The Honorable Tiffany M. Cartwright

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ALBERTO GARCIA; FERNANDO RANGEL-SAUCEDO; ISMAEL ORTIZ MONTOYA, Petitioners, v. LAURA HERMOSILLO,[1] Acting Seattle Field Office Director, Enforcement and Removal Operations, U.S. Immigration and Customs Enforcement (ICE); U.S. DEPARTMENT OF HOMELAND SECURITY; EXECUTIVE OFFICE FOR IMMIGRATION REVIEW; BRUCE SCOTT,[2] Warden, Northwest ICE Processing Center, Respondents.	CASE NO. 2:25-cv-01980-TMC FEDERAL RESPONDENTS' OPPOSITION TO PETITIONERS' MOTION FOR FEES Noted for Consideration: February 10, 2026.

I. INTRODUCTION

Federal Respondents oppose Petitioners' motion seeking $17,319.70 in attorney's fees under the Equal Access to Justice Act ("EAJA"), 28 U.S.C. § 2412; *see also* Dkt. 13 (Petitioners'

[1] Laura Hermosillo is the Acting Field Office Director for ICE/ERO's Seattle Field Office and, pursuant to Rule 25(d) of the Federal Rules of Civil Procedure, is hereby substituted as Respondent for Cammilla Wamsley.

[2] Respondent Bruce Scott is not a Federal Respondent and is not represented by the U.S. Attorney's Office.

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Application for Attorney's Fees ("Motion")). The Motion should be denied because Federal Respondents' position was substantially justified in both law and fact. No special circumstances justify an enhanced fee award under EAJA, and no bad faith exists that could support an award of market-rate fees.

Petitioners have not carried their burden to show that Federal Respondents' position lacked substantial justification. Nor have they established entitlement to enhanced EAJA rates or identified any bad faith that would permit recovery of market-rate fees against the United States. Moreover, the declaratory relief granted in *Rodriguez Vásquez* did not include injunctive relief. Both the statutory scheme enacted by Congress—which precludes class-wide injunctive relief in habeas proceedings—and the language of the *Rodriguez Vásquez* order itself required the filing of individual habeas petitions to obtain injunctive relief. Accordingly, Federal Respondents' position regarding the scope and implementation of *Rodriguez Vásquez* through individual habeas actions was lawful, reasonable, and fully justified.

Permitting Petitioners here to recover attorney's fees from Federal Respondents for failing to treat this Court's declaratory relief order as equivalent to the injunction the district court was jurisdictionally precluded from issuing to Federal Respondents is neither bad faith nor without substantial justification, particularly because Immigration Judges are required to follow contrary Board of Immigration Appeals authority that this Court's order in *Rodriquez Vásquez* does not invalidate. Rather, this Motion seeks to convert EAJA into a tool to punish Federal Respondents for not affording the Court's order greater legal effect than it is entitled to under the law. Accordingly, Petitioners' Motion should be denied.

In addition, Federal Respondents respectfully request that the Court stay any determination of fees pending the Ninth Circuit's resolution of *Rodriguez Vazquez*, as issuance of fees at this stage—where the appellate court may determine that Federal Respondents' position

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was substantially justified—could irreparably prejudice Federal Respondents, who would have no practical means to recover fees already paid.

II. BACKGROUND

Five Petitioners filed a habeas petition challenging their detention by U.S. Immigration and Customs Enforcement ("ICE"), relying on the declaratory judgment entered in *Rodriguez Vásquez*. *See* Dkt. 1; *see also Rodriguez v. Bostock*, 802 F. Supp. 3d 1297, 1303 (W.D. Wash. 2025) ("*Rodriguez Vazquez*"). The Court granted the habeas petition and ordered bond hearings or, in the alternative, release where bond was ordered. Dkt. 11. Federal Respondents fully complied with this Court's order as to each Petitioner. *See* Declaration of Christopher Sica ("Sica Decl.") ¶¶ 5-8. Petitioners were either provided with bond hearings or released in accordance with the relief ordered by the Court. *Id.*

On January 20, 2026, Petitioners' counsel filed the present Motion seeking $17,319.70 in attorney's fees. Dkt. 13. Federal Respondents oppose the Motion because (1) their position was substantially justified, and (2) Petitioners seek fees exceeding the statutory EAJA rate cap without demonstrating entitlement to any enhancement, including cost-of-living or special-factor adjustments.

III. ARGUMENT

A party may recover attorney's fees under EAJA only if: (1) the party prevailed; (2) the government's position was not substantially justified; (3) the requested fees are reasonable; and (4) the application is timely and supported. 28 U.S.C. § 2412; *see also United States v. Milner*, 583 F.3d 1174, 1196 (9th Cir. 2009). Federal Respondents do not dispute that Petitioners are prevailing parties. The dispute turns on substantial justification and the permissible scope of any fee award.

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A. Federal Respondents' position was substantially justified.

Under EAJA, fees are unavailable if the government demonstrates that its position was "substantially justified." 28 U.S.C. § 2412(d)(1)(A). Substantial justification means the position was "justified to a degree that could satisfy a reasonable person." *Pierce v. Underwood*, 487 U.S. 552, 565 (1988). The government need not show it was correct—only that its position had a reasonable basis in law and fact. "That formulation implicitly permits the government some leeway, so long as its conduct on the whole remained justified." *Ibrahim v. U.S. Dep't of Homeland Sec.*, 835 F.3d 1048, 1056 (9th Cir. 2016).

Federal Respondents reasonably litigated the scope of declaratory relief in *Rodriguez Vazquez*. Federal Respondents opposed Petitioners' habeas petition by advancing arguments grounded in the statutory detention framework and the absence of class-wide injunctive relief in *Rodriguez Vásquez*. Dkt. 9. In the alternative, Federal Respondents stipulated that Petitioners were members of the bond denial class for purposes of this litigation, while preserving their position regarding the need for individual relief. While Federal Respondents acknowledge that this Court has recently found their position not substantially justified in a similar matter, they respectfully disagree with that decision for the reasons stated herein. *M.M. v. Hermosillo,* No. 2:25-cv-02074-TMC, 2026 WL 252076, at *2–3 (W.D. Wash. Jan. 30, 2026).

Federal Respondents' core position—that *Rodriguez Vásquez* granted declaratory relief only—was legally correct and reasonable.[3] This Court in *Rodriguez Vásquez* did not issue class-wide injunctive relief governing future bond hearings or detention decisions. That limitation

[3] Any relief Petitioners can obtain from a prior habeas order, such as the holding in *Rodriguez Vásquez*, is limited to the relief of a declaration of law, not an injunction, and not vacatur of the Board of Immigration Appeals' ("BIA") decision in *Matter of Yajure-Hurtado*. *See, e.g., Heartland Reg'l Med. Ctr. v. Leavitt*, 415 F.3d 24, 29 (D.C. Cir. 2005) ("Success on a motion to enforce a judgment gets a plaintiff only the relief to which the plaintiff is entitled under its original action and the judgment entered therein.") (internal quotations and alterations omitted).

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reflects the jurisdictional constraint imposed by 8 U.S.C. § 1252(f)(1), which generally bars courts from "enjoin[ing] or restrain[ing] the operation" of immigration detention statutes except as applied to an individual noncitizen.

Declaratory relief announces the court's interpretation of the law. Where a court grants declaratory relief but injunctive relief is unavailable or expressly declined, it is reasonable—and often necessary—for impacted individuals to seek case-specific relief through individual actions, including habeas petitions. As the Supreme Court has long recognized, a declaratory judgment may be used as a predicate to further relief, but it does not itself mandate that relief. *Powell v. McCormack*, 395 U.S. 486, 498-499 (1969); *Great Lakes Dredge & Dock Co. v. Huffman*, 319 U.S. 293, 300-301 (1943). Thus, as a limitation on its jurisdiction, this Court had the legal authority to declare the law but not to enjoin Federal Respondents to take any particular action in response to the Court's order. Moreover, at the same time, while acknowledging and applying this Court's declaration in *Rodriguez Vásquez*, Federal Respondents were also required to follow their own contrary binding precedent in *Matter of Yajure-Hurtado*, 29 I&N Dec. 216 (BIA 2025). Consequently, Federal Respondents were substantially justified and not acting in bad faith in their approach under these circumstances. Indeed, the Petition here may be seen as a misuse of EAJA in order to compel Federal Respondents into affording the Court's order in *Rodriguez Vásquez* greater legal effect than it has as a matter of law through the imposition of a series of monetary penalties. That misuse of EAJA should be soundly rejected.

It is well settled that district court decisions do not freeze the law or require universal acquiescence by the government. *Camreta v. Greene*, 563 U.S. 692, 709 n.7 (2011) ("A decision of a federal district court judge is not binding precedent in either a different judicial district, the same judicial district, or even upon the same judge in a different case.") (internal quotations omitted). As the Supreme Court further explained in *Camreta*, "district court decisions—unlike

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those from the courts of appeals—do not necessarily settle constitutional standards or prevent repeated claims . . . ." *Id.* The government is therefore permitted to continue litigating unsettled legal questions in subsequent cases. This principle is particularly true in the context of habeas litigation where injunctive relief for a class of petitioners is foreclosed by Congress. 8 U.S.C. § 1252(f)(1).

Although *Camreta* arose in the qualified-immunity context, the Court's reasoning applies with equal force here, especially where this case is currently pending before the Ninth Circuit. *Rodriguez Vazquez v. Bostock,* No. 25-6842 (9th Cir. pending Oct. 29, 2025). District court decisions, particularly declaratory judgments in the habeas context, do not definitively resolve statutory or constitutional questions for all future habeas petitioners. They do not bind other courts, do not displace agency precedent, and do not eliminate the government's ability to seek further clarification through continued litigation and appellate review.

The Supreme Court has further held that the government is not subject to non-mutual offensive collateral estoppel and may litigate the same legal issue in cases involving different parties in subsequent litigation, as its litigation interests differ from private parties. *United States v. Mendoza*, 464 U.S. 154, 160–63 (1984).

That principle is reinforced by *United States v. Mendoza*, where the Supreme Court held that the federal government is not subject to non-mutual offensive collateral estoppel and may continue litigating the same legal issue in cases involving different parties. 464 U.S. at 160–63. The Court emphasized that requiring government-wide acquiescence based on a single adverse decision would improperly freeze the development of the law and undermine the government's institutional role.

The Ninth Circuit has likewise recognized similar principles. *Hart v. Massanari*, 266 F.3d 1155, 1171-72 (9th Cir. 2001) (discussing binding versus non-binding precedent). In *Hart*, the

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court explained that non-acquiescence in certain contexts is not misconduct, but a lawful and necessary feature of federal adjudication, particularly where issues are unsettled or unpublished. *Id.* at 1177–79.

Against this backdrop, Federal Respondents' conduct—continuing to litigate the scope and effect of declaratory relief within the complex statutory and institutional framework of a habeas petition for these particular petitioners—cannot plausibly be characterized as bad faith. Accordingly, continued litigation over the scope and effect of declaratory relief, particularly where appellate review is imminent and binding agency precedent remains in place, is not bad faith. It is a lawful and expected feature of federal habeas litigation—where relief can only be granted to an individual petitioner based on their individualized circumstances.

For these reasons, Federal Respondents' litigation position, advanced within an evolving legal framework and now subject to appellate review—was therefore objectively reasonable and substantially justified.

B. Petitioners fail to show an entitlement to enhanced EAJA hourly rates

Even if this Court rules that Federal Respondents were not substantially justified in their legal positions, Petitioners' requested enhanced fees are excessive. Petitioners carry "the burden of establishing entitlement to an award and documenting the appropriate hours expended and hourly rates." *Hensley v. Eckerhart*, 461 U.S. 424, 437 (1983).

Under EAJA, a district court may not award attorney's fees "in excess of $125 per hour unless the court determines that an increase in the cost of living or special factor, such as the limited availability of qualified attorneys for the proceedings involved, justifies a higher fee." 28 U.S.C. § 2412(d)(2)(A)(ii); *see Pierce*, 487 U.S. at 573 (narrowly construing exception to exceed EAJA statutory rate cap). The Ninth Circuit has approved a table of annually adjusted EAJA rates for attorneys based on the cost of living. For work performed during the relevant

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period, the maximum adjusted EAJA rate is $258.46 per hour. *See* https://www.ca9.uscourts.gov/attorneys/statutory-maximum-rates (last visited January 26, 2026). And the Supreme Court has held that under EAJA, paralegal services are "recoverable at prevailing market rates[.]" *Richlin Sec. Serv. Co. v. Chertoff,* 553 U.S. 571, 581 (2008). Here, Petitioners' counsel billed a total of 26.3 hours at various rates ranging from two-and-a-half times the hourly EAJA rate, to three-and-a-half times the hourly EAJA rate, as shown in the chart below.

Petitioners also seek fees for one paralegal's services. Established Supreme Court precedent provides for recovery of paralegal fees at "prevailing market rates." *Richlin Sec. Serv. Co. v. Chertoff*, 553 U.S. 571 (2008). Based upon figures from the U.S. Bureau of Labor Statistics, the average hourly market rate for a paralegal in the Seattle, Washington area was $43.59 in May 2024.[4] Even assuming a reasonable degree of inflation[5], the billing of $255 per hour for paralegal services is easily four-to-five times the market rate in Seattle, and therefore unreasonable.

Legal Staff	Rate Sought	Percent in Excess of EAJA/ Market Fees	Hours	Total Amount Sought in Dkt. 13	Adjusted Total per EAJA Rate
Matt Adams	$905.00/hr	350%	6	$5,430.00	$1,550.76
Sydney Maltese[6]	$255.00/hr	585%[7]	5.5	$1,402.50	$247.39[8]
Leila Kang	$738.00/hr	285%	4.2	$3,099.60	$1,085.53
Aaron Korthuis	$691.00/hr	267%	9.6	$6,633.60	$2,481.22
Glenda Aldana Madrid	$754.00/hr	292%	1	$754.00	$258.46
Total Attorney Fees				**$17,319.70**	**$5,623.36**

[4] U.S. Bureau of Labor Statistics, Occupational Employment and Wage Statistics, Area: Seattle-Tacoma-Bellevue, WA, "Paralegals and Legal Assistants (23-2011)" (May 2024), https://data.bls.gov/oes/#/area/0042660 (last visited Feb. 4, 2026).

[5] Utilizing the U.S. Bureau of Labor Statistics CPI inflation calculator, the hourly paralegal market rate of $43.59 in May 2024 is calculated as $44.98 in December 2025. *See* U.S. Bureau of Labor Statistics website "CPI inflation calculator," available at: https://www.bls.gov/data/inflation_calculator.htm (last visited February 4, 2026).

[6] Sydney Maltese appears to be a paralegal. *Compare* Dkts. 13-3, pg. 2 *with* Dkt. 13-2, pg. 2.

[7] Calculated as the requested $255/hr rate divided by the $44.98 market rate, calculates as 585% of the U.S. Bureau of Labor Statistics for paralegal fees in the Seattle market.

[8] Based upon the aforementioned $43.59 per hour for a paralegal in Seattle.

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Petitioners have failed to justify any warranted departure from EAJA's statutory framework to warrant enhanced fees. Even if all that billed time were compensable, the maximum amount they could claim under the adjusted EAJA statutory rate is $5,623.36.

A party seeking enhanced fees must prove *all* of the following: (1) "the attorney must possess distinctive knowledge and skills developed through a practice specialty," (2) "those distinctive skills must be needed in the litigation," and (3) "those skills must not be available elsewhere at the statutory rate." *Love v. Reilly*, 924 F.2d 1492, 1496 (9th Cir. 1991). Here, regardless of whether Petitioners' counsel have shown they have "distinctive knowledge and skills," they have not demonstrated that distinctive skills were needed in *this* litigation or that qualified counsel was not available at the statutory rate or that those skills were not available elsewhere at the statutory rate. *See Nadarajah v. Holder*, 569 F.3d 906, 913 (9th Cir. 2009). Petitioners fail at least the second and third prongs.

Petitioners have not shown that this case required distinctive skills beyond routine habeas and statutory interpretation litigation. The issues presented here were straightforward statutory detention interpretation and habeas procedure. These issues are routinely litigated in this District by competent counsel at EAJA rates. Petitioners' argument attempts to have it both ways: asserting that the law was so clear that Federal Respondents acted unreasonably by litigating the issue, while simultaneously claiming that the same litigation was so complex that it required specialized expertise warranting extraordinary compensation.

Petitioners rely on the Fitzpatrick Matrix to justify hourly rates exceeding $900 per hour. That reliance is misplaced. Like the Laffey Matrix, the Fitzpatrick Matrix reflects prevailing rates in the Washington, D.C., legal market and does not correlate to rates in this District.

The Ninth Circuit has declined to apply D.C.-based matrices. *Cabardo v. Petacsil*, 2022 WL 956951, at *3 (E.D. Cal. Mar. 22, 2022); *Prison Legal News v. Schwarzenegger*,

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608 F.3d 446, 454 (9th Cir. 2010). Petitioners cite no authority applying the Fitzpatrick Matrix to EAJA awards in immigration habeas cases and offer no persuasive evidence that qualified counsel was unavailable at EAJA rates. Accordingly, Petitioners have not justified any departure from EAJA's statutory cap.

C. Petitioners Also Fail to Show the Government Acted in Bad Faith or that Market-Rate Attorney's Fees are Available under the "Bad Faith" Exception

Petitioners seek market-rate attorney's fees in excess of EAJA's statutory cap by invoking the common-law bad-faith exception. That exception is narrow, punitive in nature, and applies only in extraordinary circumstances. Petitioners have not met—and, indeed, cannot meet—the demanding standard required for its application.

EAJA permits fee awards against the United States only pursuant to an express waiver of sovereign immunity. 28 U.S.C. § 2412. As relevant here, EAJA caps attorney's fees at $125 per hour, subject to limited statutory adjustments. 28 U.S.C. § 2412(d)(2)(A). Although courts retain inherent authority to award fees for bad faith conduct, that authority is exercised "sparingly" and only where the government's conduct is shown to be frivolous, harassing, or undertaken for an improper purpose. *Rodriguez v. United States*, 542 F.3d 704, 709 (9th Cir. 2008).

The Ninth Circuit has made clear that a finding of bad faith requires more than error, negligence, or aggressive advocacy. An award under this exception is warranted only where a party "knowingly or recklessly raises a frivolous argument or argues a meritorious claim ***for the purpose of*** harassing an opponent." *Primus Auto. Fin. Servs., Inc. v. Batarse*, 115 F.3d 644, 649 (9th Cir. 1997) (emphasis added). Recklessness alone is insufficient; it must be combined with an additional factor such as frivolousness, harassment, or an improper purpose. *Fink v. Gomez*, 239 F.3d 989, 993–94 (9th Cir. 2001). The mere fact that the government litigated an issue and

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did not prevail does not support the finding of bad faith. *Rodriguez v. United States*, 542 F.3d at 709–10.

In evaluating bad faith in the context of extraordinary EAJA fees, courts consider the government's position, including both the underlying agency action and the litigation position defending that action. 28 U.S.C. § 2412(d)(1)(B); *Ibrahim v. U.S. Dep't of Homeland Sec.*, 835 F.3d 1048, 1052 (9th Cir. 2016). But the inquiry remains an inclusive one: the government's conduct must lack any reasonable basis in law or fact and reflect intentional or abusive litigation conduct. *Id.* at 1052. Courts have expressly declined to adopt per se rules equating adverse rulings, continued litigation following an unfavorable decision, or pursuing unsettled legal questions with bad faith. *Id.*

Here, nothing in the record supports the finding of bad faith. Federal Respondents advanced colorable legal arguments regarding the scope and effect of declaratory relief, the absence of class-wide injunctive relief, and the procedural mechanism required for individual relief. Those arguments were grounded in statutory text, jurisdictional limits, and settled principles governing declaratory judgments. Federal Respondents also fully complied with this Court's order by providing bond hearings or release to each Petitioner as directed. Sica Decl. ¶¶ 5-8. There is no evidence that Federal Respondents raised frivolous arguments, acted for the purpose of harassment or delay, or sought to evade this Court's authority.

Petitioners' bad-faith argument rests on two premises: (1) that once declaratory relief issued in *Rodríguez Vásquez*, the government was obligated to acquiesce and treat that decision as dispositive in all subsequent cases and (2) a quotation attributed to the Western District of Washington United States Attorneys' Office in a news article. Both are incorrect.

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First, as explained above, non-acquiescence is not evidence of bad faith. It is well settled that adverse district court decisions do not freeze the law or require government-wide acquiescence. District court rulings do not bind other courts, displace agency precedent, or foreclose continued litigation of unsettled legal questions. *See Camreta v. Greene*, 563 U.S. 692, 709 n.7 (2011). The Supreme Court has further held that the federal government is not subject to non-mutual offensive collateral estoppel and may litigate the same legal issue in cases involving different parties. *United States v. Mendoza*, 464 U.S. 154, 160–63 (1984). Against this backdrop, Federal Respondents' continued habeas litigation over the scope and effect of declaratory relief as to the impact on these Petitioners cannot plausibly be characterized as bad faith and was substantially justified.

Petitioners' disagreement with Federal Respondents' legal position does not transform that position into bad faith. Accepting Petitioners' theory would improperly convert routine government litigation over unresolved legal issues into a basis for punitive fee awards, contrary to EAJA's limited waiver of sovereign immunity and controlling Ninth Circuit precedent.

Second, Petitioners' reliance on a news article attributing a statement to the United States Attorney does not change this analysis. The article mischaracterizes the statement at issue and, in any event, journalistic summaries are not evidence of litigation positions or institutional intent. Notably, the same article reflects that even an academic constitutional-law expert struggled to explain the practical distinction between declaratory and injunctive relief in this context[9]—underscoring that translating complex legal concepts for a general, non-legal audience can be imprecise and easily misunderstood. A public explanation in a non-legal setting is not evidence

[9] "'It's a thorny area of law,' said Elizabeth Porter, a University of Washington professor who teaches constitutional law." *See* Nina Shapiro, *Federal court ruling doesn't stop WA immigration judges' bond denials*, SEATTLE TIMES, Oct. 27, 2025, at A1.

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of a litigation position taken by the United States Attorney's Office or, for that matter, the Federal Respondents. Indeed, the same article quotes the United States Attorney emphasizing that the immigration court must evaluate Judge Cartwright's opinion in light of existing authority and decide whether to revisit its policy.[10] Nothing in the record supports the finding of bad faith.

IV. CONCLUSION

Federal Respondents advanced colorable legal arguments regarding the scope and effect of declaratory relief, the absence of class-wide injunctive relief, and the procedural mechanism required for individual relief. Those arguments were grounded in statutory text, jurisdictional limits, and settled principles governing declaratory judgments. At most, the parties dispute a novel and currently unsettled legal question now before the Ninth Circuit; such disagreement cannot satisfy the demanding standard for EAJA fees let alone punitive fee shifting.

Federal Respondents further respectfully request that the Court stay resolution of any fee award pending the Ninth Circuit's decision in *Rodriguez Vazquez*, as a premature award—particularly one later undermined by appellate guidance finding Federal Respondents substantially justified—would risk irreparable prejudice because fees already paid could not realistically be recovered.

For the foregoing reasons, Petitioners' motion for fees should be denied.

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[10] "'Now the immigration court has a decision to make,' said Floyd, whose office is defending the government in litigation on the bond cases. Immigration judges must determine 'whether they're going to follow the opinion of Judge Cartwright or the direction of the controlling authority for them,' the U.S. attorney said." *See* Nina Shapiro, *Federal court ruling doesn't stop WA immigration judges' bond denials*, SEATTLE TIMES, Oct. 27, 2025 at A1.

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DATED this 4th day of February, 2026.

Respectfully submitted,

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I certify that this memorandum contains 3,719 words, in compliance with the Local Civil Rules.