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UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

Lauren Fouda, next friend of E.X. and P.X., minor children,

Petitioners,

v.

Angie Salazar, et al.

Respondents.

Case no. 26-6559

PETITIONERS' REPLY BRIEF IN SUPPORT OF PETITION FOR WRIT OF HABEAS CORPUS

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I. PRELIMINARY STATEMENT*

In its groundbreaking 1967 opinion in *Application of Gault*, our Supreme Court rejected the notion, archaic and paternalistic even then, that a child has the "right not to liberty but to custody."[1] Under that discredited paradigm, whether the custodian was a parent or the government standing *in loco parentis* was of no matter because either arrangement delivered "the custody to which the child [was] entitled."[2] In correcting this view, the Supreme Court declared that minors, like adults, were entitled to "procedural regularity" to ensure that the government imposed only justified and adequately tailored restraints on children's liberty.[3]

Respondents' conduct in the administrative processes preceding this litigation betrays a fondness for the old ways. They have insisted that Petitioners E.X. and P.X. wait quietly for a decision that may come, one day, regarding their family reunification. In the meantime, Respondents draw little distinction between the narrow form of custodial "safety" they offer and the maternal love and devotion that E.X. and P.X. long for. Moreover, Respondents' management of the reunification process has ranged between inept and farcical. But "[u]nder our Constitution, the condition of being a boy does not justify a kangaroo court."[4] E.X. and P.X. are entitled to better—both in process and substance. They thus avail themselves of this Court to deliver the rights that Respondents have denied them.

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* Per Rule 2(A) of this Court's Individual Practices in Civil Cases, Petitioners designate Matthew A. Johnson, admitted to practice today, as Lead Trial Counsel.

[1] 387 U.S. 1, 17 (1967).

[2] *Id.*

[3] *Id.* at 27–28.

[4] *Id.* at 28.

II. STATEMENT OF FACTS

E.X. and P.X. are child siblings, ages 13 and nine, who have been detained by the government for 191 days.[5] They wish to reunite with their mother, who lives in Rhode Island.[6] Both children are uniquely vulnerable[7] and have experienced early-childhood trauma in the form of violence,[8] other abuse,[9] neglect,[10] and discriminatory mistreatment.[11] E.X. and P.X. seek humanitarian protection, under our immigration laws, from the persecutory harms they suffered in their country of origin, Guatemala.[12] In recognition of the children's meritorious and timely filed asylum applications, the government has cancelled its efforts to deport them from the United States.[13] Respondents, however, persist in their refusal to release the children from government custody and reunify this family.[14]

A. Respondents' six-month prolongation of the reunification process

Respondents have known since February 3, 2026 that Petitioners' biological mother, L.S.G.D., was living in the United States and was a first-priority sponsor to

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[5] *See* Pet. for Writ of Habeas Corpus & Compl. for Declaratory & Injunctive Relief ["Pet. & Compl."] ¶¶ 24–25, 27, Dkt. No. 1.
[6] *See id.* ¶¶ 8–9, 31; Young Center for Immigrant Childs. Rts., Best Ints. Determination ["Best Ints. Det."] at 1–3, 5–8, Dkt. No. 1.1; Decl. of Lauren Fouda ["Fouda Decl."] ¶¶ 24, 32–33, Dkt. No. 4; Decl. of Axl Dominguez Gonzalez ["Dominguez Decl."] ¶¶ 6, 14, 17, Dkt. No. 4.1; Decl. of L.S.G.D. ["L.S.G.D. Decl."] ¶¶ 1, 2, 10–11, Dkt. No. 4.2.
[7] *See* Pet. & Compl. ¶¶ 8–9, 26, Dkt. No. 1; Fouda Decl. ¶¶ 19, 26, Dkt. No. 4; Dominguez Decl. ¶¶ 5, 12–13, 16, Dkt. No. 4.1.
[8] Fouda Decl. ¶ 26, Dkt. No. 4.
[9] *Id.*; Best Ints. Det. at 2, 4, Dkt. No. 1.1; Decl. of Elizabeth Kronk ["Kronk Decl."] ¶ 38, Dkt. No. 16.
[10] Best Ints. Det. at 2, Dkt. No. 1.1.
[11] Pet. & Compl. ¶ 29, Dkt. No. 1; Fouda Decl. ¶ 26, Dkt. No. 4; Dominguez Decl. ¶¶ 5, 9, Dkt. No. 4.1.
[12] Pet. & Compl. ¶¶ 24–25, 29–30, Dkt. No. 1; Fouda Decl. ¶¶ 24–28, Dkt. No. 4; Dominguez Decl. ¶¶ 9–10, Dkt. No. 4.1.
[13] *See* Pet. & Compl. ¶ 28, Dkt. No. 1; Fouda Decl. ¶ 27, Dkt. No. 4; Dominguez Decl. ¶ 8, Dkt. No. 4.1.
[14] *See* Kronk Decl. ¶ 58, Dkt. No. 16.

receive the children.[15] By March 18, 2026, Ms. G.D. had completed an extensive sponsor application, signed a release authorization, and provided Respondents with her passport, her employment-authorization document, and her children's birth certificates.[16] The government-appointed social worker and best-interests advocate assigned to the case[17] concludes that Ms. G.D. has acted "diligently and in good faith" and "remained consistently engaged in the sponsorship and reunification process."[18] Respondents do not contend otherwise.[19]

While Ms. G.D. has moved swiftly to demonstrate her suitability and preparedness to receive her children, Respondents have dithered and dallied. Ms. G.D. submitted her initial sponsor application and provided her home address on March 18, 2026, but Respondents did not complete the corresponding home-study assessment until May 1, 2026—a delay of 44 days.[20] When the first home study produced a negative result, Ms. G.D. promptly moved to another apartment and notified Respondents of her new address on June 2, 2026; yet, Respondents did not complete a second home-study assessment until August 4—a further 64-day delay.[21] Moreover, at various points in the interim, Ms. G.D. was unable to comply with Respondents' requests because agency personnel "went on vacation without

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[15] *See* Kronk Decl. ¶ 37, Dkt. No. 16; *see also* 45 C.F.R. § 410.1201(a).
[16] *See id.* ¶ 40; Best Ints. Det. at 3, Dkt. No. 1.1.
[17] The Department of Health and Human Services may "appoint independent child advocates for child trafficking victims and other vulnerable unaccompanied . . . children." 8 U.S.C. § 1232(c)(6)(A). Child advocates receive "access to materials necessary" to form an opinion and are charged with "effectively advocat[ing] for the best interest of the child." *Id.*
[18] *See* Best Ints. Det. at 1, 3, Dkt. No. 1.1.
[19] *See* Kronk Decl. ¶¶ 37–58, Dkt. No. 16.
[20] *See* Best Ints. Det. at 3, Dkt. No. 1.1; Kronk Decl. ¶¶ 40–41, 45–46, Dkt. No. 16.
[21] *See* Best Ints. Det. at 3–4, Dkt. No. 1.1; Kronk Decl. ¶¶ 52–53, 55–57, Dkt. No. 16.

notifying her" and because of a technical malfunction affecting an online portal for document submission—extending this family's separation by another 20 days.[22]

Though consistently dilatory and unresponsive, Respondents have still gathered copious information about Ms. G.D.'s identity, biometric data, background, employment, finances, and living situation—none of which has produced indicia that she is an unfit parent.[23] In fact, Respondents acknowledge that their investigation has "not reveal[ed] any issues preventing sponsorship" by the children's mother.[24] Moreover, Respondents' visit to Ms. G.D.'s home environment resulted in a "positive . . . recommendation."[25] In short, Respondents all but concede that Ms. G.D. is "capable of providing for the child[ren]'s physical and mental well-being" and therefore entitled by statute to custody of her children.[26]

B. Respondents' continued disdain for unaccompanied children's rights

Respondents have established a strong pedigree of unlawful contempt for the rights of unaccompanied noncitizen children under federal law,[27] buttressed further by their conduct since this case was filed. As of August 1, 2026, Respondents Salazar and Kennedy let lapse ORR's contractual relationship with the nonprofit Acacia Center for Justice, thereby defunding the organization's nationwide network

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[22] *See* Best Ints. Det. at 3–4, 6, Dkt. No. 1.1; L.S.G.D. Decl. ¶ 7, Dkt. No. 4.2.
[23] *See* Best Ints. Det. at 8, Dkt. No. 1.1 ("Throughout the sponsorship process, ORR has not raised any child welfare or safety concerns regarding Ms. [G.D.]'s ability to care for her children . . . ."); Fouda Decl. ¶ 31, Dkt. No. 4 ("[N]o official involved in the sponsor-vetting processes has ever indicated to my office that Ms. G.D. is not a suitable sponsor for [her children] or that she is unable to provide for their physical and mental wellbeing.").
[24] Kronk Decl. ¶ 44, Dkt. No. 16.
[25] Kronk Decl. ¶ 57, Dkt. No. 16.
[26] 8 U.S.C. § 1232(c)(3)(A).
[27] *See* Pet. & Compl. ¶¶ 65–69, Dkt. No. 1.

of legal-service providers.[28] This action immediately left "[a]n estimated 26,000 children . . . without independent legal representation"—including the approximately 1,800 children who remain in custody.[29]

On August 6, 2026, the North District of California found that Respondents' withholding of congressionally appropriated funds for legal services delivered since December 2025 "violate[d] both the plain language as well as the spirit of the preliminary injunction" previously issued in the same litigation.[30] The court ordered the government to issue and disburse payment within 24 hours.[31] While this retroactive payment accounts for 65 million dollars in accumulated arrears,[32] it will not restore the robust, expert, nationwide legal-services infrastructure that Respondents Salazar and Kennedy have now prospectively defunded.[33]

Respondents' course of conduct since March 2025 validates Senator Ron Wyden's contention that "ORR has shown no hesitation in placing unaccompanied children in harm's way to facilitate mass deportation."[34] Respondents doggedly

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[28] Chiara Eisner, *More Than 25,000 Children Lose Previous Legal Protections, as Federal Contract Ends*, Nat'l Pub. Radio (Aug. 1, 2026), https://www.npr.org/2026/08/01/nx-s1-5913679/immgirant-children-lawyers-trump-administration.

[29] *Id.*

[30] *See* Dkt. 172 at 2, *Cmty. Legal Servs. in East Palo Alto v. U.S. Dep't of Health & Hum. Servs.*, No. 4:25-cv-02847-AMO (N.D. Cal. Aug. 6, 2026) [hereinafter *Community Legal Services*].

[31] *See id.* at 3.

[32] Dennis Valera, *Judge Orders Federal Government to Pay $65m to Legal Service Providers for Migrant Children*, CBS News (Aug. 7, 2026), https://www.cbsnews.com/baltimore/news/judge-orders-65m-payout-migrant-children-legal-services/.

[33] *See* Dkt. 172 at 3, *Community Legal Services*, No. 4:25-cv-02847-AMO (noting that the Defendants had not "sufficiently detail[ed] . . . efforts to comply with the preliminary injunction in the coming weeks and months.").

[34] Letter from Ron Wyden, U.S. Senator, to Angie Salazar, ORR Interim Director (Aug. 29, 2025), https://www.finance.senate.gov/imo/media/doc/letter_to_orr_on_child_repatriation_82925pdf.pdf.

aspire to deprive detained children—some as young as three years old[35]—of attorneys to represent them and to thereby clear the way for their parallel efforts to effectuate children's expulsion from the country under threadbare legal pretext.[36] Put simply, ORR harbors a manifest hostility toward its own legal mandate to act always "in the best interest of the child."[37] This Court should evaluate Respondents' actions in this case—and their arguments defending them—in light of this context.

III. ARGUMENT

The procedural and substantive guarantees of the Due Process Clause of the Fifth Amendment apply to "all persons within the territory of the United States."[38] "All persons" uncontroversially includes both minor children[39] and noncitizens.[40] As applied here, due process requires Respondents to (1) ensure that E.X. and P.X. have access to meaningful procedures to vindicate their rights to liberty and family integrity and (2) substantiate a compelling justification for both detaining E.X. and P.X. and separating them for a prolonged period from their mother. Respondents have done neither and have therefore violated the Fifth Amendment.

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[35] *See* Gwynne Hogan, *Inside the New York Court Where Children Face Deportation Without Access to Attorneys*, The Guardian (July 31, 2026), https://www.theguardian.com/us-news/2026/jul/31/unaccompanied-children-manhattan-immigration-court (documenting a recent proceeding at the New York Varick Immigration Court where detained "children—some as young as three" appeared without attorneys).

[36] *See L.G.M.L. v. Noem*, 800 F. Supp. 3d 100, 110 (D.D.C. 2025) (noting that Respondents' professed rationale for the Labor Day 2025 expulsion effort "crumbled like a house of cards about a week later").

[37] 8 U.S.C. § 1232(c)(2)(A); 45 C.F.R. §§ 410.1003(f), 410.1601(a).

[38] *Zadvydas v. Davis*, 533 U.S. 678, 694 (2001) (quoting *Wong Wing v. United States*, 163 U.S. 228, 238 (1896)).

[39] *See Gault*, 387 U.S. at 13.

[40] *Reno v. Flores*, 507 U.S. 292, 306 (1993).

A. Respondents have violated procedural due process by depriving E.X. and P.X. of fundamental constitutional rights, causing ongoing emotional and physical harm to both children, while affording no administrative process to challenge these deprivations.

To evaluate what process is due in the context of civil detention of noncitizens, courts in the Second Circuit employ the longstanding *Mathews v. Eldridge* balancing framework.[41] The *Mathews* factors are: (1) the significance of the threatened private interests; (2) the risk of erroneous deprivation through existing procedures; and (3) the government's interest, including the administrative function at issue and the burdens associated with additional process.[42] The cumulative weight of these factors guides courts' assessment of the need for judicial intervention to protect the individual interests at stake.[43]

To begin, no private interests are more compelling or foundational than E.X. and P.X.'s rights to freedom from unnecessary restraint and to family integrity. Regarding the former, children—like adults—possess a strong interest in freedom from arbitrary or unnecessary restraint.[44] This right is "a fundamental precept of liberty,"[45] and involuntary confinement, other than as punishment for a crime, is permissible only "in certain narrow circumstances."[46] Equally fundamental is the "freedom of personal choice in matters of family life."[47] This right is "reciprocal": it

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[41] *See Black v. Decker*, 103 F.4th 133, 147–48 (2d Cir. 2024) (citing *Mathews v. Eldridge*, 424 U.S. 319, 334 (1976))
[42] *Mathews*, 424 U.S. at 334–35; *Black*, 103 F.4th at 147.
[43] *See Mathews*, 424 U.S. at 348.
[44] *Parham v. J. R.*, 442 U.S. 584, 600 (1979); *Addington v. Texas*, 441 U.S. 418, 425 (1979); *Gault*, 387 U.S. at 27–28; *Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1195 (N.D. Cal. 2017).
[45] *Boumediene v. Bush*, 553 U.S. 723, 739 (2008).
[46] *Kansas v. Hendricks*, 521 U.S. 346, 357 (1997).
[47] *Santosky v. Kramer*, 455 U.S. 745, 753 (1982).

inheres both in the parent's interest in "the companionship, care, custody[,] and management" of her child and—equally—in the child's interest in avoiding "dislocat[ion] from the emotional attachments that derive from the intimacy of daily association with the parent."[48] The strength of the private interests therefore weighs heavily in Petitioners' favor.[49]

Second, the risks of erroneous deprivation here are enormous. Respondents' detention of E.X. and P.X. has already harmed them, and it threatens to inflict yet further trauma. For both children, involuntary separation from their mother has caused them to suffer "increase[d] . . . emotional distress" in the form of "anxiety, sadness, emotional overwhelm, and hopelessness."[50] This emotional anguish manifests as "physical pain and crying at night."[51] The children's best-interests advocate explains that only the children's:

> reunification with their mother would restore the primary attachment relationship essential to their sense of safety and provide the stable, nurturing environment needed for sustained recovery from the impacts of family separation.[52]

Consequently, she concludes, reuniting E.X. and P.X. with their mother is "a necessary best[-]interest intervention to safeguard [their] mental health and long-term development" and avoid further unnecessary infliction of harm.[53]

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[48] *Duchesne v. Sugarman*, 566 F.2d 817, 825 (2d Cir. 1977).
[49] *See Black*, 103 F.4th at 151–52 (reaching this conclusion based on similar circumstances for two detained adult noncitizen petitioners).
[50] Best Ints. Det. at 7, Dkt. No. 1.1.
[51] *Id.*
[52] *Id.* at 8.
[53] *Id.*

Despite these severe effects of confinement and family separation, Respondents have provided E.X. and P.X. access to no mechanism, administrative or otherwise, to seek vindication of their interests in release from custody and family reunification—indeed, no such process even exists.[54] Respondents contend that the Agency's existing sponsor-vetting procedures are sufficient to avoid erroneous deprivation because they are "designed to release Petitioners to their sponsor[]."[55] But the putative intent of a process is constitutionally irrelevant; what matters is whether the procedures afford, at minimum, the bedrock due-process requirements of notice and an opportunity to be heard.[56] Respondents have given E.X. and P.X. no notice of when the Agency will adjudicate their rights, who will render a determination, or how they might be heard.[57] Given that the Agency will not even hear the children's grievances, despite the severe and ongoing deprivation they are experiencing, the risk of erroneous deprivation is overwhelming.[58]

Finally, any residual government interest in withholding E.X. and P.X. from their mother has long since diminished to the point of triviality. Respondents profess "an important government interest" in completing the Agency's "vetting procedures."[59] But at a point long ago—and certainly by the time ORR determined that Ms. G.D. was a biological parent and fit to care for her children—any

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[54] *See* Pet. & Compl. ¶ 24, Dkt. No. 1; 45 C.F.R. § 410.1903(a)–(b), (i)–(j).
[55] Resp'ts' Mem. of Law in Opp'n to the Pet. for Writ of Habeas Corpus at 12, Dkt. 17 [hereinafter "Resp'ts' Opp'n"].
[56] *See Mathews*, 424 U.S. at 348.
[57] *See* Kronk Decl. ¶ 44, Dkt. No. 16.
[58] *See Beltran v. Cardall*, 222 F. Supp. 3d 476, 488 (E.D. Va. 2016) (holding that ORR's "deficient procedures" that entailed no notice of the opportunity to be heard "created a significant risk that [a child and his mother] would be erroneously deprived of their right to family integrity").
[59] Resp'ts' Opp'n at 13, Dkt. 17.

government interest in carrying out a vague and indeterminate sub-regulatory "vetting" process became subordinate to the children's fundamental constitutional interests in liberty and family integrity.[60] As such, all three *Mathews* factors weigh in Petitioners' favor, indicating that only this Court's intervention will bring the Agency into constitutional compliance.

B. Respondents have violated substantive due process by separating E.X. and P.X. from their mother for 191 days without demonstrating a compelling government interest or affirmatively seeking the judicial ratification required by law.

While procedural due process concerns *how* the government may lawfully effect permissible deprivations of liberty, substantive due process dictates *whether* the government may infringe upon certain core individual freedoms—regardless of the procedures used.[61] As such, if "the Due Process Clause would not countenance it even were it accompanied by full procedural protection," the claim sounds in substantive due process.[62] Government conduct that is "egregious" or "outrageous" or that "shock[s] the contemporary conscience" violates due process.[63]

Only a "compelling governmental interest in the protection of minor children" can justify interference with the right to family integrity.[64] Respondents neither identify such an interest nor attempt to.[65] Indeed, Respondents' could not assert a

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[60] *See Souza v. Sessions*, No. 18 CV 4412, 2018 WL 10436697, at *2 (N.D. Ill. June 28, 2018) (determining that, where a parent is fit, the "government's interest[] in completing certain procedures to be sure that [the child] is placed in a safe environment . . . do not outweigh the family's interest in reuniting").
[61] *See Flores*, 507 U.S. at 302.
[62] *Southerland v. City of New York*, 680 F.3d 127, 152 (2d Cir. 2012).
[63] *Velez v. Levy*, 401 F.3d 75, 93 (2d Cir. 2005) (quoting *County of Sacramento v. Lewis*, 523 U.S. 833, 847 n.8 (1998)).
[64] *Southerland*, 680 F.3d at 152 (*Wilkinson v. Russell*, 182 F.3d 89, 104 (2d Cir. 1999)).
[65] *See* Resp'ts' Opp'n at 14, Dkt. 17.

compelling interest in protecting E.X. and P.X. even if they wished because, by their own admission, the Agency's vetting of Ms. G.D. "did not reveal any issues preventing sponsorship."[66] Insofar as they contest Petitioners' substantive-due-process cause of action *at all*, Respondents gesture broadly toward "a release process that is meant to protect Petitioners' well-being."[67] However, the Second Circuit, quoting Justice Stewart, has pronounced this precise justification insufficient:

> If a State were to attempt to force the breakup of a natural family, over the objections of the parents and their children, without some showing of unfitness and for the sole reason that to do so was thought to be in the children's best interest, I should have little doubt that the State would have intruded impermissibly on the private realm of family life which the state cannot enter.[68]

There is thus no basis for Respondents to withhold E.X. and P.X. from their mother on the grounds of their well-being or best interests.

Not only do they lack a compelling justification, but Respondents have also failed to carry their burden of initiating an adversarial judicial process to justify their separation of this family. The Second Circuit has held that, following the separation of a family "based on a unilateral and untested evaluation of the removal of a child," the government must affirmatively "obtain judicial ratification of their decision to maintain custody of the children."[69] The government cannot constitutionally 'sit back and wait' for the parent to institute judicial proceedings";

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[66] Kronk Decl. ¶ 44, Dkt. No. 16.
[67] *Id.*
[68] *Duchesne*, 566 F.2d 827–28 (quoting *Smith v. Org. of Foster Fams. for Equal. & Reform*, 431 U.S. 816, 862–63 (1977) (Stewart, J., concurring)).
[69] *Id.* at 828.

rather, "[t]he burden of initiating judicial review must be shouldered by the government."[70] Applying this principle, several courts have held that ORR sponsor-vetting practices improperly and unconstitutionally place the burden of proof on parents seeking custody of their children.[71] By failing to properly assign the burden of proof and to initiate judicial proceedings—effectively adopting "an attitude of 'if you don't like it, sue'"[72] —Respondents have violated due process.[73]

IV. CONCLUSION

For the foregoing reasons, Respondents' custody of E.X. and P.X. is unlawful, and the Court should grant this Petition for Writ of Habeas Corpus.

Dated: August 11, 2026

Respectfully submitted,

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[70] *Id.*
[71] *See M.A. v. Molina*, No. 4:26-cv-00415, 2026 WL 741623, *4 (N.D. Ohio Mar. 17, 2026) ("Several courts have found that, at least when a parent is requesting reunification, the burden should be on ORR to show why continued custody of the child is appropriate, rather than placing the burden on the parent."); *E.H.C.F. v. Kennedy*, No. 3:25-CV-2142 (VDO), 2026 WL 145229, at *12 (D. Conn. Jan. 16, 2026) (finding that "ORR's procedures improperly place the burden on [the mother]").
[72] *Duchesne*, 566 F.2d 828 (quoting *Kimbrough v. O'Neil*, 523 F.2d 1057, 1060 n. 3 (7th Cir. 1975) (Swygert, J., concurring)).
[73] *Id.*

CERTIFICATE OF COMPLIANCE

Pursuant to Local Civil Rule 7.1(c), I hereby certify that this memorandum complies with the word-count limitation of this Court's Local Civil Rules. As measured by the word processing system used to prepare it, this memorandum contains 3,500 words.