IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
LUBBOCK DIVISION

KEVIN N. BASS, Plaintiff,	§ §	
v.	§ §	Civil Action No. 5:25-cv-00244-H-BV
TEXAS TECH UNIVERSITY HEALTH SCIENCES CENTER, et al., Defendants.	§ § §	

PLAINTIFF'S RESPONSE AND BRIEF IN OPPOSITION TO DEFENDANTS' MOTION TO DISMISS (DOC. 27) AND IN SUPPORT OF PLAINTIFF'S MOTION FOR LEAVE TO FILE THIRD AMENDED COMPLAINT (DOC. 26)

Use of Generative Artificial Intelligence

Plaintiff used generative artificial intelligence to assist in drafting this brief. Plaintiff has reviewed this brief and is responsible for its content.

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Plaintiff Kevin N. Bass files this response pro se and respectfully requests that the Court construe his pleadings liberally. *Haines v. Kerner*, 404 U.S. 519, 520-21 (1972).

This Response proceeds in two parts. **Part I** demonstrates that the First Amended Complaint states plausible claims under all seven counts on its own merits, relying on the FAC's well-pleaded allegations, Defendants' twelve attached exhibits, and documents central to and referenced by the complaint.[1] **Part II** demonstrates that the Proposed Third Amended Complaint cures any arguable deficiency and leave to amend should be granted under Rule 15(a)(2). A separately filed Appendix presents the full evidentiary record supporting Part II.[2] Part II is presented in the alternative under Fed. R. Civ. P. 8(d)(2) and does not concede any deficiency in Part I. Plaintiff's primary position is that the FAC survives dismissal on its own merits.

Defendants present this as a routine disciplinary case. It is not. Plaintiff does not seek reinstatement or readmission. This case is about what Defendants did with the stigma they created: they branded Plaintiff as dangerous, disseminated that label through six channels—including emails to thirty-plus recipients (FAC ¶35A), campus-wide BOLO ("Be On the Look Out") postings (FAC ¶34), and a class-wide broadcast (FAC ¶34; see TAC ¶¶122, 177 for full enumeration)—and refused any process to clear his name, while that characterization follows him into every professional context. The institutional labels—unprofessional, unremediable, dangerous, unfit—leave Plaintiff worse off than if he had never attended medical school: too dangerous to complete a medical credential, a permanent mark in every credentialing inquiry. That harm requires correction.

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[1] Part I relies on (a) the FAC's well-pleaded allegations, (b) Defendants' twelve exhibits, and (c) documents "central to" and "referenced by" the complaint. *Lone Star Fund V (U.S.), L.P. v. Barclays Bank PLC*, 594 F.3d 383, 387 (5th Cir. 2010). These include Plaintiff's notes from post-hearing review of the hearing recording (FAC ¶¶27, 42, 42A); contemporaneous recordings (FAC ¶¶27A, 27B, 39); institutional communications (FAC ¶¶25-26, 33, 35A, 37); FERPA-indexed records (FAC ¶¶29, 36A-36B); and TTUHSC policies (FAC ¶¶28, 40). "FERPA Doc ####" = Plaintiff's identifier for FERPA inspection records.

[2] The Appendix is properly before the Court: documents "central to the claim and referenced by the complaint" are cognizable at Rule 12(b)(6), *Lone Star Fund V*, 594 F.3d at 387; Rule 12(d) permits conversion; and the Appendix supports the Rule 15(a)(2) futility analysis for Doc. 26. See Appendix introduction.

Three of the four consolidated complaints involve speech—social media posts, emails to faculty, and policy criticism. Defendants omit what followed: "dangerousness" warnings, emergency exclusion, a proceeding where the Hearing Officer acknowledged "First Amendment issues" and the Threat Assessment found no actual threat, and denial of name-clearing.

They also omit what they knew: that Plaintiff had a documented disability they refused to accommodate while punishing conduct as "professionalism" violations. Every item Defendants characterize as "unprofessional" is either protected speech, protected petitioning, or conduct that Defendants identified as disability-related yet refused to accommodate—no residual misconduct exists outside protected activity.

PART I: THE FIRST AMENDED COMPLAINT STATES PLAUSIBLE CLAIMS

I. THE RECORD BEFORE THE COURT

The FAC's allegations and Defendants' exhibits establish the following.[1]

Defendants' Exhibit 7 concludes Plaintiff's condition "is not indicative of... violence"—"a sensitive and gentle individual" (TTUHSC-0000068); no official identified an actual threat (FAC ¶¶31A-C; Defs' Ex. 8). Three of four consolidated complaints involve protected speech; the Hearing Officer acknowledged "First Amendment issues" (FAC ¶¶27, 32-33, 39). Plaintiff's fourteen-hour hearing barred contemporaneous objections, excluded defense witnesses including his neuropsychological evaluator, and reversed the promised structure morning-of (FAC ¶¶27, 27A, 29, 42A).

II. REQUESTED DISPOSITION

1. **DENY** Defendants' Motion to Dismiss (Doc. 27) on the merits;
2. Alternatively, **GRANT** Plaintiff's Motion for Leave (Doc. 26) and **DENY** Doc. 27 as moot;
3. At minimum, deny dismissal with prejudice.

The FAC states plausible claims on its own merits (Part I). If the Court identifies any deficiency, Part II demonstrates the TAC cures it and leave should be freely granted. *Foman v. Davis*, 371 U.S. 178, 182 (1962); *Stripling v. Jordan Prod. Co.*, 234 F.3d 863, 872 (5th Cir. 2000). In no event should dismissal be with prejudice where Plaintiff sought leave to amend before the MTD was filed.

III. LEGAL STANDARDS

A. Rule 12(b)(6)

A motion to dismiss tests plausibility—not proof. The Court must accept well-pleaded factual allegations as true and draw reasonable inferences in Plaintiff's favor. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). Courts must not weigh competing narratives or credit defendants' characterizations. *Tolan v. Cotton*, 572 U.S. 650, 660 (2014) (per curiam). Defendants' MTD asks this Court to accept their post-hoc "professionalism" narrative over well-pleaded allegations supported by Defendants' contemporaneous admissions. *Tolan* forbids that.[3]

B. Rule 15 Futility / Qualified Immunity

Futility applies the same 12(b)(6) standard. *Foman*, 371 U.S. at 182. Qualified immunity may be resolved on a motion to dismiss only when the complaint itself establishes the defense. *McClendon v. City of Columbia*, 305 F.3d 314, 323 (5th Cir. 2002) (en banc). The Fifth Circuit has held: "government retaliation against a private citizen for exercise of First Amendment rights cannot be objectively reasonable." *Keenan v. Tejeda*, 290 F.3d 252, 262 (5th Cir. 2002).

C. Defendants' Brief Departs from Its Own Cited Standard

Defendants repeatedly violate their own standard by attributing fabricated language to the Complaint and misrepresenting the FAC's allegations:

[3] Defendants claim allegations are "conclusory." But the FAC pleads specific dates, named actors, quoted statements, and described events—detailed factual narrative.

Fabricated citation: Footnote 5 attributes "crude personal communications" to the Complaint. The words "bodily," "crude," "diarrhea," and "vomit" appear zero times in any version of the Complaint. The characterization derives entirely from Defendants' own Exhibits 2 and 8.

Disability knowledge: "Plaintiff provides no evidence or claim that... anyone... had any knowledge about his alleged disability." Doc. 27 at 9. The FAC alleges constructive knowledge through MRFA evaluations, Erwin's assessment, and Wilson's recognition. FAC ¶25; TAC ¶¶39(a)-(e).

Publication: Plaintiff "does not plead the publication of a materially false statement by any specific Defendant." Doc. 27 at 14. The FAC names Forbes and identifies specific publications with dates and recipients. FAC ¶¶35A, 34.

Protected speech: Plaintiff "does not identify with any specificity what speech" triggered actions. Doc. 27 at 15-16. The FAC identifies the specific speech—the November 3, 2023 tweet—and describes its content. FAC ¶31A.

Retaliatory animus: "No specific allegations that any of the individuals had any retaliatory animus." Doc. 27 at 18. The FAC alleges Forbes's "check his Twitter" broadcast (FAC ¶33), Williams urging Plaintiff to curtail protected online speech (FAC ¶37), and Cobbs urging the same (FAC ¶36). Documents central to the FAC further establish Williams's "obviously protected speech" acknowledgment and a multi-year surveillance chain.[1]

Phantom citation: Doc. 27 at 17 cites "Exhibit 4, at pp. 3-17" for "unprofessional personal communications." Exhibit 4 is HSC OP 77.14—a two-page disability accommodations policy. Pages 3-17 do not exist.

Exhibit mislabeling: Footnote 2 identifies Exhibit 1 as a "Hearing Notice" dated "November 9, 2023." Exhibit 1 is captioned "Notice of Consolidation." The actual hearing notice is Exhibit 2, dated November 16.

Handbook year: Doc. 27 at 12 cites the "Student Handbook (2024-2025)." Exhibit 9's cover page reads "2023-2024."

Appendix Tab G catalogues twenty-nine such instances.[4]

IV. COUNT-BY-COUNT SURVIVAL

Every item Defendants characterize as "unprofessional" is protected speech, protected association, protected petitioning, or manufactured pretext. Even the patient boundary complaint—the one item not facially connected to speech or petitioning—was constructed through the same selective-reporting pattern: Wilson acknowledged ethical ambiguity in a contemporaneous conversation ("blurred lines," "I think you're okay"), then filed a one-sided report omitting her statements (FAC ¶36A). Defendants face a fundamental dilemma: if the "professionalism" charges are genuine, they describe conduct that Defendants' own records link to a documented disability they refused to accommodate (Counts 1-2, 6). If they are not genuine, they are pretext for retaliation against protected speech (Count 5). Either way, the "independent grounds" for dismissal fail—which is why Count 3's procedural violations matter, why Count 4's stigma publications matter, and why Count 7's name-clearing denial matters. Count 1 establishes *what was denied*; Count 3, *how the process was structured*; Count 5, *why it was done*; Count 4, *what was published*; Count 7, *what remains unremedied*; Counts 2 and 6, *that it continues*.

The record reveals a single pipeline from recognition to dismissal: Defendants recognized traits consistent with disability throughout 2023—Erwin: "probably on the spectrum of autism"; Wilson: "a personality thing"—initiated no accommodations or interactive process, generated complaints and evaluations through processes with documented defects at every level (evaluator coordination, self-investigation, zero student interviews), suppressed the one expert evaluation that would have provided clinical context, overrode a passing grade, then found Plaintiff "incapable of remediating" based on testimony from the very officials who recognized disability indicators for months without acting. The "independent grounds" are downstream products of Defendants' own failures. (See Appendix Tab K-14.)

[4] Defendants' Footnote 5 characterization satisfies neither criterion of their Footnote 1 standard.

Count 1: Section 504 (Rehabilitation Act)

Elements Met: Documented neurodevelopmental disability (FAC ¶25); medical student in good standing before retaliation; TTUHSC receives federal funds (FAC ¶14); no SDS determination before 14-hour hearing, accommodations excluded as "outside scope" (FAC ¶¶25-26). Section 504 requires "meaningful access to the benefit that the grantee offers." *Alexander v. Choate*, 469 U.S. 287, 301 (1985).

Deliberate Indifference: Damages under § 504 require deliberate indifference—not "bad faith or gross misjudgment." *A.J.T. v. Osseo Area Schools*, 605 U.S. 335 (2025) (unanimous). The FAC and Defendants' exhibits establish it: December 8 written notice to SDS (FAC ¶25); proceeded without accommodations December 11 (FAC ¶26); accommodations content excluded as "outside the Board's scope" (FAC ¶42). That is deliberate choice.

Board's Own Filing: Exhibit 8 states the Board "determined that Dr. Bass's diagnosis... was not a proper basis for retroactive leniency"—knowledge, consideration, and conscious rejection. Disability accommodation is not "leniency"—it is a legal obligation. *Pickett v. Texas Tech University Health Sciences Center*, 37 F.4th 1013, 1027 (5th Cir. 2022) (holding *this defendant* cannot invoke "legitimate, nondiscriminatory reasons" at the pleading stage).

Disability Knowledge Predated the Hearing: The Board's determination references Plaintiff's "pre-existing ADHD diagnosis"—an admission that TTUHSC knew of a qualifying disability before December 2023 and never initiated the interactive process. Exhibit 8 claimed disability was "not disclosed until the morning of the hearing"—a three-day misrepresentation, since Plaintiff's attorney notified TTUHSC December 8 (FAC ¶25). The institution's professionalism coach documented that coaching was "**utterly ineffective if the mental health issues are not resolved**" (coaching notes, central to FAC ¶¶25-26)—yet no referral to SDS was made.[5]

[5] [b] Defendants cite *Shurb v. Univ. of Texas Health Sci. Ctr.*, 63 F. Supp. 3d 700 (S.D. Tex. 2014), for the proposition that late accommodation requests excuse inaction. *Shurb* is distinguishable:

Expert Suppression and Board's Own Finding: Exhibit 7 concluded the neurodevelopmental condition "is not indicative of... violence"—yet the Hearing Officer excluded it as "outside scope" and redacted accommodation recommendations. (FAC ¶26.) Exhibit 8 then found Plaintiff "incapable of remediating"—using testimony from Erwin and Wilson, the very officials who recognized disability indicators for months without accommodating them. The Board relied on witnesses who knew Plaintiff "probably" had autism and that his behavior was "not malicious" and "a personality thing"—and treated their testimony as proof of irremediable deficiency. This is deliberate indifference.

Gibson's Same-Day Double Standard: Gibson allowed the University to add Dr. Erwin that morning—"I'm going to allow Dr. [Erwin] to be added as a witness"—while denying Plaintiff's neuropsychologist because "the university did not have time to identify [a] rebuttal witness." When the only disability expert is excluded while adverse witnesses are freely added, the suppression is intentional.

Structural Denial of Accommodation: OP 77.14 requires registration, documentation review ("up to two weeks"), an interactive meeting, and a Letter of Accommodation—impossible in three days. Defendants concede SDS is "the only office authorized" to grant accommodations and claim "no requirement" to provide them before completion (Doc. 27 at 9)—admitting categorical denial. § 504 rights are not suspended by internal processing timelines. Gibson's mid-hearing accommodations—water, snacks, breaks—were performative, not disability accommodations for a neurodevelopmental condition in a 14-hour adversarial proceeding.

Defendants' assertion that Plaintiff "had three years to request accommodations" (Doc. 27 at 9) inverts the interactive process. The Rehabilitation Act imposes a bilateral obligation: institutions with disability knowledge must engage. *EEOC v. Chevron Phillips Chem. Co.*, 570

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the plaintiff there had no prior indication of disability and no constructive knowledge existed. Here, TTUHSC personnel documented disability indicators for seven months without referring Plaintiff to SDS—the institution's own failure to initiate the interactive process created the timing problem it now cites as a defense.

F.3d 606, 621 (5th Cir. 2009). TTUHSC's professionalism coach wrote Plaintiff was "probably on the spectrum of autism" and never referred him to SDS. The interactive process was not "prevented" by Plaintiff—the institution that recognized the disability never initiated it.[4b] Doc. 27's assertion that Plaintiff "never again inquired" about the application (Doc. 27 at 7) is outside the pleadings and, in any event, immaterial: Plaintiff filed the application December 8; the institution proceeded to hearing December 11 without processing it; and Plaintiff was dismissed twelve business days later. Under the bilateral interactive-process obligation, the institution that received the application bore the duty to act—not the applicant to chase it.

Count 2: Title II (ADA) Prospective Relief

Plaintiff seeks only prospective relief under *Ex parte Young*, 209 U.S. 123 (1908), against officials with implementation authority. *McCarthy ex rel. Travis v. Hawkins*, 381 F.3d 407, 412-13 (5th Cir. 2004). Ongoing harm: each transcript request republishes stigmatizing status (FAC ¶34A); BOLO/exclusion directives remain unrescinded (FAC ¶¶34, 35); name-clearing hearing denied (FAC ¶60). The relief sought is surgical: (1) a constitutionally adequate name-clearing hearing; (2) cease publishing unsupported threat characterizations; (3) Title II-compliant accommodations in any future hearing.

Defendants argue that Plaintiff's withdrawal of his TRO request "independently defeats standing for prospective relief." Doc. 27 at 12. That conflates two distinct remedies. A preliminary injunction requires showing irreparable harm *before trial*. *Winter v. NRDC*, 555 U.S. 7, 20 (2008). Permanent injunctive relief requires only prevailing on the merits and showing an inadequate legal remedy. *eBay Inc. v. MercExchange, L.L.C.*, 547 U.S. 388, 391 (2006). Declining emergency pre-trial relief says nothing about permanent-relief standing. *Uzuegbunam v. Preczewski*, 141 S. Ct. 792, 802 (2021) (standing persists where plaintiff seeks nominal damages for completed violation). Standing is established by those ongoing injuries (see above), not by the procedural posture of preliminary relief. Nor is the relief "retrospective in substance." Doc. 27 at 12. Each requested remedy addresses those same ongoing conditions. Prospective

relief halting a continuing violation is the paradigmatic application of *Ex parte Young*—even when the violation originated in a past act. *Verizon Md., Inc. v. Pub. Serv. Comm'n of Md.*, 535 U.S. 635, 645 (2002).

Count 3: Procedural Due Process

Plaintiff alleges three independent constitutional deprivations, each sufficient: **(A)** notice that violated *Goss v. Lopez*, 419 U.S. 565, 579 (1975)—Forbes wrote "NO SPECIFICS WILL BE GIVEN" regarding incident-level notice, and four complaints were consolidated without consent; **(B)** a financially conflicted decisionmaker in violation of *Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868, 876 (2009), and *Cain v. White*, 937 F.3d 446, 453 (5th Cir. 2019)—Gibson's $393K+ in OCC contracts with the prosecuting institution created an unconstitutional probability of actual bias; and **(C)** a criminal trespass warning imposed with zero pre- or post-deprivation process, enforced for twelve months through September 2024.

Defendants rely on *Van Overdam v. Texas A&M Univ.*, 43 F.4th 522 (5th Cir. 2022), for the proposition that students need only "notice and an opportunity to be heard."[6] But *Van Overdam* actually helps Plaintiff—every safeguard the Fifth Circuit relied on to uphold Texas A&M's process was absent here:

Van Overdam (Upheld)	**Bass (Deficient)**
"advanced notice of [the] allegations"	No incident-level notice (FAC ¶¶27, 29)
"permitted to call witnesses"	All defense witnesses denied (FAC ¶42A)
"neutral panel"	Gibson—Littler Mendelson attorney—presided alone (FAC ¶¶28, 42A)
"represented by counsel throughout"	Counsel barred from questioning (FAC ¶26)
"[accuser's] description of allegations directly"	Matters consolidated without consent (FAC ¶¶27A, 29)
"unlimited number of questions"	Written questions subject to unilateral rejection (FAC ¶27)

Rice University, 67 F.4th 702 (5th Cir. 2023), holds formally adequate procedures violate due process when substantively one-sided. Notice (*Loudermill*, 470 U.S. at 546), reasonable

[6] Defendants cite this case as "43 F.4th 310." (Doc. 27 at 13.) The correct starting page is 522.

calculation (*Mullane*, 339 U.S. at 314), and impartiality (*Goldberg*, 397 U.S. at 266-71)—each was violated.

Systematic Exclusion from Grievance Investigations: Plaintiff filed seven formal mistreatment grievances. In six—all those filed against faculty and administrators—respondents were interviewed; Plaintiff—the complainant—was not. All six were consolidated into the December 11 hearing and denied. (FAC ¶37A.) The pattern is structural: respondents were heard, the complainant was not.

Biased Decisionmaker: Gibson identified himself as a "retained" Littler Mendelson attorney (Plaintiff's notes from post-hearing review of the hearing recording)—the language of a paid contractor, not an independent judicial officer. Under *Cleavinger v. Saxner*, 474 U.S. 193, 206 (1985), institutional adjudicators receive only qualified immunity—not absolute. Gibson's $393K+ in OCC contracts created an unconstitutional probability of actual bias. (See Appendix Tab D-1.) Gibson promised rules would be "applied equally both parties"—then systematically violated that promise. (See §V.A.) *Walsh v. Hodge*, 975 F.3d 475, 484-85 (5th Cir. 2020), requires meaningful credibility testing where "the sanction imposed would result in loss of employment and likely future opportunities." *See also Doe v. Purdue Univ.*, 928 F.3d 652, 663 (7th Cir. 2019) (Barrett, J.); *Doe v. Baum*, 903 F.3d 575, 581 (6th Cir. 2018) (Thapar, J.).

The "Threat" Was Grievance-Filing, Not Violence: Wilson testified that faculty fear was "**fear of retaliation**"—meaning Plaintiff would **file complaints about them**, not that he posed physical danger. (Plaintiff's notes from post-hearing review of the hearing recording.) When the "threat" justifying emergency procedures is that a student might exercise his right to petition, due process is violated at its foundation.

TTUHSC Violated Its Own Threat Assessment Protocol: The institution's written decision tree mandates: if no "Physical or Other Credible Evidence (e.g., Injuries, Witness Statements, Video Surveillance)" exists, the required outcome is "No Security Hold or Criminal Trespass is Issued." No injuries existed; no witness identified a specific person threatened;

Williams's Q5 answered "No" to terroristic threats. The protocol required neither security hold nor criminal trespass warning. TTUHSC issued both—enforced for twelve months—a direct violation of its own written procedure.[7]

Count 4: Stigma-Plus

The Fifth Circuit applies a seven-element stigma-plus test. *Rosenstein v. City of Dallas*, 876 F.2d 392 (5th Cir. 1989), *aff'd en banc*, 901 F.2d 61 (5th Cir. 1990); *Bellard v. Gautreaux*, 675 F.3d 454, 462 (5th Cir. 2012).

Element	FAC Evidence
Stigma	BOLO characterizing Plaintiff as dangerous (FAC ¶34)
Falsity	Tweet did not threaten violence (FAC ¶31A); Defs' Ex. 7: "not indicative of violence"; Ex. 8: no criminal charges
Publication	Forbes email to 30+ recipients (FAC ¶35A); BOLO campus-wide (FAC ¶34); class-wide broadcast (FAC ¶34); transcript notation (FAC ¶34A)
Plus	Emergency removal, CTW, dismissal, transcript notation (FAC ¶¶34A, 35)
Name-clearing denied	Oct 19, 2025 request; no hearing provided (FAC ¶60)

Hughes v. City of Garland, 204 F.3d 223, 226-28 (5th Cir. 2000), requires the stigmatizing charges be **false**—not that enrollment status be false. The falsity is the dangerousness characterization, contradicted by Exhibit 7 and by Williams's Interim Suspension Questionnaire, in which Williams checked "No" to Question 5: "Does this involve criminal felony charges related to weapons, drugs, aggravated assault, and/or terroristic threats?" Williams's determination—November 3-4, 2023—confirms this was not a terroristic threat case, yet the same-day BOLO stated "threatening statements" and "call 911 for life-or-death situation." The falsity is the contradiction between Defendants' internal assessment (no terroristic threat)

[7] See Appendix Tabs B, C, D, K-11 for the full procedural record including the Threat Assessment Questionnaire and protocol violation.

and external publication (life-or-death emergency). The Dec. 11 hearing was not a name-clearing proceeding—zero BOLO references throughout. Under *Bellard*, a name-clearing hearing must address the *specific* stigmatizing charge. (FAC ¶60A.)[8]

Real-World Impact: The CTW required police coordination for Plaintiff to access his child's school on TTU property (FAC ¶35), enforced twelve months through September 2024. An institution maintaining armed-police exclusion of a parent—while its Threat Assessment found "no threat"—has stigmatized beyond any safety justification. See Appendix Tab E.

Count 5: First Amendment Retaliation

Protected Activity: Plaintiff's public commentary on medical education addresses matters of public concern. *Connick v. Myers*, 461 U.S. 138, 145 (1983). Plaintiff's Newsweek opinion essay—"It's Time for the Scientific Community to Admit We Were Wrong About COVID and It Cost Lives" (Jan. 30, 2023)—separate from the November 3 tweet—was widely circulated within days of publication and shared by Robert F. Kennedy Jr., Jay Bhattacharya, Marty Makary, and Vinay Prasad, who, at the time of this filing, are HHS Secretary, NIH Director, FDA Commissioner, and CBER Director. TTUHSC catalogued this article in a compiled dossier—yet Defendants dismissed as "unprofessional" the same commentary the nation's senior health officials amplified. Plaintiff's TPIA requests, FERPA complaints, and grievances are protected petitioning. *Borough of Duryea v. Guarnieri*, 564 U.S. 379, 382 (2011). *Garcetti* does not apply—Plaintiff is a student, not an employee—and expressly reserved "speech related to scholarship or teaching." 547 U.S. at 425.

TTUHSC's Policies Protect Plaintiff's Speech: The Handbook recognizes "freedom of speech and expression as a fundamental right" (Part VII.A), provides that speech provisions "shall control" over the conduct code (Part VII.A), and carves expression out entirely (Part II.D.5.f). TTUS Reg. 07.04 §9 independently protects "speech or expression protected by the

[8] See Appendix Tab E for the full publication chain and eight officials' recorded threat denials.

First Amendment." Defendants charged Plaintiff under misconduct provisions that the Handbook says do not govern expression. See Appendix Tab H-1.

Prima Facie Case (*Keenan*, 290 F.3d at 258): (1) protected speech and petitioning (FAC ¶¶31A, 32); (2) emergency removal, CTW, BOLO, dismissal (FAC ¶¶34, 35); (3) causation: tweet Nov 3 → removal Nov 4 (24 hours); Williams "urged Plaintiff to curtail protected online speech" (FAC ¶37); Forbes broadcast: "check his Twitter" (FAC ¶33).

Defendants' Own Risk Assessment Proves Retaliatory Motive: TTUHSC's Interim Suspension Questionnaire, Question 8, asked: "Does this involve retaliatory harm, discrimination, or harassment?" Williams answered: "**Yes. Dr. Bass has filed numerous grievances against members of the TTUHSC faculty and staff in response to their assessments of his professional behavior and against members of the staff who reported his behavior.**" Wilson separately confirmed the faculty fear was "**fear of retaliation**"—meaning Plaintiff would file complaints, not that he posed physical danger (Plaintiff's notes from post-hearing review of the hearing recording). The same questionnaire answered "No" to terroristic threats (Q5) and "No" to sexual misconduct (Q4). Every "Yes" answer characterizes protected activity as threatening conduct—revealing the institution's actual motive. Three of the four consolidated complaints targeted communications with officials who were themselves grievance targets. *Borough of Duryea*, 564 U.S. at 382.

General Counsel Admission Establishes Causation: In the recorded November 2023 meeting referenced in FAC ¶27A, General Counsel Posey stated: "The outcome of the tweet and the perceived threat of that tweet is the reason he is not allowed on campus right now." Posey confirmed the removal was handled as an "interim suspension" under university policies, not under Chapter 51's withdrawal-of-consent procedures—deliberately bypassing the statutory framework governing speech-based threats.[9] When the university's lawyer identifies a tweet as

[9] The November 16, 2023 recording is "central to" and "referenced by" the FAC (¶27A), cognizable at 12(b)(6). *Lone Star Fund V*, 594 F.3d at 387. Posey's causation admission:

the cause and concedes it sidestepped its statutory framework, causation is established by binding admission. FRE 801(d)(2)(D). (See Appendix Tab K-2.)[10]

"True Threat" Fails: *Counterman*, 600 U.S. at 66, requires subjective awareness. No Defendant alleges Plaintiff intended a threat. Williams's own Questionnaire Q5 answered "No" to terroristic threats. Officials continued meeting Plaintiff in ordinary settings; no lockdown or emergency protocols were activated. (FAC ¶31B.) (See Appendix Tab B.)

No Substantial Disruption: *Mahanoy*, 594 U.S. 180 (2021), limits authority over off-campus speech. *Speech First, Inc. v. McCall*, No. 23-50633 (5th Cir. May 14, 2025), holds vague university policies chill student expression. Even under *Tinker*, no disruption occurred. Every "disruption" Defendants cite was self-created. *Forsyth County*, 505 U.S. 123, 134 (1992).

Defendants cite *Students for Justice in Palestine v. Abbott*, No. 1:24-cv-00523-RP (W.D. Tex. Oct. 28, 2024), applying *Tinker* to grant qualified immunity. That case involved coordinated campus protests—collective action reasonably forecast to disrupt operations. Here, Plaintiff posted a philosophical reflection about mortality on personal social media while off campus—no disruption followed. *SJP* reinforces the distinction: coordinated on-campus action may satisfy *Tinker*; an individual's off-campus philosophical post cannot.

The Professionalism Coach Admitted It Was About Speech: Erwin wrote: "They raise issues of constitutional free speech... He seems to be taking his First Amendment rights to make an idiot of himself." (FERPA Doc 0124.) Her private notes characterized protected speech as personality pathology: "intellectual narcissism," "paranoia" (FERPA Doc 0083). Before testifying, she pre-concluded every complaint "stem[med] from his resentment." An institutional document states the objective: "Outcome: moderating his behavior, especially his communications with others." (FERPA Doc 0132, last saved December 11, 2023.) Continued

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00:01:20–00:02:04; Chapter 51 acknowledgment: 00:03:41. The Student Conduct Administrator identifies "Ms. Posey" by name at 00:04:35.

[10] The TAC further details Posey's admissions with the full 3-year speech chain, 19 admissions, and Mt. Healthy analysis. See Appendix Tabs A, F.

enrollment was conditioned on speech modification—viewpoint discrimination embedded in the remediation mechanism. (See Appendix Tabs A-3, K-10.)

Chilling Effect: Five months before the tweet, Plaintiff locked his social media accounts and notified the institution. Nunez responded: "this meeting has **nothing to do with your social media**"—while CC'ing Williams and Forbes, who knew otherwise. Erwin's notes document the institution demanding Plaintiff cease social media, which Plaintiff recognized as "**a coercive request**." (See Appendix Tab K-1.)

Count 6: ADA/Section 504 Retaliation

Prima Facie Case: (1) accommodation requests and filing lawsuit (FAC ¶¶25, 65-66); (2) proceeding without accommodations, excluding accommodation evidence, terminating support (FAC ¶¶26, 42, 66); (3) Dec 8 notice → Dec 11 hearing without accommodations (3 days). 42 U.S.C. § 12203; *Burlington Northern*, 548 U.S. at 68.

Six-Link Causation Chain: (1) disability indicators disclosed throughout 2023 coaching; (2) formal disability notification Dec. 8; (3) Gibson excluded disability evidence Dec. 11; (4) Cobbs terminated Plaintiff's only support relationship upon learning of lawsuit—Erwin testified: "Dr. Cobbs informed me that Kevin has filed a legal complaint against TTUHSC and all further correspondence must go through [legal]" (TAC ¶205); (5) SDS never processed Dec. 8 application or Dec. 11 accommodation request; (6) Board rejected disability as "retroactive leniency." Plaintiff has a decade of ADA-protected activity (2014–2023). (See Appendix Tabs A-5, F.)

TTUHSC's Anti-Retaliation Regulation: TTUS Reg. 07.10 §5.e: retaliation against anyone who opposes a discriminatory practice or files a complaint "is strictly prohibited," including "adverse actions related to an individual's... education." Defendants' regulatory framework condemns the conduct alleged.

Defendants Do Not Challenge the Retaliation Elements. Defendants addressed Count 6 only on sovereign immunity grounds—not ADA retaliation elements or § 12203. (Doc. 27 at 19-20.) Post-filing debt escalation further confirms retaliatory motive. (See Appendix Tabs A-5, F, K-16.)

Count 7: Name-Clearing Hearing

The dangerousness stigma requires its own remedial process. The Dec. 11 hearing was not noticed or structured to address the BOLO's "threatening statements" characterization—zero BOLO references throughout. Under *Bellard v. Gautreaux*, 675 F.3d 454 (5th Cir. 2012), a name-clearing hearing must address the *specific* stigmatizing charge. A "professionalism" hearing cannot clear a name stigmatized with "call 911 for life-or-death situation." The CTW was enforced for twelve months (FAC ¶35; see Count 4). No process ever addressed the "threatening statements" characterization. Each transcript request republishes the stigmatizing status (FAC ¶34A)—a continuing violation. Plaintiff requested a dedicated name-clearing hearing October 19, 2025; Defendants refused. (FAC ¶60.)

V. QUALIFIED IMMUNITY CANNOT BE RESOLVED AT RULE 12

A. Rights Were Clearly Established

Defendants argue qualified immunity under *Babinski*, 79 F.4th 515, requiring "high factual specificity." The Supreme Court has rejected this—three times correcting the Fifth Circuit alone: *Hope v. Pelzer*, 536 U.S. 730, 741 (2002); *Taylor v. Riojas*, 592 U.S. 7 (2020) (per curiam) (summarily reversing); *Gonzalez v. Trevino*, 602 U.S. 653 (2024) (vacating). The claims involve core requirements—neutral decisionmaker, meaningful opportunity to be heard, freedom from retaliation—clearly established for decades.

Clearly established law. The Fifth Circuit has denied QI where officials retaliated against protected speech: *Kinney v. Weaver*, 367 F.3d 337 (5th Cir. 2004) (en banc); *Keenan*, 290

F.3d at 262 ("cannot be objectively reasonable"); *Bevill v. Wheeler*, 103 F.4th 363 (5th Cir. 2024); *Bailey v. Iles*, 87 F.4th 275 (5th Cir. 2023) (social media post not a "true threat"). *Walsh*, 975 F.3d at 487, requires meaningful credibility-testing where sanction and credibility are intertwined. *Accord Doe v. Baum*, 903 F.3d at 582; *Haidak*, 933 F.3d at 69.

General Counsel training defeats "reasonable belief." In August 2020, Associate Provost Justyna emailed defendant Cobbs: "After our training with General Counsel recently regarding free speech I know there is little we can do when students express opinions, even very unfortunate or out of the mainstream ones." (FERPA Doc 1432.) Cobbs confirmed she knew Plaintiff that same day. (FERPA Doc 1437.) Berk was separately mobilizing Williams and Schneider about the identical tweets. Officials who received legal training confirming their conduct violates constitutional rights cannot claim objectively reasonable belief.

Defendants' own cases support Plaintiff. *Woods v. Smith*, 60 F.3d 1161, 1166 (requiring "independent disciplinary grounds"—here, derived from conduct Defendants linked to a disability they refused to accommodate); *Keenan*, 290 F.3d at 262 (retaliation "cannot be objectively reasonable"); *Nieves v. Bartlett*, 587 U.S. 391 (recognizing exception where "objective evidence" demonstrates retaliatory motive). Defendants' most-cited authority, *Esfeller*, 391 F. App'x 337, is non-precedential.

Gibson fails the *Butz v. Economou*, 438 U.S. 478 (1978), functional test for absolute immunity: no safeguards (eliminated objections and cross-examination); no insulation ($393K+ contracts); no adversarial features (banned mechanisms making hearings judicial); no appellate correctability. *See Filarsky v. Delia*, 566 U.S. 377 (2012) (private attorneys retained by government receive only qualified immunity). Where adjudicators possess pecuniary interests, disqualification is required. *Gibson v. Berryhill*, 411 U.S. 564, 578-79 (1973); *Caperton*, 556 U.S. at 876. (See Appendix Tabs D-1, D-2.)

B. The FAC's Allegations Defeat QI

The FAC establishes Defendants acted with knowledge: Williams "urged Plaintiff to curtail protected online speech" (FAC ¶37); within a week, charges issued (FAC ¶33); Forbes directed recipients to "check his Twitter" (FAC ¶33); officials met Plaintiff without security measures (FAC ¶31B); the Board used only "perceived threat" qualifiers (FAC ¶31C); the Hearing Officer acknowledged "First Amendment issues" (FAC ¶¶27, 42); Exhibit 7 concluded "not indicative of violence."[11]

C. Board Policy Changes Demonstrate Feasibility and Undermine QI

In August 2023—while Plaintiff's disciplinary matter was pending—the Board approved emergency policy changes: (1) added "which loses legal protection" to the speech-based suspension standard; (2) removed the CIRT monitoring student "expressive activities"; (3) added "legal definition of harassment" requirement; (4) modified involuntary withdrawal to require "individualized assessments." Officials who modify policies to add constitutional safeguards cannot credibly claim ignorance of those rights. *Speech First, Inc. v. Fenves*, 979 F.3d 319, 330-38 (5th Cir. 2020). *See also Stewart v. TTUHSC*, No. 5:23-cv-00007-H (N.D. Tex. 2025) (same defendants, same judge, settled with AG-approved due process release signed by Rice-Spearman individually).[12]

D. Schultea Safety Net

Even if the Court finds the current pleading insufficient to resolve QI, the proper remedy is not dismissal with prejudice. Under *Schultea v. Wood*, 47 F.3d 1427, 1433-34 (5th Cir. 1995) (en banc), a Rule 7(a) reply should be ordered.

[11] See Appendix Tab A (19 contemporaneous admissions). Party admissions: FRE 801(d)(2). Plausibility, not admissibility, governs. *Tolan*, 572 U.S. at 660.
[12] *Stewart* cited under FRE 408(b) (consciousness of liability) and 201(b)(2) (judicial notice); policy changes under FRE 407(b) (feasibility).

VI. SOVEREIGN IMMUNITY / PROPER DEFENDANTS

Plaintiff does not dispute TTUHSC is a state arm. But sovereign immunity does not bar any count. (1) § 504 waiver for Count 1: 42 U.S.C. § 2000d-7(a)(1). (2) Title II abrogation for Counts 2 and 7: *United States v. Georgia*, 546 U.S. 151, 159 (2006) (unanimous). (3) § 1983 individual-capacity suits for Counts 3-5. This Court has already held TTUHSC waives sovereign immunity by removing to federal court. *Corbett v. TTUHSC*, No. 5:21-CV-281-H, Doc. 60 (N.D. Tex. 2023) (Hendrix, J.) (citing *Lapides*, 535 U.S. at 618-19).

Ex parte Young: The FAC alleges ongoing violations and seeks prospective relief. Each official-capacity Defendant has a direct enforcement connection. *Jackson v. Wright*, 82 F.4th 362, 369 (5th Cir. 2023) (only "a mere scintilla of enforcement" necessary).

Defendant	**Enforcement Connection**	**Relief Nexus**
Rice-Spearman	Executive authority; Handbook Part I.C (FAC ¶20A)	Cease threat characterization; authorize name-clearing
D'Agostino	Provost; final appellate authority (Handbook Part II.F.4.p-q); designated Kruse to decide appeal (FERPA Doc 1510) (FAC ¶20B)	Vacate appeal denial; authorize rehearing
McSween	Registrar; records custodian (OP 77.13 §4.d(1)(a)) (FAC ¶15)	Enjoin ongoing republication of stigmatizing transcript notation
Mancini	SDS Director; sole gatekeeper (OP 77.14 §3.b) (FAC ¶18)	Process accommodation requests
Cobbs	Student Affairs; distributed BOLO (FAC ¶16)	Rescind BOLO; cease exclusion directives
Myers	Financial Aid (OP 77.13 §4.d(3)(b)) (FAC ¶19)	Resolve financial aid ineligibility
Williams	Academic Affairs; signed emergency removal (FAC ¶17)	Rescind emergency removal/CTW

Each official controls the challenged communications, records, or accommodation processes. *Okpalobi*, *City of Austin*, and *Morris* involve officials with no enforcement role; here, each connection exceeds *Jackson*'s "mere scintilla."

Firewall Provisions: Neither the FAC nor the TAC seeks OP 77.13 / Tex. Gov't Code § 559.004 enforcement, retrospective transcript correction, or education record amendments. The McSween relief is prospective: each transcript request republishes the stigmatizing notation (FAC ¶34A), and the injunction sought would halt that ongoing dissemination—not retroactively alter existing records.

VII. ANTICIPATED DEFENSES

Defendants' anticipated arguments are each defeated by the record.

1. "Plaintiff's own conduct caused dismissal" — *Mt. Healthy* fails.

Under *Mt. Healthy*, 429 U.S. 274 (1977), once a plaintiff shows protected activity was a motivating factor, the burden shifts to defendants to prove they would have taken the same action regardless. Defendants cite three grounds: four complaints, six evaluations, and a prior SPPCC warning. Each fails.

The four complaints. Each is either constitutionally protected speech (Complaint 4 — the tweet; Williams acknowledged "no problems with your tweets" sixty-two days earlier; Posey conceded the process was "prompted by Social Media post"; Justyna identified the tweet as the sole "credible evidence"), affirmatively disputed by contemporaneous recordings (Complaints 2 and 3 — Wilson's own recorded words prove she acknowledged ambiguity before filing one-sided reports at Forbes's direction), or investigated without interviewing the accused by an official who characterized counter-grievance filing as "retaliation" (Complaint 1). Defendants consolidated all four into a single hearing; they cannot disaggregate them into independent justifications now. The complaint-by-complaint evidence is compiled at Appendix Tab K-9.

The six evaluations — institutional bootstrapping. TTUHSC's retaliatory campaign contaminated every evaluation it now cites. Disciplinary meetings caused Jensen's documented "absences"; what Eboh characterized as "spaced out" coincided with an active investigation by multiple administrators. Walker's most serious allegation was hearsay from nursing staff she could not verify. Nunez recharacterized patient advocacy as insubordination and volunteered it had "nothing to do with social media"—an unprompted denial revealing her actual concern. Vo's evaluation is strictly derivative of Complaint 1. Five of six originated from Pediatrics, where Forbes controlled the campus and Wilson—whose appointment as Assistant Vice Dean Forbes announced in the same email celebrating Plaintiff's dismissal—controlled the department. The temporal clustering is notable: Walker and Wilson filed on the same day; Eboh discussed Plaintiff's conduct with Wilson before filing; Jensen—a PGY-2 resident on a different team—described the same incident Nunez reported. When the institution creates the conditions it cites as grounds, those grounds are downstream of the protected conduct—not "independent." See Appendix Tab K-12.

The grievances and SPPCC warning. Grievance-filing is protected petitioning. *Borough of Duryea v. Guarnieri*, 564 U.S. 379, 382 (2011). The investigator (Bates) never interviewed Plaintiff for any investigation and characterized counter-grievance filing as "retaliation" under TTUS Reg 07.06. The Board's Threat Assessment (Question 8) identifies grievance-filing as the motivating "retaliatory harm." When an institution classifies the exercise of petition rights as evidence of dangerousness, then cites rejection of those petitions as "independent grounds," it reveals its actual motive—not safety, but suppression. The SPPCC warning pathologized protected speech — Erwin's coaching notes characterize protected commentary as "intellectual narcissism" and "paranoia" (FERPA Doc 0083). See Appendix Tab K-12 (evaluations), Tab K-13 (grievances).

Grade manipulation, comparator evidence, and institutional campaign. The manufactured nature of these "independent grounds" is confirmed by TTUHSC's own records, which state that Plaintiff "will receive a grade of **Fail** for his Pediatric clerkship **despite the**

numerical calculation resulting in a Pass." (TAC ¶172(c); App. Tab K-18.) When an institution overrides its own grading system to impose a failing grade, the result is not an academic basis for dismissal—it is evidence of predetermined outcome. The comparator evidence is equally telling: the institution's own Threat Assessment reviewer testified that a prior student misconduct case "was handled between school administrators and the student, and this one actually turned out in the student's favor. And no one knew." Plaintiff's case, by contrast, was "escalated into public domain." (TAC ¶191; App. Tab K-20.) Same institution, opposite treatment—the differentiating factor is speech. And the institutional campaign predated the tweet by eight months: in March 2023, Plaintiff's PhD advisor reported being "constantly told" by administration that he "should not whitewash" when discussing Plaintiff—a standing instruction to suppress favorable information. (TAC ¶110; App. Tab A-3.)

Even if some baseline concerns existed, partial taint defeats *Mt. Healthy* at the pleading stage. Whether any ground reflects untainted judgment is a factual question for discovery. *Tolan v. Cotton*, 572 U.S. 650, 660 (2014).

2-7. Remaining defenses:

Defense	Dispositive Answer	Detail
"Academic deference"	Ex. 8: "Non-Academic Dismissal" (3x); 87 disciplinary, 0 academic refs; counsel controlled 11 of 12 decision points from Feb 2023 through Dec 2023—including Berk routing speech to legal, General Counsel rewriting policies, Posey designing hearing structure, academics' plan abandoned morning-of, and Gibson (retained outside counsel) present during Board deliberations while Student Conduct Administrator excluded—leaving no academic judgment for this Court to defer to (TAC ¶¶53, 53A, 64, 75, 128A, 132, 138,	App. Tab H-5

	205; App. Tab H-5a); *Pickett v. TTUHSC* binding; *Gilani* distinguishable (unpublished, no speech/disability claims)	
"Out of context" / "Emergency"	Factual disputes for discovery. *Tolan*, 572 U.S. at 660	—
"Eleventh-hour accommodation"	Three days' notice. *A.J.T.*, 605 U.S. 335 (2025)	—
"No standing"	16 discrete acts within window; ongoing publication	App. Tab F-2
"Time-barred"	*Morgan*: each discrete act restarts clock; 16 within window	App. Tab F
"Failed to exhaust"	No exhaustion for §504/Title II; 6 grievances uniformly denied = futility	App. Tab F

PART I CONCLUSION

Contemporaneous admissions defeat Defendants on every count: disability discrimination (1), procedural deprivations exceeding *Van Overdam* (3), false dangerousness (4), speech retaliation with direct admissions (5), unchallenged disability retaliation (6), and unremedied stigma (7). Qualified immunity cannot be resolved at Rule 12. Sovereign immunity does not bar any count. The Motion should be **DENIED**.

PART II: THE TAC CURES ANY DEFICIENCY AND LEAVE TO AMEND SHOULD BE GRANTED

VIII. RULE 15 FRAMEWORK

Part II is presented in the alternative under Fed. R. Civ. P. 8(d)(2) and does not concede any deficiency in Part I. None of the five *Foman* factors applies: Doc. 26 preceded Doc. 27; no prior amendment denied; no scheduling order; and the TAC's 215 paragraphs demonstrate diligence. If leave is granted, Doc. 27 becomes moot.

IX. WHAT THE TAC ADDS

The TAC's 215 paragraphs cure every arguable deficiency. The complete evidentiary record is in the separately filed Appendix.

A. Disability (Counts 1-2). Seven-month constructive knowledge chain; Board's "not disclosed until morning" is a three-day misrepresentation; structural impossibility of OP 77.14 compliance in one business day; "independent grounds" constructed from the disability Defendants refused to accommodate. See Appendix Tabs A-5, K-14.

B. Due Process (Count 3). Gibson's $393K+ OCC contracts; 18-to-0 witness asymmetry (15 pre-listed, 3 added day-of); Williams drafted the appeal decision (FERPA Doc 949); Trotter promised grievances heard first for "most protection," then structure reversed morning-of hearing. See Appendix Tabs C, D, F-3.

C. First Amendment (Count 5). Nineteen admissions across a 3-year surveillance chain; Cobbs's August 2023 notes: "It is not a dispute that he has a right to say whatever he wishes. However as a matter of professionalism he does not have a right to disrupt the learning environment." (TAC ¶72; Ex. E-002.) See Appendix Tabs A-1 through A-3, F.

D. Stigma-Plus and Name-Clearing (Counts 4, 7). Eight officials denied threat; publication reached 200+ recipients; Forbes recall attempt; St. James and St. Matthew's rejected transfer applications. See Appendix Tabs E, K-7.

E. Mt. Healthy Defeat. Three of four complaints target protected activity; Plaintiff offered least restrictive alternatives twenty-five days before the hearing—Defendants refused all. (TAC ¶114.) Twenty-five hours of clinical audio contradict evaluations and pipeline-dependent scoring pattern defeats Mt. Healthy. See Appendix Tabs K-5, K-8, K-9.

F. ADA/504 Retaliation (Count 6). Six-link causation chain from disability disclosure through dismissal; Defendants did not challenge Count 6's elements or cite § 12203 in Doc. 27—the claim stands unchallenged. See Appendix Tabs A-5, F.

X. FUTILITY ANALYSIS

The TAC is not futile. Under *Foman*, 371 U.S. at 182, futility is the sole basis Defendants can invoke. Every element of every count is supported by Defendants' records. The Appendix maps the TAC's 215 paragraphs to specific, sourced allegations through Tabs A-K. Leave to amend should be granted.

CONCLUSION AND RELIEF REQUESTED

For the foregoing reasons, Plaintiff respectfully requests that the Court:

1. **DENY** Defendants' Motion to Dismiss (Doc. 27) on the merits;
2. Alternatively, **GRANT** Plaintiff's Motion for Leave (Doc. 26) and **DENY** Doc. 27 as moot;
3. At minimum, deny dismissal with prejudice and grant leave to amend.

The FAC survives on its own. The TAC eliminates any arguable doubt. If the Court identifies any gap, leave should be freely granted under *Foman*. Defendants' Motion should be denied.

CERTIFICATE OF COMPLIANCE

Pursuant to N.D. Tex. LR 7.2(c), this Response does not exceed 25 pages, exclusive of the table of contents, table of authorities, certificate of service, and this certificate. The separately filed Appendix supports Doc. 26's futility analysis under Rule 15(a)(2) and consists primarily of documentary evidence, tabulated records, and source references rather than legal argument.

Dated: February 14, 2026

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on February 14, 2026, I served this Response and Brief by the method of service authorized by the Court and applicable rules on counsel for Defendants of record (if any have appeared).

/s/ Kevin N. Bass

Kevin N. Bass