

No. 25-5975

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

LOS ANGELES PRESS CLUB, *et al.*,
Plaintiffs-Appellees,

v.

KRISTI NOEM, *in her official capacity as Secretary of Homeland Security*;
UNITED STATES DEPARTMENT OF HOMELAND SECURITY,
Defendants-Appellants.

On Appeal from the United States District Court
for the Central District of California
No. 2:25-cv-05563 | Hon. Hernán D. Vera

BRIEF OF PHYSICIANS FOR HUMAN RIGHTS AS *AMICUS CURIAE*
IN SUPPORT OF PLAINTIFFS-APPELLEES, URGING AFFIRMANCE

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I. STATEMENT OF AUTHORITY TO FILE

Amicus Physicians for Human Rights submits this brief without a motion for leave because all parties have consented to its filing.

II. IDENTITY AND INTEREST OF AMICUS CURIAE

Physicians for Human Rights (“PHR”)¹ is an international human rights organization with networks of clinicians around the world, including in the U.S., who work to advance human rights and support accountability and justice for survivors of human rights violations. PHR uses its core disciplines—science, medicine, forensics, and public health—to conduct research and medical evaluations, undertake fact-finding investigations, and galvanize thousands of health professionals and allies in the legal sector to end human suffering, save lives, and secure justice and universal human rights for all. PHR is a global leader in forensic documentation of human rights abuses.

PHR has a long history of documenting harms caused by the use of so-called “less-than-lethal” weapons, particularly when, as here, they are employed in a manner that contravenes both international and national standards.² PHR has

¹ Pursuant to Federal Rules of Appellate Procedure, Rule 29(a)(4)(E), *Amicus* PHR affirms that no party’s counsel authored this brief in whole or in part and that no person or entity (other than the *Amicus*, its members, or its counsel) has contributed money intended to fund this brief’s preparation or submission.

² See Misuse of Crowd-control weapons and Excessive Force, PHYSICIANS FOR HUMAN RIGHTS, <https://phr.org/issues/weapons/non-lethal-weapons-used-with-excessive-force/> (last visited Nov. 25, 2025).

published multiple reports documenting the adverse health impacts of such crowd control weapons, including two seminal co-authored reports, *Lethal in Disguise* (2016)³ and *Lethal in Disguise 2: How Crowd-Control Weapons Impact Health and Human Rights* (2023).⁴

PHR's research, analysis, and conclusions have helped numerous policymakers to reform crowd-control practices that threaten public health and undermine human rights. PHR has contributed to the United Nations Guidance on Less-Lethal Weapons in Law Enforcement⁵, written on multiple issues regarding the use of these weapons, including in Portland, Oregon⁶ and New York City⁷,

³ PHR and International Network of Civil Liberties Organizations (“INCLO”), *Lethal in Disguise: The health consequences of crowd-control weapons*, <https://phr.org/wp-content/uploads/2018/09/lethal-in-disguise.pdf> (March 1, 2016).

⁴ PHR and INCLO and Omega, *Lethal in Disguise 2: How Crowd-Control Weapons Impact Health and Human Rights*, <https://lethalindisguise.org/wp-content/uploads/2022/12/LID2-Main-Report-Pages-Final-1.pdf> (March 1, 2023) (“*Lethal in Disguise 2*”).

⁵ United Nations Office of the High Commissioner for Human Rights, *Guidance on Less-Lethal Weapons in Law Enforcement*, UNITED NATIONS, https://www.ohchr.org/sites/default/files/Documents/HRBodies/CCPR/LLW_Guidance.pdf (2020) (“*LLW Guidance*”).

⁶ Katheryn Hampton, Michele Heisler, Donna McKay, “*Now they seem to just want to hurt us*”: *Dangerous Use of Crowd-control Weapons against Protestors and Medics in Portland, Oregon*, PHYSICIANS FOR HUMAN RIGHTS (Oct. 8, 2020) https://phr.org/wp-content/uploads/2020/10/PHR_Now-they-seem-to-just-want-to-hurt-us_Oct-2020-Report.pdf

⁷ Phelim Kine and Joanna Naples-Michell, “*A Targeted Attack on the Bronx*”: *Police Violence and Arrests of Health Workers at a New York City Protest*,

contributed to state policies limiting crowd control weapons,⁸ and spoken on this issue globally.⁹ PHR, therefore, hopes that this amicus brief will lend its experience regarding the use of crowd control weapons to this court and thereby help inform this court as to when these crowd control weapons are being used inappropriately in a dangerous and harmful fashion.

As a result of our experience, research, and a review of information available to us, including the record before this Court, PHR writes to urge affirmance of the district court's holding below.

III. ARGUMENT

In the summer of 2025, the U.S. Department of Homeland Security (DHS) deployed Immigration and Customs Enforcement (ICE) personnel into Los Angeles with the publicly described purpose of apprehending undocumented immigrants. In response to the aggressive nature of this crackdown, groups of community members gathered for what have generally been described as peaceful

PHYSICIANS FOR HUMAN RIGHTS (September 2020) https://phr.org/wp-content/uploads/2020/09/A-Targeted-Attack-on-the-Bronx_Police-Violence_Sept-2020.pdf

⁸See, e.g., California Assembly Bill No. 48 (October 1, 2021), https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202120220AB48 (limiting police weapons for crowd control).

⁹ See, e.g., *Lethal in Disguise 2* presented in Geneva at the UN Human Rights Council, INCLO (June 29, 2023) <https://inclo.net/latest/press-release/lethal-in-disguise-2-presented-at-an-event-in-geneva-at-the-un-human-rights-council/>.

protests in the streets of Los Angeles. The crackdown and the responsive protests brought out journalists and legal observers, as well as medics who set up stations near protests to provide first aid or medical support as needed. As a rule, these journalists, legal observers, and medics had clear identification reflecting their roles. As the protests proceeded, officers from ICE, the Federal Protection Service and Customs and Border Protection began to employ crowd control weapons.

Despite being labeled “less lethal,” crowd control weapons have the potential to cause great bodily harm, especially when misused as was the case here. In its preliminary injunction, the district court correctly noted that the crowd control weapons that were used by federal law enforcement included disorientation devices (flash-bangs), chemical irritants (tear gas and pepper spray), and kinetic impact projectiles (“KIPs”) (rubber bullets and pepper balls), along with collapsible straight batons and electronic control weapons (commonly referred to as “TASERs”).¹⁰ As the district court properly found and this brief will explain, federal law enforcement repeatedly misused KIPs, pepper balls, tear gas cannisters, and flash-bang grenades in a manner that was harmful and dangerous to protesters, journalists and medics.

¹⁰ 1-ER-4 at fn. 1.

A. Federal law enforcement used harmful and dangerous kinetic impact projectiles against peaceful protesters and journalists.

Kinetic impact projectiles (KIPs) cover a large category of crowd-control weapons that work by transferring kinetic energy (*i.e.*, energy from movement) from an object in flight to a person¹¹ KIPs can cause serious injuries, permanent disabilities, and death. Severe injuries are more likely when KIPs are fired at close range. When launched from afar, these weapons are often inaccurate and can strike vulnerable body parts or bystanders. As such, the medical evidence in PHR's *Lethal in Disguise* report underscores that KIPs should never be fired indiscriminately into groups and are, in general, an inappropriate weapon in any protest context.¹²

Due to the potentially dangerous nature of most crowd control weapons, in 2020 the United Nations created standards and guidance for their use in order to respect the human rights principles of necessity and proportionality, precaution, and accountability.¹³ According to this guidance KIPS should only be used once it

¹¹ This group of weapons go by a number of names, descriptions, mechanisms of action, range and usage, including: plastic/ rubber bullets; scattershot or multiple projectile rounds; attenuated energy projectiles (AEP); rubber coated metal bullets; flexible baton round; sponge rounds; pellet rounds; and plastic-metal composite bullets. See *Lethal in Disguise 2*, *supra* note 4, at 31-35.

¹² See *Lethal in Disguise 2*, *supra* note 4, at 159; see *United Nations Peacekeeping Missions Military Police Manual*, UNITED NATIONS (July 2015) at ¶6.3.2.

¹³ See *LLW Guidance*, *supra* note 5.

has become necessary to address an imminent threat of injury to either a law enforcement official or a member of the public; KIPs must not be used for crowd management or dispersal.¹⁴ When used in direct fire, KIPS should generally only be used with the aim of striking the lower abdomen or legs of a violent individual.¹⁵ KIPs should never be targeted at the head, face or neck.¹⁶

Despite the widely known risk, the record shows that federal law enforcement targeted the head, face and neck area of protest attendees and journalists with rubber bullets.¹⁷ The record shows that federal law enforcement repeatedly used rubber bullets in a dangerous and harmful manner – even firing at protesters and journalists in retreat. Protestor Abigail Olmeda was shot in the head above her right temple with a rubber bullet and was thereafter suspected to have a “brain bruise” when she went to the emergency room.¹⁸ On June 7, 2025, Rynne Mena, a journalist who was covering protests in Paramount related to an ICE raid at Home Depot, was hit just an inch above her right ear with what is believed to have been a rubber bullet, resulting in a concussion.¹⁹

¹⁴ *LLW Guidance*, *supra* note 5, at 35.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ The record identified attendees were hit with “rubber bullets”, a term that can refer to a range of KIPs. *See, e.g.*, 1-ER-4, 10, 12, 17, 25, 30.

¹⁸ 1-ER-13, 1-ER-34; *see also* 2-SER-478-483 (Decl. of Abigail Olmeda).

¹⁹ 1-ER-12; 1-ER-192-195 (Decl. of Rynne Mena at ¶¶ 25, 27–29, 31, 37).

As noted by PHR’s report, *Shot in the Head*, “targeting the face or head [with rubber bullets] may result in skull fracture and brain injury, damage to the eyes, including permanent blindness, or even death”.²⁰ In addition, long term injuries or disabilities associated with rubber bullets can include impaired vision, persistent headaches, neuropathic pain, facial contour deformities, facial nerve deformities, and mental health concerns including post-traumatic stress disorder.²¹ The risk of serious injury or even death from improper use of rubber bullets is great enough that the Department of Peacekeeping Operations of the United Nations prohibits the use of rubber bullets by U. N. police personnel.²²

In addition to head trauma, targeting the torso may cause damage to vital organs, and there may be penetration of the body, especially when projectiles are fired at close range.²³ Acute injuries can range from soft tissue loss to bony trauma with contusion and comminuted fractures. *Id.* Nevertheless, the record shows that the torso was repeatedly targeted. On June 9, 2025, photojournalist Ted Soqui was

²⁰ *Shot in the Head*, PHYSICIANS FOR HUMAN RIGHTS (September 14, 2020) <https://storymaps.arcgis.com/stories/29cbf2e87b914dbaabdec2f3d350839e>.

²¹ Ravi S, Leathers KO, Weinfeld AB, Harshbarger R, *Kinetic Impact Projectiles and Craniofacial Trauma: A Case Series and Literature Review*, 4 FACE 397-403 (Jun. 29, 2023). doi:[10.1177/27325016231182603](https://doi.org/10.1177/27325016231182603).

²² *United Nations Peacekeeping Missions Military Police Manual*, UNITED NATIONS, (July 2015) at ¶3.6.1; *LLW Guidance*, *supra* note 5, at 36.

²³ See *Shot in the Head*, *supra* note 20.

shot in the back three times with rubber bullets.²⁴ On June 9, 2025, Abigail Olmeda was shot in the collar bone and rib area with rubber bullets.²⁵ Olmeda's partner was reportedly shot multiple times in the stomach and the back with rubber bullets.²⁶

Chemical irritant delivery systems, such as pepper balls and tear gas cannisters, can become KIPs when they are misused in crowd control situations. Although these crowd control weapons are expressly not designed for direct bodily impact as a KIP, when fired directly towards individuals or crowds, they risk causing serious injury and death just like other KIPs.²⁷

The record highlights several instances of protesters and journalists being injured by the misuse of chemical irritant delivery systems which dangerously targeted the head and neck area. On June 7, 2025, Sean Beckner-Carmitchel, a photo-journalist covering the aftermath of the ICE immigration raid at the Home Depot, was struck in the head by a tear gas cannister causing a hematoma on his head the size of a golf ball.²⁸ On June 8, photojournalist Ted Soqui was struck in

²⁴ 1-ER-10; *see also* 1-ER-32, 3-SER-610-612 (Decl. of Ted Soqui).

²⁵ 1-ER-13; 2-SER-478-483 (Decl. of Abigail Olmeda, at ¶¶ 5-6); *see also* 1-ER-167-169 (¶¶ 39-44).

²⁶ *See* 2-SER-478-483 (Decl. of Abigail Olmeda, at ¶ 3).

²⁷ *See Lethal in Disguise 2, supra* note 4 (“tear gas cannisters, when fired directly at protesters, act as KIPs; however they can be extraordinarily hazardous when used in this manner as they are dense, metallic, large and often heated or mid-explosion”).

²⁸ 1-ER-12; *see also*, 1-ER-182 (Decl. of Sean Beckner-Carmitchel, at ¶ 3).

the left cheekbone by a pepper ball.²⁹ On June 9, protester Abigail Olmeda was shot with a pepper ball near her collarbone while walking and holding a sign.³⁰ On July 10, Alexander Nadolishny, a 55-year-old engineer attending the protests at the Glass House Farms facility in Camarillo, was hit in the ear with a pepper ball as he was running away from the protest.³¹

Contemporaneous news coverage also showed federal law enforcement regularly misusing these weapons. On June 6, 2025, independent journalist Anthony Cabassa reported being shot twice in the face with pepper balls by federal law enforcement agents while documenting the protests.³² On June 7, Jonathon Alcorn, a photojournalist covering the Paramount, California protest for Zuma Press, reported being struck by a tear gas canister that Customs and Border Patrol Officers shot at the car he was taking shelter behind, resulting in a hematoma and a burn on his arm.³³

²⁹ 1-ER-10; *see also* 3-SER-610-612 (Decl. of Ted Soqui).

³⁰ 1-ER-13; *see also* 2-SER-478-483 (Decl. of Abigail Olmeda).

³¹ 1-ER-17; *see also* 1-SER-244-251 (Decl. of Alexander Nadolishny).

³² “Journalist shot in the face with pepper balls by federal officers”, U.S. PRESS FREEDOM TRACKER (June 6, 2025) <https://pressfreedomtracker.us/all-incidents/journalist-shot-in-the-face-with-pepper-balls-by-federal-officers/>.

³³ “Photographer injured as federal agents use tear gas at LA-area protest”, U.S. PRESS FREEDOM TRACKER (June 7, 2025) <https://pressfreedomtracker.us/all-incidents/photographer-injured-as-federal-agents-use-tear-gas-at-la-area-protest/>.

B. Federal law enforcement used harmful and dangerous chemical irritants against peaceful protesters and journalists.

Primarily, two chemical irritants were used on protestors, journalists, and even medics. These are popularly referred to as “pepper spray” and “tear gas.”

Pepper spray is a chemical irritant designed to cause severe pain and irritation of the eyes and nose.³⁴ This chemical irritant is either derived from an oil known as oleoresin capsicum, the plants in genus *Capsicum*, or synthetically produced and called PAVA. Pepper spray scores extraordinarily high on the Scoville scale, which is measured in Scoville Heat Units (SHU). For instance, the bhut jolokia “ghost” pepper, which has been described as “crazy hot” with only the tiniest amount recommended to be used in foods and is one of the hottest edible peppers known, measures 500,000-1.4 million SHU.³⁵ By contrast, the pepper spray that law enforcement officers use measures five times that -- up to 5.3 million SHU.³⁶ The chemical irritant pepper spray can also be packaged as a projectile called a pepper ball. Pepper balls are generally fired from specially

³⁴ *What is pepper spray, and is it dangerous?*, Medical News Today (June 3, 2025) <https://www.medicalnewstoday.com/articles/238262#what-is-it>.

³⁵ Scoville Heat Scale, CORNELL BOTANIC GARDENS, https://cornellbotanicgardens.org/sites/default/files/2025-04/heat.index_.poster.pdf (last accessed Nov. 25, 2025).

³⁶ *What is pepper spray*, *supra* note 34.

designed forced compliance weapons that are somewhat similar to but stronger than paintball guns and are designed to aerosolize upon contact.³⁷

It is clear that pepper spray and pepper balls were misused and directly targeted. Ted Soqui was struck in the left cheekbone.³⁸ Abigail Olmeda was struck near her collarbone.³⁹ Alexander Nadolishny was hit in the ear.⁴⁰ Ryanne Mena was struck directly in the thigh.⁴¹

Tear gas, known as a lachrymatory agent or lachrymator, is a chemical weapon that activates pain receptors on the skin and mucous membranes (like the eyes, nose, mouth and lungs). It is commonly deployed through cannisters that are supposed to either be tossed or shot from a projectile in the proximity of (but not directly at) protestors dispersing the irritant in aerosolized form.⁴² The U.N. Guidance on less-lethal weapons states that a chemical irritant should be used only where sufficient toxicological information is available to confirm that it will not cause any unwarranted health problems, and when its delivery against a target is

³⁷ See, e.g., *How The PepperBall® Projectile Works*, PepperBall®, <https://shop.pepperball.com/pages/how-it-works> (last accessed Nov. 25, 2025).

³⁸ 1-ER-10; *see also* 3-SER-610-612 (Decl. of Ted Soqui).

³⁹ 1-ER-13; *see also* 2-SER-478-483 (Decl. of Abigail Olmeda).

⁴⁰ 1-ER-17; *see also* 1-SER-244-251 (Decl. of Alexander Nadolishny).

⁴¹ 1-ER-7, 1-ER-12; 1-ER-191 (Decl. of Ryanne Mena at ¶¶ 17-20).

⁴² Patty Wetli, “*What is Tear Gas, and Why is It Used on Civilians But Banned in Combat?*” WTTW NEWS, <https://news.wttw.com/2025/10/28/what-tear-gas-and-why-it-used-civilians-banned-combat> (October 28, 2025).

accurate rather than indiscriminate.⁴³ However, due to its aerosolized nature, tear gas is inherently indiscriminate.

It appears ICE regularly used chemical irritants in a way that would adversely “affect not only the intended targets but also peaceful demonstrators, bystanders, nearby communities and residences, and law enforcement officers themselves.”⁴⁴ News coverage and photos of the protests in Los Angeles repeatedly show federal law enforcement deploying vast quantities of teargas and firing numerous pepper balls and tear gas canisters into groups of protesters without provocation, much less direct threat.⁴⁵

Federal agents’ misuse of chemical irritants unquestionably was directed at protesters and journalists attending the events in Los Angeles at a time that there was no evidence they were being threatened. For example, Diya Cruz, a 52-year-old protester, attended the protest outside of Home Depot in Paramount on June 7,

⁴³ *LWW Guidance*, *supra* note 5, at 30.

⁴⁴ Factsheet: Health Impacts of Crowd-Control Weapons: Chemical Irritants (Tear Gas and Pepper Spray), PHYSICIANS FOR HUMAN RIGHTS (January 1, 2017) <https://phr.org/our-work/resources/health-impacts-of-crowd-control-weapons-chemical-irritants-tear-gas-and-pepper-spray/>.

⁴⁵ *AP PHOTOS: Protesters Tear-Gassed in Los Angeles After Federal Immigration Arrests*, U.S. NEWS (June 7, 2025) <https://www.usnews.com/news/us/articles/2025-06-07/ap-photos-protesters-tear-gassed-in-los-angeles-after-federal-immigration-arrests>.

2025.⁴⁶ He was unarmed and merely chanting with a group when agents fired tear gas on the group. *Id.* Cruz has asthma, and the tear gas triggered an attack. *Id.*

People with lung issues, including asthma, like Cruz, or chronic obstructive pulmonary disease, may experience more severe breathing issues when exposed to chemical irritants. Generally, breathing in chemical irritants can cause a dry cough or wheezing, shortness of breath or an inability to breathe properly, throat burning, chest pain, gagging, gasping for air, an inability to speak, dizziness, and even loss of consciousness. When chemical irritants come into contact with a person's eyes, they can cause immediate eye closure, acute eye pain, and temporary blindness.⁴⁷ Furthermore, PHR has found that chemical irritants can cause significant chronic injuries as well as permanent disabilities.⁴⁸

C. Federal law enforcement used harmful and dangerous disorientation devices against peaceful protesters and journalists.

Flash-bang stun grenades are disorientation devices designed to temporarily disorient individuals by producing a blinding flash of light and a deafening noise.⁴⁹ Proper use of these devices includes deploying them in situations where non-lethal

⁴⁶ 2-SER-517-520 (Decl. of Diya Cruz, at ¶¶ 1-3); *see also* 1-ER-11.

⁴⁷ *See* Haar, Rohini J., *Health impacts of chemical irritants used for crowd control: a systematic review of the injuries and deaths caused by tear gas and pepper spray*, 17 BMC PUBLIC HEALTH 831 (Oct. 19, 2017) [doi:10.1186/s12889-017-4814-6](https://doi.org/10.1186/s12889-017-4814-6).

⁴⁸ Factsheet, *supra* note 44.

⁴⁹ *Lethal in Disguise 1*, *supra* note 3, at 2.

incapacitation is needed, such as in the event of a tactical entry. Any use requires a high level of training and generally protective gear for those employing them.

News coverage and declarations from attendees at the protests demonstrate that federal law enforcement deployed these devices in a dangerous and indiscriminate manner during the protests, which the district court refers to in the Preliminary Injunction (1-ER-4 at fn 1). For instance, a photographer for a news outlet covering the protests in downtown Los Angeles on June 6, 2025 observed federal agents indiscriminately tossing these dangerous flash-bang grenades out of the windows of a vehicle moving through the crowd.⁵⁰

There is no question that the indiscriminate use of flash-bang grenades can injure innocent bystanders, including journalists. A ProPublica report documented more than 50 cases of severe injuries and deaths from their use in the United States between 2000 and 2015.⁵¹ When PHR conducted a blast injury analysis, it found that flash-bangs have the potential to cause both significant short- and long-term injuries, as shown in the following table:⁵²

⁵⁰ *Flash bang strikes TV crew at LA immigration protest*, U.S. PRESS FREEDOM TRACKER (June 6, 2025) <https://pressfreedomtracker.us/all-incidents/flash-bang-strikes-tv-crew-at-la-immigration-protest/>.

⁵¹ Julia Angwin, Abbie Nehring, and ProPublica, *Hotter Than Lava: Every Day, Cops Toss Flashbang Grenades With Little Oversight and Horrifying Results*, PROPUBLICA (May 13, 2015) <http://www.propublica.org/article/flashbangs>.

⁵² See *Lethal in Disguise 2*, *supra* note 4, at 90.

Type of Blast Injury	Cause	Outcome
Primary blast injury	Supersonic pressure shock waves from the blast.	Internal injuries, especially of delicate membranes like the eardrum and the lung membranes.
Secondary blast injury	Explosion and fragmentation of objects.	Blunt and penetrating trauma from explosive devices.
Tertiary blast injury	Displacement of air causes blast wind that can push people into solid objects.	Blunt and penetrating trauma, including fractures and head trauma.
Quaternary blast injury	Miscellaneous injuries caused by other parts of the explosion.	Burns, respiratory injuries from flames and smoke, crush injuries, eye injuries, psychiatric trauma (PTSD).

Additionally, flash-bangs become KIPs with direct impact, risking serious and permanent injuries when fired directly at an individual.⁵³

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⁵³ See e.g., J Wilson, *Woman Says she was Permanently Disfigured by Portland Police at Protest*, THE GUARDIAN (Aug. 5, 2019) www.theguardian.com/us-news/2019/aug/05/portland-police-protests-woman-claims-disfigured.

IV. CONCLUSION

The record shows that federal law enforcement repeatedly misused crowd control weapons in a manner that risked serious injury to non-violent protesters and journalists. Therefore, *Amicus* Physicians for Human Rights respectfully urges this court to uphold the district court's granting of the preliminary injunction in order to prevent the further dangerous and harmful misuse of crowd control weapons that has been visited upon protesters and journalists in Los Angeles.

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V. CERTIFICATE OF COMPLIANCE

I am the attorney for *Amicus Curiae* Physicians for Human Rights.

This brief contains 3,394 words, including **95** 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).

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Signature s/ Raymond P. Boucher **Date** November 25, 2025