

GERARD E. LYNCH, Circuit Judge, with whom Judge RAGGI, Judge HALL, and Judge LOHIER join, dissenting from the denial of rehearing en banc:

For the reasons stated by Judge Kearse in her dissent from the panel's decision, United States v. Grimm, 738 F.3d 498, 504-09 (2d Cir. 2013), I believe that the majority opinion in this case is inconsistent with United States v. Salmonese, 352 F.3d 608 (2d Cir. 2003), and that en banc review is appropriate to settle the law of the Circuit. I therefore respectfully dissent from the denial of rehearing en banc.