

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

KALSHIEX LLC,)	
)	
PLAINTIFF,)	CASE NO. 2:25-cv-1165
)	
vs.)	
)	
MATTHEW T. SCHULER, ET AL.,)	
)	
DEFENDANTS.)	
_____)	

TRANSCRIPT OF LOCAL RULE 65.1 INFORMAL HEARING PROCEEDINGS
BEFORE THE HONORABLE SARAH D. MORRISON, CHIEF JUDGE
MONDAY, NOVEMBER 3, 2025; 10:00 A.M.
COLUMBUS, OHIO

- - -

Proceedings recorded by mechanical stenography, transcript
produced by computer.

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Monday Morning Session
November 3, 2025

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(The following proceeding was held in the conference room.)

THE COURT: Good morning, everyone. We have a roomful here.

We are here, of course, for the informal conference pursuant to Local Rule 65.1 in Kalshi LLC versus Schuler, et al., case 2:25-cv-1165.

Let's begin with appearances for the plaintiff.

MR. HAVEMANN: Will or William Havemann for Kalshi.

MR. STERLING: Joshua Sterling for Kalshi.

MR. JALANDONI: Matt Jalandoni for plaintiff.

MR. HUNTER: Michael Hunter for plaintiff, Your Honor.

THE COURT: You are for the defense side. So for the defendants?

MR. INGRAM: Chris Ingram on behalf of the Ohio Casino Control Commission and the commissioners.

THE COURT: Not the Attorney General. They are splitting that up?

MR. INGRAM: Correct, Your Honor.

MS. MUNDY: Kara Mundy on behalf of the commission and the commissioners.

MS. CLARK: Rachel Clark on behalf of the Ohio Attorney General.

1 MR. ASHOU: Neema Ashou on behalf of the Ohio
2 Attorney General.

3 THE COURT: And you all are with the Attorney
4 General's Office?

5 UNIDENTIFIED SPEAKER: Yes.

6 THE COURT: All right. Thank you.

7 MR. SCHMANSKY: Joseph Schmansky, Assistant
8 Attorney General.

9 THE COURT: All right. Who are you, ma'am?

10 MS. SHAVER: Maggie Shaver with the Attorney
11 General's Office.

12 MR. KITTEL: Mark Kittel with the Attorney
13 General's Office.

14 THE COURT: All right. The gang is all here.
15 Well, good morning on a Monday morning, everyone.

16 I have taken some time to read the complaint and
17 the motion. I know the defense -- the defendants are
18 filing their responses.

19 So will you be filing separate responses?

20 MR. SCHMANSKY: I think we're still working it
21 out, on whether it's going to be a combined --

22 (Reporter requests clarification.)

23 MR. SCHMANSKY: Joseph Schmansky. We're still
24 working it out.

25 THE COURT: I know. There's a line of people.

1 Since you got ten extra pages, I sure would like
2 you-all to combine your responses. I certainly don't want to
3 read two 35 pages of a lot -- what I know would be a lot of
4 overlapping arguments. So it would seem to make sense if
5 you-all could coordinate that.

6 MR. SCHMANSKY: Chris and I will do that.

7 THE COURT: Great. Thank you.

8 I guess, let me start, though, as I read the
9 materials, without having the benefit of what the defense --
10 the defendants are going to say, is Kalshi acknowledging
11 or denying or leaving up in the air whether or not these
12 sports events contracts are gambling?

13 MR. HAVEMANN: We are not acknowledging it, but
14 we don't think that it's relevant to the case.

15 THE COURT: Okay. That's what I -- that was how
16 I read your argument, was your argument, as I understand
17 it, is it doesn't matter whether they are gambling or not
18 because that entire field is preempted under the CEA?

19 MR. HAVEMANN: Yes. And it's the field of trading
20 on these designated contract markets, so it's not a field
21 of gambling entirely, but just as applied to entities like
22 our client, which are called DCMs under federal law.

23 THE COURT: Great. So your position is -- so who
24 would decide whether or not these are, in effect, gambling?

25 MR. HAVEMANN: The -- the way that it works --

1 I hope this is an answer to Your Honor's question, but
2 the way that it works is we certify contracts to the CFTC.

3 The CFTC has an opportunity to say yes or no. If
4 they don't say no, then they go -- they are permitted to be
5 traded, and they are traded subject to a whole series of
6 enforcement protocols in the CFTC.

7 So, to us, it's not the -- the question is not
8 whether a state thinks of these as gambling or not.

9 The question is: Has the CFTC determined to authorize
10 these contracts, authorize trading of these contracts?

11 And if so, they are subjected to the CFTC's exclusive
12 jurisdiction.

13 They may be traded on a federal exchange, and the
14 states may not interpose state regulatory regimes or
15 licensing regimes or anything of the like.

16 THE COURT: So -- so I will tell you: I found it
17 late last night, and I didn't -- wasn't able to get it to
18 print, so I have not read it, but I know there's the case
19 I think Kalshi filed against the CFTC in the D.C. Circuit
20 about the congressional elections, that case.

21 MR. HAVEMANN: That's right.

22 THE COURT: So tell me what the D.C. Circuit said
23 in that case 'cause I know -- 'cause that was one of the
24 issues in that case, was that the CFTC, as I understand it,
25 said, oh, these are -- these are gambling contracts, and so

1 you can't do them, so Kalshi sued CFTC.

2 Tell me what the D.C. Circuit said about that.

3 MR. HAVEMANN: Sure.

4 So Kalshi -- taking a step back, I think the D.C.
5 litigation illustrates how we think the regime should work.

6 So, the CFTC issued a decision that said there's a
7 rule within the Commodity Exchange Act that says that the
8 CFTC has authority to conduct public interest review of
9 certain categories of contracts, and if the CFTC determines
10 that a contract within one of those categories would be
11 contrary to public interest, they issue an order, and they
12 say we are not allowing the contract.

13 So that's what happened in the D.C. litigation.

14 Kalshi --

15 THE COURT: And that was the congressional contracts?

16 MR. HAVEMANN: Congressional control.

17 And Kalshi disagreed, said we don't think these are
18 gaming contracts, and we don't think these are contrary to
19 public interest.

20 The D.C. District Court agreed with us on the first
21 question and said these aren't gaming contracts. Gaming
22 requires a game. So you don't have authority to prohibit
23 these contracts. That was the ruling of the D.C. District
24 Court.

25 The CFTC appealed, was denied a stay pending appeal,

1 and then it withdrew its appeal.

2 So the D.C. District Court's decision on that
3 question is final, and the D.C. District Court said
4 these are not gaming contracts.

5 THE COURT: I found the case.

6 Like I said, I haven't read it, but that's my sense
7 of what the decision said.

8 What -- what discovery or evidence do you think is
9 necessary for my decision on a preliminary injunction?

10 MR. HAVEMANN: We don't think any discovery or
11 fact-finding is necessary on the preliminary injunction.

12 THE COURT: Is there some necessary for a merits
13 decision?

14 MR. HAVEMANN: I don't think so. I don't think so.
15 No.

16 THE COURT: What about combining the preliminary
17 injunction with a decision on the merits?

18 MR. HAVEMANN: We would be open to that.

19 THE COURT: Okay. All right.

20 Mr. Ingram, what about discovery? Let me start with
21 the end question for you.

22 What discovery information do you think is
23 necessary either for preliminary injunction or a decision
24 on the merits?

25 MR. INGRAM: Your Honor, I don't think there's

1 any discovery necessary for the preliminary injunction --

2 THE COURT: Okay.

3 MR. INGRAM: -- motion that's before the Court.

4 As far as to the overall merits, I would reserve the
5 right to -- to interpose discovery on the merits.

6 THE COURT: What type of discovery are you thinking?

7 MR. INGRAM: Well, Kalshi has taken positions in
8 their briefing that certain things are impossible, or
9 they can't do that, and I think they should be put to
10 their proof.

11 THE COURT: In terms of some of the irreparable
12 harm issues or -- like what?

13 MR. INGRAM: For example, taking the position
14 they can't geofence or that it's impossible to -- to
15 either enable these sports wagering contracts on their
16 platform and exclude certain Ohioans, for example.

17 Today, they are -- they are accepting high school
18 seniors can bet on sporting events on their platform, and
19 they do have certain obligations to know their customers,
20 which they -- they admit, and yet they are taking the
21 position that it's impossible to exclude those Ohioans
22 during the pendency of this -- of this matter.

23 THE COURT: But wouldn't you want that -- wouldn't
24 you want that discovery for the preliminary injunction,
25 to the extent that there's irreparable harm, if they can --

1 if they can easily geofence, that would go to the
2 irreparable harm issue. I'm not sure how that is an
3 issue for the merits.

4 MR. INGRAM: Point taken. I -- it would be --
5 I don't think the Court will even need to reach that issue
6 in this -- for this motion, first of all.

7 I think for -- for the merits, the other thing
8 certainly that we should be entitled to obtain are all
9 of the marketing materials and the statements that Kalshi
10 has made to Ohio consumers regarding this sports betting
11 platform -- because, on the one hand, they are claiming
12 that these are swaps, these are financial hedges,
13 financial instruments, in certain forums, and yet some
14 of their advertisements take a directly different position
15 and characterize it as sports betting.

16 THE COURT: Okay. But if they are -- but at
17 least what I understand their argument to be is ultimately
18 the CFTC may decide it is gambling.

19 But whether or not it's gambling, it's the CFTC that
20 regulates it, not the State of Ohio, so -- I'm not going
21 to put words in their mouth, but I -- I would almost say
22 we could -- couldn't we -- wouldn't we be under -- well,
23 let me ask then this instead of put words in your mouth.

24 So would you be comfortable with the notion that
25 let's assume they are gambling contracts -- I know you say

1 they are not, but, I mean, would there be an assumption
2 that they are gambling contracts -- let's just say that
3 for purpose of preliminary injunction only or maybe for
4 purposes of merits in this case, but for preliminary
5 injunction anyway, they are gambling contracts and --
6 because your position is, regardless, they are preempted,
7 right?

8 MR. HAVEMANN: Yes.

9 So I -- I would reserve the first part of Your
10 Honor's question that, yes, we would say they are not, but
11 even if they are, the key is, even if they are, they are
12 subject to the CFTC's discretion and determination and
13 jurisdiction and all of that, so yes.

14 THE COURT: Sure.

15 And, obviously, what -- the reason that I -- at least --
16 I have thrown out the idea "let's combine the preliminary
17 injunction with the merits," but at least to the extent
18 we're talking about discovery, certainly, for step one,
19 for sake of argument, they will concede to you that it's
20 gambling. Fair enough?

21 MR. HAVEMANN: For --

22 THE COURT: For sake of argument.

23 MR. HAVEMANN: For sake of argument.

24 THE COURT: I mean, this isn't a judicial
25 estoppel-type argument I'm trying to make as much as I just

1 want to make sure what are we arguing about, because I --
2 because if the defendants want discovery for the preliminary
3 injunction, you are going to get it, but I need to know what
4 it is that you would want.

5 So -- okay. So -- so you are thinking about
6 advertising. But you are even saying you don't need that
7 for the preliminary injunction. You are thinking about
8 discovery, about the feasibility of geofencing or other
9 steps that they could take to cut -- to fence around Ohio
10 residents, for lack of a better way to put it.

11 MR. INGRAM: Sure.

12 THE COURT: But you also say you don't really
13 think you really need that for the preliminary injunction?

14 MR. INGRAM: I -- honestly, Your Honor, I think
15 the -- the -- given the statute and the legislative history
16 at issue, I really don't think the Court is going to reach
17 any evidentiary issues --

18 THE COURT: Okay.

19 MR. INGRAM: -- for the preliminary injunction.

20 THE COURT: Okay. And so then maybe what you are
21 saying is you would want to talk with co-counsel and your
22 clients about discovery on merits?

23 MR. INGRAM: Correct, Your Honor.

24 THE COURT: Okay. Well, why don't we do this: Why
25 don't you do that after we're done today.

1 It just strikes me that we don't need to separate the
2 preliminary injunction and the merits because -- at least
3 as I read it -- a lot of these factual issues that you are
4 talking about really -- again, from my first read -- and
5 you guys have all been in this case a lot longer than I
6 have, but in the three days that I've been looking at the
7 materials -- would be relevant either to the defendants if
8 I say there is no preemption, or they'd be relevant to the
9 CFTC if there is preemption, but -- but I want you-all to
10 think about it a little bit more about how that -- how that
11 might play out.

12 I don't want to rush to the merits if you feel like
13 that there is more that needs to be done, but I guess my
14 initial read is I just don't know what that would be, and
15 I would like to hear from all of you-all about that.

16 Would any of the AG lawyers like to weigh in on
17 this or is Mr. Ingram speaking on behalf of all of you?

18 MR. SCHMANSKY: I think that Chris is accurately
19 conveying the AG's position.

20 I will point out that in the motion that they do
21 mention that the geofencing would take -- I think the quote
22 was -- "many months and tens of millions of dollars."

23 We know that geofencing can be done, not just on
24 behalf of the AG's office, but the commission. It can be
25 done for a lot less time and -- time and money.

1 THE COURT: Okay. Well, I mean, that's certainly
2 one of the -- the -- to me, potential evidentiary issues
3 because it is raised on the irreparable harm piece.

4 So who are -- I mean, your materials reference
5 three categories, and I -- I -- I'm trying to find it this
6 morning, I didn't write it down -- of kind of your potential
7 customers on these events contracts -- institutions,
8 individuals, and there was a third category.

9 Can I go on your site or go to Kalshi and enter into
10 a sports events contract?

11 MR. HAVEMANN: Yes.

12 THE COURT: Do I have to get any kind of
13 certification or license or what -- any preapproval to
14 make such a contract on your site from you?

15 MR. HAVEMANN: My understanding is you have to
16 create an account first.

17 The account has to be verified and approved by Kalshi.
18 And then once it's verified and approved, and they recognize
19 you to be who you say you are, and above the age of 18 and all
20 the rest, then you don't need any other license or --

21 THE COURT: So I do have to be over 18?

22 MR. HAVEMANN: Yeah. 18 or over.

23 THE COURT: Do you know what I'm referring to?
24 It's like individuals, institutions, and I thought there
25 was a third category.

1 MR. HAVEMANN: I'm not sure.

2 MR. STERLING: Yes, Your Honor. It's financial
3 intermediaries. So brokers for individuals or institutions
4 could also participate.

5 THE COURT: Okay. Thank you. Yeah, I knew there
6 was a third and I --

7 MR. STERLING: Yes, ma'am.

8 THE COURT: Does Ohio regulate non-sports gambling?
9 And like, specifically, Kalshi talks in their briefs
10 about, like, the earthquake -- whether or not there will be
11 an earthquake in L.A. by the end of the year, or the
12 congressional outcomes.

13 Are those types of bettings that Ohio regulates?

14 MR. INGRAM: On behalf of the Casino Control
15 Commission, my -- I'm only aware of sporting events.

16 As far as anything beyond that, I would have to do
17 some research.

18 MR. SCHMANSKY: It would probably -- it wouldn't
19 be under the enforcement powers of the Casino Control
20 Commission.

21 It would more likely be under basic gambling criminal
22 laws that would be enforced through prosecutor's offices and
23 police departments.

24 MR. JALANDONI: 2915.

25 MR. SCHMANSKY: Correct.

1 THE COURT: Okay. So what does that mean? Tell me,
2 like --

3 MR. SCHMANSKY: Non-sporting events would likely
4 fall under the definitions of bets or wagers under the Ohio
5 Criminal Code and because -- the AG's office, we don't have
6 primary criminal penalties, not in this area. There's a
7 few -- few areas, like health care fraud.

8 And the Casino Control Commission -- while it has
9 investigative authority -- it does not have prosecutorial
10 authority.

11 So in order to pursue the criminal violation for
12 betting on non-sporting events, you would likely have to
13 go through the myriad local law enforcement and prosecutors'
14 offices throughout Ohio in order to enforce it -- as a
15 criminal violation.

16 THE COURT: Okay. So can you legally bet on,
17 like, the -- I like the earthquake example, on an earthquake
18 in L.A. before the end of year in Ohio?

19 MR. SCHMANSKY: We're going to say no.

20 THE COURT: But the fact that Kalshi allows Ohio
21 residents to do a contract on such an event does not cause
22 the defendants any heartburn or trouble?

23 It's not an issue that you have challenged that they do?

24 MR. SCHMANSKY: Not -- not for this litigation, no.

25 Was it a concern to the Attorney General? Yes, but

1 this litigation obviously just deals with the sports event
2 futures contracts.

3 THE COURT: Right. And there's no parallel track,
4 though, where you are also saying to Kalshi, "Hey, while we
5 are fighting over sports betting here in this category, we're
6 going to talk about the other types of non-sports events
7 contracts that you are doing"?

8 MR. SCHMANSKY: Correct. That has not happened.

9 THE COURT: Is that anticipated?

10 MR. SCHMANSKY: Not that I'm aware of. No.

11 So far, everything has been -- the discussion has
12 been confined to this sports betting realm.

13 THE COURT: Okay. And how long have you been
14 doing the -- how long has Kalshi been doing the -- I'll
15 say the non-sports?

16 MR. HAVEMANN: Since 2020.

17 THE COURT: Did you have another thought?

18 MS. MUNDY: Your Honor, I was just going to say
19 I think that the -- the history of how this came to the
20 Casino Control Commission is informative.

21 I mean, one of the issues is that Ohio has legalized
22 gambling in certain contexts.

23 And so, although the AG's office, I'm sure, is
24 looking into a myriad of events contracts, not just sports
25 betting, it was particularly concerning to the Ohio Casino

1 Control Commission because there are companies that are
2 offering sports betting under Ohio's regime.

3 THE COURT: That are permitted as a permitting
4 process?

5 MS. MUNDY: Licensing, licensing.

6 THE COURT: Licensing. Okay. And when did Ohio
7 start licensing sports betting?

8 MR. JALANDONI: '22.

9 MR. SCHMANSKY: The law went into effect in spring
10 of 2023.

11 THE COURT: 2023.

12 MR. SCHMANSKY: So it was back in the year that
13 they put the licensing paradigm and got it up running.

14 THE COURT: Okay. Okay.

15 MR. HAVEMANN: And we just -- in case it is useful
16 to Your Honor, there are many states, I think including Ohio,
17 that define prohibited gambling to be placing any amount of
18 money on a future contingent event.

19 THE COURT: Okay.

20 MR. HAVEMANN: And so one of the reasons that we
21 so strongly think that this area is preempted is all event
22 contracts could be understood to be gambling.

23 States could regulate them if they were gambling.
24 Maybe all futures contracts could be gambling because, of
25 course, a futures contract is -- in some sense is putting

1 some money on a future contingent event, like would the
2 price of gold go up and down or the like, and so we think
3 that that --

4 THE COURT: Although, there's some distinction,
5 and I certainly don't want to get us derailed from the key
6 issue -- which can -- which I know can quickly be coming
7 because this is such -- a fraught area isn't right, but
8 there's certainly a lot of nuance and -- I mean, to me, the
9 futures are very different, though, because there you have --
10 we have a hard asset at some point that is the foundation.

11 So if we're talking about gold or we're talking about
12 corn or water, I mean, there -- at some point, in the more
13 typical futures contract, there's an asset that what we're
14 gambling -- gambling -- I used the word "gambling"
15 purposefully -- on is price fluctuations, and -- but we
16 always have the same asset.

17 What you are talking about on these events contracts,
18 as I understand, is there is no asset.

19 There is -- there is some kind of future event, events
20 contract, that could be either somewhat in control of humans,
21 congressional races, sporting events, or completely out
22 of the control of humans but unforeseeable. Earthquakes,
23 right?

24 I mean, is that a true -- real distinction or is that
25 something that I have made up in my mind?

1 MR. HAVEMANN: I think it is certainly the intuition
2 that I came to this case with --

3 THE COURT: Okay.

4 MR. INGRAM: But the CEA combines commodities in
5 a few ways.

6 One is sort like a hard commodity, like corn or gold,
7 but there is a whole category of excluded commodities, which
8 are intangible commodities, and they include events, so
9 it's right -- it's events, but it's other things too.

10 It's interest rates going up or down, not tangible
11 things, and so --

12 THE COURT: Right. Yeah. They do have some
13 non-tangible things, but -- okay --

14 MR. HAVEMANN: And so events are right here in
15 Congress' definition of commodity --

16 THE COURT: Okay.

17 MR. HAVEMANN: -- along with corn and gold.

18 THE COURT: All right. Those are all the questions
19 I had. So we have the briefing schedule already.

20 You are going to file your response by Friday. You
21 are going to file a reply by December 1st.

22 I know you've requested oral argument. I am assuming
23 that the defendants also think oral argument would be helpful.

24 MR. INGRAM: The defendants would defer to Your
25 Honor's preference on that.

1 THE COURT: Okay. Okay. Well, I like to see the
2 response before I decide -- we may well do oral argument.
3 And if we do it, we'll do it in December.

4 I will give you guys plenty of notice because you two
5 are coming from out of town?

6 MR. HAVEMANN: Yeah.

7 THE COURT: Everyone else is local.

8 MR. HAVEMANN: But Mr. Sterling is an Ohioan so --

9 MR. STERLING: That's true, Your Honor.

10 THE COURT: All right. Great. What part of Ohio?

11 MR. STERLING: Canton, Ohio.

12 THE COURT: Oh, Canton. Okay. Nice.

13 Anything else that you think I should be aware of as
14 we -- as I move forward and as I have the benefit of the
15 additional briefs on your motion and complaint?

16 MR. HAVEMANN: I think we will give thought to
17 Your Honor's suggestion about potentially combining the
18 PI stage and the merit stage, and we will reach out to
19 opposing counsel to see if there's a way to reach an
20 agreement on that.

21 THE COURT: That would be great. Yeah, I just --
22 I just don't know what the next step would be.

23 I mean, likelihood of success on the merits, and then
24 either yes or no, and then -- again, I know you are going to
25 think about discovery, so maybe there are things that I'm

1 missing, but at least, based on a little bit of knowledge
2 I have, I just don't know what the -- what the distinction
3 would be of why to do it in two steps.

4 How about for the defendants? Anything else that
5 I should be aware of or that we should be thinking of as I --
6 as you are working on your briefs?

7 MR. INGRAM: Yeah. I think it's -- we'll try to
8 make the briefing as exciting as possible in this area of
9 the law.

10 THE COURT: Sure. It's certainly interesting issues.
11 We were talking this morning about -- was it -- I think
12 Governor DeWine was talking about prop bets.

13 THE LAW CLERK: Micro prop bets.

14 THE COURT: Micro prop bets. And it's certainly an
15 interesting area.

16 Anything else, Mr. Schmansky?

17 MR. SCHMANSKY: Nothing else, Your Honor.

18 THE COURT: All right. If you guys would talk, if
19 you can let my law clerk, Michalea, know if you all agree --
20 let me say this: If you -- why don't you talk this week.

21 If you agree -- but that means you would like to
22 supplement your motion itself, which would be helpful for
23 them to do before you file your response brief, we certainly
24 could talk about a different briefing schedule, so if you
25 wanted to do a little more fulsome brief on the merits.

1 I mean, I will tell you this seems pretty fulsome to
2 me, but maybe there are arguments that you would want to make
3 a little bit differently.

4 So why don't you -- so if you think about that this
5 week and you decide, yeah, we can just do this one time, and --
6 but we would like to change the briefing schedule a little
7 bit, I would just like that decision to be made before the
8 defendants respond.

9 MR. HAVEMANN: Of course.

10 THE COURT: I think that would be probably a better
11 use of their resources as well.

12 I know a lot of what they have already done will
13 probably go to any changes that you make, but just so
14 everybody is being efficient with their resources.

15 MR. HAVEMANN: Great.

16 THE COURT: All right. Great. Unless counsel has
17 anything else, thank you all for coming in this morning, and
18 interesting -- I mean, this is definitely an interesting
19 issue, an interesting area of the law, that I'm not super
20 familiar with, so I look forward to reading all the briefs.

21 So thank you, Counsel.

22 MR. INGRAM: Thank you.

23 MR. HAVEMANN: Thank you, Your Honor.

24 (Discussion off the record.)

25 (The proceedings were adjourned at 10:27 a.m.)

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C E R T I F I C A T E

I, Allison A. Kimmel, do hereby certify that the foregoing is a true and correct transcript of the proceedings before the Honorable Sarah D. Morrison, Chief Judge, in the United States District Court, Southern District of Ohio, Eastern Division, on the date indicated, reported by me in shorthand and transcribed by me or under my supervision.

s/Allison A. Kimmel
Allison A. Kimmel, FAPR, RDR, CRR, CRC
Official Federal Court Reporter
November 5, 2025

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