The Hyde Amendment Brief: The Broadview Six

A model brief for attorney's-fee recovery under the Hyde Amendment

By Danny Aguilar with Claude · Bad Faith Prosecution · wiki / The Broadview Six · Content draft 2026-05-28 · Updated 2026-06-09 (verified pin fix, Briggs precision, Fund-status reframe)

What this is. This is an independent legal-research and advocacy/citizen-journalism document. It is a *model* brief: a worked-out argument that the four Broadview Six defendants whose case was dismissed with prejudice on May 21, 2026 could press for attorney's-fee recovery under the Hyde Amendment. It is not legal advice, not a filed pleading, and not authorized by or attributed to Ms. Abughazaleh, her co-defendants, or their counsel. Every factual assertion is cited to the public dismissal-hearing transcript or to a published opinion. Where the law cuts against the defendants, this brief says so plainly. The project's posture is "receipts, not vibes."

A threshold honesty note carried through the whole brief. The dismissal here was entered on the government's own motion under Federal Rule of Criminal Procedure 48(a). The court did not, on May 21, enter findings of prosecutorial misconduct as the *basis* for dismissal; it granted the government's motion. The United States Attorney stated on the record that he did not believe any prosecutor acted with intent to mislead the court, and that he believed there was probable cause for the misdemeanor the government was prepared to try. That posture is the hardest fact in this brief. It is confronted directly in Part I and Part IV, not buried.

Caption

United States v. Rabbitt et al., No. 25 CR 693 (N.D. Ill.), before the Honorable April M. Perry. Defendants: Michael Rabbitt, Katherine Marie Abughazaleh, Andre Martin, Catherine Sharp, Brian Straw, and Joselyn Walsh, "the Broadview Six." The case arose from a September 27, 2025 protest at the U.S. Department of Homeland Security's immigration detention facility in Broadview, Illinois, during the federal enforcement operation the courts of this district have called "Operation Midway Blitz."

Drafting note (not for filing): A Hyde Amendment fee application is filed in the underlying criminal case, by each prevailing defendant, after final disposition. This model brief is written as a single consolidated argument for clarity; an actual application would be filed per-defendant on each defendant's own invoices and net-worth showing. See Part V.

Preliminary Statement

The Hyde Amendment exists for one purpose: to make the United States pay when it drags a person through a criminal prosecution that should never have been brought or maintained. Congress wrote it in 1997 because, in Representative Hyde's words, "[p]eople do get pushed around, and they can get pushed around by their government." *United States v. Shaygan*, 652 F.3d 1297, 1321 (11th Cir. 2011) (Edmondson, J., dissenting in part) (quoting the sponsor). The statute lets a prevailing criminal defendant with private counsel recover "a reasonable attorney's fee and other litigation expenses, where the court finds that the position of the United States was vexatious, frivolous, or in bad faith." Hyde Amendment, Pub. L. No. 105-119, § 617, 111 Stat. 2440, 2519 (1997) (codified at 18 U.S.C. § 3006A statutory note).

The Broadview Six are the people Congress had in mind, and the record in this case is unusually candid about why. A grand jury returned a *no bill* on the government's first presentation. The government did not convene a fresh panel; it returned to the same grand-jury body and presented again, and again, until an indictment issued on the third session, with dissenting grand jurors gone. When the District Court reviewed the grand-jury transcripts in camera, it found conduct it had "never seen" in "hundreds, if not thousands" of grand-jury transcripts: a prosecutor vouching her personal credibility to the grand jurors, substantive ex parte communications with grand jurors outside the grand-jury room, and the excusing of grand jurors who disagreed with the government's case. And the government had *redacted those very passages* out of the transcripts it first handed the court. The United States Attorney himself, on the record, said the conduct "upset" him and was the reason he dismissed the felony. The case ended with a dismissal with prejudice.

This brief argues that the Broadview Six can meet the Hyde Amendment standard, while confronting, head-on, the real obstacles in their path. Those obstacles are serious. The single hardest one is not any of the three statutory prongs; it is the threshold question of whether a defendant whose case was dismissed *as a matter of prosecutorial-conduct cleanup, on the government's own motion* is a "prevailing party" at all. The Ninth Circuit has said, on facts that rhyme with these, that the answer can be no. *United States v. Chapman*, 524 F.3d 1073 (9th Cir. 2008). The brief takes that question first, because if it is lost, nothing else matters.

The argument that follows is structured the way a court would have to take it:

- **Part I**: the threshold. Are the Broadview Six "prevailing parties"?
- **Part II**: the standard's central obstacle. "The position of the United States" means the prosecution as an inclusive whole, not isolated misconduct.
- **Parts III.A–III.C**: the three statutory prongs (vexatious, frivolous, bad faith), each with its leading obstacle and the record-based response.
- **Part IV**: the grand-jury anchor and the United States Attorney's good-faith disclaimers.
- **Part V**: eligibility, "special circumstances," and how a Hyde claim relates to the other available relief, including the prosecutorial-immunity line and the trade-off built into the Anti-Weaponization Fund's waiver.

A word on posture. This brief does not ask the court to invent new law or to treat the leading denials as wrongly decided. It argues that the controlling cases, applied to *this* record, point toward recovery, and it concedes, where it must, that the question is contested. The project's standing label for the Hyde route is "contested," not "strong." That label is kept honestly throughout.

Statement of Facts

All facts below are drawn from the public, redacted *Transcript of Proceedings* before the Honorable April M. Perry, dated May 21, 2026 ("Tr."), and from published opinions. The transcript is the official court record of the dismissal-day hearing.

The protest and the charges. The case grew out of a September 27, 2025 protest at the DHS immigration detention facility in Broadview, Illinois. Six defendants were charged. The only felony count was a conspiracy charge, the count the parties refer to as Count 1. Tr. 20:22–25. The remaining charges were misdemeanors.

The first grand jury said no. The grand jury returned a "no bill" on the government's first presentation. Tr. 31:25–32:2 (AUSA Skiba: "the grand jury returned a no bill that day"). The government did not go to a fresh grand jury. The United States Attorney later explained why on the record: the office was "concerned that by going into a different grand jury, we may be perceived as forum shopping," so "it was important to me that I say we will go back into the same grand jury again and do it right as opposed to trying to go into a new grand jury, which would have certainly eliminated all of these issues, a fresh grand jury." Tr. 52:3–22.

Three sessions, and the conduct in the grand-jury room. Across three grand-jury sessions, the indictment was eventually returned on the third. Tr. 29:1–4. Reviewing the grand-jury transcripts in full and unredacted, the District Court identified "significantly bigger problems than misinstructions to the grand jurors," Tr. 22:7–10, and named three:

> "First, improper prosecutorial vouching to the grand jurors, with the AUSA putting her personal credibility and trustworthiness on the line in support of the charges.
>
> "Second, improper prosecutorial communications of a substantive nature with the grand jurors outside of the grand jury room.
>
> "And, third, the prosecutor excusing grand jurors who disagreed with the government's case from the deliberations process."

Tr. 22:23–23:6. The court added that it had read "hundreds, if not thousands, of grand jury transcripts," and "ha[d] never seen the types of prosecutorial behavior before a grand jury that I saw in those transcripts." Tr. 22:13–18. On the third session, the one that produced the indictment, "no one gets kicked out." Tr. 29:2–4.

The first grand jury's instructions were themselves infirm, and it *still* declined to indict. During in camera review, the court "did identify some infirmities in the legal instructions that had been provided to the grand jury, at least in regards to the very first grand jury appearance." Tr. 20:8–11. Even on instructions the court found defective, the first grand jury returned a no bill.

The redactions. The government had redacted the passages documenting the three problems out of the transcripts it first provided the court. Tr. 23:7–9 ("all of this was redacted out of the versions of the transcripts that I got"). The court called the redactions the part it found "the most problematic," Tr. 23:9–10, and addressed the prosecutors directly:

> "Mistakes happen. They happen to all of us. But as I tell my children, you own it. You admit to it. You apologize for it, and you move on. What you do not do is hide it."

Tr. 23:10–13. The court continued: "I relied on all of you and your personal representations in this case … That trust has been broken." Tr. 23:14–25. AUSA William Hogan acknowledged responsibility for the redactions: "Yes, mostly me. … I'll take responsibility for it." Tr. 30:4–6.

The AUSA's concession on vouching. Asked about the first of the three problems, AUSA Matthew Skiba conceded that the vouching, which he "would never make … as a matter of personal style," was, "at a minimum, arguably misconduct":

> "What I did not know then, and what only became apparent as we were discussing dismissing these charges, is that's beyond personal style, and that is, at a minimum, arguably misconduct."

Tr. 31:10–13.

The two-stage dismissal. The government dismissed in two steps. First, on April 28, 2026, after becoming aware of the grand-jury conduct, the United States Attorney "immediately dismissed Count 1," the felony, and proceeded on a misdemeanor information. Tr. 53:1–6; 20:22–25. Second, at the May 21, 2026 hearing, after the court vacated the May 26 trial date, the United States Attorney moved to dismiss the remaining misdemeanor information *with prejudice*, and the court granted it:

> "THE COURT: … is that dismissal with prejudice? MR. BOUTROS: With prejudice. THE COURT: That will be granted."

Tr. 50:2–5. With that, the four defendants then before the court "no longer ha[d] to go to trial." Tr. 59:11–14.

The United States Attorney's good-faith disclaimers. This is the hardest part of the record and it is set out in full. The United States Attorney stated his "very sincere belief … that no prosecutor acted intentionally in misleading you, and that there was no desire to mislead the Court and no deliberate misconduct on the part of the prosecutors." Tr. 50:17–20. He stated that he, too, "had not seen conduct like that," "and it upset me, which is why we did dismiss that indictment." Tr. 53:13–16. He maintained that the office "stand[s] by the charges that we were prepared to bring," Tr. 58:10–11, and that "this United States Attorney believes that there's probable cause that a crime was committed," the Section 111 misdemeanor "we were prepared to go to trial on on Tuesday." Tr. 58:17–20.

The court's own caution on the basis for dismissal with prejudice. Earlier in the hearing, before the government moved to dismiss with prejudice, the court flagged that the legal basis for a *with-prejudice* dismissal was unsettled: "What I have not seen is much case law about the dismissal being with prejudice. … I am looking for case law on that issue." Tr. 24:7–13. And the court was explicit that the defendants had disclaimed any allegation of misconduct *at the U.S. Attorney's Office level* on their vindictive-prosecution theory; that motion was "based solely on the theory that someone external to this U.S. Attorney's Office had urged this prosecution," and was "ultimately denied … [because] there was no evidence of any outside influence." Tr. 24:14–25:3.

The district-wide pattern. This was not an isolated event. Magistrate Judge Gabriel A. Fuentes, in *United States v. Briggs*, No. 1:25-cr-00610 (N.D. Ill. Nov. 20, 2025), catalogued five Operation Midway Blitz arrest cases arising from the same September 27 Broadview events (Mazur, Collins/Robledo, Ivery, and Briggs), in each of which the affiants swore that video evidence corroborated the charges — and all of which were dismissed. *Briggs*, slip op.; Tr. 5:21–23, 7:15–19. The opinion names one grand-jury no bill among them: in Collins/Robledo, "the federal grand jury returned a 'no bill' against these persons and thus refused to indict them on the felony Section 111 charge," and the government dismissed the next day. *Briggs*, slip op. District-wide, Judge Fuentes wrote that a grand-jury "no bill" was "virtually unheard of in this district until Operation Midway Blitz," that "in the past two months, at least three have occurred," and that it was "unusual and possibly unprecedented" for the office "to charge so hastily that it either could not obtain the indictment in the grand jury or was forced to dismiss upon a conclusion that the case is not provable, in repeated cases of a similar nature." *Briggs*, slip op. (verbatim, Midpage-verified).

Argument

Part I. The threshold: the Broadview Six are "prevailing parties."

Before any prong of the Hyde Amendment can matter, a defendant must clear a threshold: the statute awards fees only to a "prevailing party." 18 U.S.C. § 3006A statutory note. This is the most dangerous question in the case, and it must be answered first.

The obstacle: *Chapman*. In *United States v. Chapman*, the Ninth Circuit affirmed dismissal of an indictment with prejudice as a sanction for "flagrant" prosecutorial misconduct (Brady/Giglio violations "and the misrepresentations used to conceal" them) and yet affirmed the denial of Hyde Amendment fees. 524 F.3d 1073, 1089 (9th Cir. 2008). The court held that a "prevailing party" must have "received at least some relief on the merits of his claim," and that "the dismissal was purely intended to sanction the government's flagrant Brady/Giglio and procedural violations … not based on the merits of the case (except as necessary to calculate prejudice), so Defendants are not 'prevailing parties' under the Hyde Amendment." *Id.* The court did not even reach whether the position was vexatious, frivolous, or in bad faith; the prevailing-party failure was "sufficient in and of itself." *Id.*

That holding maps onto this record with uncomfortable precision: a dismissal with prejudice, driven by grand-jury misconduct that the government concealed by redaction, entered on the government's own motion. If a court reads the May 21 dismissal as *purely* a misconduct-cleanup sanction with no bearing on guilt or innocence, *Chapman* says the Broadview Six never reach the merits of a fee claim.

Three responses, in ascending order of strength.

First, *Chapman* is persuasive, not binding. *Chapman* is a Ninth Circuit case; the Broadview Six are in the Seventh Circuit. It is the leading reasoned treatment of the question and it deserves a direct answer rather than a dodge, but it does not control, and its prevailing-party rule (drawn from *Buckhannon Board & Care Home, Inc. v. West Virginia Department of Health & Human Resources*, 532 U.S. 598 (2001), via the Ninth Circuit's *Campbell*) has not been adopted as the Seventh Circuit's test for the Hyde Amendment. The court should reach the question fresh.

Second, this dismissal *did* turn on the merits, not on misconduct cleanup alone. *Chapman* itself draws the line at whether the dismissal was "based on the merits of the case." 524 F.3d at 1089. Here it was, in two concrete senses the *Chapman* record lacked.

(a) *The first grand jury's no bill is a merits event.* A grand jury's refusal to indict is a determination that the government did not establish probable cause. The first grand jury here returned a no bill, even on instructions the District Court later found "infirm[]." Tr. 20:8–11; 31:25–32:2. That is the opposite of the *Chapman* posture, where a properly returned indictment was later dismissed only for discovery misconduct. The neutral body charged with screening this case looked at it and said no.

(b) *The government abandoned the felony and the case was "not provable" in its siblings.* The United States Attorney dropped the only felony, Count 1, Tr. 20:22–25, 53:1–6, and proceeded on a misdemeanor. In the parallel Operation Midway Blitz cases, Judge Fuentes recorded that the office was "forced to dismiss upon a conclusion that the case is not provable." *Briggs*, slip op.; Tr. 7:15–8:5. A prosecution that loses its felony, that a grand jury no-billed, and that the office's own pattern shows was "not provable," is not dismissed *purely* to discipline a prosecutor. The provability of the charge is bound up in the dismissal.

Third, the *Chapman* court expressly preserved the merits/provability carve-out, and that is the door the Broadview Six walk through. The Ninth Circuit denied fees because the dismissal there was "not based on the merits of the case *except as necessary to calculate prejudice*." 524 F.3d at 1089 (emphasis added). The exception swallows this case: the prejudice the misconduct caused was the indictment itself, an indictment a properly functioning grand jury had already refused. When the misconduct is what *manufactured* the charge that the merits could not, the dismissal is a merits dismissal in everything but caption.

The honest assessment: this is contested. *Chapman* is real and on point (the site now confronts it head-on, ahead of the three prongs). But it is beatable on this record precisely because, unlike *Chapman*, the Broadview Six have a no bill, an abandoned felony, and a documented "not provable" pattern to show the dismissal reached the provability of the case, not merely the manners of the prosecutor.

Part II. "The position of the United States" means the prosecution as an inclusive whole; on this record, the misconduct *is* the prosecution.

Assume the prevailing-party threshold is cleared. The next obstacle is the one the project's site already names as load-bearing, and it must be confronted in its *strongest* form.

The obstacle, in its heaviest form: the *Shaygan* panel. The Eleventh Circuit held, as a core holding, that "[t]he district court abused its discretion when it imposed sanctions against the United States for a prosecution that was objectively reasonable," and that "discovery violations alone" cannot ground a Hyde award because "[t]he Hyde Amendment allows an award … only when [the government's] overall litigating position was vexatious, frivolous, or in bad faith." *United States v. Shaygan*, 652 F.3d 1297, 1313–14 (11th Cir. 2011). The "position of the United States" "refer[s] to the legal position of the government, not the mental attitude of its prosecutor." *Id.* at 1312. Judge Pryor distilled the rule defending it from rehearing: "The Hyde Amendment is concerned with wrongful prosecutions, not wrongs that occur during objectively reasonable prosecutions." *United States v. Shaygan*, 676 F.3d 1237, 1239 (11th Cir. 2012) (Pryor, J., respecting denial of rehearing en banc). The Third Circuit reads the statute the same way: the Amendment "requires far-reaching prosecutorial misconduct affecting the criminal case 'as an inclusive whole,'" not "isolated 'errors.'" *United States v. Reyes-Romero*, 959 F.3d 80, 92 (3d Cir. 2020) (quoting *United States v. Manzo*, 712 F.3d 805, 810 (3d Cir. 2013)).

This brief leads with the panel's "objectively reasonable prosecution" core holding deliberately, rather than resting on the softer en-banc-denial phrasing. The obstacle is heavier in its panel form, and a brief that beats only the easier version has not done the work. If a court views the Broadview Six prosecution as a generally reasonable attempt to charge a federal offense that merely "happened to involve" grand-jury misconduct, *Shaygan* says the Hyde Amendment does not reach it; the misconduct feeds traditional sanctions, suppression, OPR referrals, and bar complaints instead.

The response, on this record: the conduct the court named was not *inside* the prosecution. It *was* the prosecution. *Shaygan* and *Reyes-Romero* both turn on a factual premise that is absent here: an "otherwise reasonable prosecution" with misconduct layered on top. The Broadview Six record inverts that premise. On the court's own observations and the lead AUSA's concession, the conduct in the grand jury is what produced the indictment.

- The first grand jury, the neutral body whose job is to screen the charge, returned a no bill. Tr. 31:25–32:2.
- The same body had to be re-presented, and on the session that finally indicted, the dissenting grand jurors were gone: "in the third hearing, no one gets kicked out. And I think that's the one where your indictment was ultimately returned." Tr. 29:2–4.
- The lead AUSA conceded that the vouching used in the grand jury was "at a minimum, arguably misconduct." Tr. 31:10–13.

When the indictment cannot be obtained without vouching, ex parte contacts, and the removal of dissenting jurors, after the grand jury had already said no on its own, the misconduct is not a "discrete wrong" occurring "during an otherwise reasonable prosecution." *Shaygan*, 676 F.3d at 1239. It is the load-bearing structure of the prosecution. The "overall litigating position" *Shaygan* protects is exactly what is missing: a charge a properly functioning grand jury would return.

The favorable lever lives inside *Shaygan* itself. The very opinion the government will cite supplies the doctrinal bridge. Judge Pryor conceded that "a prosecution that begins with objectively reasonable charges and later becomes unreasonable" (for example, where "the government … later discover[s] evidence that proved that a defendant was not guilty" and "continued to prosecute the case") would be "in bad faith." *Shaygan*, 676 F.3d at 1239–40 (Pryor, J.). That hypothetical is a fortiori here. The Broadview Six case did not *begin* objectively reasonable and degrade; the *only* path to an indictment ran through the misconduct, after a no bill. If pressing on after innocence-evidence surfaces is bad faith, pressing on after a no bill, by re-presenting to the same body with dissenters excused, is at least as far over the line.

The "position = prosecutors" rule helps, not hurts. *Reyes-Romero* limits "the position of the United States" to "the position taken by the department and officers charged with administering the prosecution," not independent agencies. 959 F.3d at 91. That cuts *for* the Broadview Six: every act of misconduct the District Court named (vouching, ex parte contacts, excusing dissenting jurors, the redactions) is AUSA-side, squarely prosecutorial. *Reyes-Romero* also recognizes that upstream agent misconduct counts where "prosecutors leverage that misconduct to further a prosecution that has no factual or legal basis." *Id.* To the extent the broader Operation Midway Blitz record involves agent conduct (the sworn declarations Judge Fuentes catalogued), the prosecutors leveraged it to charge cases a grand jury would not indict and the office could not prove.

Contested, honestly. The government's best answer is that one redacted-and-cured grand-jury sequence does not make the *whole* prosecution wrongful, especially once the felony was dropped and the office proceeded on a misdemeanor it believed was supported by probable cause. That is a real argument. The response is that the misdemeanor was the residue of a charging effort the grand jury rejected and the office could not sustain, not an independent, objectively reasonable prosecution that misconduct merely accompanied.

Part III. The three statutory prongs.

The Hyde Amendment is disjunctive: a defendant prevails by showing the government's position was vexatious, *or* frivolous, *or* in bad faith. *Gilbert*, 198 F.3d at 1298–99. The Broadview Six need only one. Each is taken in turn, with its leading obstacle and the record-based response. Each is labeled, honestly, "contested."

Part III.A. Vexatious.

The standard. "[A] determination that a prosecution was 'vexatious' for the purposes of the Hyde Amendment requires both a showing that the criminal case was objectively deficient, in that it lacked either legal merit or factual foundation, and a showing that the government's conduct, when viewed objectively, manifests maliciousness or an intent to harass or annoy." *United States v. Knott*, 256 F.3d 20, 29 (1st Cir. 2001).

The objective-deficiency half is well-supported. A grand jury's no bill is the textbook indicator that a charge lacks a factual foundation a neutral body will accept, and here the first grand jury no-billed even on instructions the court found "infirm[]." Tr. 20:8–11; 31:25–32:2. The felony was abandoned. Tr. 20:22–25. Judge Fuentes's parallel cases show the office "forced to dismiss upon a conclusion that the case is not provable." *Briggs*, slip op.

The obstacle: *Knott*'s "perspective at the time" rule, and the malice half. *Knott* also holds that "the court must assess the basis for pursuing charges from the perspective of the government at the time," and lets the government rely on later-suppressed evidence so long as it had a "good-faith basis" for thinking it admissible. 256 F.3d at 32. And *Knott* requires "*some* finding of malice or improper motivation," not merely an inadequate evidentiary foundation, or "vexatious" collapses into "frivolous." *Id.* at 30–31. The malice/harassment showing is the heavier lift on this record.

The response. *Knott*'s retrospective charity is answered by pointing to the *inception* of the case, not its later evidentiary problems: this is not a charge that looked sound at filing and soured at suppression. The neutral screening body said no at the outset, and the government manufactured the indictment anyway. As for malice or improper motivation, the brief does not overclaim it. The court denied the vindictive-prosecution motion for lack of evidence of *outside* influence, and the defendants disclaimed U.S. Attorney's Office-level misconduct on that theory. Tr. 24:14–25:3. What the record supports is the *objective* malice *Knott* requires, conduct that, "viewed objectively, manifests … an intent to harass or annoy," 256 F.3d at 29, inferred from the choice to re-present to the same body after a no bill, to excuse dissenting jurors, and to redact the evidence of both. Vexatious is the *hardest* of the three prongs on this record, because it demands both halves; the brief flags it as such and rests its weight on frivolous and bad faith.

Part III.B. Frivolous.

The standard. "A 'frivolous action' is one that is '[g]roundless … with little prospect of success; often brought to embarrass or annoy the defendant.'" *Gilbert*, 198 F.3d at 1298–99 (quoting Black's Law Dictionary 668 (6th ed. 1990)).

The obstacle: the "high bar" and the "inclusive whole." A prosecution "based on an unresolved but reasonable legal argument cannot be frivolous," and failure to prevail does not by itself prove frivolousness. *Reyes-Romero*, 959 F.3d at 96. The position must be "'foreclosed by binding precedent or … obviously wrong,'" *id.* (quoting *Manzo*), assessed across the case "as an inclusive whole," *id.* at 92. *Gilbert* adds a grand-jury-specific caution: failing to present exculpatory evidence to a grand jury is "not a basis" for Hyde fees, "at least not where … the trial jury convicts with knowledge of that evidence." 198 F.3d at 1304.

The response. Take the "inclusive whole" framing on its own terms. It is the government's framing, and it favors the defendants here. Viewed whole, this prosecution's life-cycle reads: a first grand jury that returned a no bill, on instructions the court later found infirm; repeated re-presentations to the same body until an indictment issued with dissenters gone; redactions that concealed the misconduct from the court; a felony

abandoned before trial; a case dismissed with prejudice on the government's own motion; and a district-wide pattern of "not provable" Operation Midway Blitz charges. That whole is the picture of a groundless prosecution pressed anyway, "[g]roundless … with little prospect of success." *Gilbert*, 198 F.3d at 1298–99.

Gilbert's grand-jury carve-out does not bind here, and the difference matters. *Gilbert* withheld fees because the *trial jury convicted* with knowledge of the withheld evidence; the conviction proved the charge was not groundless. 198 F.3d at 1304. The Broadview Six were never convicted; the case was dismissed with prejudice. The premise that defeated the *Gilbert* claimant is absent. (The brief does not rest the frivolous prong on a "failure to present exculpatory evidence to the grand jury" theory at all; the conduct here is affirmative misconduct, vouching, ex parte contact, excusing dissenters, not mere non-disclosure.)

Contested, honestly: a court could find that an office which believed it had probable cause for a Section 111 misdemeanor, Tr. 58:17–20, did not press a "groundless" position even if the felony failed. The response is that the misdemeanor was the remainder of a charging effort the grand jury rejected and the office could not prove, not a freestanding, reasonable prosecution.

Part III.C. Bad faith.

The standard. "'[B]ad faith' is not simply bad judgment or negligence, but rather it implies the conscious doing of a wrong because of dishonest purpose or moral obliquity; … it contemplates a state of mind affirmatively operating with furtive design or ill will." *Gilbert*, 198 F.3d at 1299 (quoting Black's Law Dictionary 139 (6th ed. 1990)); accord *Bunn*, 215 F.3d at 436. The inquiry is objective; a court "may not 'delve into the minds and motivations of individual prosecutors'" but asks whether the litigating strategy was "objectively unreasonable in light of the facts and binding case law." *Reyes-Romero*, 959 F.3d at 99 (quoting *Manzo*).

The obstacle: *Bunn* and the line between negligence and bad faith. The Fourth Circuit held that a prosecutor's failure to listen to a backup audio recording of grand-jury proceedings before charging was negligence, not bad faith, because the prosecutor had a "reasonable basis" to charge: a court reporter's transcript and the foreman's confirming testimony. *Bunn*, 215 F.3d at 436–37. The Hyde Amendment "places a daunting obstacle before defendants." *Id.* at 436 (quoting *Gilbert*).

The response: active concealment is the "furtive design" *Gilbert* names. *Bunn* is a case about *inaction*, a prosecutor who did not check a third source. This record is about *action*: the government reviewed the grand-jury transcripts, saw the vouching, the ex parte contacts, and the excusing of dissenting jurors, and then *chose what to hide* before handing the transcripts to the court. Tr. 23:7–13; 30:4–6. That is not a failure to investigate. It is a decision to conceal the very conduct that grounded the indictment. The District Court named it on the record: "What you do not do is hide it." Tr. 23:13. Hiding the misconduct that obtained the charge is "the conscious doing of a wrong … with furtive design," *Gilbert*, 198 F.3d at 1299, and, at the floor, the "reckless disregard for the truth" *Gilbert* folds into bad faith (citing *Franks v. Delaware*, 438 U.S. 154, 171 (1978)).

The objective test helps here. A court need not find that any individual AUSA harbored ill will; it asks whether the strategy (re-presenting after a no bill, excusing dissenters, and redacting the record of both before in camera review) was "objectively unreasonable in light of the facts and binding case law." *Reyes-Romero*, 959 F.3d at 99. Redacting from a court the very misconduct the court asked to review is objectively unreasonable on its face.

The hardest counter, confronted directly: the United States Attorney's disclaimer. The United States Attorney stated, on the record, his "very sincere belief … that no prosecutor acted intentionally in misleading you, and that there was … no deliberate misconduct." Tr. 50:17–20. And *Reyes-Romero* warns that a Rule 48(a) dismissal "does not inherently constitute bad faith." 959 F.3d at 99–100. These are the bad-faith prong's real weaknesses, and the brief does not paper over them.

Three points in response. *First*, the test is objective; the United States Attorney's sincere subjective belief about his line prosecutors' intent does not control whether the *position*, the redacted, re-presented, dissenter-purged path to indictment, was objectively in bad faith. *Reyes-Romero*, 959 F.3d at 99. *Second*, the disclaimer is narrower than it sounds: it speaks to *intent to mislead the court*, and the United States Attorney himself said he became aware of the vouching and ex parte conduct only at the dismissal stage. Tr. 51:5–12; 52:23–53:6. The conduct *inside the grand jury* is not cured by the front office's later good faith. *Third*, the *Reyes-Romero* Rule 48(a) caution addresses a dismissal taken for ordinary "litigation risk"; this dismissal-with-prejudice followed in-camera findings of conduct the court had "never seen" and a concealment the court called "the most problematic" part of the record. Tr. 22:13–18; 23:9–10. That is not benign prosecutorial discretion.

Bad faith is, candidly, the prong that requires the most inference about state of mind, even under an objective test. But it is also the prong with the most affirmative, on-the-record conduct behind it: the redactions, the responsibility AUSA Hogan accepted for them, and the court's own "trust has been broken" finding. Tr. 23:25; 30:4–6.

Part IV. The grand-jury anchor: dismissal was warranted because the misconduct substantially influenced the decision to indict.

The Hyde prongs rest on a premise: that the grand-jury misconduct mattered enough to taint the indictment. The Supreme Court's standard for that premise both helps and complicates the argument, and it is taken on its own terms.

The rule, both edges. "[A]s a general matter, a district court may not dismiss an indictment for errors in grand jury proceedings unless such errors prejudiced the defendants." *Bank of Nova Scotia v. United States*, 487 U.S. 250, 254 (1988). Dismissal is appropriate "only 'if it is established that the violation substantially influenced the grand jury's decision to indict,' or if there is 'grave doubt' that the decision to indict was free from the substantial influence of such violations." *Id.* at 256. There is a narrow exception, where prejudice is presumed, when "the structural protections of the grand jury have been so compromised as to render the proceedings fundamentally unfair," the named examples being racial discrimination in juror selection (*Vasquez v. Hillery*, 474 U.S. 254 (1986)) and the exclusion of women (*Ballard v. United States*, 329 U.S. 187 (1946)). *Id.* at 256–57.

The brief defends on "substantially influenced," not presumed prejudice. Extending *Bank of Nova Scotia*'s presumed-prejudice exception (built for racial and sex discrimination in juror *selection*) to vouching, ex parte contact, and the excusing of dissenting jurors would be an argument, not settled law, and the brief does not stake the case on it. The safer and stronger ground is the "substantially influenced the decision to indict" branch. The proof is on the record: the same body returned a no bill before the misconduct produced an indictment, and the indicting session was the one where "no one gets kicked out." Tr. 29:2–4; 31:25–32:2. When a grand jury that refused to indict is brought back, stripped of its dissenters,

and then indicts, the violations did not merely *influence* the decision; they reversed it. There is, at the least, "grave doubt" that the indictment was "free from the substantial influence" of the misconduct. *Bank of Nova Scotia*, 487 U.S. at 256.

Anticipating the government's *Bank of Nova Scotia* counter. The same opinion notes that knowing Rule 6 violations may be "remed[ied] by means other than dismissal" (contempt, disciplinary proceedings, or "chastis[ing] the prosecutor in a published opinion") to avoid "granting a windfall to the unprejudiced defendant." *Id.* at 263. The District Court here in fact reserved "sanctions for prosecutorial misconduct and … potential ethical violations" as "a separate issue." Tr. 25:19–25. The answer is that those alternative remedies are reserved for the *unprejudiced* defendant. The Broadview Six were prejudiced in the most concrete way the statute contemplates: an indictment they would not have faced but for the misconduct. And *Bank of Nova Scotia* expressly did *not* decide the standard where misconduct is "systematic and pervasive," which is precisely what the Operation Midway Blitz pattern, with its repeated no bills and "not provable" dismissals, tends to show. *Briggs*, slip op.; Tr. 7:15–8:5.

The court's own caution on with-prejudice dismissal. The District Court candidly noted it was "looking for case law" on whether grand-jury misconduct warrants dismissal *with prejudice*, since in the dismissals it had seen "the government is allowed to try again." Tr. 24:6–13. That caution cuts two ways. It means the with-prejudice basis was not a settled merits finding the Hyde claim can simply borrow. But the dismissal that ultimately issued was *with prejudice on the government's own motion* (the United States Attorney himself asked for it, Tr. 50:2–5), which removes the "try again" off-ramp the court had described and leaves the dismissal as a final, on-the-merits-affecting disposition.

Part V. Eligibility, special circumstances, and how a Hyde claim relates to the other routes.

V.A. Eligibility and the EAJA caps.

The Hyde Amendment "expressly adopts 'procedures and limitations' from the EAJA," and that reference "incorporates the … limitations contained in EAJA § 2412(d)," including the net-worth ceilings: no recovery if an individual's net worth exceeds $2 million (or a corporation's exceeds $7 million with more than 500 employees), and an hourly-rate cap of $125. *Knott*, 256 F.3d at 33–34 (citing 28 U.S.C. § 2412(d)(2)(A)–(B)). Two consequences. *First*, each defendant must make an individual net-worth showing; for natural persons without significant assets this is not a bar, but it is per-defendant. *Second*, the EAJA-incorporation holding is the First Circuit rule (followed by the Eleventh Circuit in *Aisenberg*); the Supreme Court has not decided it, and the brief should not assume it binds the Seventh Circuit. The fee recovery, if won, is real but capped: fees and litigation expenses, not damages.

V.B. "Special circumstances."

The statute denies fees if "special circumstances make such an award unjust." 18 U.S.C. § 3006A statutory note. The government's likely "special circumstances" argument is the United States Attorney's prompt self-correction: he dismissed the felony within roughly 24 hours of learning of the conduct, issued office-wide guidance, met with the chief judge, and ultimately moved to dismiss the misdemeanor with prejudice. Tr. 51:5–52:2; 53:1–6. That is a genuine equity, and it is the government's strongest non-merits card. The response is that voluntary correction *after* the misconduct produced an indictment and dragged six defendants toward a trial does not make a fee award "unjust"; it confirms the position was infirm. The harm the fees compensate (the cost of defending the manufactured charge) was already inflicted before the correction.

V.C. The prosecutorial-immunity line is a different track and does not defeat the Hyde claim.

Two separate bodies of law must not be confused. A civil suit for *damages* against the individual prosecutors, for malicious or retaliatory prosecution under § 1983/*Bivens*, runs into absolute prosecutorial immunity. *Imbler v. Pachtman*, 424 U.S. 409, 431 (1976) ("in initiating a prosecution and in presenting the State's case, the prosecutor is immune from a civil suit for damages under § 1983"). Under *Imbler*, the advocacy-function misconduct here could not ground personal-damages liability against the AUSAs; such claims would run, if at all, against the federal *agents/investigators* (and would require identifying the inducing official and pleading absence of probable cause, answered here by the first grand jury's no bill, under *Hartman v. Moore*, 547 U.S. 250 (2006), with *Imbler*'s advocate/investigator line and *Armstrong*'s rigorous selective-prosecution discovery bar in play).

None of that touches the Hyde Amendment. *Imbler* immunity is a defense to *personal damages* suits. The Hyde Amendment is a *statutory waiver of sovereign immunity* that targets "the position of the United States," not a damages claim against any prosecutor. *Imbler* does not bar it. *Imbler* itself notes that absolute immunity leaves intact "professional discipline" and criminal liability under 18 U.S.C. § 242 as accountability channels, 424 U.S. at 429, consistent with the District Court's reserved sanctions/ethics track, Tr. 25:19–25, none of which is the Hyde fee remedy. Keep the two distinct: immunity does not defeat the fee claim against the United States.

V.D. File or sue: the Hyde route and the Anti-Weaponization Fund are alternative paths, not cumulative.

The project's companion brief argues that the Broadview Six qualify under the Anti-Weaponization Fund's own stated standards. (The posture there is "fine, by your own logic": take DOJ at its stated word and apply it, without endorsing the Fund's premises.) That argument is now conditional in a second sense: on May 29, 2026, a federal court temporarily barred the government from creating the Fund or paying any claims, and on June 2 the Acting Attorney General told Congress the administration is "not moving forward with the fund. Period." No commission was seated, no claims were accepted, and no money was paid. As a practical matter, the Hyde Amendment — a standing federal statute no administration can withdraw by press conference — is the route that remains open, and the Broadview Six's counsel filed a Hyde fee motion on June 2, 2026 (docket entry 201, the joint motion for Rabbitt, Abughazaleh, Martin, and Straw; Catherine Sharp filed her own on June 5). The court is treating the June 2 filing as a protective motion, with the government's response due July 7 and replies July 21.

For the conditional world in which the Fund revives, one load-bearing caution must still be flagged: the Fund's settlement carries a § V.B waiver. Accepting Fund money trades away other relief, including the right to sue, which can include the Hyde fee route. The two are best understood as *alternative* paths to making the defendants whole, not as remedies a claimant can stack.

This means the choice is strategic, not free. A Hyde claim is a motion, often with discovery, frequently with an evidentiary hearing, and almost always with a government appeal if the defendant wins; it yields *fees and costs*, capped, per defendant. The Fund route — if it ever operates — would be faster, would reach *damages* beyond fees (relevant, for Kat specifically, to a documented congressional-primary loss mid-prosecution that fees cannot reach), and would cover all six under one common showing; but the waiver forecloses the Hyde route once Fund relief is accepted. A claimant cannot take the Fund's money *and* keep the lawsuit. The honest framing is: the Hyde Amendment is the route for defendants who want to make the United States pay for the prosecution *as litigants*, and it is available so long as they have not signed away the right to sue.

Conclusion

The Broadview Six can make a serious, principled case for attorney's-fee recovery under the Hyde Amendment, and the case is contested, not a sure thing. The hardest obstacle is the threshold: under *Chapman*, a dismissal that is *purely* a misconduct sanction may not confer prevailing-party status. The answer is that this dismissal was not purely a sanction. A grand jury no-billed the case; the government abandoned the felony; the office's own Operation Midway Blitz pattern shows charges that were "not provable." The dismissal reached the provability of the charge, not merely the manners of the prosecutor.

On the merits, the central obstacle (that the Hyde Amendment reaches wrongful *prosecutions*, not wrongs inside reasonable ones) is answered by the structure of this record: on the court's own observations, the conduct in the grand jury did not accompany an otherwise reasonable prosecution; it produced the indictment after a neutral body had already refused to return one. That fact pattern satisfies *Shaygan*'s own carve-out for a prosecution that "begins reasonable, later becomes bad faith," and then some, because here it was never reasonable to begin with. Of the three prongs, frivolous and bad faith carry the most weight on this record; vexatious is the heaviest lift because it demands objective malice as well as deficiency. The grand-jury anchor holds on the "substantially influenced the decision to indict" branch of *Bank of Nova Scotia*, without needing the narrow presumed-prejudice exception.

Take the United States at its word. The United States Attorney said the conduct "upset" him, that it was "why we did dismiss," and that what he saw he "had not seen" before. The District Court said it had "never seen" such behavior in thousands of transcripts, and that "trust has been broken." By the government's own standard, that prosecutors' "client is justice itself," Tr. 23:22, a prosecution that had to be re-run past a no bill, with dissenters excused and the record of it redacted from the court, is the wrongful prosecution the Hyde Amendment was written to remedy.

The label stays honest: **contested**. Winnable on these facts, and hard to win. Both are true.

Sources cited (all Midpage-verified verbatim; see docs/factcheck/hyde-prosecution-doctrine-midpage-2026-05-28.md and per-case files)

Hyde Amendment fee cases

- *United States v. Knott*, 256 F.3d 20 (1st Cir. 2001): vexatious standard (objective deficiency + objective malice); EAJA-cap incorporation; "perspective of the government at the time."
- *United States v. Gilbert*, 198 F.3d 1293 (11th Cir. 1999): frivolous and bad-faith definitions (Black's Law Dictionary); grand-jury-exculpatory carve-out (distinguishable; no conviction here).
- *United States v. Shaygan*, 652 F.3d 1297 (11th Cir. 2011) (panel): "objectively reasonable prosecution" core holding; "position = legal position, not mental attitude"; discovery violations alone insufficient.
- *United States v. Shaygan*, 676 F.3d 1237 (11th Cir. 2012) (Pryor, J., respecting denial of reh'g en banc): "wrongful prosecutions, not wrongs … during objectively reasonable prosecutions"; favorable "begins reasonable, later becomes bad faith" carve-out.
- *United States v. Reyes-Romero*, 959 F.3d 80 (3d Cir. 2020): "inclusive whole"; "position = prosecutors" (helps); "leverage" exception (helps); Rule 48(a) "does not inherently constitute bad faith."
- *United States v. Bunn*, 215 F.3d 430 (4th Cir. 2000): negligence is not bad faith; "daunting obstacle."
- *United States v. Chapman*, 524 F.3d 1073 (9th Cir. 2008): prevailing-party threshold; sanction-only dismissal does not confer prevailing-party status (persuasive, not binding; confronted in Part I).

Grand-jury anchor

- *Bank of Nova Scotia v. United States*, 487 U.S. 250 (1988): prejudice required; "substantially influenced / grave doubt"; narrow presumed-prejudice exception; alternative remedies; left "systematic and pervasive" open.

Immunity / civil-tort line (kept distinct from Hyde)

- *Imbler v. Pachtman*, 424 U.S. 409 (1976): absolute prosecutorial immunity for advocacy; § 1983 damages only; does NOT bar the Hyde fee claim.
- *Hartman v. Moore*, 547 U.S. 250 (2006): retaliatory-prosecution requires want of probable cause (answered by the no bill). [Cited for the civil track contrast only.]
- *United States v. Armstrong*, 517 U.S. 456 (1996): rigorous selective-prosecution discovery bar. [Civil track contrast only.]

2026 dockets (primary sources)

- *United States v. Briggs*, No. 1:25-cr-00610 (N.D. Ill. Nov. 20, 2025) (Mag. J. Fuentes): Operation Midway Blitz five-case catalog; no-bill pattern; "not provable" finding; Rule 48(a) dismissal with prejudice.
- *United States v. Rabbitt et al.*, No. 25 CR 693 (N.D. Ill.): the Broadview Six case. Cited to the in-repo dismissal-hearing transcript (May 21, 2026); not yet ingested in Midpage. **No verified published opinion exists for this docket; do not cite it for anything beyond the transcript record.**