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

In re: HIGHLAND CAPITAL MANAGEMENT, L.P., Reorganized Debtor.	Chapter 11 Case No. 19-34054-sgj11
THE DUGABOY INVESTMENT TRUST, Appellant, v. HIGHLAND CAPITAL MANAGEMENT, L.P. *et al.*, Appellees.	On Appeal to the U.S. District Court for the Northern District of Texas **Case No. 3:26-cv-02315-X**

APPELLANT THE DUGABOY INVESTMENT TRUST'S
NOTICE OF INTERVENING EVENT

Appellant The Dugaboy Investment Trust respectfully submits this Notice of Intervening Event in support of its pending Motion for Certification to the Fifth Circuit. Dkt. 14.

Following the close of briefing, an intervening development occurred in another federal matter—*Patrick v. Gaetz*, Case No. 3:26-cv-2483-N—currently pending in this District. Therein, Mark Patrick—the consequences of whose

misconduct on a bankruptcy settlement are at issue in this appeal—sued a sitting United States Congressman Lance Gooden for having made public statements detailing and criticizing his misconduct. The United States removed the action and substituted itself following the U.S. Attorney's Westfall certification, which plaintiffs challenge.

On September 8, 2026, the United States filed a response in *Patrick* stating that the issues surrounding approximately $270 million in charitable funds and their connection to the Highland bankruptcy and related proceedings are "a matter of ongoing, public concern" intersecting with federal bankruptcy and tax interests. App'x at 17. The United States further explained that, if the funds were not used for their intended charitable purpose, the associated federal tax benefits "would likely be inappropriate." *Id.* at 24.

The response also recounts four letters to federal agencies, including a formal referral from the Department of Justice: Congressman Gooden's November 21, 2025, letter to the U.S. Trustee Program; his December 11, 2025, letters to the Department of War and the FBI; and his June 26, 2026, referral to then-Acting Attorney General Todd Blanche. App'x at 8. The June referral requested that DOJ "immediately open a coordinated federal investigation with relevant agencies, including a criminal-securities review with the Securities and Exchange Commission." *Id.* The United States further states that Congressman Gooden made

multiple referrals to federal law-enforcement agencies and that the matter relates directly to his House Judiciary Committee oversight responsibilities. *Id.* at 23.

The response further recounts Congressman Gooden's concerns that Patrick used his control of charitable and investment entities to move valuable assets into structures he controlled, eliminate longstanding charitable interests for a small fraction of their value, carry out an undisclosed insider transaction affecting investment-fund investors, and execute a federal bankruptcy settlement without a complete account of ownership and authority. App'x at 9–10. Those transaction-specific allegations concern the same settlement and the same questions of Patrick's ownership and authority at issue in this appeal. They therefore directly reinforce that the appeal presents "a matter of public importance" warranting direct review. 28 U.S.C. § 158(d)(2)(A)(i).

Dated: September 24, 2026

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on September 24, 2026, a true and correct copy of this document was served electronically via the Court's CM/ECF system to the parties registered or otherwise entitled to receive electronic notices in this case.

/s/ *John Michael Gaddis*
John Michael Gaddis

CERTIFICATE OF COMPLIANCE

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/s/ *John Michael Gaddis*
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APPENDIX

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

THE DUGABOY INVESTMENT TRUST, Appellant, v. HIGHLAND CAPITAL MANAGEMENT, L.P., et al., Appellees.	Civil Action No. 3:26-cv-02315-X

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EXHIBIT A

IIN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

MARK ERIC PATRICK and DFW CHARITABLE FOUNDATION, Plaintiffs, v. MATT GAETZ, HERRING NETWORKS INC. D/B/A ONE AMERICA NEWS NETWORK, and UNITED STATES OF AMERICA, Defendants.	Civil Action No. 3:26-CV-2483-N

DEFENDANT UNITED STATES OF AMERICA'S RESPONSE TO PLAINTIFFS' OBJECTION TO THE GOVERNMENT'S WESTFALL ACT CERTIFICATION

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I. Introduction

In response to the government's motion to dismiss, Plaintiffs Mark Eric Patrick and DFW Charitable Foundation do not contest that the government retains sovereign immunity as to defamation claims of the type Plaintiffs are asserting. (*See* Doc. 5.) Instead, Plaintiffs challenge the government's Westfall Act certification (by which the government was substituted as the defendant in place of U.S. Congressman Lance Gooden), and argue that it should be set aside because, in Plaintiffs' view, Gooden was "not acting within the course and scope of his employment as a U.S. Congressman" with respect to the statements at issue. (Doc. 5 at 2.) As explained herein, though, the Westfall Act certification was properly issued because Congressman Gooden was within his scope of employment as a Member of Congress at all relevant times, and Plaintiffs fail to show any grounds for overturning the certification (or for taking related discovery). The Court should therefore deny Plaintiffs' objection and, for the reasons given in the government's motion to dismiss, dismiss all claims in this action against the government.

I. Background

A. Congressman Gooden takes various oversight-related actions relating to Patrick and the DFW Charitable Foundation.

Congressman Gooden represents the 5th Congressional District of Texas, which includes portions of Dallas County. (App.[1] 001.[2]) He is a member of the House

[1] "App. __" citations refer by page number to the materials in the accompanying appendix.

[2] *See also* https://gooden.house.gov/about (visited Sept. 8, 2026).

Judiciary Committee, which among other things has oversight responsibilities relating to various federal law-enforcement functions of the Executive Branch, including those conducted by the U.S. Department of Justice (DOJ) and the Federal Bureau of Investigation (FBI). (App. 003, 045.) In his capacity as a Congressman and a member of the House Judiciary Committee, Congressman Gooden has on multiple occasions reached out to several federal agencies about matters relating to Plaintiffs Mark Patrick and DFW Charitable Foundation, including by specifically questioning whether those activities were compliant with federal law and calling for an investigation. (App. 003, 005, 008, 010.)

For example, on November 21, 2025 (several months before the TV interview that is the subject of Plaintiffs' claims), Congressman Gooden had sent an official letter to the U.S. Trustee Program raising concerns about the Highland Capital Management bankruptcy proceedings and the disposition of assets connected to Highland Capital Management that were supposed to benefit charitable organizations. (App. 003–04.) And a few weeks later, on December 11, 2025, Congressman Gooden sent official letters to both the Department of War and the FBI raising similar concerns. (App. 005, 008.) Congressman Gooden also sent a letter to then-Acting Attorney General Todd Blanche on June 26, 2026, making a formal referral of the issues relating to Patrick and DFW Charitable Foundation to DOJ and requesting that DOJ "immediately open a coordinated federal investigation with relevant agencies, including a criminal-securities review with the Securities and Exchange Commission." (App. 010.)

As Congressman Gooden explained in his June 26th letter, his concerns about

Patrick and DFW Charitable Foundation (and others) related to their dealings with a charity that had originally been created by James Dondero (the co-founder of Highland Capital Management). (App. 011.) This charity "by 2025 held approximately $270 million in a donor-advised fund and, on a conservative estimate, at least $23.5 million in related [] entities – assets that were likely worth substantially more," and "those assets supported long-standing community charities connected to The Dallas Foundation, the Greater Kansas City Community Foundation, the Santa Barbara Foundation, and the Community Foundation of North Texas," which were "operating charitable organizations with independent boards and ongoing grant commitments." (App. 011.) Highland Capital Management had filed for bankruptcy in 2019, though, and in the following years litigation concerning the assets of the company and related individuals unfolded in the bankruptcy and related proceedings—including litigation about the assets gifted by Dondero for charitable purposes. *See, e.g.*, *In re Highland Cap. Mgmt., L.P.*, No. 19-34054-sgj11, 2025 WL 2047279 (N.D. Tex. Bankr. July 21, 2025).

Congressman Gooden explained that, in his view, "evidence arising from the Highland Capital bankruptcy proceedings concerning Marc Eric Patrick, Rand Advisors, LLC, DFW Charitable Foundation, Hunter Mountain Investment Trust ("HMIT"), and related entities" had "raise[d] substantial questions as to whether Mr. Patrick used his control of charitable and investment entities to move valuable assets into structures he controlled, eliminate long-standing charitable interests for a small fraction of the value tied to them, carry out an undisclosed insider transaction affecting investment-fund investors, and later sign a federal bankruptcy settlement without a complete account of

ownership and authority." (App. 010.) Congressman Gooden therefore requested that DOJ open an investigation and take various other actions. (App. 012–13.)

B. Congressman Gooden discusses the Patrick/DFW Charitable Foundation issue, as well as various other matters of public concern, on a news program hosted by Matt Gaetz.

On March 5, 2026, Congressman Gooden sat for an interview for a TV news program hosted by Matt Gaetz on the One America Network. (App. 001.) At the time of the interview, Congressman Gooden was in Washington, D.C., and the interview was conducted from the House Judiciary Committee's recording studio located within the Rayburn House Office Building at the U.S. Capitol Complex (with Congressman Gooden present at that location and interacting with Gaetz through a video link). (App. 001.) The interview had been arranged by Congressman Gooden's official congressional staff, and occurred during normal business hours. (App. 001–02.)

Congressman Gooden was introduced on the program as "Texas Congressman Lance Gooden" (*see* App. 044[3]), with an on-screen identifier of "Rep. Lance Gooden (R) Texas," as shown in the screenshot below.[4]

[3] A digital copy of the recorded interview will be lodged with the Court on a CD. In addition, the appendix to this response contains a transcript of the episode of *The Matt Gaetz Show* on which the interview appeared. (*See* App. 014.)

[4] *See also* App. 058. The words "Texas Congressman" in the image are from the close-captioning of the interview (in other words, those are Gaetz's words when introducing the Congressman to the viewing audience).



(App. 058.)

After being introduced by Gaetz, Congressman Gooden opened the interview by explaining his concerns that military families and veterans were missing out on charitable contributions as a result of Plaintiffs' actions: "Yes, it's sad, and it's really come to light in the recent days of this war overseas because we've got military families and veterans that are missing out on charitable contributions that were promised to them, that were promised to other charities." (App. 044.) The Congressman continued discussing Plaintiffs, including by making statements that Plaintiffs now allege to constitute defamation, and then went on to specifically explain the nexus between these matters and his official duties as a Member of Congress, as follows:

> And I often get the question, well, why do you care as a Congressman? Well, the answer is, because I sit on the Judiciary Committee. We oversee the FBI and Justice Department, and this is perhaps the largest financial charity fraud in the history of this country, and it deserves looking into and justice that needs to be done.

(App. 058; *see also* App. 045.) And after discussing the matter relating to Plaintiffs, Congressman Gooden went on to discuss other matters of public import with Gaetz, including the hostilities in Iran and issuing relating to the leadership of the Department of Homeland Security, ICE, and immigration enforcement. (App. 046–48.)

C. Plaintiffs file suit against Congressman Gooden, and the government removes the case to federal court with itself substituted as the defendant based on a Westfall Act certification.

Plaintiffs filed this suit in Texas state court alleging that Congressman Gooden defamed Plaintiffs during the interview aired on Gaetz's news program on the One America Network. (Doc. 1-6, ¶ 19.) As the petition notes, Gaetz is a "former United States Congressman from the State of Florida" (Doc. 1-6, ¶ 6), and his program on One America addresses current day political issues and other news stories from Gaetz's "Washington insider perspective."[5] The petition alleges that during Congressman Gooden's interview with Gaetz, Congressman Gooden made several statements that allegedly defamed Patrick and the DFW Charitable Foundation. (*See* Doc. 1-6, ¶ 15.)

The government was substituted as the defendant in place of Congressman Gooden (and the case removed to this Court) after the U.S. Attorney for the Northern District of Texas issued a Westfall Act certification stating that Congressman Gooden was acting within the scope of his federal office or employment with respect to the incidents out of which Plaintiffs' claims arose. (*See* Doc. 1-1); *see also* 28 U.S.C.

[5] *See* OAN, *The Matt Gaetz Show*, https://www.oann.com/shows/thematt gaetzshow/ (visited Sept. 8, 2026).

§ 2679; 28 C.F.R. § 15.4 (Westfall Act procedures). The government then moved to dismiss the claims against it based on sovereign immunity. (Doc. 4.) Plaintiffs do not dispute that the government has sovereign immunity, but instead object to the Westfall Act certification and effectively seek to have Congressman Gooden re-substituted as the defendant so that they can proceed against him individually. (*See* Doc. 5.) The government now responds to Plaintiffs' objection to the Westfall Act certification and explains why it lacks merit and should be rejected.

II. Argument and Authorities

A. The government was properly substituted as the defendant in place of Congressman Gooden because his actions were within the scope of his employment as a Member of Congress.

Plaintiffs challenge the government's Westfall Act certification by arguing that Congressman Gooden was not acting with the scope of his employment with respect to the matters alleged in this suit. (*See* Doc. 5 at 2.) The Westfall Act provides that, upon certification by the Attorney General or his designated representative that a government employee[6] was acting within the scope of his employment at the time of an allegedly tortious act, the government may substitute itself as the proper defendant in an action against the employee (and also remove the case to federal court if it was not initially filed there). 28 U.S.C. § 2679(d); *Counts v. Guevara*, 328 F.3d 212, 214 (5th Cir. 2003). A plaintiff who challenges the government's Westfall Act certification bears the burden of

[6] There is no dispute that, for purposes of the Federal Tort Claims Act and the Westfall Act, a Member of Congress is considered an "employee" of the government. *See* 28 U.S.C. § 2671 (stating that an "Employee of the government" includes any officer or employee of any "federal agency," which term is defined to "include[] . . . the judicial and legislative branches").

showing that the employee's conduct was not within the scope of his employment. *Williams v. United States*, 71 F.3d 502, 506 (5th Cir. 1995). The Westfall Act certification should be upheld unless "the District Court determines that the employee, *in fact*, and not simply as alleged by the plaintiff, engaged in conduct beyond the scope of his employment." *Osborn v. Haley*, 549 U.S. 225, 231 (2007).

1. A Member of Congress's job duties include interacting with the press and weighing in on issues of public note.

"Whether a federal employee acted within the scope of his employment is determined by the law of the state in which the negligent or wrongful conduct occurred." *White v. United States*, 419 F. App'x 439, 442 (5th Cir. 2011) (citing *Garcia v. United States*, 62 F.3d 126, 127 (5th Cir. 1995) (en banc)). Here, Congressman Gooden was located within the District of Columbia (on the grounds of the U.S. Capitol Complex) when the statements at issue were made, and therefore D.C. law scope-of-employment law is the relevant law (as Plaintiffs concede, *see* Doc. 5 at 11 ("If the interview occurred in the District of Columbia, then D.C. law governs . . . .")). (*See* App. 001.)

On the scope-of-employment issue, D.C. law generally follows the Restatement (Second) of Agency, which as relevant here explains that a person is acting within the scope of employment if his conduct (1) "is of the kind [he] is employed to perform;" (2) "occurs substantially within authorized time and space limits;" and (3) "is actuated, at least in part, by a purpose to serve the master." *Trump v. Carroll*, 292 A.3d 220, 228 (D.C. 2023); *see also, e.g.*, *Wuterich v. Murtha*, 562 F.3d 375, 383 (D.C. Cir. 2009). D.C. law takes a broad view of the scope of employment. *See, e.g.*, *Jacobs v. Vrobel*, 724

F.3d 217, 221 (D.C. Cir. 2013); *Wilson v. Libby*, 535 F.3d 697, 711–12 (D.C. Cir. 2008); *see also Harbury v. Hayden*, 522 F.3d 413, 422 n.4 (D.C. Cir. 2008) ("Many states and D.C. apply the scope-of-employment test very expansively . . . [so much so, that] [t]he scope-of-employment test often is akin to asking whether the defendant merely was on duty or on the job when committing the alleged tort.").

To determine whether Congressman Gooden's actions were within the scope of his employment, it is of course necessary to consider what the "job" of a Member of Congress consists of. "[S]ervice in the United States Congress is not a job like any other, it is a constitutional role to be played upon a constitutional stage." *United States v. Rostenkowski*, 59 F.3d 1291, 1312 (D.C. Cir. 1995), *opinion supplemented on denial of reh'g*, 68 F.3d 489 (D.C. Cir. 1995). The "duties of Members of Congress are not confined to those directly mentioned by statute or the Constitution." *Williams*, 71 F.3d at 507. "Besides participating in debates and voting on the Congressional floor, a primary obligation of a Member of Congress in a representative democracy is to serve and respond to his or her constituents." *Id.* "Such service necessarily includes informing constituents and the public at large of issues being considered by Congress." *Id.*

Not surprisingly, the work of a Member of Congress regularly involves interacting with the press. "Congressmembers routinely broadcast their views on pending legislation and related current events through press releases, televised speeches, interviews, and . . . through social media postings." *Does 1–10 v. Haaland*, 973 F.3d 591, 602 (6th Cir. 2020). And in addition to the direct interaction that occurs between Members of Congress and the press and public at large, it is probably safe to say that every Member

has at least one staffer, if not several, whose primary job duties include serving as a liaison to the press and managing the Member's relationships with various press outlets. The fact that these staffers—whether known by the title "communications director," "press secretary," "public affairs officer" or something else—are carried as official, taxpayer-paid employees within Members' offices is further reflective of the common-sense notion that dealing with the press is part of a Member's job. (*See also* App. 001–02 (explaining that the interview with Gaetz was set up by Congressman Gooden's official congressional staff).)

2. Congressman Gooden's actions were within the scope of his employment.

Against this backdrop and applying the above-described legal principles, there can be no dispute that the alleged activities of Congressman Gooden upon which Plaintiffs have brought suit were well within the scope of the Congressman's employment as the Member of Congress.

First, Congressman Gooden's actions in appearing on a TV news program and discussing matters relating to this oversight responsibilities as a Member of Congress—and, specifically, as a member of the House Judiciary Committee with oversight responsibilities for various federal law enforcement agencies—were clearly actions of the kind he is employed as a Member of Congress to perform. *See Trump*, 292 A.3d at 228 (asking whether the activity "is of the kind [he] is employed to perform"). Congressman Gooden represents a portion of the Dallas–Fort Worth Metroplex, and the activities of a large charitable organization that supports charitable causes in the DFW area is clearly a

matter affecting his constituents. There also can be no doubt that the issues swirling around the $270 million in charitable funds set aside by Dondero and their link to the Highland Capital Management bankruptcy and related legal proceedings are a matter of ongoing, public concern that intersect with various federal interests (including bankruptcy and tax issues). In July 2025, for example, the Wall Street Journal ran an article about the matter and reported that Texas Attorney General Ken Paxton was also looking into allegations about how these charity funds have been used.[7] And other media outlets, such as Bloomberg Law, have likewise reported on the issue.[8]

There are also no facts alleged indicating that Gaetz, as the host of a TV news show addressing political issues, had decided to interview some random private individual to discuss personal items, and that this private individual just happened to be Congressman Gooden who then chose to discuss DFW Charitable Foundation on a personal, private lark. Instead, the context of the interview makes clear that the Congressman was appearing on the program *because of* his status as the Member of Congress specifically to weigh in on issues of public importance and interest relative to his official duties—including the DFW Charitable Foundation issue but also other matters relating to the hostilities in Iran and immigration enforcement. (*See* App. 044–49, 058.) Nor are there any facts alleged indicating the Congressman's actions and

[7] *See* https://www.wsj.com/articles/texas-attorney-general-asks-to-pause-highland-bankruptcy-for-charity-probe-27657bae (visited Sept. 8, 2026).

[8] *See* https://news.bloomberglaw.com/bankruptcy-law/texas-cites-charity-probe-in-bid-to-halt-highland-bankruptcy (visited Sept. 8, 2026).

statements relating to Patrick and the DFW Charitable Foundation were somehow purely personal in nature. Instead, the record establishes that Congressman Gooden's interest in the DFW Charitable Foundation and his repeated calls for investigative and other actions by the Executive Branch relative to this issue have all been inextricably connected to and bound up in the Congressman's job duties as a Member of Congress. (*See* App. 003, 005, 008, 010.)

Second, although a Congressman's official duties certainly are not limited to any specific job-site or duty station but instead can and commonly are undertaken from essentially anywhere, it is notable that Congressman Gooden's actions here occurred at the U.S. Capitol Complex itself, during normal business hours, and the interview was arranged by his official congressional staff. (App. 001–02); *see Trump*, 292 A.3d at 228 (asking whether the activity "occurs substantially within the authorized time and space limits"). Indeed, Congressman Gooden participated in the interview with Gaetz from the House Judiciary Committee's own recording studio. (App. 001.) The fact that Congress has such recording studios within government buildings that are intended to facilitate interviews with the press—and that Members of Congress also typically employ communications directors or other press liaison personnel on their official, taxpayer-paid staff—is a further indication that Congressman Gooden's activities fell firmly within the heartland of "on the job" congressional activity.

Third, when considering whether Congressman Gooden's actions and statements were "actuated, at least in part, by a purpose to serve the master," *Trump*, 292 A.3d at 228, the answer is yes, and in this regard it must be remembered that the job of a Member

of Congress "is not a job like any other, it is a constitutional role to be played upon a constitutional stage." *Rostenkowski*, 59 F.3d at 1312. To the extent Congressman Gooden has some "master" to serve in connection with his job, that master or employer can be thought of as his constituents, and he serves them simply by making his views known and working to advance whatever policies and positions he thinks would benefit them and the public interest generally. *See Does 1–10*, 973 F.3d at 600 (explaining in the context of discussion of a claim about a Senator's allegedly defamatory comments that "the Senator's employer was his constituents and he served them by fully informing them of his views and working to pass legislation he believed would benefit them"). By highlighting the issues swirling around DFW Charitable Foundation and calling for an investigation and other government action, Congressman Gooden was undoubtedly acting in service of that "master"—his constituents and the public interest as a whole—by making his views on the subject known and seeking to spur action by a coordinate branch of government (i.e., the Executive Branch).

* * * * *

Caselaw also fully supports the conclusion that Congressman Gooden's activities here were within the scope of his employment. Notably, the D.C. Circuit considered another lawsuit involving a claim that a Member of Congress had made defamatory statements relating to a non-profit organization in *Council on American Islamic Relations v. Ballenger*, 444 F.3d 659 (D.C. Cir. 2006). There, a Member of Congress was talking to a reporter about a recent separation from his wife, and stated that his wife was dissatisfied with life in Washington, D.C. and, in particular, the fact that the congressman

and his wife lived across the street from the headquarters of the non-profit Council on American-Islamic Relations (CAIR). *Id.* at 662. The congressman stated that CAIR was a "fund-raising arm for Hezbollah," which was a designated terrorist organization, and CAIR thereafter sued for defamation and slander. *Id.* Applying D.C. law, the D.C. Circuit found that these statements were within the scope of the Member's employment since they were at least "incidental to the kind of conduct he was employed to perform." *Id.* at 664–65. The same is true here, for all the reasons discussed above.

Another case, also related to CAIR, provides further support for this conclusion. In *Chapman v. Rahall*, 399 F. Supp. 2d 711, 713 (W.D. Va. Nov. 23, 2005), an individual had accused a Member of Congress of supporting CAIR, which was described as tied to terrorism, and the Member responded by calling the individual a "bigoted, right wing, redneck, racist wacko" during a discussion with the press. Notwithstanding the highly personal nature of these remarks, the court explained that they were within the scope of the Member's employment given that "speaking to the press is a critical part of the expected and authorized conduct of a United States Congressman," and the remarks were within scope given that they were intended to "ensure [the Member's] effectiveness as a legislator and maintain the support of his constituents." *Id.* 714, 715 (internal quotation marks and citation omitted).

Here, if Congressman Gooden was apparently of the view that some fraud has occurred in connection with DFW Charitable Foundation and that various law-enforcement agencies of the Executive Branch—for which Congressman Gooden has oversight responsibilities—ought to take appropriate action on this issue, it was within

the scope of the Congressman's job as a Member of Congress to engage with the media to make his own views about these matters known and to advocate for them. For this reason, his actions and statements were all in the scope of his employment, even if Plaintiffs contend the statements were false and/or defamatory, and also even if Plaintiffs contend that there may have been some mixture of official and (unspecified and speculative) personal motivations behind Congressman Gooden's actions. *See also Williams*, 71 F.3d at 506–07 (rejecting the argument that a Congressman's allegedly defamatory remarks about a lobbyist were not within the scope of his official duties, where the remarks were made in the context of an interview addressing an appropriation of money for a project in Texas); *Does 1–10*, 973 F.3d at 600 (explaining that "unsolicited comments by elected officials on an event of widespread public interest" were within the scope of employment of a Senator and Congresswoman, even though the "unsolicited comments" (made on Twitter) were alleged to be libelous); *Ballenger*, 444 F.3d at 665 (explaining that so long as the relevant conduct "was motivated—at least in part—by a legitimate desire to discharge his duty as a congressman," it is within the scope of employment, because "even a *partial* desire to serve the master is sufficient").

B. Plaintiffs' arguments against the Westfall Act certification are unavailing.

Plaintiffs challenge the government's Westfall Act certification in their objection, by arguing that Congressman Gooden's statements were not made in the scope of employment as a Member of Congress. (Doc. 5 at 11–14.) But as discussed below, Plaintiffs fail to carry their burden to rebut the government's Westfall Act certification. *See Williams*, 71 F.3d at 506.

Specifically, on the scope-of-employment issue, although Plaintiffs acknowledge that "media interviews by Members of Congress *can* satisfy [D.C. law's scope-of-employment] test when the underlying conduct is of the kind the Member is employed to perform and is actuated at least in part by a purpose to serve the United States," they argue that Congressman Gooden's statements here were not of this type because they merely related to a "private individual" and had "no connection to any pending legislation, committee work, oversight inquiry, or constituent request." (Doc. 5 at 12; *see also* Doc. 12 at 13 (claiming that the statement "were not made in furtherance of any legislative agenda, committee jurisdiction, or representative function").) Plaintiffs then attempt to distinguish the cases in which Westfall Act certifications for congressional media statements were upheld, by arguing that those cases "involved statements about persons or organizations already connected to public or legislative controversies"—whereas, in Plaintiffs' view, the controversies swirling around Patrick and DFW Charitable Foundation are somehow not public and not related to legislative activities. (Doc. 5 at 13.)

But Plaintiffs' scope-of-employment arguments fail for multiple reasons. First, Congressman Gooden's statements *were* related to his legislative work as a Member of Congress—including, specifically, to his oversight responsibilities as a member of the House Judiciary Committee. (App. 003, 005, 008, 010, 045.) Congressman Gooden expressly made this point during the course of the interview itself, stating:

> And I often get the question, well, why do you care as a Congressman? Well, the answer is, because I sit on the Judiciary Committee. We oversee the FBI and Justice

> Department, and this is perhaps the largest financial charity fraud in the history of this country, and it deserves looking into and justice that needs to be done.

(App. 058; *see also* App. 045.) And it is also the case that Congressman Gooden has on multiple occasions—including prior to the interview—sent letters urging action to various Executive Branch agencies about DFW Charitable Foundation. (App. 003, 005, 008, 010.) Indeed, one of Plaintiffs' arguments is that the statements allegedly were not related to any "pending legislation, committee hearing, oversight inquiry, referral, or constituent request," but the opposite is true. (Doc. 5 at 16.) Congressman Gooden has made multiple referrals of the matter to federal law enforcement agencies. (App. 003, 005, 008, 010.) And the matter is also clearly relevant to Congressman Gooden's oversight-related duties on the House Judiciary Committee, as was noted during the interview itself. (App. 058; *see also* App. 045.) Plaintiffs presumably felt compelled to argue that the Congressman's actions were not related to any "legislation, committee hearing, oversight inquiry, referral, or constituent request" because Plaintiffs know that matters that *do* relate to such things are clearly within a Member of Congress's scope of employment. But the issues here *are* related to several of these items, including Congressman Gooden's committee work, referrals he has made to Executive Branch agencies, and his constituents (given that he represents a geographic area that the DFW Charitable Foundation is set up to serve). These considerations alone make clear that the Congressman was within the scope of his employment.

Second, Plaintiffs' attempt to portray the controversies swirling around the DFW Charitable Foundation as merely a "private" matter does not withstand scrutiny. The

dispute about the DFW Charitable Foundation and Patrick's involvement therein has been the subject of high-profile litigation in multiple forums as well as national press coverage in the Wall Street Journal (as noted above). And the disposition of charitable funds potentially exceeding $270 million is certainly a matter of public interest, as well as federal interest given that federal tax breaks are typically associated with charitable giving, and if funds are not used for their intended charitable purpose, these tax breaks would likely be inappropriate.

Third, Plaintiffs cite no authority supporting their theory that Congressman Gooden's statements about a matter relevant to the oversight responsibilities of his committee work and of public notoriety and interest—including to the people of his own district, where the DFW Charitable Foundation is supposed to be providing charitable assistance—falls outside the scope of his employment as a Member of Congress. To the contrary, as discussed above, the caselaw makes clear that comments such as those at issue here fall within the scope of a congressman's employment. Indeed, in the *Chapman* case (discussed above), the court identified no relevant oversight activity, Executive Branch referral, or other traditional legislative angle to the congressman's derogatory personal remarks about the plaintiff (calling him a "bigoted, right wing, redneck, racist wacko"), but nonetheless concluded that the remarks were within the scope of employment given that the congressman was talking to the press and the remarks were at least relevant to maintaining the support of his constituents and his effectiveness as a legislator. *See* 399 F. Supp. 2d at 714–15. And in *Ballenger*, the congressman allegedly defamed a non-profit organization (accusing it of having ties to terrorism) in the context

of explaining the highly personal issue of why he and his wife were separating, but the court nonetheless found that the remarks were within the scope of his employment. *See* 444 F.3d at 662, 666. The circumstances and context of Congressman Gooden's remarks about Plaintiffs were, by contrast, even more closely tethered to the Congressman's official duties and without any similar manifestly personal angle at all. They were within the scope of his employment and Plaintiffs have not shown otherwise.

C. Plaintiffs have not shown any entitlement to discovery.

As an alternative to setting aside the Westfall Act certification, Plaintiffs seek discovery on the "scope-of-employment issue," including through a deposition of Congressman Gooden; document requests to the Congressman for documents—including emails and other communications—relating to Plaintiffs, the interview, and other matters; and document requests to numerous non-parties, including James Dondero and various other persons or entities. (Doc. 5 at 16–17.) But Plaintiffs fail to show any entitlement to such discovery.

A "'plaintiff challenging the Government's Westfall Act certification has no right to conduct discovery as to the defendant's scope of employment unless plaintiff alleges facts that plausibly suggest the defendant acted outside the scope of her employment.'" *Del Carmen Guevara v. United States*, No. 3:20-CV-1287-D, 2020 WL 7344133, at *3 (N.D. Tex. Dec. 14, 2020) (quoting *Bolton v. United States*, No. 2:18-CV-63-KS-MTP, 2018 WL 4224456, at *2 (S.D. Miss. Sept. 5, 2018) (further internal quotation marks and citation omitted)); *see also White*, 419 F. App'x at 443. And, as the Fifth Circuit has made clear, "speculative allegations do not meet this burden." *White*, 419 F. App'x at

443.

In this case, though, Plaintiffs point to no concrete factual allegations that would support discovery, but instead rely only on what is at best speculation. For example, Plaintiffs argue that Congressman Gooden's "statements were made at the instigation of third parties for private reasons having nothing to do with any official duty" (Doc. 5 at 16), but Plaintiffs identify no well-pled allegations to support this claim, which is instead nothing more than speculation. Indeed, the fact that Plaintiffs refer only to (unidentified) "third parties" who allegedly would have instigated the statements for (unidentified) "private reasons" highlights the entirely speculative and conclusory nature of this assertion. (*See* Doc. 5 at 16.)

Plaintiffs' other asserted reasons for needing discovery are similarly lacking. For example, Plaintiffs claim that Congressman Gooden's statements were "entirely gratuitous" because there (allegedly) was no "no pending legislation, committee hearing, oversight inquiry, referral, or constituent request connecting the DFW Charitable Foundation or Mark Patrick to any business of the United States or to Gooden's committee responsibilities." (Doc. 5 at 16.) But Congressman Gooden made clear during the course of the interview itself that the issues were related to his oversight responsibilities as a member of the House Judiciary Committee, and also that there was a nexus with the Congressman's district—and thus his constituents—given Patrick's presence in Dallas and the charity's ostensible mission that was connected to the DFW Metroplex. (App. 054; *see also* App. 045.) And, Patrick and DFW Charitable Foundation have been the subject of multiple formal and official congressional referrals

by Congressman Gooden to different Executive Branch agencies. (App. 003, 005, 008, 010.)

Nor can Plaintiffs claim any basis for conducting discovery through their contentions that the statements accused a "private individual and private foundation" of charity fraud and that a court in the Cayman Islands had allegedly "exonerated Plaintiffs." (Doc. 5 at 16.) As discussed previously, the issues relating to Patrick and DFW Charitable Foundation have been the subject of court proceedings and press coverage (prior to Congressman Gooden's interview with Gaetz), and in any event even if it were assumed that Plaintiffs are purely "private," that still does not support discovery under these circumstances. *See Chapman*, 339 F. Supp. 2d at 715 (explaining that there was no basis for conducting discovery or an evidentiary hearing into a congressman's statements to the press that the plaintiff was a "bigoted, right wing, redneck, racist wacko"). There is no dispute about who Patrick and the DFW Charitable Foundation are, and even if they are somehow characterized as "private" parties, the undisputed existence of a dispute over a large Dallas-based charity with assets in the hundreds of millions of dollars is the type of thing that a Member of Congress could reasonably consider to merit an official inquiry and attention.

As noted in a Third Circuit opinion that rejected an argument for discovery into a Westfall Act certification, "[p]ermitting additional discovery when the Attorney General's certification is not based on a different understanding of the facts than is reflected in [the plaintiff's] complaint would undermine the intent of the Westfall Act to protect federal employees from responding to state law tort claims." *Brumfield v.*

Sanders, 232 F.3d 376, 380 (3d Cir. 2000) (quoting from the underlying district court decision, which was affirmed). Here, there is no dispute about what Congressman Gooden said during the interview with Gaetz, nor have Plaintiffs pleaded any facts supporting that these statements were anything other than matters arising out of and relating to the Congressman's official duties and responsibilities. No basis for discovery is shown.

III. Conclusion

For all these reasons, the Court should overrule and reject Plaintiffs' objection to the government's Westfall Act certification.

Respectfully submitted,

RYAN RAYBOULD
UNITED STATES ATTORNEY

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Attorneys for the United States

Certificate of Service

On September 8, 2026, I electronically submitted the foregoing document with the clerk of court for the U.S. District Court, Northern District of Texas, using the electronic case filing system of the court. I hereby certify that I have served all parties electronically or by another manner authorized by Federal Rule of Civil Procedure 5(b)(2).

/s/ Brian W. Stoltz
Brian W. Stoltz
Assistant United States Attorney

EXHIBIT B

IIN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

MARK ERIC PATRICK and DFW CHARITABLE FOUNDATION,

Plaintiffs,

v.

MATT GAETZ, HERRING NETWORKS INC. D/B/A ONE AMERICA NEWS NETWORK, and UNITED STATES OF AMERICA,

Defendants.

Civil Action No. 3:26-CV-2483-N

APPENDIX TO DEFENDANT UNITED STATES OF AMERICA'S RESPONSE TO PLAINTIFFS' OBJECTION TO THE GOVERNMENT'S WESTFALL ACT CERTIFICATION

RYAN RAYBOULD
UNITED STATES ATTORNEY

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Letter to K. Patel (FBI) (Dec. 11, 2025) ..... App. 008

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Respectfully submitted,

RYAN RAYBOULD
UNITED STATES ATTORNEY

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/s/ Brian W. Stoltz
Brian W. Stoltz
Assistant United States Attorney

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

MARK ERIC PATRICK and DFW CHARITABLE FOUNDATION, Plaintiffs, v. MATT GAETZ, HERRING NETWORKS INC. D/B/A ONE AMERICA NEWS NETWORK, and UNITED STATES OF AMERICA, Defendants.	Civil Action No. 3:26-CV-2483-N

DECLARATION

1. My name is Matthew Esguerra. I am a federal employee and serve as Chief of Staff for Congressman Lance Gooden. Congressman Gooden represents the 5th Congressional District of Texas, which includes portions of Dallas County and the DFW Metroplex. In my capacity as Congressman Gooden's Chief of Staff, I am familiar with the matters set forth herein.

2. On March 5, 2026, Congressman Gooden sat for an interview for a TV news program hosted by Matt Gaetz on the One America News Network. At the time of the interview, Congressman Gooden was in Washington, D.C., and the interview was conducted from the House Judiciary Committee's recording studio located within the Rayburn House Office Building at the U.S. Capitol Complex (with Congressman Gooden present at that location and interacting with Gaetz through a video link). The interview

had been arranged by Congressman Gooden's official congressional staff, and occurred during normal business hours.

3. Congressman Gooden has on several occasions sent referral letters to Executive Branch agencies about the activities of Mark Patrick, DFW Charitable Foundation, and related persons or entities. Attached to this declaration are true and correct copies letters sent by Congressman Gooden on this issue to the U.S. Trustee Program (on November 21, 2025), the Department of War and FBI (on December 11, 2025) and to the Department of Justice (to the then-Acting Attorney General) (on June 26, 2026).

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Signed and executed on September 8, 2026.

Matthew Esguerra

Matthew Esguerra
Chief of Staff, Office of Congressman Lance Gooden

LANCE GOODEN
5TH DISTRICT, TEXAS

2443 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, D.C. 20515
(202) 225-3484

Congress of the United States
House of Representatives
Washington, DC 20515–4305

November 21, 2025

The Honorable Ramona D. Elliott
Acting Director, U.S. Trustee Program
Executive Office for U.S. Trustees
441 G Street NW, Suite 6150
Washington, DC 20530

Dear Acting Director Elliott,

I write to express concerns regarding the conduct of the Chapter 11 proceedings of Highland Capital Management, L.P. It has been brought to my attention that the conduct of these proceedings has been marred by potential conflicts of interest and a failure to follow rules pertaining to key filings, calling into question the integrity of the process. As a member of Congress representing Texas and serving on the House Committee on Judiciary, I am interested in ensuring that the appropriate rules and procedures in bankruptcy proceedings are followed diligently.

Key stakeholders in the proceedings have highlighted issues of opacity and irregularities. Since its filing in October 2019 for bankruptcy, professional and administrative fees are estimated to have exceeded $260 million, while over $350 million in claims have gone to a select number of hedge funds under reportedly suspicious circumstances. Multiple stakeholders, including former equity holders, alleged insider trading, undisclosed assets, and preferential settlements have drained hundreds of millions that would otherwise go to creditors and Highland's employees.

One specific issue stems from reported failure to file affiliate reports throughout the case, against Bankruptcy Rule 2015.3, ultimately excluding minority stakeholders from knowing the true scale of Highland's assets and leaving no recourse to challenge potentially illegal backroom deals. On that note, there are concerns that hundreds of millions in unsecured claims are being quickly transferred to buyers with possible links to the estate decision makers, without court approval or public notice.

Given the limited information provided in public disclosures, the speed and pricing of these transfers raise additional concerns about possible material non-public information being shared with the eventual buyers. If such allegations are true, it disadvantages similarly situated creditors and further undermines confidence in the administration of the estate.

These incidents don't appear isolated. Initial plans also contained sweeping third-party releases which protected non-debtors from later accountability, and were only altered on appeal, after years of litigation. Recent developments in the proceedings draw additional concerns. In June 2025, the Bankruptcy court approved a settlement that extinguished claims reportedly exceeding $600 million held by Hunter Mountain Investment Trust that were supposed to benefit charitable organizations like The Dallas Foundation. Reports to my office describe the settlement itself had issues concerning disputed authority over assets, questionable transfers, and the denial of a state regulator's request to intervene to safeguard beneficiaries.

These facts, if accurate, warrant an immediate inquiry to ensure charitable assets were not compromised. Accordingly, I request that the Executive Office for U.S. Trustees:

a. Investigate potential insider trading, undisclosed conflicts, and collusive conduct related to claim trading, valuations, and settlements;
b. Conduct a compliance review of Highland's Rule 2015.3 obligations and the Program's enforcement posture, with recommendations to strengthen affiliate reporting in complex cases;
c. Evaluate the propriety of the June 25, 2025, settlement affecting charitable assets and coordinate with relevant state authorities as needed; and
d. Report on fee oversight and conflict-management controls, including whether additional safeguards or remedies are warranted.

Thank you for your attention to this matter, and I look forward to your response.

Sincerely,



Lance Gooden
Member of Congress

LANCE GOODEN
5TH DISTRICT, TEXAS

2204 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, D.C. 20515
(202) 225-3484

Congress of the United States
House of Representatives
Washington, DC 20515–4305

December 11, 2025

Stephen Simmons
Deputy Assistant Secretary of War
for Military Family and Community Policy
Department of War
The Pentagon
Washington, DC 20301

Re: Misappropriation of Military-Oriented Charitable Assets Connected to Highland Dallas Foundation (Donor Advised Fund)

Dear Deputy Assistant Secretary Simmons,

I am writing to bring your attention to a matter that directly affects military families and the charitable infrastructure that supports them. On November 21, 2025, my office transmitted the enclosed letter to Acting Director Ramona D. Elliott of the U.S. Trustee Program requesting an inquiry into serious irregularities surrounding the Chapter 11 proceedings of Highland Capital Management, L.P. (*In re Highland Capital Management, L.P.*, No. 19-34054-sgj11 (Bankr. N.D. Tex.)), including a June 25, 2025, settlement that extinguished claims reportedly exceeding $600 million intended to benefit charitable organizations. Because these issues implicate philanthropic assets that have historically supported service members, veterans, Gold Star families, and first responders, I believe they also warrant review by the Department of War (DoW).

The Department of War should open a formal inquiry into the settlement and related proceedings, as records indicate a deliberate scheme by Mark Eric Patrick to misuse funds intended for charitable uses, conceal misconduct, and obstruct any recovery by intended beneficiaries. This alleged misuse has stripped military-aligned charities of hundreds of millions of dollars in philanthropic assets supporting service members, veterans, and their families.

Due to Mr. Patrick's actions, Highland Dallas Foundation (HDF) reports it can no longer initiate new grants and is diverting its remaining resources to litigation and asset-recovery efforts, placing all existing grant funding in jeopardy. This is not an abstract corporate dispute. For nearly fifteen years, HDF has funded programs that directly intersect with DoW's interests, including:

- $1 million challenge grant to the Gary Sinise Foundation (formerly Snowball Express), which catalyzed approximately $800,000 in additional private giving and enabled services for more than 8,000 Gold Star children;

- $1 million grant to the Center for BrainHealth, supporting programs for active-duty service members, veterans, and military families; and
- Significant support to other organizations serving military, veterans, and first responders, including Helicopters for Heroes, Marine Corps Law Enforcement Foundation, Texas Rangers, Texas Department of Public Safety Foundation, and Friends of the Dallas Police.

Multiple organizations that deliver services to DoW-relevant populations now stand to lose both existing and anticipated pledges.

Evidence from ongoing proceedings in Delaware (*In re Charitable DAF HoldCo, Ltd.*, No. 25-11376 (Bankr. D. Del.) (Chapter 15)) outlines a multi-step fiduciary scheme in which Mr. Patrick, after obtaining control of Charitable DAF HoldCo, Ltd. (HoldCo), systematically migrated value away from U.S. charities and into entities he controlled, while leaving the original military-supporting charities with only a nominal payout. On March 25, 2021, Mr. Patrick obtained control over HoldCo by becoming a director and acquiring management shares, placing him in a position to direct transactions and control disclosures. Since then, it is reported that Mr. Patrick allegedly leveraged his fiduciary/management position to misuse HoldCo's assets to enrich himself and those around him. This included moving core charitable assets into entities he controlled, diluting the economic rights of the original charitable stakeholders, and "cashing out" charities for a nominal amount. There have also been reports of efforts to conceal these activities and obstruct any recovery by voluntarily initiating offshore liquidation in the Cayman Islands.

Internal correspondence and governance changes show that, after the charities raised concerns, Mr. Patrick and his advisers discussed tactics to dilute the charities' shares, frustrate their rights, and make their stake effectively worthless, while approving extraordinary compensation and retroactive benefits for himself, funded by HoldCo.

This raises concerns well beyond a private trust dispute. It presents systemic risk to military-oriented philanthropy, as it demonstrates how a fiduciary can quietly divert nine-figure assets from vehicles that fund Gold Star, brain-health, and veterans' programs. This undermines public-private partnerships that support force readiness, family resilience, and wounded-warrior care. The charities harmed have a history of substantial grantmaking into military-adjacent institutions, including brain-health research, transition programs, and direct support to military families, so the impairment of these funding streams may already be degrading services to populations in which DoW has a statutory and policy interest.

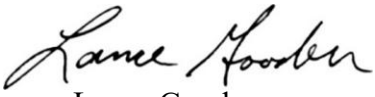
A sophisticated fiduciary fraud of this scale—executed through offshore structures, controlled nonprofits, and complex capital-markets transactions—also poses a reputational and operational threat to any DoW-aligned initiative that relies on external philanthropic capital.

I respectfully request that the Department of War:

1. Review the relevant court records concerning Mr. Patrick, Charitable DAF HoldCo, Highland Dallas Foundation, and the June 25, 2025, settlement;
2. Assess whether any DoW-linked programs or partner institutions have been adversely affected by the loss or diversion of charitable assets; and
3. Consider developing guidance or safeguards for engagements with philanthropic vehicles that fund DoW-relevant missions, in coordination with the U.S. Trustee Program, state regulators, and law enforcement agencies as appropriate.

My office stands ready to provide additional information and coordinate with your staff on this matter. Thank you for your attention to this issue and for your continued service to our military families.

Sincerely,



Lance Gooden,
Member of Congress

Enclosure: Letter to Acting Director Ramona D. Elliott, U.S. Trustee Program (Nov. 21, 2025)

LANCE GOODEN
5TH DISTRICT, TEXAS

2431 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, D.C. 20515
(202) 225-3484

Congress of the United States
House of Representatives
Washington, DC 20515–4305

December 11, 2025

The Honorable Kash Patel
Director
Federal Bureau of Investigation
935 Pennsylvania Avenue, NW
Washington, DC 20535-0001

Re: Request for FBI Investigation – Mark Eric Patrick / Charitable DAF Fraud

Dear Director Patel,

I write to bring your attention to recent developments concerning HoldCo, Ltd. (HoldCo), a charitable donor-advised fund (DAF) structure. HoldCo is worth approximately $270 million, aiming to support U.S. charitable beneficiaries, including organizations serving veterans, service members, and military families. Information presented to my office indicates that HoldCo has been the target of a multi-step scheme by Mark Eric Patrick, who was originally entrusted with stewardship over the DAF. I request the Federal Bureau of Investigation (FBI) to investigate Mr. Patrick's conduct and take appropriate action against any fraudulent activity.

On March 25, 2021, Mr. Patrick obtained control over HoldCo by becoming a director and acquiring management shares, placing him in a position to direct transactions and control disclosures. Since then, it is reported that Mr. Patrick allegedly leveraged his fiduciary/management position to misuse HoldCo's assets to enrich himself and those around him. This included moving core charitable assets into entities he controlled, diluting economic rights of the original charitable stakeholders, and "cashing out" charities for a nominal amount. There have also been reports of efforts to conceal these activities and obstruct any recovery by voluntarily initiating offshore liquidation in the Cayman Islands.

These allegations, if substantiated, suggest violations including wire fraud, mail fraud, money laundering, and multiple related offenses. Relevant proceedings containing records highlighting these issues include:

1. *In re Charitable DAF HoldCo, Ltd.* (in Official Liquidation), Chapter 15 Case No. 25-11376 (U.S. Bankr. Ct., D. Del.) (foreign liquidation/recognition filings that reference the Cayman Islands proceeding and the DAF structure).

2. *In re Highland Capital Management, L.P.*, Case No. 19-34054-sgj-11 (U.S. Bankr. Ct., N.D. Tex., Dallas Div.) (Chapter 11).

It has come to my knowledge that the U.S. Attorney's Office for the Northern District of Texas and FBI personnel in the area have been briefed on these allegations and provided with supporting documents. Given the magnitude of the alleged charitable loss and the possible efforts to shield misconduct through offshore liquidation, I kindly request you to promptly investigate this issue.

Thank you for your attention to this matter and I look forward to your response.

Sincerely,



Lance Gooden
Member of Congress

LANCE GOODEN
5TH DISTRICT, TEXAS

2431 RAYBURN HOUSE OFFICE BUILDING
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(202) 225-3484

Congress of the United States
House of Representatives
Washington, DC 20515–4305

Via E-Mail and Federal Express

June 26, 2026

The Honorable Todd Blanche
Acting Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

Re: Formal Referral and Request for Immediate Investigation and Prosecution Where Warranted – Mark Eric Patrick, Rand Advisors, LLC, DFW Charitable Foundation, HMIT, and Related Transactions

Dear Acting Attorney General Blanche:

I write to formally refer evidence arising from the Highland Capital bankruptcy proceedings concerning Mark Eric Patrick, Rand Advisors, LLC, DFW Charitable Foundation, Hunter Mountain Investment Trust ("HMIT"), and related entities. The evidence raises substantial questions as to whether Mr. Patrick used his control of charitable and investment entities to move valuable assets into structures he controlled, eliminate long-standing charitable interests for a small fraction of the value tied to them, carry out an undisclosed insider transaction affecting investment-fund investors, and later sign a federal bankruptcy settlement without a complete account of ownership and authority.

Considering the nature and extent of these actions and the overriding public interest in having clean, transparent, and fair bankruptcy proceedings, I reached out to relevant agencies about issues arising from this case last year. This includes letters to the U.S. Trustee Program on November 21, 2025, the Department of War on December 11, 2025, and the Federal Bureau of Investigation on December 11, 2025.

Accordingly, I now request that the Department of Justice immediately open a coordinated federal investigation with relevant agencies, including a criminal-securities review with the Securities and Exchange Commission. If the evidence establishes violations of federal law, the Department should prosecute every responsible person and entity, recover misdirected assets, and prevent further improper transfers. This referral does not presume guilt; it asks the Department to use its subpoena power and financial-investigative resources to resolve serious questions that still remain unanswered.

Charitable assets and restructuring

Beginning in 2011, philanthropy from James Dondero funded a charitable structure that by 2025 held approximately $270 million in a donor-advised fund and, on a conservative estimate, at least $23.5 million in related Rand/HMIT entities – assets that were likely worth substantially more. Before 2025, those assets supported long-standing community charities connected to The Dallas Foundation, the Greater Kansas City Community Foundation, the Santa Barbara Foundation, and the Community Foundation of North Texas. These were operating charitable organizations with independent boards and ongoing grant commitments.

Mr. Patrick later formed and controlled DFW Charitable Foundation, headquartered it at his residence, and made it the majority beneficiary of the charitable structure. He then inserted CDM CFAD between the old charitable holding company and the principal fund and caused the old holding company's interest to be redeemed for approximately $1.637 million, even though the underlying structure held approximately $270 million, including approximately $138 million in cash/Treasury securities. Earlier communications indicate that he had explored whether the existing charities' interests could be reduced, redeemed, or made "otherwise worthless." Investigators should determine whether these transactions were authorized, fairly valued, fully disclosed, and consistent with the assets' charitable purpose.

Beacon Mountain, HMIT, and registered-investment-adviser concerns

HMIT held a residual equity interest in the Highland bankruptcy estate, where at least $70 million reportedly remained. On February 12, 2025, before approval of the bankruptcy settlement, Mr. Patrick caused Beacon Mountain – which carried the HMIT interest – to be sold for $1 million from one entity he controlled to another entity he controlled. The transaction moved the Beacon/HMIT economics out of the Rand/Atlas/Crown Global chain and into the newer Patrick-controlled structure. Crown Global Life Insurance, Ltd., acting through Segregated Accounts 30218 and 30219, was the sole limited partner – and therefore the investor – in Atlas IDF, LP. Yet, Crown Global was not informed and did not consent to the transfer, and the insider sale price was later used as a valuation input.

This conduct raises separate federal securities-law concerns. Rand Advisors, LLC was a registered investment adviser. It owed fiduciary and contractual duties directly to Atlas IDF, LP under their investment-management agreement and had management responsibilities for Rand PE Fund I, LP. Atlas IDF owned 99 percent of Rand PE Fund, and Crown Global invested in Atlas IDF. Rand Advisors therefore had to put Atlas IDF's interests ahead of its own, disclose the Beacon sale and the common-control conflict, and obtain any required consent. Although the direct advisory duty ran to Atlas IDF, federal pooled-fund antifraud rules also barred Rand Advisors from misleading Crown Global or withholding material facts from it.

The Beacon transaction therefore warrants investigation under Sections 206, 207, and 217 of the Investment Advisers Act and Rule 206(4)-8, including as a possible fraudulent course of conduct, an undisclosed principal or common-control transaction, and a material omission to investors in pooled investment vehicles. Because management fees were tied to the value of managed assets, investigators should also examine fee calculations, asset valuations, compensation, compliance records, investor notices, and the identities of the true advisory clients and beneficial owners at each level of the structure.

The bankruptcy settlement and authority to act

Despite the February 2025 Beacon sale, Mr. Patrick signed a Rule 9019 settlement with Highland, the debtor in bankruptcy, in May 2025 on behalf of the legacy Rand/Atlas/HMIT entities. By then, the valuable Beacon/HMIT economics had already been moved into the new Patrick-controlled structure. The bankruptcy court lacked a complete picture of who owned the value, who would benefit from the settlement, and whether the entities signing it still had a meaningful economic stake.

There is also a serious question whether Mr. Patrick had authority to bind HMIT. HMIT's trust agreement provides for automatic removal of the Administrator upon specified serious misconduct and applies its references to successor administrators. The pre-settlement conduct triggered that provision, and Mr. Patrick could not validly sign for HMIT. The Department should examine all representations concerning his authority and the ownership of the multi-million-dollar settlement benefits.

The documentary evidence was confirmed by testimony at a recent bankruptcy hearing in Lubbock, Texas. On June 15, 2026, the bankruptcy court denied a motion to set aside the 9019 settlement under the narrow standards governing relief from an existing judgment, but it did not decide whether the restructuring was proper or lawful, whether the adviser-related disclosures were adequate, or whether federal crimes occurred. That ruling is not a substitute for an independent criminal and securities investigation.

Requested action

I therefore request that the Department take the following actions without delay:

1. The U.S. Attorney's Office for the Northern District of Texas should lead or participate with the FBI, the U.S. Trustee Program, IRS Criminal Investigation, and the SEC.

2. The Department should promptly obtain communications, bank and brokerage records, trust and entity documents, valuation files, investment-management agreements, Form ADV filings, compliance materials, fee records, auditor workpapers, settlement communications, and records of grants, compensation, and transfers. Investigators should follow the money through every related entity and identify the ultimate beneficiaries.

3. The review should include possible willful Advisers Act violations, pooled-fund investor fraud, wire fraud and conspiracy, bankruptcy fraud or concealment, false statements, obstruction, misuse of tax-exempt entities, and related financial offenses.

4. If supported by the evidence, the Department should seek appropriate restraints, restitution, forfeiture, or recovery; coordinate with the SEC on disgorgement, injunctions, industry bars, and rescission or unwind relief; and work with the U.S. Trustee Program, as well as state charity and securities regulators. The Department should also determine whether the bankruptcy court should be informed of material evidence bearing on ownership, disclosure, or authority.

Charitable money must remain devoted to charitable purposes, and assets managed by a registered investment adviser must be handled with loyalty and full disclosure. A maze of commonly controlled entities should not be used to place those assets beyond the reach of beneficiaries, investors, or the courts.

Please confirm within 30 days that this referral has been assigned to an appropriate component and identify a point of contact for my office, consistent with the Department's rules governing pending investigations. This referral is non-exhaustive and may be supplemented as additional evidence becomes available.

Sincerely,



Lance Gooden
Member of Congress

cc: The Honorable Paul S. Atkins, Chairman, U.S. Securities and Exchange Commission