No. 25-447

In the United States Court of Appeals for the Ninth Circuit

STATE OF OREGON,

Plaintiff-Appellant,

v.

SAMUEL TROY LANDIS,

Defendant-Appellee.

On Appeal from the United States District Court for the District of Oregon

BRIEF OF PROFESSOR MICHAEL J.Z. MANNHEIMER AS *AMICUS CURIAE* IN SUPPORT OF PETITION FOR REHEARING EN BANC

Michael J.Z. Mannheimer
SALMON P. CHASE COLLEGE OF LAW
Northern Kentucky University
518 Nunn Hall, Nunn Drive
Highland Heights, KY 41099
(859) 572-5862

Elizabeth B. Wydra
Brianne J. Gorod
Brian R. Frazelle
CONSTITUTIONAL ACCOUNTABILITY CENTER
1730 Rhode Island Ave. NW
Suite 1200
Washington, D.C. 20036
(202) 296-6889
brian@theusconstitution.org

Counsel for Amicus Curiae

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

CASES

TABLE OF AUTHORITIES – cont'd

INTEREST OF *AMICUS CURIAE*[1]

Amicus Michael J.Z. Mannheimer is Regents Professor of Law at Salmon P. Chase College of Law, Northern Kentucky University, where he teaches courses in, *inter alia*, criminal law and procedure.[2] *Amicus* has a scholarly interest in the implementation of federalism principles in the criminal legal system and believes this case carries particular importance. For his current work-in-progress, "Unpacking Supremacy Clause Immunity,"[3] *amicus* has scrutinized the briefs and record in *In re Neagle*, 135 U.S. 1 (1890), the progenitor of "Supremacy Clause immunity," and has reviewed virtually every federal court case on that doctrine.

INTRODUCTION AND SUMMARY OF ARGUMENT

En banc review is warranted here because the panel fundamentally misread Supreme Court precedent governing Supremacy Clause immunity, distorting the panel's review of the district court decision and illustrating the pervasive confusion within this Circuit about a critically important doctrine. Contrary to the panel opinion, *In re Neagle* does not create a broad constitutional immunity from state prosecution whenever a federal judge views an officer's conduct as reasonable. Its

---

[1] No counsel for a party authored this brief in whole or in part, and no person other than *amicus* or his counsel made a monetary contribution to its preparation or submission. All parties have consented to the filing of this brief.

[2] The views expressed herein are those of Professor Mannheimer, not of any institutions or groups with which he is affiliated.

[3] *Available at* https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5283929.

holding is much more limited. When federal officers are charged with state crimes, *Neagle* empowers federal courts to conduct only a preliminary gatekeeping inquiry that asks whether the undisputed facts show sufficient evidence of guilt to make the prosecution viable under state law.

Properly understood, therefore, *Neagle* protects federal officers from harassment by baseless prosecutions, but it does not shield them from accountability when they might be guilty. *Neagle*'s aim is achieved by allowing federal courts a first look at the evidence to determine whether there is any case at all. If sufficient evidence exists to support a conviction under state law, or if material facts are disputed, the matter should proceed to a jury trial. Dismissal is warranted only when no rational jury could convict.

The panel's overreading of *Neagle* stems from the limited and severely flawed jurisprudence in this area. Decisions in this Circuit have incorrectly expanded *Neagle* in two ways: first, by treating immunity as a purely federal question divorced from state law, and second, by allowing federal judges to weigh evidence and resolve disputed facts in the course of assessing reasonableness. The district court, with the panel's blessing, committed both errors here. It ignored completely Oregon law on criminally negligent homicide, the crime at issue. And it arrogated to itself the jury's task of evaluating and weighing the evidence bearing on whether Defendant's conduct was reasonable.

Fortunately, this Court has a guide to a better understanding of *Neagle*: its own opinion in *Idaho v. Horiuchi*, 253 F.3d 359 (9th Cir.) (en banc), *vacated as moot*, 266 F.3d 979 (9th Cir. 2001), which denied immunity because the reasonableness of the defendant's conduct was contestable and material facts were disputed. Instructive and oft-cited as it is, *Horiuchi* is not binding. This case presents an ideal opportunity to provide binding precedent clarifying this muddled but vitally important area of law.

ARGUMENT

I. Supremacy Clause Immunity Permits Federal Courts to Halt State Prosecutions Only When the Evidence Could Not Support a Conviction.

In re Neagle, 135 U.S. 1 (1890), the progenitor of what lower courts later termed "Supremacy Clause immunity," contemplated only a limited gatekeeping role for federal courts: determining whether there is sufficient evidence of guilt under state law for a prosecution to proceed. But decisions in this Circuit have misread *Neagle* by ignoring state law, resolving factual disputes, and dismissing criminal charges based on the courts' own sense of reasonableness.

Neagle arose from unusual facts. David Terry and his wife were deeply embittered toward U.S. Supreme Court Justice Stephen Field following an adverse ruling while Field was sitting as Circuit Justice. After the couple repeatedly threatened Justice Field's life, David Neagle, a federal deputy marshal, was detailed to protect Field as he rode circuit in California. *Id.* at 44-52.

As Justice Field rode a train from Los Angeles to San Francisco, Neagle at his side, the Terrys boarded the train. Encountering Justice Field and Neagle, Mr. Terry, who was known to carry a bowie knife in his vest pocket, struck Justice Field twice in the head. Neagle rose, drew his pistol, and ordered Mr. Terry to cease his assault. Mr. Terry then motioned with his right hand toward his left breast as if to draw the ever-present bowie knife. Neagle fired, killing Mr. Terry. *Id.* at 52-53.

California charged Neagle with murder. He obtained habeas corpus relief in federal district court, and California took the case to the Supreme Court. Its sole contention was that the habeas statute did not apply because Neagle was not "in custody for an act done or omitted in pursuance of a law of the United States." *Id.* at 3-5, 40-41; Appellant Br. 8-43, *Neagle*, No. 1472 (1889). The State claimed that no "law"—no specific statute—authorized Neagle to provide protection to a Supreme Court Justice.

Disagreeing, the Court pointed to a federal statute that obligated Neagle to prevent attempted homicide in his presence, using lethal force if necessary. 135 U.S. at 68-69. The Court then held that if Neagle was prosecuted in state court

> for an act which he was *authorized* to do by the law of the United States, which it was his *duty* to do as marshal of the United States, and if, in doing that act, he did no more than what was *necessary and proper* for him to do, he cannot be guilty of a crime under the law of the state of

> California. When these things are shown, it is established that he is innocent of any crime against the laws of the state.

135 U.S. at 75 (emphasis added).

Crucially, the "necessary and proper" language here does not, as some courts have mistakenly held, refer to some special test for immunity deriving from federal law. The Court was simply restating the requirements of the state-law justification defense that, if applicable, would mean that Neagle "cannot be guilty of a crime under the law of the state of California." *Id.* Nineteenth-century lawyers and judges commonly used the stock term "necessary and proper" to describe the parameters of state-law justification defenses.[4]

Thus, this critical passage contemplates only a preliminary look at the evidence by a federal court, limited to determining whether the defendant could

---

[4] *See*, *e.g.*, *Simpson v. State*, 59 Ala. 1, 5 (1877) (discussing proposed jury instruction that landowner "may resort to any means necessary and proper for the protection of his property"); *State v. Hyde*, 29 Conn. 564, 565 (1861) (describing defendant's claim that his assault on intruder "was in the necessary and proper defense of his dwelling-house"); *Miller v. State*, 37 Ind. 432, 439 (1871) (writing that defendant could not be convicted of murder for inflicting mortal wounds in "necessary and proper self-defence"); *Gaither v. Blowers*, 11 Md. 536, 542-43 (1857) (quoting proposed jury instruction requiring acquittal even if force used was "more violent and dangerous than was necessary and proper for the self-defence"); *Coleman v. N.Y. & New Haven R.R. Co.*, 106 Mass. 160, 167 (1870) (noting in civil assault case that plaintiff's own actions "would increase the violence necessary and proper to be used on [the defendants'] part"); *Manier v. State*, 65 Tenn. 595, 599 (1872) (discussing involuntary-manslaughter standard governing whether it was "necessary and proper for [the victims] to fight in their defense").

plausibly be guilty under state law. *Neagle* expressly adopted this view three sentences later, explaining that the grant of habeas relief under these circumstances "is the exercise of a power common under all systems of criminal jurisprudence. There must always be a preliminary examination by a committing magistrate, or some similar authority, as to whether there is an offense to be submitted to a jury." *Id.* That is, a federal court acts only as a gatekeeper, determining whether there is sufficient evidence of guilt to proceed.

This reading of *Neagle* is fortified by the opening brief of the United States, which explained: "Nothing is more common than for cases of homicide to be disposed of simply by preliminary examination before a justice of the peace, or United States commissioner, or an examination before a coroner's jury, or upon an *ex parte* examination before a grand jury." U.S. Br. 23-24, *Neagle*, No. 1472 (1889). Neagle's own brief adopted this view in discussing the federal-court inquiry he proposed: "[T]he inquiry, whether or not the crime charged has been committed, does necessarily involve, in a certain way, the question of guilt or innocence, but so it is always involved in the inquiry and decision of the committing magistrate." Appellee Br. 92, *Neagle*, No. 1472 (1889). This is precisely the role of the habeas court that *Neagle* adopted—supplying a federal judicial forum to test the strength of the State's case, similar to a magistrate's preliminary hearing.

The federal court's limited role as gatekeeper—not as factfinder or arbiter of reasonableness—was confirmed in *United States ex rel. Drury v. Lewis*, 200 U.S. 1 (1906). There, two U.S. soldiers stationed at a federal arsenal chased a man named Crowley in the streets of Pittsburgh, suspecting him of stealing from the base. Ultimately, they shot Crowley dead. Some evidence suggested that Crowley had been shot while fleeing, while other evidence suggested that he was shot after he had stopped, turned, and given himself up. The soldiers were indicted for homicide in Pennsylvania state court, and they unsuccessfully sought federal habeas relief. *Id.* at 2-5.

On appeal to the Supreme Court, the soldiers contended that they fell into the same category as Neagle on the ground that "the homicide was committed by them 'while in the lawful performance of a duty and obligation imposed upon them'" by federal law. *Id.* at 7-8. The Court rejected that argument, holding that it was for a state jury, not a federal court, "to determine the guilt or innocence of the accused," which depended upon whether Crowley was "a fleeing felon" at the moment he was shot. *Id.* at 8. Because of the "conflict of evidence as to whether Crowley had or had not surrendered," the district court had properly denied habeas relief. *Id.*

Drury thus confirmed what was readily apparent upon a careful reading of *Neagle*: the federal court's role is limited to screening out cases in which the

evidence could not support a conviction under state law. In *Neagle*, the undisputed evidence revealed that the officer was legally compelled to act as he did, providing an ironclad defense against the prosecution. In *Drury*, by contrast, one version of the contested facts would have foreclosed the officers' defense, so a federal court could not say that the prosecution was futile without a jury's resolution of those facts.

To be sure, *Neagle*'s gatekeeping role provides substantial benefits for federal officers. In addition to assuring a federal forum for the sufficiency determination—a benefit largely mooted by the 1948 expansion of the federal officer removal statute to cover all federal officers—*Neagle* obligates the State to preview its case and allows defendants to adduce their own evidence. By nipping baseless prosecutions in the bud, *Neagle* protects federal officers from local harassment, shielding them from the expense of trial and preventing States from abusing criminal prosecutions to thwart legitimate federal authority. But its protections go no further.

II. Decisions in this Circuit Have Inappropriately Expanded Supremacy Clause Immunity Beyond What *In re Neagle* Authorizes.

This Court has interpreted *Neagle* as establishing a two-part test for Supremacy Clause immunity. First, the officers must have been acting within the scope of their federal duties. Second, their actions must have been "both subjectively and objectively reasonable." Slip Op. 3.

That test misinterprets the "necessary and proper" language of *Neagle* as establishing a federal reasonableness standard for immunity rather than simply describing the criteria for Neagle's justification defense under California law. This misreading has led to a dramatic and unjustified expansion of Supremacy Clause immunity in two distinct ways. First, courts in this Circuit have treated immunity as a purely federal question, ignoring state-law standards governing the charges at issue. Second, courts often take it upon themselves to weigh evidence and resolve disputed issues surrounding the reasonableness of a defendant's conduct.

A. Courts Have Erroneously Treated Supremacy Clause Immunity as Governed Only by Federal Standards, Ignoring State Law.

Properly read, *Neagle* does not establish a federal reasonableness standard for Supremacy Clause immunity divorced from state law. Rather, it makes state law central to the immunity inquiry.

The confusion stems from a passage in *Neagle* that distinguishes state-law and federal-law questions. Based on the evidence, it was clear that Neagle had been "justified in what he did in defense of Mr. Justice Field's life." 135 U.S. at 53-54. But, the Court continued,

> such a justification would be a proper subject for consideration on a trial of the case for murder in the courts of the state of California; and there exists no authority in the courts of the United States to discharge the prisoner while held in custody by the state authorities for this offense, unless there be found in aid of the defense of the prisoner some element of power and authority asserted under the government of the United States.

Id. at 54.

Many have interpreted this language as requiring a strict separation between the state substantive criminal law question and the federal question of immunity. *See, e.g.*, *California v. Dotson*, No. 12-917, 2012 WL 1904467, at *1 n.1 (S.D. Cal. May 25, 2012) (opining that California's "presentation of the evidence supporting a conviction under California law ... misses the mark [because] [i]mmunity from prosecution renders that analysis moot"). But that is wrong. The Court was explaining that Neagle's innocence as a matter of state law was *necessary but not sufficient for a grant of habeas relief*. However guiltless Neagle might be under state law, more was required to invoke the habeas statute—namely, "some element of power and authority asserted under the government of the United States." 135 U.S. at 54. In other words, without a connection to the officer's federal duties, there was no "authority in the courts of the United States to discharge the prisoner" from state custody. *Id.*

Neagle thus provides relief only when it is indisputable—or, as in *Neagle* itself, undisputed—that the federal officer committed no crime.[5] Once again, this interpretation is fortified by the U.S. government's brief, which argued that "the

[5] The Supreme Court easily concluded that Neagle was innocent under state law because California conceded that point for the sake of argument, contending instead that federal courts lacked jurisdiction to even consider a habeas petitioner's culpability. *See generally* Appellant Br., *supra*.

question of [Neagle's] guilt or innocence [is] a question *identical* with the determination whether in what he did he exceeded or came short of his duty to the Federal Government." *See* U.S. Br., *supra*, at 23 (emphasis added). In the key passage from *Neagle*, the Supreme Court agreed. If Neagle "did no more than what was necessary and proper for him to do, *he cannot be guilty of a crime* under the law of the state [and] *he is innocent* of any crime against the laws of the state." 135 U.S. at 75 (emphasis added). Not that he is immune from prosecution regardless of guilt or innocence—the ordinary meaning of "immunity"—but that "he is innocent."

Indeed, the *Neagle* Court never used the word "immunity" to describe what it was doing. The idea that the Supremacy Clause bestows "immunity" is an invention of later lower courts. And in defining this "immunity," some courts have succumbed to the error of deeming state law irrelevant. The panel here, for example, never addressed the state-law crime with which Defendant was charged—criminally negligent homicide in violation of Oregon Revised Statute § 163.145(1)—or what evidence the State needed to adduce to prove him guilty. Under *Neagle*, however, the federal courts' responsibility was to determine whether, considering the evidence adduced by both sides, the State could prove the elements of this crime. And that determination requires engaging with Oregon's definition of criminal negligence:

> "Criminal negligence" ... means that a person fails to be aware of a substantial and unjustifiable risk that the result will occur .... The risk must be of such nature and degree that the failure to be aware of it constitutes a gross deviation from the standard of care that a reasonable person would observe in the situation.

Or. Rev. Stat. § 161.085(10). The panel and the district court conducted no analysis of whether a reasonable jury could find Defendant guilty under this provision.

To the panel and the district court, all that seemingly mattered was the importance of the federal interest in surveilling suspected drug traffickers and the usefulness of violating traffic laws in conducting effective surveillance. Yet Oregon law requires determining whether Defendant's creation of the risk of death to another was "unjustifiable." This, in turn, requires comparing the potential benefits of Defendant's conduct with the nature and degree of risk he created. The panel and the district court failed to analyze whether a rational jury could find that the risk Defendant created of killing someone outweighed the benefits he could gain by running a stop sign. The courts substituted their own judgments on that question, and in doing so looked at only one side of the ledger.

B. Courts Have Improperly Supplanted the Jury's Role in Resolving Contested Facts and Deciding Whether an Officer's Conduct Was Reasonable.

The second major error driving the unwarranted expansion of *Neagle* in this Circuit is that courts have assumed the power to weigh evidence and resolve

factual disputes bearing on the reasonableness of an officer's conduct. Under *Neagle* and *Drury*, however, dismissal is warranted only when the undisputed facts make a defendant's innocence clear. If defendants cannot establish their lack of culpability—either because state law offers no justification for their conduct, or because unresolved factual disputes make that determination impossible—then federal courts have no basis to intercede. Yet numerous courts have wrongly taken it upon themselves to form their own judgments about the reasonableness of a defendant's conduct, weighing evidence and resolving disputed facts in the process.

When the reasonableness of a defendant's conduct is at issue, that question is typically treated as a matter for jury resolution unless no rational jury could find that the defendant acted unreasonably. *See, e.g.*, *State v. Lewis*, 290 P.3d 288, 296, 299 (Or. 2012) (addressing "whether the evidence presented at trial was sufficient to support the trial court's finding ... that defendant acted with the mental state of criminal negligence," and concluding that "there was evidence from which a rational factfinder" could make that finding). And under *Neagle*, federal court intervention is similarly warranted only if the defendant acted reasonably *as a matter of law*—that is, if *no* rational jury could have found otherwise. *See* 135 U.S. at 75 (granting relief where officer "established that he is innocent of any crime against the laws of the state"); *accord* Pet. 11 ("the district court should not

grant a pretrial motion to dismiss unless the moving party demonstrates that no reasonable factfinder could conclude that they are not entitled to judgment").

Yet courts in this Circuit routinely assert that it is their job to "assess the reasonableness of the [defendant's] conduct." *California v. Sato-Smith*, No. 24-668, 2024 WL 4683294, at *3 (S.D. Cal. Nov. 5, 2024). In *Sato-Smith*, for instance, the court concluded that the defendant's illegal U-turn, which led to a motorcyclist's death, was "indeed reasonable." *Id.* Likewise, in *California v. Dotson*, on which the district court here relied heavily, the court took it upon itself to deem the defendant's actions—going through a stop sign at 78 miles per hour, killing three people—to be reasonable. *Dotson*, 2012 WL 1904467, at *1, *3-4. Both courts made their own value judgments about whether the significance of the defendants' federal duties outweighed the risks they created to innocent life—judgments untethered from any specific legal standard.

The panel decision here succumbed to the same error. As in *Dotson* and *Sato-Smith*, the district court claimed exclusive power to resolve "the question of whether [Defendant] acted reasonably." 1-ER-8. Reviewing that assessment for "clear error," the panel held that the "district court's conclusions are heavily supported by the facts in the record and therefore not clearly erroneous." Slip Op. 4-5. Specifically, the panel wrote, Defendant's actions were "subjectively reasonable because he honestly believed he could safely run the stop sign while

driving with a purpose to catch up to the rest of his surveillance team," and "objectively reasonable because every agent testified that in order successfully to conduct a surveillance operation, each agent must, at multiple points, violate traffic laws." *Id.* at 4 (quotation marks omitted).

The panel thus endorsed the proposition that the value Defendant added to the success of his team's surveillance operation by violating Oregon traffic laws justified endangering the lives of Oregon's residents by ignoring those laws. But nothing in *Neagle* or any other Supreme Court precedent empowers federal courts to make such freewheeling policy judgments.

A sounder approach to cases like this was demonstrated by this Court's later-vacated but still much-cited decision in *Idaho v. Horiuchi*, 253 F.3d 359 (9th Cir.) (en banc), *vacated as moot*, 266 F.3d 979 (9th Cir. 2001). There, FBI Special Agent Horiuchi was charged with manslaughter after shooting a woman through a door; his target was a man he believed posed an imminent threat to the safety of his fellow officers, some of whom were in a helicopter. *Id.* at 362-64, 368-69. This Court concluded that "there are material questions of fact in dispute which, if resolved against Horiuchi would strip him of Supremacy Clause immunity." *Id.* at 374. These disputed questions included "whether a reasonable agent in Horiuchi's position would have believed that the helicopter would be endangered," whether he "could have reasonably believed that giving a warning [before shooting] would be

futile or dangerous," and whether "a reasonable agent in Horiuchi's position would have concluded" that his target would pose a danger had he attempted to escape into the woods. *Id.* at 370-74.

This is substantially correct. As discussed, the *Neagle* Court did not resolve disputed facts, weigh evidence, and conclude that Neagle's conduct was reasonable as judged by the Court's own intuitions. The Court instead held, as a matter of law, that Neagle's undisputed lack of culpability for murder under state law entitled him to habeas corpus relief.

The panel's error here may stem from some language in *Clifton v. Cox*, 549 F.2d 722 (9th Cir. 1977), which stated that the essential question is whether a defendant "employed means which he could not honestly consider reasonable in discharging his duties." *Id.* at 730. This language suggests that a defendant is entitled to dismissal of state-law charges if his conduct *could* be found reasonable. *See* Slip Op. 3 (quoting *Clifton*'s statement that dismissal is warranted if an officer's conduct "may be said to be reasonable under the existing circumstances"). Or, as some have put it, dismissal is required "unless *no reasonable officer* could have concluded that the actions were necessary and proper to the performance of his federal functions." Seth P. Waxman & Trevor W. Morrison, *What Kind of Immunity? Federal Officers, State Criminal Law, and the Supremacy Clause*, 112 Yale L.J. 2195, 2239 (2003) (citing *Clifton*); *accord Sato-Smith*, 2024 WL

4683294, at *3 (similarly reasoning that there were "sufficient facts in the record to support a finding of exigency," i.e., that dismissal was warranted because the facts *could* support a finding that the officer's conduct was justified).

But this gets the standard exactly backwards. It is not that state charges should proceed only if *no* reasonable officer would have done as the defendant did. Rather, *Neagle* and *Drury* instruct that state charges should proceed unless *every* reasonable officer would have done as the defendant did. *Contra* Slip Op. 4 (affirming dismissal of charges because Defendant's actions "were not outside the bounds of what another agent *may have done* under the circumstances" (emphasis added)). Neagle did not win his case because some reasonable officers may have shot Terry; he won because no reasonable officer would have done otherwise. Neagle had a legal "duty" to take precisely the action he took, and he did no more than what was "necessary" to fulfill that specific duty, providing a complete defense under state law to the charge of murder. 135 U.S. at 75. The defendants in *Drury*, by contrast, could not make such a showing because critical facts were in dispute, so relief was denied. 200 U.S. at 8.

If for no other reason, en banc review is needed here so this Court can correct this grievous misimpression created by *Clifton*.

CONCLUSION

For these reasons, the Court should grant the petition for rehearing en banc.

Respectfully submitted,

Dated: February 2, 2026

/s/ Brian R. Frazelle
Elizabeth B. Wydra
Brianne J. Gorod
Brian R. Frazelle
CONSTITUTIONAL ACCOUNTABILITY CENTER
1730 Rhode Island Ave. NW, Suite 1200
Washington, D.C. 20036
(202) 296-6889
brian@theusconstitution.org

Michael J.Z. Mannheimer
SALMON P. CHASE COLLEGE OF LAW
Northern Kentucky University
518 Nunn Hall, Nunn Drive
Highland Heights, KY 41099
(859) 572-5862

Counsel for Amicus Curiae

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Form 8. Certificate of Compliance for Briefs

Instructions for this form:
http://www.ca9.uscourts.gov/forms/form08instructions.pdf

9th Cir. Case Number(s): 25-447

I am the attorney or self-represented party.

This brief contains 4,191 words, including 0 words manually counted in any visual images, and excluding the items exempted by FRAP 32(f). The brief's type size and typeface comply with FRAP 32(a)(5) and (6).

I certify that this brief *(select only one)*:

[ ] complies with the word limit of Cir. R. 32-1.

[ ] is a **cross-appeal** brief and complies with the word limit of Cir. R. 28.1-1.

[x] is an **amicus** brief and complies with the word limit of FRAP 29(a)(5), Cir. R. 29-2(c)(2), or Cir. R. 29-2(c)(3).

[ ] is for a **death penalty** case and complies with the word limit of Cir. R. 32-4.

[ ] complies with the longer length limit permitted by Cir. R. 32-2(b) because *(select only one)*:

- [ ] it is a joint brief submitted by separately represented parties.
- [ ] a party or parties are filing a single brief in response to multiple briefs.
- [ ] a party or parties are filing a single brief in response to a longer joint brief.

[ ] complies with the length limit designated by court order dated _____.

[ ] is accompanied by a motion to file a longer brief pursuant to Cir. R. 32-2(a).

Signature */s/ Brian R. Frazelle* **Date** February 2, 2026

*(use "*s/[typed name]*" to sign electronically-filed documents)*

CERTIFICATE OF SERVICE

I hereby certify that on this 2nd day of February, 2026, I electronically filed the foregoing document using the Court's Appellate Case Management System, causing a notice of filing to be served upon all counsel of record.

Dated: February 2, 2026

/s/ Brian R. Frazelle
Brian R. Frazelle