvania*, 2016 WL 3189529, at *9-*10 (U.S., June 9, 2016); *Nguyen v. United States*, 539 U.S. 69 (2003).

C. Cordray's Perfunctory Endorsement of All His Prior Actions Was Insufficient to Ratify Enforcement Proceedings Against Gordon

On August 30, 2013, following Senate confirmation, Cordray issued a four-sentence notice purporting to ratify all actions he took while serving as a recess appointee. The Supreme Court had not yet handed down its *Noel Canning* decision, so Cordray was still insisting that "the actions I took during the [18-month] period ... were legally authorized and entirely proper." Notice, 78 Fed. Reg. 53734. The Notice provided no indication that he had actually reviewed *any*

of his prior actions, let alone that he had evaluated them recognizing that they were invalid when done.

The panel's endorsement of the perfunctory manner in which Cordray purported to ratify CFPB's actions in this case conflicts with the holdings of other federal appeals courts and warrants *en banc* review. Both the D.C. and Third Circuits have held that even though a *proper* ratification may sometimes serve as "an adequate remedy" for a constitutional separation-of-powers violation, *Federal Election Comm'n v. Legi-Tech, Inc.*, 75 F.3d 704, 709 (D.C. Cir. 1996), ratification is not an adequate remedy where it does not involve some meaningful review of the initial decision.

The D.C. Circuit has repeatedly held that a proper ratification requires the new (and properly appointed) federal official to engage in a *de novo* deliberative process. *See, e.g., Intercollegiate Broad. Sys., Inc. v. Copyright Royalty Bd.*, 796 F.3d 111, 117-18 (D.C. Cir. 2015) (ratification requires "a subsequent determination" by "a properly appointed official" who "has the power to conduct an independent evaluation of the merits and does so"); *Legi-Tech*, 75 F.3d at 708-09 (ratification effective where the FEC reconstituted itself, received new recommendations from the General Counsel, and engaged in three days of deliberations before voting to authorize continued litigation); *Doolin*, 139 F.3d at

213-14 (ratification effective where properly appointed officer ratified a decision by a prior Office of Thrift Supervision employee after making a "detached and considered judgment in deciding the merits against the Bank"). The Third Circuit holds similarly that "[r]atification of previously unauthorized agency action" requires, at a minimum, that "the ratifier must make a detached and considered affirmation of the earlier decision." *Advanced Disposal Services East,* 2016 WL 1598607, at *6.

Cordray made no such "detached and considered affirmation" of CFPB's decision to initiate and prosecute an enforcement action against Gordon. Indeed, his Notice provides no indication that he even thought about the *Gordon* case and explicitly denies that there was any constitutional violation for which a remedy might be appropriate. *En banc* review is warranted to determine whether, as other federal appeals courts have held, perfunctory statements of the sort issued by Cordray are insufficient to ratify previously unauthorized conduct.

CONCLUSION

The Court should grant the petition for rehearing *en banc*.

Respectfully submitted,

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Dated: June 27, 2016

Attorneys for Appellant Chance Edward Gordon

STATEMENT OF RELATED CASES

Petitioner Gordon is not aware of any cases related to the present appeal that are pending before this Court.

CERTIFICATE OF COMPLIANCE

I am an attorney for Appellant Chance E. Gordon. Pursuant to Fed. R. App. P. 32(a)(7)(C) and Ninth Circuit Rules 29-2 and 32-1, I hereby certify:

1. This brief complies with the type-volume limitation imposed by the Court's June 6, 2016 order because: this brief contains 4,182 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii).

2.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(a)(6) because: this brief has been prepared in a proportionately spaced typeface using WordPerfect X5 Times New Roman.

/s/ Richard A. Samp
Richard A. Samp
Attorney for Appellant Chance E. Gordon

Dated: June 27, 2016

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 27th day of June, 2016, I electronically filed the foregoing brief of Appellant Chance E. Gordon with the Clerk of the Court for the U.S. Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system. 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.

/s/ Richard A. Samp
Richard A. Samp