

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
NORTHERN DIVISION

DERENCE V. FIVEHOUSE,)
)
Plaintiff,) Case No.
) 2:25-CV-00041-M-RN
v.)
)
UNITED STATES DEPARTMENT OF)
DEFENSE, PETE HEGSETH, *in his*)
official capacity as Secretary)
of Defense, and DAVID J. SMITH,)
in his official capacity as)
Acting Director of the Defense)
Health Agency,)
)
Defendants.)

TUESDAY, MARCH 10, 2026
TRANSCRIPT OF SHOW CAUSE HEARING
BEFORE THE HONORABLE ROBERT T. NUMBERS, II
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

On Behalf of the Defendants:

W. Ellis Boyle, United States Attorney
Neal Fowler, Assistant United States Attorney
150 Fayetteville Street, Suite 2100
Raleigh, North Carolina 27601

Also Present:

Matthew Fesak, Assistant United States Attorney
Rudy E. Renfer

TAMMY JOHNSON, CVR-CM-M, RVR
Official Court Reporter
United States District Court
Raleigh, North Carolina
Stenomask with computer-aided transcription

INDEX

<u>TUESDAY, MARCH 10, 2026</u>	<u>PAGE</u>
Court's Opening Remarks	3
Statement by Mr. Fowler	5
Statement by Mr. Boyle	6
Court's Examination of Rudy E. Renfer	8
Court's Colloquy with Mr. Boyle	32
Court's Colloquy with Mr. Fesak	36
Court's Concluding Remarks	39
Court Reporter's Certificate	42

Tuesday, March 10, 2026 at 4:01 p.m.

P R O C E E D I N G S

THE COURT: Good afternoon, everyone.

MR. FOWLER: Good afternoon, Your Honor.

THE COURT: We are here in the United States District Court for the Eastern District of North Carolina, sitting in Raleigh for a show cause hearing in Fivehouse versus Department of Defense, case number 2:25-CV-41.

I'm United States Magistrate Judge Roger Numbers. It does not appear the plaintiff, Mr. Fivehouse, is here. He was excused from attending if he did not wish to be here, so I'd ask counsel for the defendants and any other interested individuals to identify themselves for the record, please.

MR. FOWLER: Neal Fowler for the United States, Your Honor. I've been assigned this case at this point in time.

MR. BOYLE: Good afternoon, Your Honor. Ellis Boyle, the United States Attorney.

THE COURT: All right. To provide some background, plaintiff, Derence V. Fivehouse, has brought a claim under the Administrative Procedure Act challenging certain decisions by the United States Department of Defense about healthcare benefits to veterans. As part of his case, Fivehouse asked the Court for permission to supplement the administrative record. Defendants, through their attorney, Assistant United States Attorney Rudy Renfer, opposed that request.

1 After the defendants filed their response, Fivehouse
2 drew the Court's attention to issues with that document. He
3 noted it included fabricated quotations and misrepresented the
4 holdings of cases. The Court ordered Renfer to respond to
5 Fivehouse's allegations. The Court also required the Clerk of
6 Court to serve a copy of the order on the United States
7 Attorney for the Eastern District of North Carolina, and the
8 First Assistant United States Attorney.

9 A few days later, a new Assistant United States
10 Attorney appeared in the case and sought an extension of time
11 to respond. The request noted that Renfer was out of the
12 country on leave without access to his government computer and
13 cell phone. The new AUSA responded that after reviewing the
14 relevant pleadings, she determined that AUSA Renfer needed to
15 review plaintiff's allegations and prepare defendants'
16 response. The Court granted the request for an extension.

17 In his response, Renfer claimed that he
18 inadvertently included incorrect citations to case law from
19 the Circuit. He maintained that the error was clerical in
20 nature, and resulted from the inadvertent filing of an
21 unfinalized draft document. He asked the Court to either
22 strike the fabricated quotations and misstatements, or accept
23 a substitute document that he claimed was the document
24 defendants intended to file as a response.

25 Finding this explanation suspect, the Court reviewed

Statement by Mr. Fowler

1 Renfer's filings from the past several months in this and
2 other cases to determine if these errors were an isolated
3 incident. Unfortunately, the Court found several other
4 instances where Renfer's filings contained fabrications. The
5 Court then entered an order requiring Renfer and the U.S.
6 Attorney's Office for the Eastern District of North Carolina
7 to appear and show cause why they should not be sanctioned for
8 the inclusion of false quotations and misrepresentations of
9 case holdings. That very unfortunate set of circumstances is
10 what brings us here today.

11 I have many questions for Mr. Renfer. Mr. Fowler,
12 I'll hear from you first, if you want to say anything, as you
13 are now the assigned attorney on this case.

14 MR. FOWLER: We appreciate your opportunity to
15 respond, Your Honor. The surreply, obviously, set out the
16 various summary details. Mr. Renfer can speak more fully
17 about the reasons for the errors made that have been
18 acknowledged, so I'll defer to him, Your Honor. We do note
19 that the briefs in the case, we believe, were solid briefs.
20 The position is solid. Obviously, there were errors made in
21 which we regret. I'll turn over the rest to Mr. Renfer, Your
22 Honor.

23 THE COURT: Well, they were solid except for the
24 fabricated quotations and misstatements.

25 MR. FOWLER: Absolutely, Your Honor. And certainly

Statement by Mr. Boyle

1 we're not trying to minimize that. What we're saying, there
2 were summary judgment motions. There's, I think, 102 filings
3 in this case. It was very fully litigated, and there were
4 certainly some big errors that were made, which we do not deny
5 in any way, Your Honor.

6 THE COURT: All right. And, Mr. Boyle, I also have
7 questions for you, which I plan to get to later, but if there
8 are any opening comments you'd like to make, I'm happy to hear
9 them.

10 MR. BOYLE: Your Honor, first, we would like to
11 apologize on behalf of the Eastern District of North Carolina
12 and U.S. Attorney's Office and the Department of Justice.
13 This is unacceptable, and there's no good excuse other than to
14 say we're sorry. We recognized that there was a problem when
15 the Court asked for the surreply back, I believe, on January
16 8th and/or the show cause back on January 8th. And when the
17 surreply was presented, it did not appear to be in order to
18 the leadership, and we thought that the explanation seemed
19 unusual.

20 So without going into great detail due to the
21 personnel issues, there is a process for the U.S. Attorney's
22 Office and DOJ where there's a division at main Justice called
23 the Office of Professional Responsibility that investigates,
24 sort of, if you will, the internal affairs for the Department
25 of Justice. And there's also the Department of Justice's

Statement by Mr. Boyle

1 lawyers, the General Counsel's Office. We sought guidance
2 from the General Counsel's Office and submitted this case to
3 the Office of Professional Responsibility. I think that was
4 around January 26th and February 2nd and 4th. So it's been
5 something that we've been in the process of looking at, even
6 before the Court's more recent order in March, on March 2nd.

7 When we got the order, the show cause order here, I
8 issued a memorandum, Your Honor, internally to the office, and
9 if the Court will allow me, I'll hand up a copy. And it's not
10 attached, but this memorandum had the Court's show cause order
11 attached, and it was sent out to all of the personnel in the
12 Eastern District of the North Carolina U.S. Attorney's Office.
13 May I approach, Your Honor?

14 THE COURT: You may. This is not a memorandum.

15 MR. BOYLE: A letter.

16 THE COURT: Okay.

17 MR. BOYLE: Sorry. It was styled as a letter. Oh,
18 I gave you the wrong letter. Sorry. Memo to all staff, here
19 it is. My bad, Your Honor. May I approach?

20 THE COURT: You may.

21 MR. BOYLE: Sorry about that.

22 THE COURT: Thank you.

23 (The Court reviews document.)

24 MR. BOYLE: Again, I'll allow the Court to inquire,
25 obviously, as it may desire, as to the specifics of the

1 explanations, but as you see in that memo, we take this very
2 seriously, and we intend to ensure that it is not replicated
3 ever again in this court by any of our lawyers.

4 THE COURT: Thank you. At this time, I'd like to
5 call Mr. Renfer to the witness stand, please.

6 RUDY E. RENFER,
7 was sworn at 4:10 p.m., and testified as follows:

8 EXAMINATION BY THE COURT:

9 THE COURT: Mr. Renfer, do you understand that you
10 are now under oath and if you answer any of my questions
11 falsely, you may be prosecuted for perjury or making a false
12 statement?

13 THE WITNESS: Yes, Your Honor.

14 THE COURT: You've had time now to review the
15 filings identified in the show case order and the authorities
16 cited in it. Before we go further, I want to give you another
17 opportunity to explain to the Court fully and candidly how
18 those false quotations and representations came to appear in
19 your filings.

20 THE WITNESS: Your Honor, with the Court's
21 permission, may I read a statement first?

22 THE COURT: You may.

23 THE WITNESS: Your Honor, thank you for allowing me
24 the opportunity to address the Court. The filings that
25 prompted these proceedings contained citations that were not

1 accurate and had not been verified before the document was
2 submitted. It was my duty and responsibility to ensure that
3 certain edits and verifications had already been completed
4 when they had not. I take full responsibility for what
5 happened.

6 Your Honor, I cannot emphasize enough I would never,
7 ever knowingly, deliberately, or intentionally submit any
8 filing to any Court that I knew contained erroneous citations
9 or quotations. I take too much pride in my work to engage in
10 that behavior. However, as the attorney who signed and filed
11 the document, it was my obligation to ensure that every
12 citation and quotation and representation to the Court was
13 accurate. I failed to complete that careful verification that
14 should occur before any filing is submitted, and that
15 responsibility rests with me.

16 I have practiced law for approximately 30 years,
17 including 17 years of serving as an Assistant United States
18 Attorney. Throughout my career, I have understood that my
19 duty of candor to the Court is fundamental. I also understand
20 that the Court must be able to rely completely on the accuracy
21 of representations made by counsel. My filing and explanation
22 did not meet that standard. I want the Court to know,
23 however, I did not knowingly make a false representation to
24 the Court. This incident falls short of the standard I've
25 tried to maintain throughout my career, and I regret that it

1 occurred.

2 After reflecting on this matter and my
3 responsibility for it, I've made the personal decision to
4 separate from the office I have been honored to serve for the
5 past 17 years. I do not offer that decision as a substitute
6 for the Court's authority, but only to acknowledge the
7 seriousness with which I view this matter and the consequences
8 I believe are appropriate for me personally.

9 Your Honor, I understand why the Court is concerned
10 about this matter, and why issues of candor and accuracy must
11 be addressed carefully. I regret that the Court has had to
12 devote any time and resources to this situation. I take
13 responsibility for my actions, and I apologize to the Court.

14 THE COURT: Thank you for that statement. As I
15 indicated, I want to give you another opportunity to explain
16 fully to the Court and candidly how those quotations and
17 representations came to appear in your filing.

18 THE WITNESS: Your Honor, I believe -- you're
19 talking about docket entry 86?

20 THE COURT: Well, Madam Clerk, can you activate the
21 screen for me, please? I've put together a PowerPoint
22 presentation that runs through these items, and we'll go over
23 them --

24 THE WITNESS: Okay.

25 THE COURT: -- because there are several documents.

1 There's the -- there were errors, as I outlined in the show
2 cause order, in the Response in Opposition to Plaintiff's
3 Motion for a Preliminary Injunction filed on October 20th,
4 2025, at docket entry 39; the Response in Opposition to
5 Plaintiff's Motion to Expand the Administrative Record filed
6 on December 9th, 2025, at docket entry 79; the Response to
7 Plaintiff's Motion to Supplement the Administrative Record
8 filed on December 23rd, 2025; and the Response in Opposition
9 to Plaintiff's Motion for Summary Judgment filed on December
10 30th, 2025, at docket entry 90.

11 Eighty-six, the one that brought us here, is the one
12 that has the most issues, but there are issues that pervade
13 these documents, and, candidly, I need a fuller explanation as
14 to how these ended up here because what I'm going to walk us
15 through, I think, is diametrically opposed to the statement
16 that this was not done intentionally, given what we will all
17 see in a few minutes.

18 So to begin with, in the Response in Opposition to
19 the Motion to Supplement the Administrative Record, you cite
20 the case of *Ohio Valley Environmental Coal. versus Aracoma*
21 *Coal Company*, 556 F. 3d 177 (4th Cir. 2009), and that's a case
22 involving a challenge to a permitting decision by the U.S.
23 Corps of Army Engineers under the Clean Water Act and the
24 National Environmental Policy Act. That is cited repeatedly.
25 Prior to citing that case, had you read that case?

1 THE WITNESS: No, Your Honor. What had -- would --

2 THE COURT: Well, I want to go through this --

3 THE WITNESS: Okay.

4 THE COURT: -- because you've indicated you -- you
5 know, you've set out your position, and I just need
6 explanations here, given all of that.

7 To begin with, on pages 2 and 3 of your response
8 brief, you said, "The Fourth Circuit has consistently applied
9 these principles, holding that APA review, quote, 'is limited
10 to the administrative record that was before the agency at the
11 time of its decision'," close quote, and you cite that for
12 page 201.

13 However, the actual language at 201 is close but
14 different. The quoted language would be, "Is typically
15 limited to the administrative record that was available to the
16 agency at the time of its decision."

17 So that is -- at best, you misquoted that language.
18 Do you have an explanation for that?

19 THE WITNESS: Your Honor, the entire docket entry 86
20 was something that arose at the end of December. I began
21 drafting a response December 18th or 19th, I believe. But as
22 counsel has indicated, there were numerous filings in that
23 case, and I tended to work on multiple filings at the same
24 time. I accidentally saved a motion to strike and wrote over
25 the response that I prepared, and so when I went to open it up

1 on December 22nd, I saw what had happened and I panicked, and
2 I used artificial intelligence to try to catch me back up to
3 where I was.

4 But at the same time, I was working on the Response
5 to Motion for Summary Judgment in that case simultaneously,
6 and I had intended to and I thought I had gone back and
7 reviewed docket entry 86 prior to filing. And when I closed
8 it out that day, I thought I had reviewed it, and I had not.
9 And it was a memory that I -- you know, as I sit here today,
10 Your Honor, I still thought I had gone through that ca- --
11 through that docket, and I did not.

12 And it was not something where I intended to file
13 something with the Court, with those language. It was just --
14 it was an error in the way I was editing, and I was probably
15 putting too much on myself at the same time. And, you know, I
16 don't want to say it slipped through the cracks because
17 that's -- that puts too -- that seems too nonchalant because
18 it's more serious than that, but it really was an error in the
19 editing process that I didn't really -- until I went back to
20 find out, you know, why did I have something from December
21 19th and December 22nd, there were two different documents
22 and, you know, that's what I recall.

23 THE COURT: So you're ascribing this to an error in
24 an editing process?

25 THE WITNESS: My editing process. I mean, it's -- I

1 thought I had edited it, and I had not.

2 THE COURT: And what would your editing process have
3 yielded?

4 THE WITNESS: It would have gone through to go --
5 because I understand there are limitations with artificial
6 intelligence. It would have gone through it to look at every
7 case and the language, and if it's not right, I change it
8 to -- you know, and look for cases similar.

9 THE COURT: And so you're saying this was because
10 you were in a hurry at the end of December and had overwritten
11 something?

12 THE WITNESS: I don't think it -- I had overwritten
13 it on December 19th. On December 22nd, when I tried to open
14 it up, it was a completely different document, a completely
15 different response in the case, so I had to redraft it. And
16 that's why I said I panicked and I shouldn't have, but I
17 utilized artificial intelligence to -- intelligence to try to
18 catch me up to where I was.

19 Artificial intelligence did all these quotes in all
20 the cases. You know, like I said, at the same time, I'm
21 working on the Response for Summary Judgment at the same time.
22 That took up most of my time. None of the language in -- and
23 I think I acknowledged in my response to you that -- that the
24 Court was right. They were wrong. And so, I mean, that
25 entire docket entry is because I screwed up in how I was

1 editing the document and probably putting too much on myself
2 and doing too much at the same time, that it -- I just screwed
3 up.

4 THE COURT: Well, I want to walk through these, and
5 you can tell me if the response is the same. This is page 5
6 of that same brief. You say, "In *Ohio Valley*, the Court
7 rejected claims that the record must be incomplete where
8 plaintiffs offered no evidence that specific materials were
9 omitted," and you again cite to page 201, but that premise
10 does not appear on page 201 or at any point in the *Ohio Valley*
11 decision. So how -- is your explanation the same?

12 THE WITNESS: Yes, Your Honor. All the -- all the
13 questions regarding docket entry 86 suffer from the same
14 problem.

15 THE COURT: Well, I will -- there are several. I
16 can walk through each one of them, or if you're just willing
17 to tell me all these shortcomings are the same, I'll skip to
18 the next document.

19 THE WITNESS: Yes, Your Honor. All the shortcomings
20 for docket entry 86 are the same.

21 THE COURT: There's the *Dow AgroSciences* cases,
22 which suffers from the same issue. There's the *Sierra Club*
23 case, which suffers from the same issues. But then there's
24 other filings. There's the Response in Opposition to the
25 Motion to Expand the Administrative Record, which was filed on

1 December 9th, 2025, at docket entry 69 -- or 79, and a Request
2 to Take Judicial Notice, and in that case, you cite -- in
3 those dockets you cite this case, *South Carolina Health &*
4 *Human Services Financial versus Sullivan*, 915 F. 2d 129.

5 And the language in these documents, it's a quote
6 supposedly from that case saying, quote, "Under this highly
7 deferential standard of review, a reviewing court has the
8 least latitude in finding grounds for reversal," close quote,
9 "of an agency decision and," quote, "may not substitute its
10 judgment for that of the agency," and you cite to page 130 of
11 *Sullivan*, yet that language does not appear in *Sullivan* at
12 all, and you filed this in on December 9th. So what is your
13 explanation for this?

14 THE WITNESS: Your Honor, in that situation, on page
15 130 of the *South Carolina* decision, there is the
16 administrative -- there's a standard regarding administrative
17 -- using the administrative record. I had adopted that
18 language and put the *South Carolina* cite with the correct page
19 number. But in my research, I found stronger language, which
20 is the language you find quoted there, and I found it in a
21 Fifth Circuit case of *Sabine River Authority versus U.S.*
22 *Department of Interior* at -- I believe it's 951 F. 2d 669 on
23 page 678.

24 And I had taken -- I took the stronger language and
25 cut and pasted it, but I screwed up and did not include the

1 citation for the *Sabine River Authority* case. It is an actual
2 case with the actual language, Your Honor, from the Fifth
3 Circuit, and I found that language to be stronger and more
4 persuasive. I just -- I did not include the citation for that
5 case when I moved it from one document to another.

6 And because, you know, it got filed once and given
7 the nature of these cases and some of these filings are so
8 similar to each other, that in another response, I just cut
9 and pasted the same language from the -- on docket entry 80.
10 I took the language from docket entry 79 regarding the *South*
11 *Carolina* case and, you know, just moved it from one response I
12 had to another response I was preparing, and I just did not
13 realize that I did not -- did not include the *Sabine River*
14 citation.

15 THE COURT: I, candidly, find that difficult to
16 believe. You're correct this comes from *Sabine River* out of
17 the Fifth Circuit, but I, candidly, find that to be a very
18 difficult explanation.

19 And then there are two other documents. There's
20 your Response in Opposition to the Motion for Preliminary
21 Injunction and Response in Opposition to the Motion for
22 Summary Judgment. You cite to 32 CFR 199.21(d) and you say,
23 "The implementing regulation" -- cite that regulation --
24 "contains," quote, "uniformity," close quote, "language
25 requiring pharmaceutical benefits to be," quote, "uniform in

1 the healthcare plans offered," close quote, but that's not
2 anywhere close to what 199.21(d) says.

3 THE WITNESS: Yes, Your Honor.

4 THE COURT: That provision establishes the Uniform
5 Formulary Beneficiary Advisory Panel.

6 THE WITNESS: Yes, Your Honor.

7 THE COURT: So how do you explain that discrepancy?

8 THE WITNESS: Your Honor, I either should have put
9 (a) or just left it blank, and the "uniform in the healthcare
10 plans offered," I was using that as kind of a quotation for
11 general concepts. I did not intend that to be -- to -- and I
12 did not intend for, you know, any reader of that document
13 to -- to infer that that is a direct quotation from that Code
14 of Federal Regulation.

15 It was something I was trying to -- as a writing
16 technique, I was trying to utilize to not make it so humdrum,
17 to try to liven it up a little bit, and to try to encapsulate
18 this general concept about uniform health -- healthcare
19 plan -- healthcare plans being offered.

20 THE COURT: Well, I could give you that with the
21 first time you put the word "uniformity" in quotes, but then
22 when you cite the entirety of a phrase, that's -- I don't
23 understand how that's a -- any sort of valid writing
24 technique, and it also doesn't explain why you cite to
25 subsection (d).

1 THE WITNESS: Your Honor, I do not know why I cited
2 to subsection (d). I don't. I mean, if I'm -- with all the
3 filings in this case, I don't recall each and every time I
4 filed a response or what responses I filed in this case. I
5 can only tell the Court I did the best I could, and I made
6 errors along the way. I did not intend to misrepresent
7 anything to this Court, Your Honor. You know, I -- obviously,
8 I tried some things and I shouldn't have tried them, and I --
9 it's costing me not only my reputation with the Court, but my
10 reputation with colleagues, my reputation with the office.

11 THE COURT: Explain to me this writing technique you
12 claim you are -- you're trying out here that resulted in this
13 erroneous quotation.

14 THE WITNESS: The uniform in healthcare plans
15 offered, I'm trying to make that kind of a concept, an over --
16 an over -- an overarching concept that if I can just rely on
17 it later, I can just bring up the same general concept that
18 this is what he's trying -- this is what Mr. Fivehouse is
19 trying to say, is that the uniformity thing -- or the
20 uniformity language requires uniform healthcare plans offered.
21 And so I was trying to -- this writing technique of
22 encapsulating a general concept in quotations, and,
23 apparently, I did not do it correctly.

24 Your Honor, may I say one thing about the *South*
25 *Carolina* case?

1 THE COURT: You may.

2 THE WITNESS: Well, I know the Court indicated that
3 it finds it hard to believe, but I read -- it was a mistake in
4 not moving over the citation from the *Sabine River*.

5 THE COURT: The challenge is when you submitted
6 things to the Court that are not fully forthright, it calls
7 into question every other statement you make. And an
8 alternative explanation is that you've gone back and tried to
9 find these things and you looked up that language, which very
10 easily leads you to the Fifth Circuit case, and that you're
11 trying to justify what you're doing here in the hopes of
12 salvaging something, and it becomes difficult, despite your
13 many years of service in this courtroom, to this court, before
14 me and other judges, to credit your response, given what
15 you've done here.

16 THE WITNESS: Your Honor, I don't know what to say.
17 I can only tell you what I know and try to speculate putting
18 things together about other things.

19 THE COURT: I want to go to your surreply. This is
20 the language in --

21 THE WITNESS: Yes, sir.

22 THE COURT: -- 199.21(d). It's a gigantic paragraph
23 establishing a panel that --

24 THE WITNESS: Yes, sir.

25 THE COURT: -- it has nothing to do with this.

1 THE WITNESS: Yes, sir.

2 THE COURT: You filed your surreply when this first
3 occurred and, well, I guess initially the motion for extension
4 of time was filed and that said you were out of the country on
5 leave. Where were you?

6 THE WITNESS: I was in Europe, Your Honor.

7 THE COURT: And when did you leave?

8 THE WITNESS: January 3rd.

9 THE COURT: And when did you return?

10 THE WITNESS: January 14th.

11 THE COURT: Now, to your surreply, on page -- the
12 main page of that document, you said, "In its prior Response
13 in Opposition" -- and you cite to docket entry 86 --
14 "defendants inadvertently included incorrect citations to case
15 law from this Circuit." You then say the error was clerical
16 in nature and resulted from the inadvertent filing of
17 unfinalized draft documents. What do you mean that it was
18 inadvertently included?

19 THE WITNESS: It was inadvertently included, Your
20 Honor, because when I discussed this with the Civil Chief at
21 the time, I asked her how to respond, and I told her the same
22 thing I told you, which is I could have sworn that I went
23 through the edits of this thing. I could have sworn I did
24 this. And, you know, I said, clearly, what got filed was the
25 unfinalized version, which I hadn't edited. And so that's

1 when I say -- when I guess I say it inadvertently included
2 incorrect citations. You know, I -- I just probably should
3 have said "incorrectly included citations." I didn't say it's
4 inadvertent. I -- you know, I say that in the sense that it
5 was accidental. It was not intentional. I mean, that's what
6 I mean by inadvertently. It was not intentional.

7 THE COURT: It sounds like you intentionally used AI
8 to generate a portion of your written materials, and you
9 intentionally filed it with the Court.

10 THE WITNESS: Your Honor, I did not intentionally
11 file a AI draft with the Court. I don't know what -- there --
12 other than the English language and the words that I have to
13 try to convince you of that, I don't know what I can do to
14 tell you that -- to convince you I'm being sincere on that.
15 I'm being sincere in all my responses, Your Honor.

16 THE COURT: Did someone else file it for you?

17 THE WITNESS: No.

18 THE COURT: You filed it?

19 THE WITNESS: Yes, Your Honor. I sent it to my
20 legal assistant to say, "Gabby, please file this." And I
21 discussed it with the Civil Chief at the time, and this was
22 the response that we thought would be appropriate.

23 THE COURT: Why did you -- why were you not fully
24 candid with the Court and say, "I used AI to generate this
25 pleading and I submitted it, and I neglected to properly edit

1 the document"? That's very different from what you've got
2 here.

3 THE WITNESS: Well, Your Honor --

4 THE COURT: That's a substantive response that is
5 fully candid with the Court in the vein that generally
6 attorneys are expected to deal with this Court and
7 particularly attorneys who -- who are privileged enough to
8 hold the position of Assistant United States Attorney and the
9 power and responsibility over the lives of the people of this
10 district that come along with that position.

11 THE WITNESS: Yes, Your Honor. When it came to
12 head, when I got to the office, the first thing I did was meet
13 with the Civil Chief and we talked about it, and this is --
14 this is the response that we thought would be appropriate.

15 THE COURT: So --

16 THE WITNESS: I mean, yes, Your Honor -- Your Honor,
17 I could have -- I could have included other things. I could
18 have reworded things. I could have not used the word
19 "inadvertently." But the issue is whether I tried to mislead
20 the Court. I did not try to mislead the Court. It was not an
21 intentional use of incorrect citations. It was an inadvertent
22 use of incorrect citations and quotations, because when I
23 tried to -- when I tried to edit -- you know, when I thought I
24 had edited it and closed it out, I was wrong. I had not. It
25 was just the bare draft, which I had asked the AI to assist me

1 to catch up.

2 And like I said, Your Honor, I clearly was doing too
3 much at the same time and it was more than, you know, I guess
4 my organizational skills. I shouldn't say that. I mean, I
5 had it organized. I just thought from a memory standpoint
6 that I had covered docket entry 86, and I had gone through and
7 edited it, and I was wrong.

8 THE COURT: So just so we're clear, this surreply
9 that you submitted was approved by the Chief of the Civil
10 Division of your office?

11 THE WITNESS: Yes, and it was drafted, Your Honor --
12 it was drafted after. There was -- I did not have a final
13 version that existed at the time of the filing. All I had was
14 the draft. And when I came back, that's when I drafted what I
15 intended to file, which was the final edited version.

16 THE COURT: You're going to have to walk me through
17 that because you filed a document.

18 THE WITNESS: Yes, Your Honor.

19 THE COURT: You said -- just said you told your
20 legal assistant to file a document.

21 THE WITNESS: Yes, Your Honor.

22 THE COURT: And then you're telling me that -- now
23 you're telling me that's a draft and then you -- when you came
24 back from your vacation, you then finalized the document. Do
25 you see where that's difficult to accept and understand? I

1 know what the words mean that you're saying. It just strains
2 credulity in terms of how the world works and how attorneys do
3 their job. When you're filing a document that's not a draft,
4 that's your final document.

5 THE WITNESS: Yes, Your Honor, but it was a draft.
6 It was not one that had been edited or finalized by me or
7 anybody else in the office. It was the draft.

8 THE COURT: You had to be aware at the time you did
9 this, of the issues that attorneys across the country and
10 state and federal court have had with generative AI producing
11 hallucinated cases.

12 THE WITNESS: Yes, Your Honor.

13 THE COURT: So why for any reason did you use AI to
14 draft pleadings that you would consider at any point
15 submitting to the Court?

16 THE WITNESS: Your Honor, it was poor judgment
17 because I felt panicked at the time because I'd lost the first
18 draft that I had done, and I was going to have it filed, and I
19 intended on filing it the next day, and I panicked and used AI
20 to catch up. You know, sitting back now, that, obviously, is
21 the worst decision I've ever used in my 30-year career.

22 THE COURT: And why did you not immediately check
23 those citations?

24 THE WITNESS: Because, Your Honor, I was working on
25 two things simultaneously, the Response to the Motion for

1 Summary Judgment, as well as this, and I went from one to the
2 other.

3 THE COURT: And given that you've practiced here for
4 so long and know the judges of this court, why did you not
5 simply ask for more time?

6 THE WITNESS: I don't know. I thought I could get
7 it done. I thought I could get it done.

8 THE COURT: Have you used generative AI to draft
9 filings in any other submissions in this case or other cases
10 in this court?

11 THE WITNESS: I've used AI to create outlines, but
12 not to create drafts, if that makes sense.

13 THE COURT: Explain that to me.

14 THE WITNESS: You would use AI to put in legal
15 topics and you could say, identify issues to respond to, and
16 what it would do, it'd create, you know -- you know, he says
17 this, he says this, he says this, he says this. And it
18 creates an outline of like one, two, three, four points that
19 you can use, or that I used to try to start facilitating the
20 drafting of the -- the drafting of the document.

21 THE COURT: Why are you using AI to do the basic
22 issue-spotting work that attorneys do every day? And, again,
23 you're not just a run-of-the-mill attorney. You're an
24 Assistant United States Attorney. You represent the millions
25 of people in this district. It's a privileged position that

1 many attorneys would give anything to have, and yet you're
2 taking these shortcuts on basic work. Why?

3 THE WITNESS: Your Honor, I saw it as a tool. Not a
4 tool. I mean, it's been, you know, all over the country about
5 the problems with AI and submissions to court. So I didn't --
6 you know, I didn't -- whenever I used AI, I was very aware of
7 that. And like I said, the thing with docket entry 86, that
8 was a screw-up of monumental proportions of me thinking I had
9 edited it and I hadn't.

10 And that's the first thing I told the Civil Chief,
11 Paige O'Hale. That's the first thing I said to her, was like,
12 "I could have sworn that I edited this. I could have sworn.
13 I don't know what happened." And I went back to find the
14 final draft. It wasn't there. It was just the initial draft
15 that got done on the 22nd, and that's when I realized,
16 obviously, I was wrong.

17 Your Honor, I did -- I gain nothing by lying to the
18 Court about -- I gain nothing by intentionally presenting
19 these cases to the Court. I gain nothing by doing that. The
20 only thing I do is run the risk of losing my job. These --
21 the -- you know, the law -- these were not -- this was not
22 summary judgment. These were not, you know, motions to
23 suppress or anything like that. These are relatively
24 straightforward motions on, you know, motions for -- to
25 extend -- supplement the administrative record or a response

1 to a motion to strike, and I just saw it as a tool to
2 efficiently get through the numerous filings that I had to
3 respond to that Mr. Fivehouse was filing in this case, and I
4 just used it as a tool to try to be a better worker for the
5 office and, clearly, it did not work out that way.

6 THE COURT: You're correct these are almost all very
7 basic issues of administrative law or evidence or other
8 things, and that makes it all the more outrageous that you
9 resorted to, you know, an AI tool and didn't, you know, verify
10 what it's telling you. This is not a cutting-edge issue.
11 None of these issues are cutting-edge issues that would have
12 required deep thought or creative thinking. It's all basic
13 things. It's just -- it doesn't -- I don't think it's helpful
14 for you. It's hurtful to your cause because it's so basic
15 that it makes it that much more egregious that there was not,
16 you know, the right care given to this, the regular course of
17 work done here, particularly in light of your admission that
18 you understand the risks inherent in AI.

19 Because we went through and we pulled your filings
20 from many other cases in this district, and there are very
21 easy-to-use tools available to anyone who has electronic
22 databases, you know, to analyze work product, compare
23 quotations and see if they're accurate, and we found numerous
24 other instances where there are minor mistakes and
25 misstatements and words in places they shouldn't be, and I

1 didn't include those in the show cause order because they
2 could just be lack of attention to detail. They are not so
3 egregious and so obvious as being AI, but, you know, your
4 pleadings in this and other cases are rife with misstatements
5 and errors, and that in and of itself is less than ideal.
6 But, you know, I have grave concerns that this is not limited
7 to these filings, but, again, that is not what's part of the
8 show cause order.

9 You know, I think a whole -- wholesale review of
10 these things indicates, at best, repeated sloppiness. And
11 anyone who is thinking about using AI tools in a similar way
12 should understand that certainly the federal courts have
13 available to them tools that can detect this in, you know,
14 commercially-available databases. This isn't special
15 judiciary software that's been created. It's things like
16 Westlaw and Lexis now have tools that can be used to almost
17 instantaneously check the accuracy of quotations, and so it's
18 something that courts should be able to catch very quickly and
19 deal with appropriately when it's found.

20 But part of my concern in my show cause order was
21 that the North Carolina Rules of Professional Conduct govern
22 the conduct of attorneys in this court, and Rule 3.3(a)(1)
23 provides that a lawyer shall not knowingly make a false
24 statement of material fact or law to a tribunal, or fail to
25 correct a false statement of material fact or law previously

1 made to the tribunal by the lawyer. And I'd like you to
2 explain your view as to why your conduct in this matter,
3 particularly with respect to the surreply, does not amount to
4 a violation of Rule 3.3(a)(1).

5 THE WITNESS: Your Honor, I don't see how I
6 knowingly misled the Court. I mean, I'm not trying to be
7 obtuse, but it would -- the filing of docket entry 86 was
8 unintentional. The filing of it was intentional, but the
9 filing of the draft, that was unintentional. That was not a
10 knowing misrepresentation to the Court.

11 As far as the surreply, the language that we used
12 was something that I discussed with the Civil Chief, and
13 that's something that we both agreed on. I was not in my
14 office trying to scheme a way, trying to figure out how I
15 could parse hairs and get away with it. That was something
16 that she and I discussed, and so I was basically following a
17 supervisor's recommendation.

18 THE COURT: North Carolina Rule of Professional
19 Conduct 8.4(c) explains that it is professional misconduct for
20 a lawyer to engage in conduct involving dishonesty, fraud,
21 deceit, or misrepresentation that reflects adversely on the
22 lawyer's fitness as a lawyer. I'd like you to explain to me
23 why you believe your conduct in this matter does not
24 constitute professional misconduct, as described in Rule
25 8.4(c).

1 THE WITNESS: Your Honor, none of my -- none of what
2 I did was intentional to mislead the Court, to fraud the Court
3 or -- there was no intent in any of my actions to mislead the
4 Court. I wasn't intending to be dishonest with the Court. I
5 wasn't intending to be -- to commit fraud on the Court. I
6 wasn't intending to be deceitful with the Court. I handled
7 the situation that arose, and I handled it poorly. If -- you
8 know, going back with the surreply, I did not realize that
9 that -- that language would cause the Court concern. I
10 certainly could have rephrased it, but I went with what my
11 supervisor and I had discussed.

12 THE COURT: And then North Carolina Rule of
13 Professional Conduct 8.4(d) explains it is professional
14 misconduct for a lawyer to engage in conduct that is
15 prejudicial to the administration of justice. Explain why
16 your conduct in this matter does not constitute professional
17 misconduct as described in Rule 8.4(d).

18 THE WITNESS: Your Honor, I would think docket entry
19 86 would be the only one that may qualify for that. That was
20 not an intentional violation, but, you know, was the conduct
21 of trying to work on a draft at the same time I'm working on a
22 response for summary judgment. The conduct of, you know,
23 saving over a file and then having to redraft it and using AI
24 because I panicked, that is all conduct I engaged in, which,
25 you know, arguably could be prejudicial, but there was no

1 intent on my part.

2 I had a duty to present -- to present the best
3 argument and the correct citations to the Court, and I failed
4 in that duty, and, you know, if the failure of that duty
5 constitutes conduct prejudicial to the administration of
6 justice, then, yeah, I -- I will -- you know, I'll have to
7 face that music, but it was nothing -- I was doing nothing
8 intentional. I had a duty, and I failed in my duty both to
9 this Court and to my off- -- to the office and, quite frankly,
10 to myself.

11 THE COURT: Have you ever been sanctioned by a state
12 or federal court before?

13 THE WITNESS: No, Your Honor.

14 THE COURT: Is there anything else you'd like the
15 Court to know about the issues raised in the show cause order
16 or the potential sanctions the Court may levy if it determines
17 that you've engaged in sanctionable conduct?

18 THE WITNESS: No, Your Honor. I just apologize once
19 again. I'm sorry.

20 THE COURT: Thank you.

21 (The witness exits the witness stand at 4:46 p.m.)

22 THE COURT: Mr. Boyle, any additional thoughts after
23 hearing Mr. Renfer's comments?

24 MR. BOYLE: Your Honor, I believe I share the
25 Court's concerns. When I received the copy of the surreply,

1 it did not make sense to me, the explanations. I believe this
2 is the first time that I've heard mention of the AI component.
3 It certainly doesn't appear to be in the surreply, based on my
4 reading of it. Obviously, the Court has a copy of the memo
5 that I submitted to the office, so I had my suspicions that
6 this was potentially an AI-focused problem.

7 Once again, on behalf of the office, I apologize. I
8 hope the Court recognizes how seriously we are taking this and
9 the actions that we've taken to reconfirm that we do not use
10 AI. It hallucinates, and that's not proper, that every lawyer
11 has an obligation to put their own eyes on an actual case
12 before anything is cited and quoted and submitted. That was
13 the policy. It's now been reinforced. We are all going to
14 take training on Rule 3 and Rule 8 by the end of this month.
15 And, again, when this came to my attention, we initiated the
16 somewhat cumbersome but appropriate internal steps in the
17 machinery of DOJ.

18 THE COURT: I appreciate there may be some laws or
19 regulations that limit what you can tell me about personnel
20 actions here. I believe you mentioned earlier that this has
21 been referred to the Office of Professional Responsibility.

22 MR. BOYLE: It has.

23 THE COURT: And has that office made any findings
24 that you are able to disclose to the Court?

25 MR. BOYLE: No, and it's my understanding from my

1 few months in this position that it takes a good, long while
2 to get stuff out of the system, so we have not and I couldn't
3 possibly give you an estimate of when that would occur, Your
4 Honor. I can tell you that there are ongoing investigated --
5 investigative processes occurring that I'm aware of.

6 THE COURT: And my understanding of the ins and outs
7 of DOJ personnel rules are not very thorough, but I -- does
8 the evaluation by OPR preclude you from taking any action as
9 the U.S. Attorney?

10 MR. BOYLE: I believe it does, Your Honor. I think
11 it does, Your Honor. I think it's something that -- I
12 shouldn't give you direct quotes from my privileged
13 communications, but generally, I believe it does, Your Honor.

14 THE COURT: The comments about Ms. O'Hale's
15 involvement as the Civil Chief are somewhat disturbing to me
16 because I don't believe that the surreply was fully candid
17 with the Court about what went on here. Obviously, we've
18 heard additional discussion as to how this all came to be. I
19 know she was at one time the Civil Chief. I don't believe
20 she's the Civil Chief anymore. I believe Mr. Fesak has taken
21 over that role. I didn't know if you had any comment about
22 that portion of what we heard here today.

23 MR. BOYLE: That didn't ring -- that did not ring a
24 bell to my recollection. I recall receiving a copy and
25 immediately voicing concerns, and I believe they were all

1 shared, which is why we undertook the internal processes. So
2 I don't believe Ms. O'Hale had any involvement or action to
3 promulgate this problem. It's an unusual and difficult thing
4 to have to deal with, not by way of excuse; I just don't think
5 any of us had ever confronted it before, so we were trying to
6 do the right thing in a timely basis, and it was awkward.

7 THE COURT: So are you telling me you do not believe
8 Mr. Renfer's explanation about Ms. O'Hale's role, or do you
9 believe that he was correct about her role?

10 MR. BOYLE: I am unaware of the version of events
11 that he said to the Court under oath, and I am unable to speak
12 for Ms. O'Hale, but my understanding is that she did
13 everything appropriate and proper.

14 THE COURT: Is she still employed by your office?

15 MR. BOYLE: She's not. She has taken another job.

16 THE COURT: Somewhere in North Carolina?

17 MR. BOYLE: Yes, Your Honor.

18 THE COURT: Because while I had hoped to resolve
19 this today, or at least resolve the evidentiary portion of it
20 today, it appears we may need to reconvene to hear from Ms.
21 O'Hale because, obviously, if what Mr. Renfer said is correct,
22 that's disturbing in one sense. If he -- what he said is
23 incorrect, that is immensely disturbing in a different
24 respect.

25 MR. BOYLE: Understood, Your Honor, and it's

1 obviously the Court's prerogative. I don't know that I have
2 the ability to compel her appearance, but I will leave that to
3 the Court if the Court deems it appropriate.

4 THE COURT: Well, anything else, Mr. Boyle, you'd
5 like to add on behalf of your office or the Department?

6 MR. BOYLE: Your Honor, could I allow Mr. Fesak to
7 say a few words?

8 THE COURT: You may.

9 MR. FESAK: Thank you, Your Honor. With the Court's
10 indulgence, the United States Attorney asked me to do a little
11 forensic research into kind of reconstructing what had
12 happened with the drafting and the filing in this -- in this
13 situation. I'm really limited to speaking to that, just to
14 the extent it might elucidate the Court's decision-making.

15 The United States Attorney's Office a few years ago
16 switched to a system called NetDocs, which is a cloud-based
17 document management system. So it allows limited ability to
18 look back at versions and whatnot. It doesn't show you what
19 changes are made within a version, but as versions change, you
20 can kind of see the timeline and compare what happened.

21 So just with respect to document 86, it was first
22 created on December 18th, 2025, at approximately 10:08 a.m.
23 That was a Thursday, prior to the Tuesday filing deadline. It
24 was closed and saved at approximately 2:52 p.m. the following
25 day, but the metadata indicate a total of about 25 minutes of

1 actual editing time on that document, which, to me, would
2 probably be indicative of maybe copying and pasting from
3 ChatGPT or some -- some source like that.

4 The document was next opened that following Monday
5 on December 22nd by Rudy as a new version, and that was edited
6 for a total of 275 minutes before it was saved -- last saved
7 by his paralegal, Gabby, and filed with the Court on December
8 23rd at approximately 11:13 a.m. We don't know exactly what
9 happened in those 275 minutes, but we did a red-line kind of
10 comparison of version one to version two, and there were some
11 stylistic-type changes, but nothing we could identify that --
12 that went to the -- either the citations or the quotations, so
13 I just wanted to the Court to be aware of that.

14 Separately, and I can't speak as any kind of an
15 expert, but I did attempt to, as I think the Court or the
16 Court's clerk did, attempt to go back and reconstruct were
17 there other cases or other bodies of law where these quotes
18 may have come from. I also found the *Sabine River* Fifth
19 Circuit case that the Court did. I just would note that there
20 were a lot of -- you know, these are very kind of generic, I
21 would almost say, self-evident kind of propositions of APA
22 law, right? I mean, none of it was, like, really all that
23 controversial despite the fact it was miscited.

24 Despite that fact, there were several instances
25 where putting in those direct quotes, searching the entire

1 body of, for example, the CFRs or all federal case law,
2 returned zero hits, right? So I do think, for example, with
3 the *South Carolina* -- it was just my opinion -- whichever one
4 it is, the *South Carolina Health & Human Services* versus the
5 *Sabine River*, I think it would -- it's very improbable that
6 Rudy could quote that precise a language and go back after the
7 fact and find a case that fit the parameters. In other words,
8 just based on my trying to recreate things, it was very clear
9 that -- well, to put -- to string together that many words in
10 a row in a quote and come up with a hit in a federal case
11 would be very unlikely. That's just my opinion. Do you have
12 any questions for me, Your Honor?

13 THE COURT: What do you mean -- what do you mean by
14 that last portion? I mean, are you saying that that supports
15 his argument or it contradicts his argument?

16 MR. FESAK: I think -- I think that supports -- in
17 my opinion, it supports what Rudy is saying, that he probably
18 -- I don't know what happened. I think it's unlikely that he
19 could manufacture a quote from whole cloth, and then just it
20 just happens to be that there is a case that contains that
21 exact same quote that pops up in our research, just based on
22 the fact that I put in other quotes that are misquoted from
23 his brief and quite often came up with absolutely nothing,
24 even though they're relatively uncontroversial quotes.

25 THE COURT: I don't think the issue is that

1 Mr. Renfer is inventing quotations out of whole cloth. I have
2 concerns he's repeatedly using AI tools to draft his
3 pleadings, and AI is coming up with quotations because if you
4 take the submission from Mr. Fivehouse that led to docket
5 entry 86 and put it in ChatGPT and say, "Draft reply brief to
6 be filed" or "a response brief to be filed in the Eastern
7 District of North Carolina," it cites a lot of the same cases.

8 MR. FESAK: I did not take that step, yes. And I
9 think that's probably -- I'm making a lot of assumptions, but
10 I suspect that these quotes were -- are actual case quotes,
11 and it was just misidentified as a -- as a -- the real case.
12 Thank you.

13 MR. BOYLE: That's all from us, Your Honor, unless
14 you have further questions.

15 THE COURT: Well, I certainly have questions. I
16 don't know if they're ever going to be answered to my
17 satisfaction, but and it is with, for very many reasons, with
18 tremendous disappointment I'm here today, you know, holding
19 this hearing with these attorneys. It truly is disappointing
20 to find myself in this position, you know, with any attorney,
21 but particularly an attorney who represents the people of this
22 district, who takes the oaths that the attorneys take to to be
23 in these positions, who have the power and the responsibility
24 that they have, to find ourselves here is just so
25 disappointing and, you know, the -- so I'm going to take this

1 matter under advisement. I will issue a written order.
2 Obviously, there are a wealth of opinions dealing with these
3 sort of issues, at least the AI use issues, some of which also
4 delve into lack of candor, and those will be my guide in terms
5 of resolving this. The Fifth Circuit certainly had an opinion
6 a few weeks ago that, while not exactly on all fours, bears a
7 lot of hallmarks to this. So Judge Elrod wrote that opinion.
8 So that is part of my thinking.

9 But I do appreciate, Mr. Boyle, the steps you are
10 taking to ensure that this does not occur again. I appreciate
11 the seriousness with which -- with which you treated it once
12 it came to your attention. Obviously, you know, these are the
13 sort of things that can only be addressed prospectively, and
14 so I am -- as disappointed as I am to be here, I'm heartened
15 that there are steps being taken to ensure this doesn't happen
16 again, and your leadership is a key part of making sure that
17 that -- you know, that we are not in this position again, and
18 I know you'll take this very seriously and do everything in
19 your power to make sure that this is not the first time of
20 several that this occurs, so I appreciate that effort from
21 your office and yourself.

22 All right. Well, as I said, I'll take this under
23 advisement. I'll ask the court reporter to have a transcript
24 prepared for the Court. And if I determine that we need to
25 reconvene for further proceedings, I will let everyone know,

Court's Concluding Remarks

1 but until we convene again, we'll be in recess.

2 (Proceeding concluded at 5:01 p.m.)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA

CERTIFICATE OF OFFICIAL REPORTER

I, Tammy Johnson, CVR-CM-M, RVR, Federal Official Court Reporter, in and for the United States District Court for the Eastern District of North Carolina, do hereby certify that pursuant to Section 753, Title 28, United States Code, that the foregoing is a true and correct transcript of the Stenomask-reported proceedings held in the above-entitled matter and that the transcript page format is in conformance with the regulations of the Judicial Conference of the United States.

Dated this 13th day of March, 2026.

/s/ Tammy Johnson
Tammy Johnson, CVR-CM-M, RVR
U.S. Official Court Reporter