No. 25-5014

IN THE UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

UNITED STATES OF AMERICA,
Plaintiff - Appellee,

v.

ADAM JOSEPH KING,
Defendant - Appellant.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA
THE HONORABLE JOHN D. RUSSELL, U.S. DISTRICT JUDGE, PRESIDING
CASE NO. 4:24-CR-00081-JDR-1

APPELLANT'S REPLY BRIEF

JULIA L. O'CONNELL
Federal Public Defender

JARED T. GUEMMER
Asst. Federal Public Defender

OFFICE OF THE FEDERAL PUBLIC DEFENDER
NORTHERN DISTRICT OF OKLAHOMA
One West 3rd Street, Suite 1225
Tulsa, Oklahoma 74103-3532
(918) 581-7656

COUNSEL FOR DEFENDANT/APPELLANT
Oral Argument Is Requested
Attachments Electronically Filed in Native PDF Format

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

Federal Cases

Federal Statutes

REPLY ARGUMENT

I. The evidence is insufficient to prove beyond a reasonable doubt that Mr. King either lacked any degree of Indian blood or that he was not recognized as an Indian prior to the charged conduct.

For a person to be an "Indian," under federal law, two elements must be satisfied: (1) A person must have "some Indian blood" and be "recognized as an Indian by a tribe or by the federal government." *United States v. Hebert*, 159 F.4th 777, 780 (10th Cir. 2025).

The United States begins its discussion of the sufficiency of the evidence as to Mr. King's non-Indian status with a citation to a published decision of this Court: *United States v. Walker*, 85 F.4th 973, 983 (10th Cir. 2023). (Govt.'s Resp. at 14). It cites this case for the premise that testimony of a "defendant's relatives that the family has no Indian blood or has no tribal recognition can establish non-Indian status." (Govt's Resp. at 14). However, the sufficiency of the testimony to support the verdict as to his non-Indian status was not tested in *Walker*; the only question in that case was whether the Government adequately demonstrated the witness's personal knowledge to render the evidence

admissible under the Federal Rules of Evidence.[1] *Id.* at 983. In *United States v. Laskey*, also cited by the United States, the testimony concerned whether the defendant was an Indian, not if he was a non-Indian. No. 22-5115, 2024 WL 3898299, at *3–4 (10th Cir. Aug. 22, 2024) (unpublished).

The appropriate standard for determining whether a family's member's testimony is sufficient to establish an individual's *non-Indian* status is found in *United States v. Diaz*, 679 F.3d 1183 (10th Cir. 2012), and *United States v. Hebert*, 159 F.4th 777 (10th Cir. 2025).

With respect to Indian blood, in *Hebert*, this Court has two key decisions indicating how to determine if a person *lacks* Indian blood: *Hebert*, 159 F.4th 777, and *United States v. Diaz*, 679 F.3d 1183 (10th Cir. 2012). In *Hebert*, a panel of this Court applied the *Diaz* approach, noting that "a person has 'some Indian blood' if he has 'Indian ancestors.' " 159 F.4th at 780. The *Hebert* panel's evisceration of the prosecution's evidence was swift:

> No rational jury could have found beyond a reasonable doubt that Mr. Hebert lacks Indian blood. The prosecution introduced no DNA or genealogical evidence to show Mr. Hebert has no "Indian ancestors." By contrast, in *Diaz*,

[1] Notably, another witness also testified that the defendant in *Walker* was not affiliated with a tribe based upon his personal knowledge of the defendant. *Id.* at 983–84.

> the victim's father conducted extensive research into his and his wife's family history. That Mr. Hebert never mentioned "being an Indian" to Ms. Byers tells nothing about his ancestry. And although Mr. Hebert identified as part-Mexican, white, and Latino/Hispanic, that also does not show he has no Indian ancestors.

Id. at 786–87 (internal citations omitted). When it comes to the Indian blood element, the *Hebert* panel's decision strongly suggests that DNA or genealogical evidence is necessary to prove an absence of Indian blood. In other words, more than just suspicions or notions about ancestry. A family member testifying that their family lacks Indian blood must demonstrate real genealogical knowledge of that absence, otherwise DNA testing is needed to prove an absence of Indian blood.

Notably here, the United States had DNA evidence available to it because it performed DNA testing on various pieces of evidence found in the bedroom. (See, e.g., Supp. Rec. Vol. 1, at 72). Nothing stopped the United States from running a test to determine if Mr. King had Indian ancestry.

1. Indian Blood – The Sisters' Testimony

Turning to the evidence presented, the United States seemingly shifts its burden to prove an absence of Indian blood to require his sisters, Krystal Dunckel and Kellie Guess, to prove that they do have Indian blood. (Govt.'s Resp. at 14–15).

The United States has taken the position that since neither of the sisters could "document" that anyone in their family had Indian blood or Indian tribal affiliation, that Mr. King does not have Indian blood and was not recognized. (Govt's Resp. at 14–15). That is not the law. It is the United States' burden to prove an absence of Indian blood, and a lack of recognition.

Ms. Dunckel's testimony was categorical in its certainty: She (and by extension, Mr. King) have Indian blood. (*See, e.g.*, Vol. 3A, at 567–68). Her inability to prove that does not prove Mr. King has an absence of Indian blood.[2]

[2] The United States briefly cites to *United States v. Ortner* for the premise that "where witness had no family records to document tribal status, 'unsubstantiated opinion testimony' was insufficient evidence to show the defendant possessed some quantum of Indian blood." (Govt.'s Resp. at 15). It neglects to mention that this analysis was done *not* in the context of analyzing sufficiency of the evidence to support the conviction, but in determining whether the district court committed *plain*

As to Ms. Guess, when asked if anyone in her family has Indian heritage here response was "Nothing that is – that I'm aware of, no." (Vol. 3A, at 578–79). When asked whether her mother had any tribal heritage, her response was "I don't – I don't know." (Vol. 3A, at 579). Her testimony was nothing more than a statement that she was not aware of any tribal heritage, not that it did not exist. The analysis in *Hebert* is instructive. There, when witness Kara Byers responded to a question about Mr. Hebert being a tribal member by stating, "Not that I know of, no," the panel concluded that this was little more than her saying she did not know he if he was a tribal member, and it was not a direct declaration that he was not a tribal member. 159 F.4th at 787. Ms. Guess's testimony

---

instructional error with respect to the jury instructions that failed to require the jury to find that Mr. Ortner was a non-Indian. *United States v. Ortner*, No. 21-5075, 2023 WL 382932, at *3 (10th Cir. Jan. 25, 2023) (unpublished). The panel in *Ortner* concluded that the evidence Mr. Ortner contended showed he was an Indian (and therefore the instructional error violated his substantial rights) was not enough to demonstrate plain error. *Id.* This should also be understood through the lens of the fact that Mr. Ortner explicitly told law enforcement "he was not Native American." *Id.* at *1.

Later in the United States' response brief, it claims: "King's biological sisters testified extensively about their family's lack of Indian blood and lack of tribal affiliation." (Govt.'s Resp. at 16–17). Even a cursory review of the sisters' testimony reveals that is an inaccurate characterization of their testimony.

is in the same vein: She did not know if her mother's side of the family bore Indian heritage. Meanwhile, Ms. Dunckel's testimony was emphatic that they do have Indian heritage. The United States' attempt to shift the burden of proof to the witnesses that it called is meritless.

The evidence shows that Mr. King does have Indian blood or, at a minimum, that the United States has not proven an absence of Indian blood.

2. Tribal Recognition – The Sisters' Testimony

There are four factors for tribal recognition: "(1) enrollment in a tribe, (2) provision of government assistance reserved only for Indians, (3) enjoying the benefits of tribal affiliation, and (4) social recognition as an Indian through living on a reservation and participating in Indian social life. *Id.* The first factor, if satisfied, is sufficient to prove recognition, but it "is not the only way an individual can show she is an Indian under 18 U.S.C. § 1152." *United States v. Hebert*, 158 F.4th at 780 (quoting *Drewry*, 365 F.3d 957, 961 (10th Cir. 2004), *vacated on other grounds*, 543 U.S. 1103 (2005), *reinstated*, 133 F. App'x 543 (10th Cir. 2005)).

The United States' arguments concerning tribal recognition take two different approaches: First, it seems to argue that since Ms. Dunckel said that her family never did "powwows or anything like that" as a kid, that means Mr. King was not recognized as an Indian at any point in time. (Vol. 3A, at 573). But Ms. Dunckel's testimony does not express any knowledge about what Mr. King did or did not do later in life; the question to which she responded specifically asked if she or Mr. King "were raised to believe that [they] were Native American or Indian" (Vol.

3A, at 573), meaning her response is limited explicitly to the period in which she and Mr. King were children. Further, Ms. Dunckel's testimony demonstrates that she did not recall discussing with Mr. King potential tribal heritage or affiliation except when he asked her about enrolling with the Delaware Tribe. (Vol. 3A, at 572–73 ("Prior to that conversation, has the defendant ever talked to you about any tribal heritage that you may have?"; "I don't think so")). However, just as in *Hebert*, the United States failed to lay any kind of foundation for how often they spoke or what matters they otherwise spoke about. *Id.*, at 787 (noting that prosecution failed to ask defendant's stepdaughter "how often they talked, how long, or about what").

Moreover, Ms. Dunckel is six years older than Mr. King. (Vol. 3A, at 565), which indicates she may have less knowledge about Mr. King's later childhood (when she was 18 years old, Mr. King was only 12 years old). If Ms. Dunckel did have such information, the United States never sought to elicit it. At best, Ms. Dunckel's testimony indicates they did not attend powwows as children, but it reaches no further than that.

Furthermore, a lack of powwow attendance as a child is indicative of little. Two other circuits, the Eighth and Ninth, view the four factors

as having "declining" importance. *United States v. Stymiest*, 581 F.3d 759, 763 (8th Cir. 2009); *United States v. Cruz*, 554 F.3d 840, 846 (9th Cir. 2009). This would make the fourth factor the least useful in determining recognition, which makes sense given its malleability. Does everyone with Indian blood automatically qualify as an Indian just by living on a reservation? The entire eastern half of Oklahoma is Indian reservation land following the Supreme Court's decision in *McGirt v. Oklahoma*, 591 U.S. 894 (2020). Some powwows are open to the public; does attending one automatically make one an Indian so long as they have Indian ancestry? If the answer to each is "no," then the lack of such attendance (during childhood) is equally unhelpful.

Moreover, there are other avenues of recognition left completely unexplored by the United States in its presentation of the evidence. For example, the United States never sought to elicit testimony from either Ms. Dunckel or Ms. Guess as to whether their family ever received federal assistance when they were children (based upon being Indians) or if they went to Indian hospitals, clinics, or obtained other tribal

benefits as children.[3] *See Hebert*, 159 F.4th at 788 (noting that the prosecution never asked a key witness "whether or not [Mr. Hebert] had received government assistance reserved for Indians, enjoyed the benefits of tribal affiliation, or lived on a reservation and participated in Indian social life—all factors relating to Indian recognition apart from tribal enrollment."). The absence of the fourth factor for a limited period of time as a child says nothing about the two remaining factors, both of which other circuits consider to be more "important."

[3] The United States has taken the position that children receiving healthcare benefits based upon their association with a tribal member is indicative of recognition. (Govt.'s Resp. at 17–20). It would presumably state that, since Mr. King was adopted, he is not similarly situated to MV. However, if Mr. King has some degree of Indian blood and received healthcare benefits as a child, that would seem to constitute recognition under the United States' theory of the law. Even if it would not automatically confer recognition, the United States would then have to prove the basis of the healthcare was based upon something other than his own Indian blood and it could not rely upon assumptions or speculation to do so.

While Mr. King disagrees with the United States' analysis that would confer recognition upon a child who receives healthcare services based upon their association with a tribal member, what's good for the goose is good for the gander. In that case, the United States had an obligation to explore whether Mr. King received such benefits in the past, demonstrate that he did not, or demonstrate that they were provided based upon some exception permitting provision of healthcare to non-Indians.

3. Evidentiary Failures and Missed Opportunities

In *Hebert*, the panel was critical of the prosecution for failing to ask key questions. *See, e.g.*, 159 F.4th at 787 ("Having laid a thin foundation of how well Ms. Byers knew Mr. Hebert, the prosecution asked only three questions purportedly related to Indian status."; "The Government elicited only limited and superficial information from Ms. Byers about her relationship with Mr. Hebert"). The prosecution here also failed to ask key questions.

In *Hebert*, the prosecution had the defendant's stepdaughter available for testimony concerning Mr. Hebert's status. *Id.* In this case, the United States had two of Mr. King's older sisters and his significant other. It called all three of them to the stand and had the opportunity to question them about Mr. King's status. The limitations of the sisters' testimony is already set forth above; the United States never sought to ask them about tribal benefits or affiliations they may have had (or the absence of such benefits or affiliations).

As to Emily Anazagasty, she was Mr. King's significant other, the mother of his children, and lived with him beginning in February 2017. (Vol. 3A, at 491–92). The United States clearly recognized it had the

opportunity to ask Ms. Anazagasty about Mr. King's status and that should would plausibly have information on that matter. (Vol. 3A, at 535). Strangely, however, it limited its questioning of Ms. Anazagasty to whether Mr. King was enrolled, if she was aware of the lineage that provided the basis of the enrollment, the identity of Mr. King's biological father, and whether he was adopted by Clarence King. (Vol. 3A, at 535–36). At no point did the United States seek to elicit any information from Ms. Anazagasty regarding Mr. King's affiliation with a tribe dating back to 2017, such as receipt of benefits. It never asked Ms. Anazagasty if he had received healthcare services from an Indian medical center or tribal medical center. Just as in *Hebert*, the prosecution failed to ask key questions of witnesses even though it had the opportunity to do so.

4. Mr. King's Prior Litigation; Mr. King's Text Messages

Mr. King was originally charged in Oklahoma state court. He sought to dismiss those charges on the basis that he was an enrolled member of the Delaware Tribe. (Supp. Rec. Vol. 1, at 41–46). The Cherokee Nation subsequently charged him. However, he later asserted that the Cherokee Nation lacked authority over him because he was not a member of a federally-recognized tribe at the time of the charged conduct, he sought to dismiss those charges. (Supp. Rec. Vol. 1, at 47–50).[4] Mr. King subsequently withdrew his Oklahoma state court motion to dismiss on December 22, 2023, just ten days after filing the Cherokee Nation motion to dismiss. (Vol. 3A, at 608–09). These filings prove nothing except that Mr. King was not an enrolled member of a federally-recognized tribe at the time of the charged conduct. Yet there are other avenues to being an Indian, and the United States failed to explore those in any meaningful sense.

[4] Mr. King's motion in Cherokee Nation District Court is unambiguous in the premise underlying its claim for relief: "Adam King was not an enrolled member of any tribe during the time these crimes were alleged. This Court has no jurisdiction over a person who is not a member of a federally-recognized tribe." (Supp. Rec. Vol. 1, at 49). Nothing in this motion indicates Mr. King is lacking any of the recognition factors except enrollment.

The United States seems to believe this was an attempt to "manipulate" the system. (Govt.'s Resp. at 16). Whether that is the case is, frankly, irrelevant. The United States bears the burden to prove Mr. King's status. Whether he sought to play a "trump card" on the prosecution's case does not change the fact that the United States is obligated to adequately investigate the charges it brings and ensure it can present evidence proving every element of those charges beyond a reasonable doubt.

The United States further claims that Mr. King's text messages to Ms. Anazagasty amount to an admission that he was not an Indian. (Govt.'s Resp, at 16). But those text messages came after he was told that his absence of enrollment meant he could not be prosecuted by a tribal court.

Moreover, the element is not whether Mr. King *believed* he was an Indian or non-Indian, it is whether he *was* an Indian or non-Indian. And the evidence must prove he *was* a non-Indian beyond a reasonable doubt. It is worth noting that even lawyers who practice this area of law and know the standards often find it challenging to navigate and determine

who is, and is not, an Indian. Mr. King's own uninformed statements of his beliefs do not make him a non-Indian under the law.

5. Conclusion

"The evidence may permit a rational jury to make an educated guess, but not a finding 'with utmost certainty' that [Mr. King] was not an Indian." *Hebert*, 159 F.4th at 789 (quoting *Goldesberry*, 128 F.4th 1183, 1192 (10th Cir. 2025). "The test is not whether a rational jury could decide that guilt was more likely than not, but beyond a reasonable doubt." *Id.* at 789–90. (quoting *United States v. Rufai*, 732 F.3d 1175, 1188 (10th Cir. 2013). Here, the United States did not prove an essential element of its case because it failed to explore key potential avenues for recognition even though it plainly had the opportunity to do so. Thus, it failed to demonstrate, beyond a reasonable doubt, that Mr. King was not recognized as an Indian.

II. The evidence is insufficient to demonstrate that MV was recognized as an Indian at the time of the charged conduct.

The United States relies heavily on *Drewry*, 365 F.3d 957 for the premise that the provision of healthcare services constitutes recognition as an Indian. (Govt.'s Resp., at 18–19).

Mr. King acknowledges that *Drewry* is binding precedent following its reinstatement by the panel following remand from the Supreme Court. *See United States v. Clark*, 617 F.2d 180, 184 n.4 (9th Cir. 1980) (noting that, following prior opinion being vacated by Supreme Court, specific portion of original opinion was not reinstated on remand and was, therefore, not precedential). However, *Drewry* is nonetheless limited by the facts within it, and any decision of this panel must be bound by the evidence presented at trial.

In *Drewry*, there were numerous other factors at play that led the panel to hold the children were recognized as Indians. But the United States ties its argument to the premise that, in *Drewry*, the "the children received medical care from Indian Medical Services and their receipt of such care was not predicated on a determination that they fell within one of the two exceptions allowing for the provision of care to non-Indians," and that the children's receipt of medical care "was based on an

assumption that they were Indians eligible for such treatment." *Drewry*, 365 F.3d at 961.

Notably, the *Drewry* panel never explains what those two exceptions were, nor does it explain what it means when it says the medical care was based on an assumption the children were Indians eligible for medical care.

As Mr. King explained in his Opening Brief, there are numerous avenues by which non-biological children could receive those same services simply by virtue of their relationship with an enrolled member. (Opening Br. at 40). These are not "exceptions" allowing the provision of medical care to non-Indians, they are expansions of the eligibility of healthcare benefits to children associated with tribal members. Thus, medical care provided based upon a child's relationship to an enrolled member is not "government assistance reserved only for Indians" as required by the *Drewry* and *Hebert* factor concerning recognition. *Hebert*, 158 F.4th at 780; *Drewry*, 365 F.3d at 961.

The United States contends that "M.V. received medical care based on her personal eligibility as the biological child of an enrolled Cherokee member." (Govt.'s Resp. at 19). But the evidence here demonstrates that

MV did not receive medical care from her own affiliation with the Cherokee Nation. And the recognition factor states that the individual must have "enjoy[ed] the benefits of tribal affiliation." *Hebert*, 158 F.4th at 780.

Derrick Vann's testimony demonstrates that MV would not have received medical services based upon her own status or affiliation because "she was not a Cherokee Nation citizen," (Vol. 3A, at 404) and the Cherokee Nation confers healthcare benefits on citizens/enrolled members (Vol. 3A, at 391).

Kim Trammel explicitly testified that MV did not receive her healthcare through her own affiliation with the tribe, but through her mother's affiliation with the tribe. That does not indicate she had "personal eligibility"; it indicates she had vicarious eligibility. (Vol. 3A, at 411).

Bill Trammel's testimony indicated that, once she was enrolled, MV was "was eligible for that healthcare" through her own affiliation with the tribe rather than relying upon an intermediary. (Vol. 3A, at 430).

As asserted in Mr. King's Opening Brief, this distinction is not meaningless. (Opening Br. at 41). The Supreme Court rejects the notion that Indian status is biological (i.e., racial). *United States v. Antelope*, 430 U.S. 641, 645–46 (1977). Premising Indian status on descendancy, such as the United States encourages here through its argument that MV was recognized because she received tribal benefits through her mother's affiliation with the tribe, would reduce Indian status to a racial classification. The recognition factor is not framed as whether the individual enjoyed the benefits of *someone else's* tribal affiliation. As written, it requires that they enjoy the benefits of their own tribal affiliation. Interpretating the factor in this way is consistent with *Antelope*'s declaration that Indian status is not racial and that it is premised upon "member[ship] [with a] quasi-sovereign tribal entity." 430 U.S. at 645–46.

III. The District Court erred in declining to order an election of charges because the two pairs of charges prejudiced Mr. King's ability to present a defense.

The United States fails to meaningfully address the fundamental premise underlying Mr. King's claim of prejudice with respect to the District Court's refusal to order an election of charges. It also continues to emphasize Mr. King's prior state and tribal court filings as if those somehow justified failing to conduct an adequate investigation of his status.

First, as to Mr. King's state and tribal court filings, those were made based upon his *membership* in the Delaware Tribe. Once it was determined that he had not been a member of the tribe prior to the charged conduct, the Cherokee Nation tribal charges were dismissed and he withdrew his motion to dismiss the charges in Oklahoma state court because it was premised solely upon his enrollment status. (Government's Exhibit 41, Supp. Rec. Vol. 41–46; Government's Exhibit 42, Supp. Rec. Vol. 1, at 47–51; Defendant's Exhibit 20, Supp. Rec. Vol. 2, at 22; Vol. 3A, at 608–09). Those are not jurisdictional games; those are decisions made as facts are learned and the law is applied to them. Mr. King could not plausibly have claimed Indian status *based upon*

enrollment in the Delaware Tribe at trial in this case. So he could not have continued to make the same "gambit" in federal court.

Second, Mr. King has a right to present a defense to the charges against him. That includes challenging a specific element of the charges against him. While charges in the alternative may be perfectly normal in other cases, charges in the alternative that are both multiplicitous and specifically designed to prevent a defendant from raising a defense are uniquely prejudicial.

The Double Jeopardy Clause functions in two primary ways: to preclude courts from imposing more than one punishment for the same offense and to prevent prosecutors from attempting to secure punishment in more than one trial. *Brown v. Ohio*, 432 U.S. 161, 165 (1977). If Mr. King had been charged solely with being an Indian person and found not guilty because he presented evidence that he was a non-Indian, the United States could not have turned around and tried him a second time using that evidence against him to secure a conviction on the basis of him being a non-Indian.[5] Here, the United States accomplished this purpose

[5] If the charges are multiplicitous for purposes of punishment (thereby violating the protection against double jeopardy) separate trials on each charge would necessarily also have violated double jeopardy.

by simultaneously charging Mr. King as both an Indian and a non-Indian and proceeding to trial on both sets of charges. Thus, while the charges do not technically violate double jeopardy protections, their effect was the same as if he had faced consecutive trials.

Mr. King was prejudiced by the multiplicitous charges proceeding to trial precisely because he was precluded from presenting a defense to challenge an element of the offense that he could have presented if not facing multiplicitous charges. The United States does not meaningfully explain why this is not prejudicial except to assert that he had "no right" to make the same "gambit" he made in state and tribal court.[6]

[6] And Mr. King must again emphasize that the litigation in state and tribal court were premised solely upon his enrollment status with the Delaware Tribe and not on any of the other factors that are considered when determining if an individual is an Indian.

CONCLUSION

As to Issue One, Mr. King requests that this Court vacate his convictions, order that judgment of acquittal be entered as to Counts 1 and 2, and remand for further proceedings consistent with its ruling. Alternatively, as to Issue Two, Mr. King requests that this Court vacate his convictions and remand for a new trial and proceedings consistent with its ruling.

Respectfully submitted,

Julia L. O'Connell, Federal Public Defender

s/ Jared T. Guemmer
Jared T. Guemmer
Assistant Federal Public Defender
Mo. Bar. No. 69109
Office of the Federal Public Defender
Northern District of Oklahoma
1 West Third Street, Ste. 1225
Tulsa, OK 74104
(918) 571-7656 / Fax (918) 581-7630
Counsel for Defendant/Appellant

CERTIFICATE OF DIGITAL SUBMISSION AND PRIVACY REDACTION

I hereby certify that the digital version of this brief and attachment is an exact copy of any paper copy required to be submitted to the court. It has been scanned by the most recent version of Apex One Security Agent and according to the program is free of viruses. All required privacy redactions have been made.

s/ Jared T. Guemmer

CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMIT

1. This document complies with the type-volume limitations of Fed. R. App. P. 32 because, excluding the parts of the document exempted by Fed. R. App. P. 32(f), it contains 4421 words.

2. This document complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in proportionally spaced typeface using Microsoft Word in 14 point Century Schoolbook.

Date: January 9, 2026

s/ Jared T. Guemmer

CERTIFICATE OF SERVICE

I hereby certify that on the 9th day of January, 2026, I electronically filed this brief, with attachments, in the Tenth Circuit using the ECF System, which transmitted a Notice of Docket Activity to the following ECF registrant: Elliot Anderson, Assistant United States Attorney, counsel for Plaintiff/Appellee.

s/ Jared T. Guemmer