No. 22-60203 consolidated with Nos. 22-60301, 22-60332, 22-60527, 22-60597

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

HINDS COUNTY BOARD OF SUPERVISORS; HINDS COUNTY SHERIFF TYREE JONES, IN HIS OFFICIAL CAPACITY,

Defendants-Appellants

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI

OPPOSITION OF THE UNITED STATES TO APPELLANTS' PETITION FOR REHEARING EN BANC

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INTRODUCTION

This appeal concerns a district court's package of relief to resolve years of unconstitutional conditions of confinement in the Hinds County Jail. After extensive evidentiary proceedings and two contempt findings, the district court issued orders streamlining the parties' consent decree into a tailored new injunction and appointing a receiver to ensure compliance.

The panel issued a well-reasoned, fact-bound opinion largely affirming these orders. The panel carefully applied binding precedent to the substantial record to determine whether unconstitutional conditions persisted and the appropriateness of the new injunction and receivership to correct those conditions.

While the County may be unhappy with the panel's decision, it identifies no "error"—much less one of "exceptional public importance"—or "direct[] conflict[]" with precedent justifying the full Court's consideration. 5th Cir. I.O.P. 40. En banc review is an "extraordinary procedure," and its standard is not met here. *Ibid.*

STATEMENT

1. The focus of this case is the Raymond Detention Center (RDC), one of Hinds County's four detention facilities. A 2013 grand jury report aired grave conditions at RDC, which was "in a deplorable condition and inadequately

staffed," posing "major security risks." ROA.22-60527.181-200.[1] The next year, the United States opened an investigation under the Civil Rights of Institutionalized Persons Act, 42 U.S.C. 1997 *et seq.*, which found that the County was violating detainees' Eighth and Fourteenth Amendment rights. ROA.22-60527.148-176.

In 2016, the United States filed a complaint and a joint motion with the County for entry of a negotiated consent decree. ROA.22-60527.53-200. The complaint alleged a pattern or practice of systemwide violations relating to detainee-on-detainee violence; use of force; inadequate staffing, jail-management protocols, and physical plant; unlawful detention; and mistreatment of vulnerable detainees. ROA.22-60527.53-59. The parties stipulated that the decree's terms complied with the Prison Litigation Reform Act's (PLRA) requirement under 18 U.S.C. 3626(a)(1) that prospective relief "is narrowly drawn, extends no further than necessary to correct the violation of" federal rights and "is the least intrusive means necessary" (the "need-narrowness-intrusiveness" standard). ROA.22-60527.267. The district court approved the decree. ROA.22-60527.206.

The County achieved substantial compliance with only two of the decree's

[1] "ROA.__" refers to the Record on Appeal. "Op.__" refers to the panel opinion. "Pet.__" refers to the County's Petition. "U.S. Br.__" refers to the United States' Brief as Appellee. "Cnty. Br.__" refers to Hinds County's Brief as Appellant.

requirements by 2019, and the United States moved for contempt. ROA.22-60332.906-941. The district court found contempt was "warranted," citing monitoring reports about violence, excessive force, and chaos, and its own onsite observations of unsafe and "dehumanizing" living conditions. ROA.22-60527.1285-1287 & n.4, 1294. Nevertheless, the court entered a stipulated order designed to jumpstart compliance. ROA.22-60527.1294-1303.

By November 2021, however, the County's compliance had barely improved, while six deaths had occurred in the calendar year. ROA.22-60332.8923, 8942. The district court ordered the County to show cause as to whether it should be held in contempt and a receivership imposed. ROA.22-60527.1991-2018. The County claimed in December to be "righting the ship" and asked the court to defer ruling on contempt for six months, but promptly changed course in January, moving for termination or modification of the consent decree under 18 U.S.C. 3626(b)(3). ROA.22-60527.2163-2186, 2216-2218.

In February 2022, the district court held the County in contempt for breaking its commitments in the two negotiated orders to fix constitutional violations, and for its noncompliance with 30 consent-decree provisions. ROA.22-60527.2378-2404. Despite the County's claims of an "upward trend," the court visited RDC, and it "looked substantially the same" as it did three years prior. ROA.22-60527.2394. The court reserved sanctions. ROA.22-60527.2404 (citation

omitted).

The district court then held a two-week bench trial on the County's termination motion and contempt, hearing testimony from nearly a dozen witnesses and collecting almost 3000 pages of documentary evidence. ROA.22-60203.4535-6701; ROA.22-60332.6892-9803. After trial, the court again held the County in contempt, this time for continuing to house detainees in "A-Pod"—an RDC unit so poorly supervised and maintained that the Sheriff called it "unsafe." ROA.22-60527.2751-2769.

In April, the district court amended the consent decree. ROA.22-60527.2917-3065. The court acknowledged that the County had made "a few" long-promised improvements but found that "[t]he underlying fundamentals . . . are unchanged," citing historically low staffing, unprecedented violence and death, and mistreatment of vulnerable detainees. ROA.22-60527.2918. The court analyzed conditions and the County's response and concluded that the County failed to meet minimum constitutional standards for detainees' protection from harm, use of excessive force, and unlawful detention. ROA.22-60527.2959-3039. Based on these findings and the PLRA's need-narrowness-intrusiveness requirement, the court entered a new injunction, limited to RDC, that retained but streamlined the consent decree's substantive sections. ROA.22-60527.12309-12319.

After allowing the County more time and holding another evidentiary hearing, the court determined that "the County is incapable, or unwilling, to handle its affairs" and that it was "time to appoint a receiver." ROA.22-60527.12256 (citation omitted). In so concluding, the court considered historical receivership examples and applied a multi-factored test from proceedings leading to the Supreme Court's decision in *Brown v. Plata*, 563 U.S. 493, 538 (2011). ROA.22-60527.12256-12277. The court found these factors favored receivership to sanction the County's violation of court orders and to ensure compliance with their fundamental purpose: "ameliorat[ing] the unconstitutional conditions at RDC." ROA.22-60527.12268. The district court then entered orders imposing a receivership and outlining its scope. ROA.22-60527.12279-12295.

The County appealed.

2. A two-judge panel largely affirmed. Op. 1-33. As relevant here, the panel first outlined the PLRA and constitutional standards—including that deliberate indifference, unmitigated by a reasonable response, is required to establish an unlawful failure to protect—and then addressed each of the district court's determinations that relief remained necessary to correct current and ongoing violations. Op. 8-25 (citing, *inter alia*, *Farmer v. Brennan*, 511 U.S. 825, 834 (1994)). The panel concluded that the bulk of the new injunction must stand, considering RDC's conditions, the County's efforts to correct them, and the usual

deference to district court factual determinations on clear-error review. Op. 13-25.

As for the receivership, the panel held that it was an "appropriate sanction for contempt in this case." Op. 25-29. The panel acknowledged this Court's precedents regarding a district court's "discretion" to impose receivership as a remedy, as well as the Supreme Court's admonishments that federal courts must remedy violations of detainees' constitutional rights when "uncorrected" by state authorities. Op. 25-26 (citing, *inter alia*, *Netsphere, Inc. v. Baron*, 703 F.3d 296, 305 (5th Cir. 2012), and *Brown*, 563 U.S. at 511). The panel held that appointing a receiver was consistent with courts' past practice when orders to remediate have not yielded constitutional conditions. Op. 26-28. The panel also held that, in consideration of the same factors the district court analyzed, the receivership met the need-narrowness-intrusiveness standard. Op. 29. The panel concluded, however, that the receiver's duties improperly reached into budgetary matters and required more specific analysis to satisfy the PLRA. Op. 29-32.

Thus, the panel partly affirmed, partly reversed, and remanded for further proceedings. Op. 33.

ARGUMENT

En banc review is "not favored" and only warranted where a panel decision conflicts with a decision of the Supreme Court, this Court, or another circuit court,

or where the proceeding involves a question of "exceptional importance." Fed. R. App. P. 40(a) and (b)(2). Neither requirement is met here.

There is no conflict with precedent. The Petition's first two points—about the panel's assessment of the County's deliberate indifference and the propriety of appointing a receiver to sanction contempt of a later-narrowed consent decree—merely rehash prior arguments that fail to show any deviation from settled law. The third—regarding successive orders that are the least intrusive means necessary to correct constitutional violations—was not pressed previously and thus is waived, and, moreover, lacks support.

Further, these arguments are highly specific to the circumstances of this case and do not create questions of exceptional importance for en banc consideration.

I. The panel's decision comports with Supreme Court and Fifth Circuit precedent and does not warrant en banc review.

A. The panel hewed to precedent in reviewing the district court's fact-bound assessment of the evidence demonstrating the County's deliberate indifference.

Although the Petition charges (Pet. 4) that the panel's deliberate-indifference analysis is "unrecognizable," the panel faithfully applied the standard from *Farmer v. Brennan*, 511 U.S. 825, 844 (1994), thoroughly considering the County's response to grave jail conditions. The County's disagreement with how the panel viewed the case under this binding authority—through the lens of clear-error review—does not create a conflict with precedent justifying en banc review. Fed.

R. App. P. 40(b)(2).

There is no dispute that *Farmer* guides consideration of detainees' Eighth and Fourteenth Amendment rights to protection from harm.[2] *See* Op. 10-11; Pet. 4-5. As the panel correctly explained, establishing a violation requires demonstrating both "substantial risk of serious harm," which is an "objective matter," and officials' "deliberate indifference to inmate health or safety," which is a "subjective component." Op. 10 (quoting *Farmer*, 511 U.S. at 843). Certain factors, such as "longstanding" and "well-documented" risks, may result in the imputation of deliberate indifference, whereas a showing that officials "respond[ed] reasonably" to those risks may negate it. Op. 11 (quoting *Farmer*, 511 U.S. at 842-844). A response may be reasonable, the panel observed, even if it is "unsuccessful" or not "optimal." Op. 16 (citing *Farmer*, 511 U.S. at 844-845).

The County does not argue that the panel applied an incorrect standard for deliberate indifference and instead claims, wrongly, that the panel failed to "actually assess" its reasonableness. Pet. 4-5. But the panel expressly engaged with this aspect of *Farmer* throughout its opinion and thoroughly assessed the nature of the County's efforts—or lack thereof—to mitigate well-known risks. *See*

[2] Because the Fourteenth Amendment's protections for pretrial detainees are "at least as great" as the Eighth Amendment's for convicted prisoners, this Court considers Eighth Amendment precedents, like *Farmer*, as proper guideposts for Fourteenth-Amendment guarantees. *Hare v. City of Corinth*, 74 F.3d 633, 649 (5th Cir. 1996) (en banc) (citation omitted).

Op. 10-25. The County offers what it calls "blatant examples" of the panel's failure to consider its response, but they reveal only evidentiary disputes. Pet. 5. The Petition identifies no authority that conflicts with the conclusion that the County's efforts were unreasonable. This is unsurprising, as a court need not find that taking "some reasonable precautions" establishes a reasonable response "on the whole." *Converse v. City of Kemah*, 961 F.3d 771, 779 (5th Cir. 2020).

Staffing. The County claims that the panel's deliberate-indifference analysis was deficient because it misunderstood when a 5% pay increase was implemented and undervalued the County's retention efforts. Pet. 5. This is merely an invitation to revisit the record, not grounds for en banc review. Regardless, the panel expressly considered the County's efforts and found them unreasonable, evidenced by their recency and inadequacy to prevent conditions from worsening (shown by record-low staffing, violent quarters left unsupervised, and an officer walkout)—even after years under court orders outlining corrective measures. Op. 14-16 (citing, *inter alia*, *Cope v. Cogdill*, 3 F.4th 198, 209 (5th Cir. 2021)). Some efforts the County touted were barely implemented (like the 5% raise, in December 2021), while others were unimplemented or unapproved (a base-pay increase, payroll improvements, retention pay, and recruitment and uniform-stipend proposals). *See* U.S. Br. 44-46 (discussing response). While the panel may have

mistaken the month of the 5% raise's implementation, its refusal to find the County's efforts reasonable was not in error or conflict with authority.

Use of Force. The County wrongly claims that the panel relied on a "single incident" of excessive force to assess the reasonableness of its response and "glossed over" its efforts. Pet. 5-6. First, the panel highlighted a recent illustrative incident in assessing ongoing unconstitutional conditions arising from excessive force, but also weighed other circumstances, like inadequate training, that in their "totality" kept detainees' safety in jeopardy. Op. 17 (quoting *Alberti v. Klevenhagen*, 790 F.2d 1220, 1224 (5th Cir. 1986)).[3] This was proper, as a court may consider whether conditions violate the Constitution "in combination" where they have a "mutually enforcing effect" that produces "the deprivation of a single, identifiable human need"—here, physical safety. *Gates v. Cook*, 376 F.3d 323, 333 (5th Cir. 2004) (citing *Wilson v. Seiter*, 501 U.S. 294, 304 (1991)).

Nor did the panel err in assessing the County's purported efforts to address

[3] For the first time in this case, the County expresses "concern[]" about reliance on *Alberti* (Pet. 6 n.3), a decision cited below and before the panel. The panel relied on *Alberti* for several distinct principles, only one of which—that constitutional violations may arise when officials allow violence to go "unchecked" and "'terror reigns'" (Op. 13 (quoting *Alberti*, 790 F.2d at 1224))—directly relates to deliberate indifference. But the panel did not incorporate the "terror reigns" standard into its deliberate-indifference analysis, much less construe it to override *Farmer*'s subjective-intent component, as the County suggests. Moreover, this Court, sitting en banc post-*Farmer*, has described *Alberti* as consistent with precedent requiring deliberate indifference to establish violations of pretrial detainees' right to protection from harm. *Hare*, 74 F.3d at 641-642.

excessive force, along with its actions (like issuing tasers without training) that increased risk. Op. 17-20. On clear-error review, the panel held that the County's factual contentions could not negate the district court's "thorough" and "ampl[y]" "supported" findings—including that claimed measures were not as described, or nonexistent. Op. 17-20 & n.8; *see also* U.S. Br. 38-40, 46-48 (discussing incidents, practices, and responses). The County cites no contrary authority and disputes only the application of law to fact, which is not grounds for en banc review.

Investigations. Here again the County improperly asks the full court to reweigh evidence that the panel found insufficient to demonstrate a reasonable response, citing no conflicting precedent. Pet. 6-7. The request is perplexing because the County did not independently argue to the panel that its investigations efforts formed a reasonable response. Cnty. Br. 28-37. Nevertheless, the panel thoroughly reviewed the County's failure to address known deficiencies—reflected in "the continued dearth of functional cameras" and an investigator's resignation despairing the futility of his efforts—and rightly concluded that they overcame the value of any claimed changes. Op. 21-22. The panel did not fail to consider reasonableness but instead could not find it in the record, viewed through the proper lens of clear-error review.

B. The panel's affirmance of the receiver's appointment comports with Supreme Court and Fifth Circuit precedent.

The County cannot identify a conflict with this Court's "prior decisions" to justify en banc review of the receivership, either. Pet. 7-8.

The district court imposed the receivership to remedy persistent noncompliance with court orders that were tailored—as they must be under the PLRA, 18 U.S.C. 3626(a)—to correcting violations of detainees' federal rights. *See* ROA.22-60527.12265-12266, 12268-12269. The receivership is a necessary complement to the new injunction because it compels adherence to the injunction's terms and purpose, which County leaders "were incapable, or unwilling" to fulfill. ROA.22-60527.12256, 12277-12278. Indeed, directing compliance with court orders and the Constitution is the receiver's charge. ROA.22-60527.12282-12295.

In properly affirming, the panel cited ample precedent holding that courts' authority to effectuate compliance with their orders, and the Constitution, is broad and includes a range of remedies compatible with the PLRA's limitations. *See* Op. 26-29 (citing, *inter alia*, *In re Bradley*, 588 F.3d 254, 265 (5th Cir. 2009) (describing the scope of civil contempt) and *Brown v. Plata*, 563 U.S. 493, 511 (2011) (discussing options for "remedying unconstitutional prison conditions")). The County identifies no authority for its claim that streamlining the underlying order barred the receiver's appointment, or its new position that the order and receivership cannot coexist consistent with the need-narrowness-intrusiveness

requirement. Pet. 8-12.

1. Narrowing the consent decree did not preclude receivership.

The County's argument that the panel wrongly affirmed the receivership as a sanction for violating a later-"replaced" decree rests on a misleading factual premise and a single, inapposite case. *See* Pet. 9-10 (citing *National Mar. Union v. Aquaslide "N" Dive Corp.*, 737 F.2d 1395, 1400 (5th Cir. 1984)). It presents no conflict of authorities warranting en banc review.

In reality, the decree was not replaced. Because unconstitutional conditions justifying the decree's existence persisted, the court "revised" it to "excis[e] those provisions that exceeded the constitutional minimum" while retaining nearly all its core requirements. ROA.22-60527.12256; *see also* ROA.22-60527.12309-12319. Moreover, the receivership was a remedy not just for noncompliance with the decree's terms but with their essential purpose: correcting constitutional violations. Op. 25-28; ROA.22-60527.2390, 2393-2394, 2755, 12265, 12269, 12271, 12275, 12277.

National Maritime Union has no bearing here. It arose from a finding that a union violated an injunction in a labor dispute that this Court concluded the district court lacked jurisdiction to issue. 737 F.2d at 1397. The Court reversed the contempt finding because "[c]oercive proceedings designed to impel compliance with the injunction necessarily cease when the injunction is invalidated." *Id.* at

1400. The decision says nothing about this case, where the injunction was not invalidated but streamlined. Nor does it address a court's authority—indeed, its "responsibility"—to remedy constitutional violations that local authorities failed to correct. Op. 26 (quoting *Brown*, 563 U.S. at 511).

2. Both the new injunction and the receiver's appointment comply with the PLRA.

The County's final argument appears to be that the panel could not affirm the new injunction *and* the receivership because both could not be "the least intrusive means necessary"—part of Section 3626(a)(1)'s need-narrowness-intrusiveness requirement—to correct unconstitutional conditions. Pet. 10-14. The County never has pressed this argument and offers no direct support for it. It is waived, unpersuasive, and unfit for en banc consideration.

a. First, this argument appears nowhere in the County's prior briefing, and its prior positions contradict it. *See* Cnty. Br. 37-61; ROA.22-60527.2163-2186, 2293, 12031-12043, 12063-12070, 12110-12117. "[A] party who fails to make an argument before either the district court or the original panel waives it for purposes of en banc consideration." *Miller v. Texas Tech. Univ. Health Scis. Ctr.*, 421 F.3d 342, 349 (5th Cir. 2005) (en banc).[4]

[4] At oral argument, the County's counsel twice expressed incredulity that the new injunction and receivership each could be the "least intrusive means," without further explication. Oral Argument 15:57-16:10, 39:15-22. Even if this

Moreover, to the panel, the County argued that the district court should have imposed *different relief*, not that *no additional relief* could be entered consistent with the least-intrusive-means principle. Cnty. Br. 43-45. And in the district court, the County moved for the entry of the stipulated order to facilitate compliance with the consent decree and averred that this additional measure satisfied Section 3626(a)(1). ROA.22-60203.1260-1261. It is unclear why the County believed that the consent decree and stipulated order each could form the "least intrusive means necessary" but that the further measure of receivership cannot.

b. In any event, the County identifies nothing—in statute or precedent—with which the panel's affirmance of two successive orders to correct persistent violations conflicts. *See* Pet. 10-13.

The PLRA does not specify the timing or number of orders a court may enter that form the "least intrusive means necessary" to correct constitutional violations. 18 U.S.C. 3626(a)(1). It only does so with respect to prisoner-release orders, which may be entered if "an order for less intrusive relief [] has failed" and "the defendant has had a reasonable amount of time to comply with the previous court orders." 18 U.S.C. 3626(a)(3)(A)(i)-(ii). These prerequisites do not apply to

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was intended to articulate the unbriefed point now asserted, "[a]rguments presented for the first time at oral argument are waived." *Comsat Corp. v. FCC*, 250 F.3d 931, 936 n.5 (5th Cir. 2001).

receivership, but even they assume a court's ability, or even obligation, to impose successive, escalating measures to achieve constitutional compliance.

Further, *Brown v. Plata*, the leading Supreme Court precedent interpreting Section 3626, endorsed employing "a range of available options," including consent decrees, special masters, and receivers. 563 U.S. at 511. Indeed, those measures coexisted in the cases before the Court, which concluded that a prisoner-release order *also* could be imposed to achieve an "efficacious," PLRA-compliant remedy. *Id.* at 507-510, 529-539. Referencing an earlier receivership order, the Court explained that unconstitutional "conditions of confinement are rarely susceptible of simple or straightforward solutions," which may require "a *multifaceted* approach aimed at many causes." *Id.* at 525-526 (emphasis added). "The PLRA should not be interpreted to place undue restrictions on the authority of federal courts to fashion practical remedies." *Id.* at 526.

c. The panel's affirmance of the receivership comports with *Brown*. After years of the County's noncompliance, the district court's entry of the streamlined new injunction and appointment of a receiver to ensure compliance demonstrated adherence to the least-intrusive-means principle, not its violation. The panel correctly concluded this was no abuse of discretion, especially given the district court's findings that the County's failure to take responsibility was a key barrier to improvement. Op. 28-29; ROA.22-60527.12273-12275, 12277-12278; *see Plata*

v. Schwarzenegger, 603 F.3d 1088, 1098 (9th Cir. 2010) (holding receivership was the least intrusive means to address violations unresolved by prior consent orders because "[t]he problem has not been with a lack of plans, but with the State's inability to execute them").

The County's attempt (Pet. 10-13) to manufacture a conflict between the panel's decision and *Ball v. LeBlanc*, 792 F.3d 584 (5th Cir. 2015), a case the panel cited once on the standard of review (Op. 26), is wholly unpersuasive. First, *Ball* holds that courts may not enter relief broader than the record calls for—there, a facility-wide injunction in a three-plaintiff, non-class case that was more intrusive than plaintiffs' expert deemed necessary. *Id.* at 598-599. It is silent on the County's argument about successive forms of prospective relief.

Second, the County is wrong that affirming both the new injunction and the receivership violated *Ball*'s admonition that "under the PLRA, plaintiffs are not entitled to the most effective remedy." Pet. 13 (quoting *Ball*, 792 F.3d at 599). The panel affirmed the receivership because it was "necessary" to ensure compliance with court orders and the Constitution given, *inter alia*, unmitigated risk and leadership failures—not because it was the most effective measure. Op. 28-29. The fact that the court entered complementary orders to achieve a "timely and efficacious remedy for the ongoing violation of [detainees'] constitutional rights," *Brown*, 563 U.S. at 543, does not render that relief unduly intrusive.

II. The panel's opinion applied settled law to the unique circumstances of this case and creates no question of exceptional importance for en banc review.

Although the County initially claims (Pet. iii) that its Petition raises "questions of exceptional importance" justifying en banc review, it never specifies how the panel's application of the correct law to a unique record constitutes an exceptionally important question. Failing to return to this theme, the County concludes its plea by speculating only that "mischief" will come of the panel's opinion. Pet. 14. "Mischief" does not meet the strict requirements for en banc review.

While this appeal arises from exceptional circumstances—notoriously grave jail conditions and the County's yearslong delay and gamesmanship to avoid addressing them—it presents no exceptionally important questions. Rather, the panel applied settled law to affirm fact-bound assessments of an extensive record and a prudent relief package that comports with those circumstances and with statutory and constitutional requirements. *See* Part I, *supra*; U.S. Br. 43-81. En banc review is unwarranted.

CONCLUSION

This Court should deny the Petition.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on January 13, 2025, I electronically filed the foregoing OPPOSITION OF THE UNITED STATES TO APPELLANTS' PETITION FOR REHEARING EN BANC with the Clerk of the Court for the United States Court of Appeals for the Fifth Circuit by using the appellate CM/ECF system.

I certify that all participants in this case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

s/ Katherine E. Lamm
KATHERINE E. LAMM
Attorney

CERTIFICATE OF COMPLIANCE

The attached OPPOSITION OF THE UNITED STATES TO APPELLANTS' PETITION FOR REHEARING EN BANC does not exceed the type-volume limitation imposed by Federal Rule of Appellate Procedure 40(d)(3).

The brief was prepared using Microsoft Office Word for Microsoft 365 and contains 3894 words of proportionally spaced text. The typeface is 14-point Times New Roman font.

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Date: January 13, 2025