

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

ELZIE BALL, NATHANIEL CODE,
AND JAMES MAGEE,

PLAINTIFFS

VS.

JAMES M. LEBLANC, SECRETARY OF
THE LOUISIANA DEPARTMENT OF
PUBLIC SAFETY AND CORRECTIONS,
BURL CAIN, WARDEN OF THE
LOUISIANA STATE PENITENTIARY,
ANGELA NORWOOD, WARDEN OF
DEATH ROW, AND THE LOUISIANA
DEPARTMENT OF PUBLIC SAFETY
AND CORRECTIONS,

DEFENDANTS

* CIVIL ACTION NO. 13-368
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* JUDGE: BAJ
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* MAGISTRATE: SCR
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**PLAINTIFFS’ MOTION TO SET ATTORNEYS’ FEES AND COSTS REGARDING
MAINTENANCE OF THE STATUS QUO**

NOW INTO COURT COME PLAINTIFFS Elzie Ball, Nathaniel Code, and James Magee, through undersigned counsel, and move for an Order setting an award of Attorneys’ Fees and Costs with respect to Plaintiffs’ *Motion to Maintain the Status Quo* (Rec. Doc. 203) in the above-captioned matter, pursuant to this Court’s Order of Oct. 30, 2014 (Rec. Doc. 214), in the amount of \$16,649.00 in fees and \$243.04 in costs. In support of their motion, Plaintiffs submit the accompanying Memorandum of Law, along with accompanying exhibits and attachments, and Proposed Order.

Date: Nov. 20, 2014

Respectfully submitted,

/s/ Mercedes Montagnes

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CERTIFICATE OF SERVICE

I do hereby certify that on Nov. 20, 2014, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send a notice of electronic filing to all CM/ECF participants.

/s/ Mercedes Montagnes

MERCEDES MONTAGNES, LSBA #33287
Attorney at Law
636 Baronne Street
New Orleans, LA 70113
(504) 529-5955

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

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**MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS’ MOTION TO SET
ATTORNEYS’ FEES AND COSTS REGARDING MAINTENANCE OF
THE STATUS QUO**

NOW INTO COURT COME PLAINTIFFS Elzie Ball, Nathaniel Code, and James Magee, through undersigned counsel, to provide a memorandum in support of Plaintiff’s *Motion to Set Attorneys’ Fees and Costs Regarding Maintenance of the Status Quo*, pursuant to this Court’s Order (Rec. Doc. 214). Plaintiffs state as follows:

I. BACKGROUND

Plaintiffs described the facts giving rise to their *Motion to Maintain the Status Quo* (the “Motion”) (Rec. Doc. 203) in their Memorandum in Support of that motion (Rec. Doc. 203-1 at 2-4), detailing how they were made aware that the mercury thermometers on the Death Row tiers had been removed; replaced with digital thermometers with no read-out; and subsequently

reaffixed. This Motion was filed on October 16, 2014. Defendants filed a Memorandum in Opposition the same day (Rec. Doc. 205). Plaintiffs filed a *Motion for Leave to file Reply* (Rec. Doc. 206) on October 21, 2014, and the Reply was entered into the Record on October 23, 2014 (Rec. Doc. 210). At the same time, on Oct. 22, 2014, this Court ordered oral argument on the Motion, scheduled for Oct. 28, 2014 (Rec. Doc. 207). Defendants filed a motion to have Warden Cain testify at the hearing (Rec. Doc. 208) but the motion was denied (Rec. Doc. 212).

At the hearing on October 28, 2014, the parties presented their arguments regarding the Motion. This Court granted the Motion from the bench (*see* Rec. Doc. 213). The Court also granted Plaintiffs' request for reasonable attorneys' fees and costs associated with the Motion (Rec. Docs. 213-14).

Following the hearing, on November 11, 2014, Special Master Hebert and the parties conducted a visit to Death Row so that Special Master Hebert could familiarize himself with the characteristics of the facility as they relate to this litigation.

II. ARGUMENT

a. Attorneys' Fees

i. The Court granted Plaintiffs' Motion to Maintain the Status Quo and awarded fees.

For purposes of attorneys' fees associated with the Motion to Maintain the Status Quo, Plaintiffs prevailed (Rec. Doc. 214 at 1). The Court awarded Plaintiffs fees and costs associated with the Motions for Sanctions and ordered Plaintiffs to file their motion for attorneys' fees and costs no later than November 21, 2014. (Rec. Doc. 214 at 1-2, "**IT IS FURTHER ORDERED** that Plaintiffs' request for reasonable attorneys' fees and costs associated with the instant motion is **GRANTED**. . . .")

ii. The Court has inherent authority to impose fees in this instance.

Where a party has violated the duty to preserve evidence in pending litigation, the Court can impose sanctions – including the award of attorneys’ fees – under its inherent authority. *See Chambers v. NASCO*, 501 U.S. 32, 43-46 (1991) (discussing the court’s inherent power, its scope, the imposition of fees as a sanction, and the role of bad faith); *Batson v. Neal Spelce Assoc.*, 805 F.2d 546, 550-51 (5th Cir. 1986) (discussing bad faith, punitive purpose of fee shifting, and abuse of judicial process, and concluding that sanction was imposed not under Fed. R. Civ. P. 37 but rather the district court’s inherent powers); *Allstate Ins. v. Mader*, 201 F.Appx. 261, 265 (5th Cir. 2006) (stating that the court should sanction based on a Rule where one is applicable, but in the absence of that, the court can use inherent powers); *Union Pump v. Centrifugal Tech.*, 404 F.Appx. 899, 905-06 (5th Cir. 2010) (stating that spoliation is punishable by sanctions under the court’s inherent powers and that spoliation is a serious offense).¹

The actions of Defendants in altering the Death Row thermometers were taken in bad faith. Where the Court imposes sanctions based on its inherent authority, a finding of bad faith is required. *See Chambers* at 45-46; *Batson* at 550; *Allstate* at 265. Here, Defendants had already been sanctioned by the Court for altering the conditions on the Death Row tiers (Rec. Doc. 88). The Court had previously made clear to the parties that spoliation includes the failure to preserve property for litigation (Transcript, Aug. 5, 2013, at 50:2-7) (“BY THE COURT: . . . It’s clear that spoliation is not just the destruction [or] the significant alteration of the evidence. . . . But,

¹ The Court has authority to impose sanctions under Fed. R. Civ. P. 37 for violations of the rules governing discovery. *See, e.g.*, Rec. Doc. 88 (imposing sanctions on Defendants for discovery violations including spoliation of evidence). Here, the parties are no longer in discovery so Rule 37 does not appear to be the applicable basis for sanctions. Rather, the Court has authority to impose sanctions in this instance based on its inherent authority.

also, the failure to preserve property so that it can be valid for use at trial.”).² Defendants’ motion, following the trial, to remove the awnings they had erected on two tiers indicated their apparent understanding that any modifications to the tiers should only be undertaken with the Court’s awareness and approval (Rec. Doc. 79). To remove the existing mercury thermometers from the tiers, given this extensive history with regard to spoliation in this matter, and then to refuse to give assurances to Plaintiffs that counsel have advised their clients about their common law duty to preserve evidence demonstrates bad faith on the part of Defendants.

iii. Plaintiffs’ fee request comports with the calculation of permissible fees.

1. The lodestar amount.

Reasonable attorneys’ fees are the product of the hours reasonably expended multiplied by the applicable hourly rate for the legal services, known as the “lodestar amount.” *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983). A reasonable hourly rate is based on the prevailing market rates in the community for attorneys of comparable skill, experience, and reputation. *Blum v. Stenson*, 465 U.S. 886, 895 (1984). The Fifth Circuit has stated that, generally, the “relevant market for purposes of determining the prevailing rate to be paid in a fee award is the community in which the district court sits[.]” *Scham v. District Courts Trying Criminal Cases*, 148 F.3d 554, 558 (5th Cir. 1998); *Tollett v. City of Kemah*, 285 F.3d 357, 368 (5th Cir. 2002).

A. Hourly rates requested are reasonable.

Plaintiffs incorporate by reference their arguments regarding the current market rates for local and out-of-district counsel, as well as the necessity for out-of-district counsel in this matter, in their main fees motion (*see* Rec. Doc. 187-1 at 8-11) and their motion for attorneys’ fees

² The Court subsequently cautioned that a future failure by counsel to abide by the rules, including the duty of candor, would not be looked on leniently. (Show Cause Hearing Transcript, Mar. 12, 2014, at 53:6-17.)

regarding Rule 37 Sanctions (*see* Rec. Doc. 104-1 at 11-15). In this fee motion, out-of-district rates are only a factor as to time expended by Mr. Vora, as discussed *infra*.

In support of these arguments, Plaintiffs incorporate by reference the declarations submitted with their principal fee motion in this matter, from attorneys in practicing within the markets of both local and out-of-district counsel, attesting that the rates requested by the attorneys are reasonable. *See* Rec. Doc. 187-8 (Declaration of Katie Schwartzmann), Rec. Doc. 187-9 (Declaration of Mary E. Howell), Rec. Doc. 187-10 (Declaration of Justin Harrison), Rec. Doc. 187-11 (Declaration of Steven Schulman), Rec. Doc. 187-12 (Declaration of David Lash). Plaintiffs also incorporate by reference the comparable declarations submitted in the sanctions fee motion. *See* Rec. Doc. 104-16 (Declaration of Mary E. Howell), Rec. Doc. 104-17 (Declaration of Katie Schwartzmann), Rec. Doc. 104-18 (Declaration of Justin Harrison), Rec. Doc. 104-20 (Declaration of Steven Schulman), Rec. Doc. 104-21 (Declaration of David Lash).

B. Hours requested are reasonable.

A full compensatory fee “will encompass all hours reasonably expended on the litigation.” *Hensley v. Eckerhart*, 461 U.S. at 435. Reasonably expended hours may be measured by the litmus test of what could reasonably be billed to a paying client. *Id.* at 433. In turn, the determination of reasonableness looks at “the profession’s judgment of the time that may be conscionably billed and not the least time in which it might theoretically have been done.” *Norman v. Hous. Auth. of Montgomery*, 836 F.2d 1292, 1306 (11th Cir. 1998). All hours expended as to the motion for status quo in this matter were necessary and compensable, as discussed *infra*.

i. Time spent investigating the alterations of the thermometers

As discussed in the attached affidavits, counsel for Plaintiffs expended initial hours

investigating received reports of alterations to the thermometers. Ex. A (Montagnes affidavit), Ex. C (Compa affidavit), Ex. E (Vora affidavit); *see also* Ex. B (Montagnes time entries), Ex. D (Compa time entries), Ex. F (Vora time entries). This included discussions with clients and other sources, and subsequent correspondence with Defendants' counsel by email. *Id.* Counsel for Plaintiffs also spent time researching the duty to preserve evidence and conferred internally about how to address the matter. *Id.* All six attorneys comprising Plaintiffs' counsel were involved in this phase, but in the exercise of billing judgment counsel seek fees only for the time expended by Ms. Montagnes, Ms. Compa, and Mr. Vora.

ii. Time spent on the Motions and Hearing

As the attached affidavits discuss, Ms. Montagnes, Ms. Compa, and Mr. Vora conducted research and prepared the motion to maintain the status quo, read Defendants' Opposition, and researched and prepared the Reply. Ex. A-F. Following the Court's order for oral argument, counsel prepared for and attended the hearing. *Id.* This work included preparing to cross-examine Warden Cain in light of Defendants' motion to have him testify, made October 23, 2014 (Rec. Doc. 208). This request was pending until the morning of October 28, 2014 (Rec. Doc. 212) (denying Defendants' motion).

iii. Time spent visiting Death Row with the Special Master

Following the hearing on the motion to maintain the status quo, Special Master Hebert contacted the parties to ask that counsel accompany him on a visit to the Death Row facility so that he could observe the current mechanical set-up and familiarize himself with the facility in its current state. This visit was conducted on November 11, 2014. Ms. Montagnes and Ms. Compa attended on behalf of the Plaintiffs. Ex. A, Ex. C; *see also* Ex. B, Ex. D.

iv. Time spent on this fees motion

Upon granting Plaintiffs' motion to maintain the status quo, the Court also ordered Plaintiffs to submit a motion for attorneys' fees. Counsel have expended several hours preparing this fee motion, as the attached affidavits detail. Ex. A-F. As discussed in Plaintiffs' principal Motion for Attorneys' Fees (Rec. Doc. 187) as well as their motion for fees related to sanctions (Rec. Doc. 104), counsel are entitled to fees for time spent preparing the fees motion. *See* Rec. Doc. 187-1 at 16 (discussing the policy considerations underlying the award of so-called fees-on-fees); Rec. Doc. 104-1 at 17-18 (same). *See also Norelus v. Denny's, Inc.*, 628 F.3d 1270, 1298-1299 (11th Cir. 2010) (stating that excluding from a sanctions award the costs incurred in obtaining it would undercut the purposes of providing for sanctions, including the goal of deterrence).

2. Counsel exercised appropriate billing judgment.

In the exercise of billing judgment, Plaintiffs do not seek to recover fees for the limited time expended by Ms. Kornberg, Mr. Kamin, and Mr. Scheckman on this topic. While those lawyers were involved in email communications and phone calls regarding the issue, they did not expend significant time on the correspondence, motions, or hearing discussed *supra*.

As discussed in the attached affidavits, Ms. Montagnes, Ms. Compa, and Mr. Vora have, in the exercise of billing judgment, factored in a global reduction of at least 20% to the time for which fees are sought as compared with the total expended on the motion for status quo as reflected in their timesheet entries. Ex. A-F.

The time that Plaintiffs' counsel devoted to the status quo motion in this litigation is discrete and identifiable, as reflected in the attached affidavits by counsel. Counsel has carefully documented the time directly and reasonably incurred in this regard, and has made "a good faith

effort to exclude . . . hours that are excessive, redundant, or otherwise unnecessary.” *Hensley*, 461 U.S. at 434. The exercise of billing judgment is reflected in the affidavits and incorporated timesheets of Ms. Montagnes, Ms. Compa, and Mr. Vora. Ex. A-F. *See Harkless v. Sweeny Indep. Sch. Dist., Sweeny, Tex.*, 608 F.2d 594, 597 (5th Cir. 1979) (stating that keeping timesheets is a good practice for attorneys and helpful to determining fees).

Because the matter of maintaining the status quo unfolded over a period of only several weeks since the time Plaintiffs were made aware of the change in thermometers, Plaintiffs’ counsel have not devoted an objectively large number of hours to this question. The hours that were spent, however, were necessary and efficiently allocated.

iv. The PLRA cap does not limit the Court’s ability to award fees.

Plaintiffs incorporate by reference their argument in the motion for attorneys’ fees as to sanctions (Rec. Doc. 104) regarding the inapplicability of the PLRA rate cap in the context of sanctions fees. *See* Rec. Doc. 104-1 at 25-27. This fee motion is not made under 42 U.S.C. § 1988, but rather under the Court’s inherent authority. Since the PLRA cap is meant to address the recovery of attorneys’ fees in successful litigation and not govern the sanctioning of defendants, the PLRA cap should not apply to the instant fee motion. *See Edwin G. v. Washington*, 2001 WL 196760 (C.D.Ill., Jan. 26, 2001) (holding that fees sought as discovery sanctions were not subject to PLRA); *Aaron Fillmore, v. Thomas F. Page, et al.*, Civil No. 97-844-CJP, (S.D. Ill., 1998) (fees on motion for discovery sanction were not capped by PLRA because fees were not sought under § 1988).

Because this is the second separate instance of Defendants’ spoliation of evidence, coming more than a year after the first instance (*see* Rec. Doc. 88), the deterrent purpose of the imposition of sanctions is of even greater importance. *See Chambers* at 56 (discussing intended

deterrent effect of sanctions); *see also United States v. 49,000 Currency*, 330 F.3d 371, 376 (5th Cir. 2003) (discussing the desired deterrent effect of sanctions in the context of Rule 37).

Accordingly, it would be entirely reasonable for the Court to award Plaintiffs their full market rate in the present fees matter.

v. Counsel employed a reasonable and efficient division of labor.

Attorneys Ms. Montagnes, Ms. Compa, and Mr. Vora made concerted efforts to efficiently divide the work related to the motion to maintain the status quo in order to avoid repetition or any unnecessary time expended. The attached attorney affidavits and timesheets discuss the specific tasks performed by each attorney. Ex. A-F.

vi. Summary of fees related to the motion to maintain the status quo:

Attorney	Hours (incl. >20% reduction)	Hourly rate	Total
Mercedes Montagnes	33.0	\$225.00	\$7,425.00
Elizabeth Compa	35.2	\$200.00	\$7,040.00
Nilay Vora	6.24	\$350.00	\$2,184.00
TOTAL			\$16,649.00

b. Costs

Counsel seek costs for travel to and from Baton Rouge for the hearing on the Motion to Maintain the Status Quo on October 28, 2014, as well as travel to and from Angola for the visit to Death Row with Special Master Hebert on November 11, 2014. As the attached documentation shows, the roundtrip mileage to the Federal Court for the Middle District of Louisiana from the office of the Promise of Justice Initiative (“PJI”) in New Orleans is 162 miles. Ex. G (roundtrip mileage from PJI office to M.D.La. courthouse). The roundtrip mileage to the Louisiana State Penitentiary at Angola from the PJI office is 272 miles. Ex. H (roundtrip mileage from PJI office to Angola prison). The current witness and juror mileage reimbursement rate for the Middle District of Louisiana is \$0.56 per mile. *Fee Schedule, Fees of the U.S.*

District Court (Dec. 1, 2013), available at www.lamd.uscourts.gov/fee-schedule. For the total 434 miles traveled in connection with the motion for status quo, the cost at the current M.D.La. witness and juror mileage rate is \$243.04.

Although counsel also expended resources printing documents and preparing binders in preparation for the hearing on the motion for status quo, counsel only seek cost reimbursement as to the travel costs described *supra*.

III. CONCLUSION

For the foregoing reasons, Plaintiffs hereby respectfully request that the Court award attorneys' fees and costs in this matter as to sanctions at \$16,649.00 in fees and \$243.04 in costs.

Date: Nov. 20, 2014

Respectfully submitted,

/s/ Mercedes Montagnes

Mercedes Montagnes, La. Bar No. 33287 (Lead Counsel)

Elizabeth Compa, La. Bar No. 35004

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CERTIFICATE OF SERVICE

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/s/ Mercedes Montagnes
MERCEDES MONTAGNES, LSBA #33287
Attorney at Law
636 Baronne Street
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CIVIL ACTION NO. 13-368

JUDGE: BAJ

MAGISTRATE: SCR

AFFIDAVIT OF MERCEDES MONTAGNES

MERCEDES MONTAGNES declares, pursuant to 28 U.S.C. § 1746 and under penalty of perjury, as follows:

1. I incorporate previously filed affidavits in this matter with respect to attorneys' fees. (Rec. Doc. 104-2 & 187-2.)
2. I am an attorney and the deputy director of the Promise of Justice Initiative ("PJI") in New Orleans, Louisiana.
3. I have been a member of the Louisiana Bar since 2010. I am also admitted to appear before the Middle District of Louisiana, and the United States Fourth Circuit Court of Appeals.

4. I am lead counsel in this lawsuit and in this role I helped carry out all aspects of the litigation. My role began in January 2012 when I began working at this office.

5. This affidavit discusses my time expended as to alterations to the death row thermometers in September and October, 2014, and Plaintiffs' pursuant motion to maintain the status quo.

6. The attached billing entries constitute a contemporaneous log of the time I expended on this matter.

7. On or about September 29, 2014, I received reports that mercury and glass thermometers had removed from death row.

8. After we verified that this was true, I attempted to negotiate with the Defendants to ensure there would be no more material alterations to death row.

9. The Defendants refused to provide us with assurances of their intention to maintain the status quo for the pendency of this litigation.

10. I conducted this negotiation in consultation with my co-counsel.

11. As a result, we filed a Motion to Maintain the Status Quo (Rec. Doc. 203).

12. I lead the drafting and filing of this motion.

13. Following Defendants' Opposition to the Motion, we also prepared and filed a Reply and a motion for leave to file the same (Rec. Docs. 206, 206-1).

14. On October 28, 2014, this Court held oral argument on this motion and orally granted Plaintiffs' motion.

15. I argued that motion and had to prepare for this oral argument.

16. On October 31, 2014, this Court entered an order granting attorneys' fees for the work completed on this motion. (Rec. Doc. 214).

17. I also attended the Special Master's visit to death row on November 11, 2014.

18. This visit was scheduled in response to the removal of the thermometers.

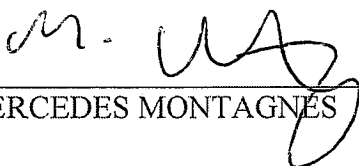
19. I then participated in the drafting of the fee motion.

20. In litigating this matter, I spent 44 hours and 54 minutes. However, in an exercise of billing judgment I have deducted approximately 20% of my time and request here that the Court award fees for 33 hours of time.

21. I believe that a fair market rate for my hours in this matter is \$225 per hour, based upon my level of experience and skill as well as the market rate for attorneys of comparable skill and experience in the New Orleans, LA, area.

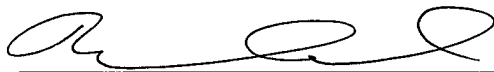
I declare under penalty of perjury that the foregoing is true and correct.

Executed on November 18, 2014.



MERCEDES MONTAGNES

Sworn to and signed before me this 18 day of November, 2014.



Michael Adair, Notary No. 91061

Project	Description	Date	Duration	Tags
Correspondence	various communication re: removal of digital thermometers	9/29/2014	1:47:00	Heat
Correspondence	correspondence re: digital thermometers	10/1/2014	3:45:00	Heat
Correspondence	call with client and f/u re: thermometers	10/1/2014	0:43:00	Heat
Research / Writing (Federal)	draft and review motion re: status quo	10/15/2014	3:33:00	Heat
Research / Writing (Federal)	research duty to preserve	10/16/2014	1:00:00	Heat
Research / Writing (Federal)	research duty to preserve	10/16/2014	0:46:00	Heat
Research / Writing (Federal)	review and file pleadings- motion for exp. review (22 mins) and motion for status quo (1 hr)	10/16/2014	1:00:00	Heat
Research / Writing (Federal)	read and review defendants opposition re: status quo	10/17/2014	1:30:00	Heat
Research / Writing (Federal)	review draft of reply to motion for status quo and research caselaw	10/21/2014	2:29:00	Heat
Research / Writing (Federal)	call with GBC re: oral argument and outlining of prep	10/22/2014	2:19:00	Heat
Correspondence	Draft and send reply to opposing counsel re Cain testimony	10/22/2014	0:51:00	Heat
Research / Writing (Federal)	review filings and review jurisdiction caselaw.	10/27/2014	2:30:00	Heat
Court Prep Time (Federal)	complete hearing prep	10/27/2014	4:08:00	Heat
Court Prep Time (Federal)	hearing prep	10/27/2014	0:45:00	Heat
Court Prep Time (Federal)	hearing prep re: relief, review judges order	10/28/2014	1:28:00	Heat
Court Time (Federal)	Travel and attend hearing	10/28/2014	6:41:00	Heat
Correspondence	call with grant re: data	10/29/2014	0:05:00	Heat
Court Time	Special Master visit to DR (incl. travel, meal)	11/11/2014	8:35:00	Heat
Research / Writing (Federal)	review fee motion draft	11/12/2014	0:27:00	Heat
Research / Writing (Federal)	review affidavit and draft	11/18/2014	0:32:00	Heat
TOTAL			44:54:00	

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

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AFFIDAVIT OF ELIZABETH COMPA

ELIZABETH COMPA declares, pursuant to 28 U.S.C. § 1746 and under penalty of perjury, as follows:

1. I incorporate previously filed affidavits in this matter with respect to attorneys' fees. (Rec. Doc. 104-9 & 187-16.)
2. I am a staff attorney with the Promise of Justice Initiative ("PJI") in New Orleans, Louisiana.
3. I have been a member of the Louisiana Bar since April 2013. I am also a member of the Georgia Bar and am admitted to appear before the Middle District of Louisiana.

4. I have helped carry out all aspects of litigation on this action under lead counsel Mercedes Montagnes. My role began in September 2012 when I began working at this office.

5. This affidavit discusses my time expended as to alterations to the death row thermometers in September and October, 2014, and Plaintiffs' pursuant motion to maintain the status quo.

6. The attached billing entries constitute a contemporaneous log of the time I expended on this matter.

7. In the initial investigation of reports of alterations to the thermometers and related correspondence with Defendants, my role was limited to keeping apprised of the developments and consulting with the rest of my co-counsel as to how to respond.

8. We filed a Motion to Maintain the Status Quo (Rec. Doc. 203) as well as a Reply and a motion for leave to file the same (Rec. Docs. 206, 206-1).

9. I conducted research and writing on both filings.

10. During the same time period, I prepared a motion to expedite consideration related to a pending matter of expert fees, and some of my time entries include both motions. I have identified in the billing log how much time was devoted explicitly to the motion to maintain the status quo (in the column labeled "SQ Time").

11. On October 28, 2014, this Court held oral argument on this motion and orally granted Plaintiffs' motion.

12. I assisted my colleague Mercedes Montagnes in preparing for that oral argument and attended the hearing.

13. On October 31, 2014, this Court entered an order granting attorneys' fees for the work completed on this motion. (Rec. Doc. 214).

14. I also attended the Special Master's visit to death row on November 11, 2014. This visit was scheduled in response to the removal of the thermometers.

15. I lead the drafting of the instant motion for attorneys' fees.

16. In litigating this matter, I spent 44 hours. However, in an exercise of billing judgment I have deducted 20% of my time and request here that the Court award fees for 35.2 hours of time.

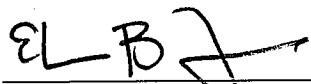
17. I believe that a fair market rate for my hours in this case is \$200 per hour, based upon my level of experience and skill as well as the market rate for attorneys of comparable skill and experience in the New Orleans, LA, area.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on November 18, 2014.


ELIZABETH COMPA

Sworn to and signed before me this 18th day of November, 2014.


NOTARY PUBLIC - Elizabeth Biedenbarn Jordan
Notary ID # 137315
My commission is for life.

Project	Description	Date	Duration	SQ Time
Correspondence	Emails re Thermometer issue	9/29/2014	0:10:00	0:10:00
Correspondence	Emails re Thermometer issue	10/1/2014	0:10:00	0:10:00
Correspondence	Emails re Thermometer issue	10/2/2014	0:05:00	0:05:00
Correspondence	Emails re Thermometer issue	10/3/2014	0:10:00	0:10:00
Correspondence	Emails re Thermometer issue	10/6/2014	0:05:00	0:05:00
Correspondence	Email re Thermometer issue	10/7/2014	0:02:30	0:02:30
Correspondence	Email re Thermometer issue	10/8/2014	0:10:30	0:10:30
Case Meeting	Meet with MM re motions to maintain status quo, expedite consideration	10/15/2014	0:10:00	0:10:00
Research/writing	Prepare motions to maintain status quo, expedite consideration [PARTIAL]	10/15/2014	1:02:57	0:45:00
Research/writing	Prepare motion to maintain status quo	10/15/2014	3:34:58	3:34:58
Research/writing	Circulate status quo motion to team	10/15/2014	0:06:00	0:06:00
Case Meeting	Meet with MM re motions to maintain status quo, expedite consideration [PARTIAL]	10/16/2014	0:15:00	0:07:30
Correspondence	Emails re motions to maintain status quo, expedite consideration [PARTIAL]	10/16/2014	0:05:00	0:02:30
Research/writing	Finalize motions to maintain status quo, expedite consideration and prep proposed orders [PARTIAL]	10/16/2014	0:25:42	0:15:00
Research/writing	File motions to maintain status quo, expedite consideration and prep proposed orders [PARTIAL]	10/16/2014	0:16:51	0:09:00
Case Meeting	Meet with MM re status quo reply	10/17/2014	0:15:00	0:15:00
Research/writing	Prepare status quo reply	10/17/2014	1:39:53	1:39:53
Research/writing	Prepare status quo reply	10/20/2014	1:39:29	1:39:29
Research/writing	Prepare status quo reply	10/21/2014	2:02:59	2:02:59
Research/writing	Status quo reply- final revise and file	10/21/2014	0:38:41	0:38:41
Case Meeting	Emails re Tuesday hearing and discussion with MM	10/22/2014	0:20:00	0:20:00
Research/writing	Status quo hearing prep	10/22/2014	1:12:28	1:12:28
Obtain or Review Court Record	Review and discuss motion for Cain testify	10/23/2014	0:25:00	0:25:00
Court Prep Time	Meet with MM re hearing	10/27/2014	0:40:09	0:40:09
Research/writing	Case cites re court's inherent sanction authority	10/27/2014	0:22:58	0:22:58
Research/writing	Case cites/review of treatise re court's inherent sanction authority	10/27/2014	2:00:00	2:00:00
Court Prep Time	Meet with MM re hearing	10/27/2014	0:33:32	0:33:32
Research/writing	Case cites/review of treatise re court's inherent sanction authority	10/27/2014	0:32:00	0:32:00
Court Prep Time	Meet with MM re hearing	10/28/2014	0:10:00	0:10:00
Court Time	Hearing re status quo motion (incl. travel)	10/28/2014	6:39:15	6:39:15
Research/writing	Prepare motion to affix date re status quo fees/email to o/s re opp [OMIT]	10/31/2014	0:31:45	0:00:00
Research/writing	Prepare motion for attys fees re Status Quo	11/5/2014	0:30:39	0:30:39

Research/writing	Prepare motion for attys fees re Status Quo	11/5/2014	0:25:29	0:25:29
Correspondence	Thermometer/digital data emails review	11/6/2014	0:07:40	0:07:40
Court Time	Special Master visit to DR (incl. travel, meal)	11/11/2014	8:35:00	8:35:00
Correspondence	Email to team re SM visit	11/11/2014	0:31:53	0:31:53
Research/writing	Prepare motion for attys fees re Status Quo	11/11/2014	0:57:54	0:57:54
Case Meeting	Review fees time/current draft	11/12/2014	0:32:00	0:32:00
Research/writing	Research for motion for attys fees re Status Quo	11/13/2014	2:04:10	2:04:10
Research/writing	Prepare motion for attys fees re Status Quo	11/13/2014	0:25:19	0:25:19
Research/writing	Prepare motion for attys fees re Status Quo	11/16/2014	0:45:00	0:45:00
Research/writing	Prepare motion for attys fees re Status Quo	11/17/2014	1:35:56	1:35:56
Research/writing	Prepare motion for attys fees re Status Quo	11/18/2014	2:20:20	2:20:20
	TOTAL			44:05:42

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA**

ELZIE BALL, NATHANIEL CODE,
AND JAMES MAGEE,

CIVIL ACTION NO. 13-368

Plaintiffs,

JUDGE: BAJ

vs.

MAGISTRATE: SCR

JAMES M. LEBLANC, Secretary of
the Louisiana Department of Public
Safety and Corrections; BURL CAIN,
Warden of the Louisiana State
Penitentiary; ANGELA NORWOOD,
Warden of Death Row; and THE
LOUISIANA DEPARTMENT OF
PUBLIC SAFETY AND
CORRECTIONS,

Defendants.

AFFIDAVIT OF NILAY U. VORA

NILAY U. VORA declares, pursuant to 28 U.S.C. § 1746 and under penalty of perjury, as follows:

1. I incorporate previously filed affidavits in this matter with respect to attorneys' fees (Rec. Doc. 104-14 & 187-13).
2. I am an attorney with the law firm of Bird, Marella, Boxer, Wolpert, Nessim, Drooks, Lincenberg & Rhow, P.C. in Los Angeles, California.
3. I have been a member of the California Bar since December 2009. I am also admitted to appear before the Central District of California, and the United States Fifth Circuit Court of Appeals and Ninth Circuit Court of Appeals.
4. I have helped carry out all aspects of litigation on this action under lead counsel Mercedes Montagnes. My role began in or about May 2013.
5. This affidavit discusses my time expended as to alterations to the death

row thermometers in September and October 2014, and Plaintiffs' related motion to maintain the status quo.

6. The attached billing entries constitute a summary of the contemporaneous log of the time I keep and accurately reflects the time I expended on the motion to maintain the status quo.

7. On or about September 29, 2014, co-counsel received reports that mercury and glass thermometers had removed from death row.

8. After we verified that this was true, co-counsel attempted to negotiate with the Defendants to ensure there would be no more material alterations to death row.

9. The Defendants refused to provide us with assurances of their intention to maintain the status quo for the pendency of this litigation.

10. I consulted with my co-counsel about our negotiation of a potential agreement to resolve the issue and avoid motion practice on the issue.

11. In the initial investigation of reports of alterations to the thermometers and related correspondence with Defendants, my role was limited to keeping apprised of the developments and consulting with the rest of my co-counsel as to how to respond.

12. We filed a Motion to Maintain the Status Quo (Rec. Doc. 203), as well as a Reply and a motion for leave to file the same (Rec. Docs. 206, 206-1).

13. I conducted research and writing on both filings.

14. On October 28, 2014, this Court held oral argument on this motion and orally granted Plaintiffs' motion.

15. I assisted lead counsel Mercedes Montagnes in preparing for that oral argument and hearing.

16. On October 31, 2014, this Court entered an order granting attorneys' fees for the work completed on this motion (Rec. Doc. 214).

17. I assisted in the preparation and writing of the instant motion for


attorneys' fees.

18. In litigating this matter, I spent 7.8 hours. However, in an exercise of billing judgment I have deducted 20% of my time and request here that the Court award fees for 6.24 hours of time.

19. I believe that a fair market rate for my hours in this case is \$350 per hour, based upon my level of experience and skill, as well as the market rate for attorneys of comparable skill and experience in the Los Angeles, California, area.

I declare under penalty of perjury that the foregoing is true and correct.

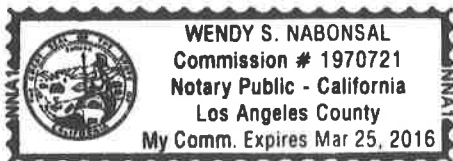
Executed on November 19, 2014.




Nilay U. Vora

STATE OF CALIFORNIA)
)
COUNTY OF LOS ANGELES)

Subscribed and sworn to (or affirmed) before me on the 19th day of November, 2014, by Nilay U. Vora, proved to me on the basis of satisfactory evidence to be the person who appeared before me.



(Seal)


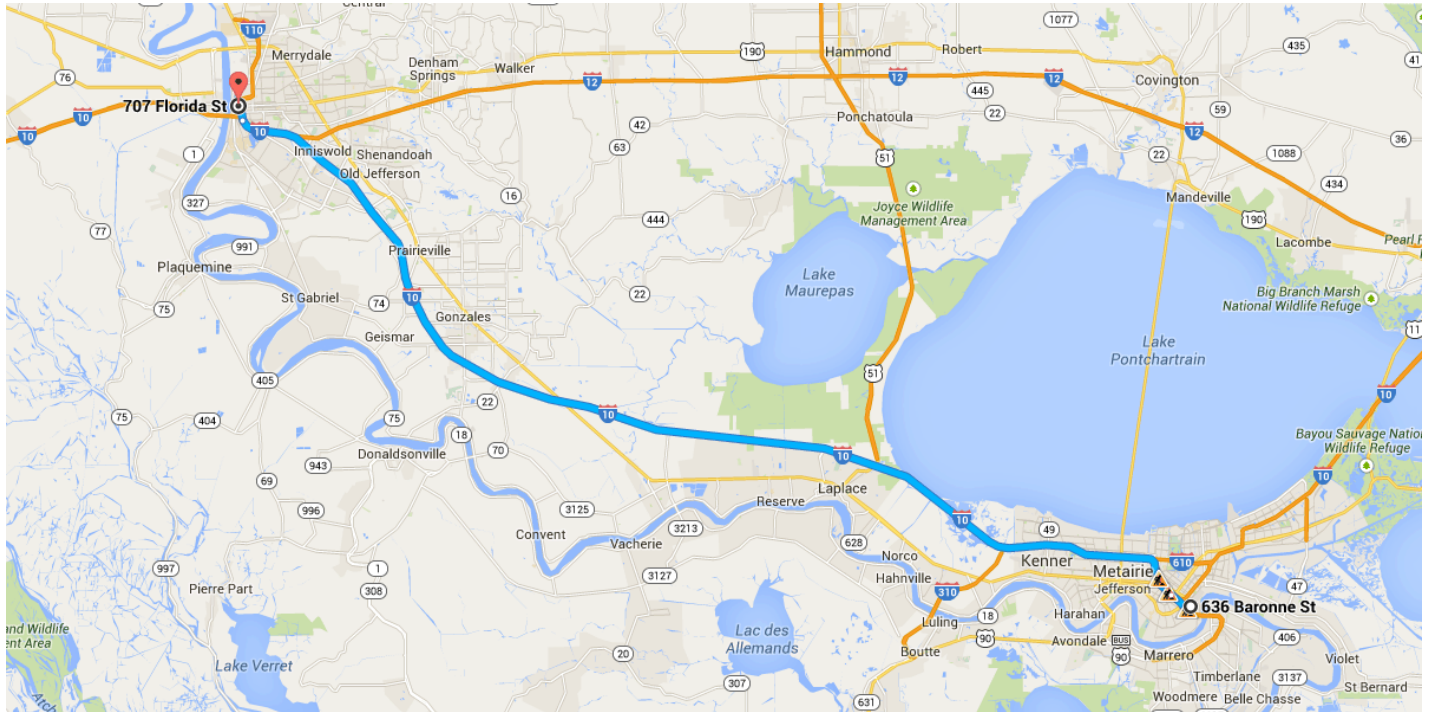
Signature

NUV October 2014 Time for Angola: Death Row Heat Litigation

Date	Time	Description
10/1/14	0.2	Email and telephone conference with M. Montagnes re alterations to prison facility and strategy for dealing with same
10/6/14	0.3	Review correspondence re special master issues
10/6/14	0.5	Email with M. Montagnes re reports of changes to thermometers and need for motion to preserve evidence and maintain status quo
10/7/14	0.6	Email and telephone conference with B. Compa and M. Montagnes re Defendants' alterations to physical structures and thermometers in death row facilities
10/8/14	0.5	Legal research re motion to maintain status quo
10/8/14	0.3	Email with M. Montagnes re strategy to maintain status quo
10/8/14	0.1	Email with opposing counsel re maintenance of evidence and status quo
10/13/14	0.1	Email with M. Montagnes re strategy to maintain status quo
10/13/14	0.3	Legal research re jurisdictional issues re maintaining status quo
10/15/14	0.7	Email and telephone conference with B. Compa and M. Montagnes re motion to maintain status quo
10/15/14	0.3	Review and revise motion to maintain status quo
10/17/14	0.2	Email with B. Compa re reply brief re motion to maintain status quo
10/20/14	0.2	Review and revise reply brief re preservation of evidence
10/20/14	0.1	Email with B. Compa re reply brief
10/22/14	0.5	Review Order re hearing on motion to maintain status quo; email with co-counsel re same and defendants' request for live testimony at hearing
10/27/14	0.4	Telephone conference with M. Montagnes re strategy for hearing re motion to maintain status quo
10/28/14	0.4	Telephone conference with M. Montagnes and B. Compa re hearing re motion to maintain status quo
10/30/14	0.1	Review court order re motion to maintain status quo
11/12/14	1.0	Prepare motion for attorneys' fees re motion for maintenance of status quo and review, summarize, and tabulate time entries re same.
11/17/14	1.0	Review and revise motion for attorneys' fees re motion for maintenance of status quo and legal research re same (.7); prepare affidavit re same (.3).
	7.8	TOTAL



Directions from 636 Baronne St to 707 Florida St



○ 636 Baronne St

New Orleans, LA 70113

Get on US-90 BUS E

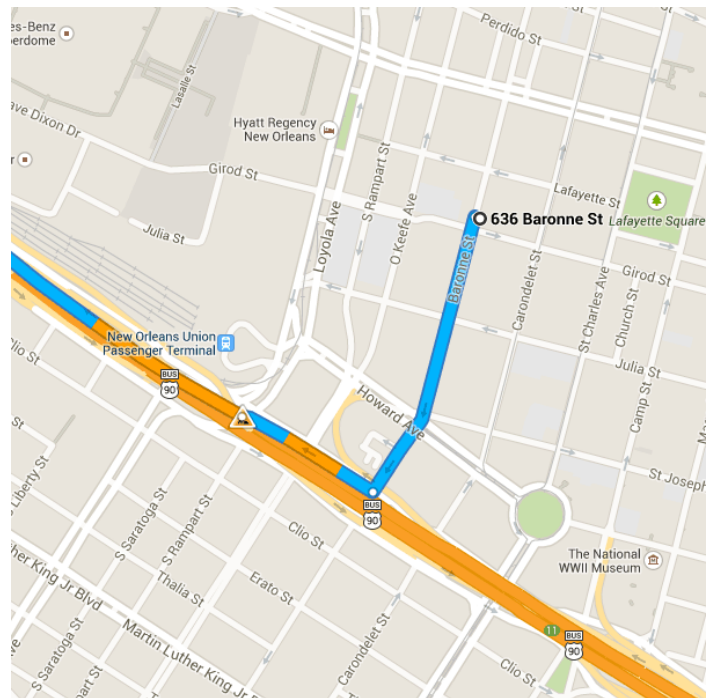
0.5 mi / 2 min

↑ 1. Head south on Baronne St toward Girod St

0.3 mi

↗ 2. Turn right to merge onto US-90 BUS E

0.2 mi



Follow I-10 W to Convention St in Baton Rouge. Take exit 1B from I-110 N

80.5 mi / 1 h 12 min

- ⤴ 3. Merge onto **US-90 BUS E**

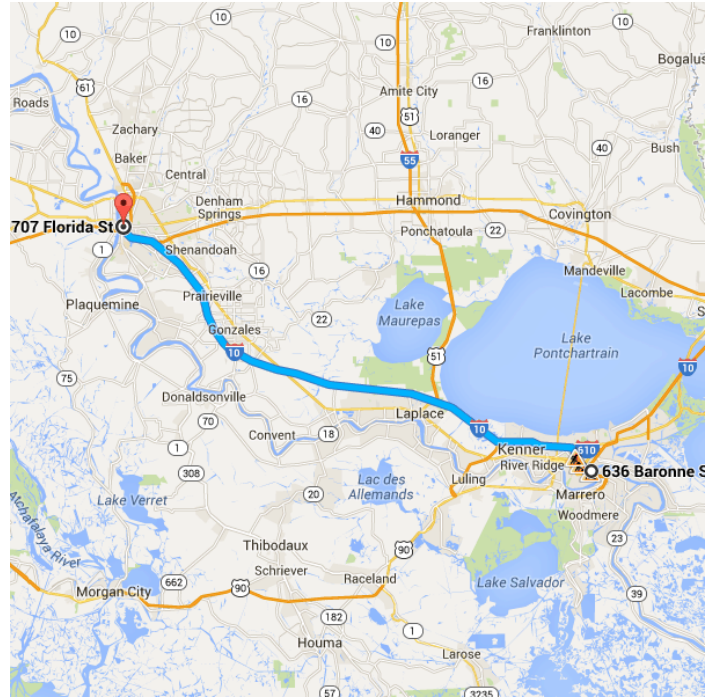
1.5 mi
- ⤴ 4. Merge onto **I-10 W**

78.0 mi
- ⤴ 5. Keep **right** at the fork to continue on **I-110 N**, follow signs for **Downtown/Metro Airport**

0.7 mi
- ⤴ 6. Take exit **1B** on the **left** for **Convention Street** toward **Downtown**

0.2 mi
- ⤴ 7. Keep **right** at the fork and merge onto **Convention St**

210 ft



Continue on **Convention St**. Drive to **Florida St**

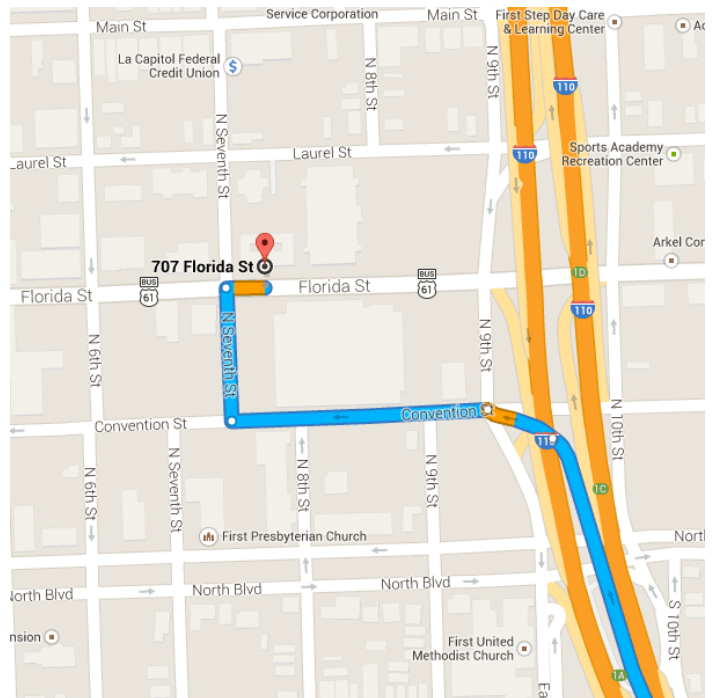
0.2 mi / 57 s

- ⤴ 8. Merge onto **Convention St**

0.1 mi
- ⤴ 9. Turn **right** onto **N Seventh St**

387 ft
- ⤴ 10. Take the **1st right** onto **Florida St**

112 ft



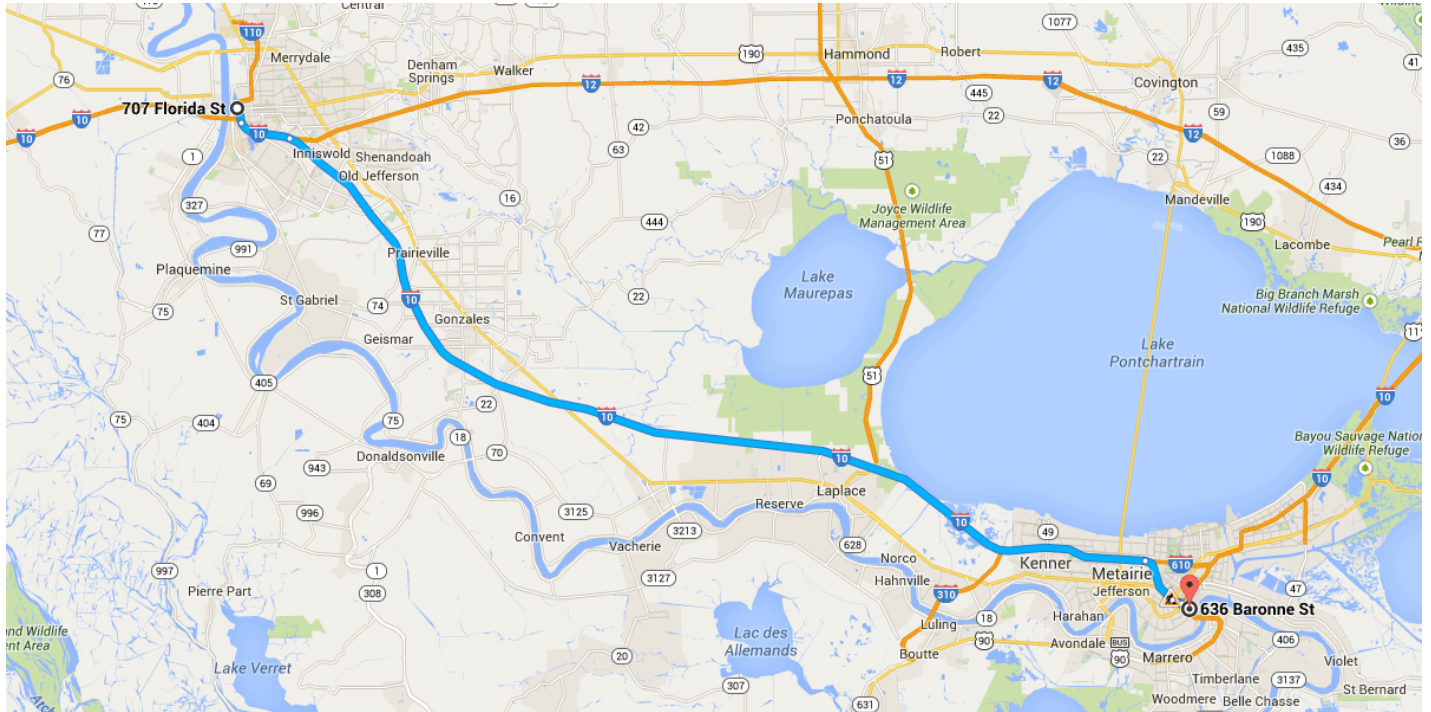
📍 707 Florida St

Baton Rouge, LA 70801

These directions are for planning purposes only. You may find that construction projects, traffic, weather, or other events may cause conditions to differ from the map results, and you should plan your route accordingly. You must obey all signs or notices regarding your route.



Directions from 707 Florida St to 636 Baronne St



○ 707 Florida St

Baton Rouge, LA 70801

Get on I-110 S

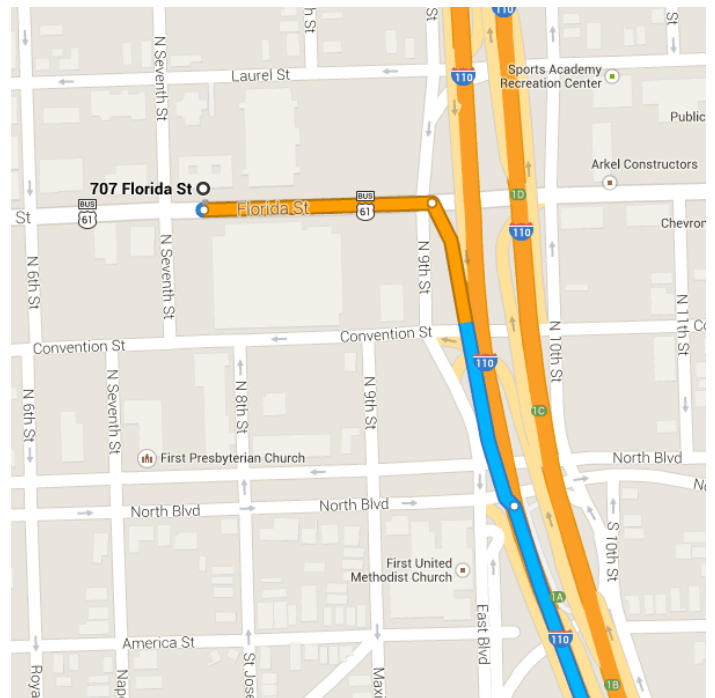
0.3 mi / 37 s

- ↑ 1. Head east on Florida St toward N 9th St

0.1 mi

- ↗ 2. Turn right to merge onto I-110 S

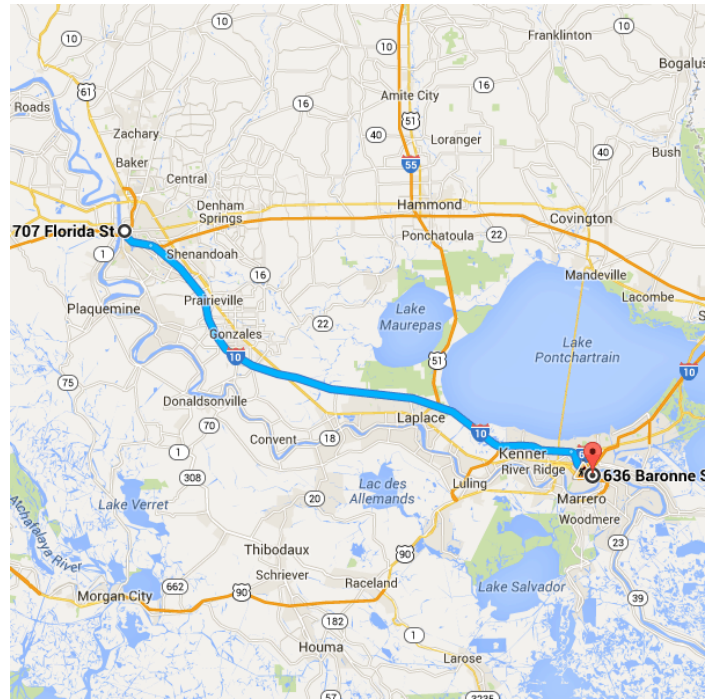
0.2 mi



Follow I-10 E to Poydras St in New Orleans. Take exit 234B from I-10 E

79.8 mi / 1 h 11 min

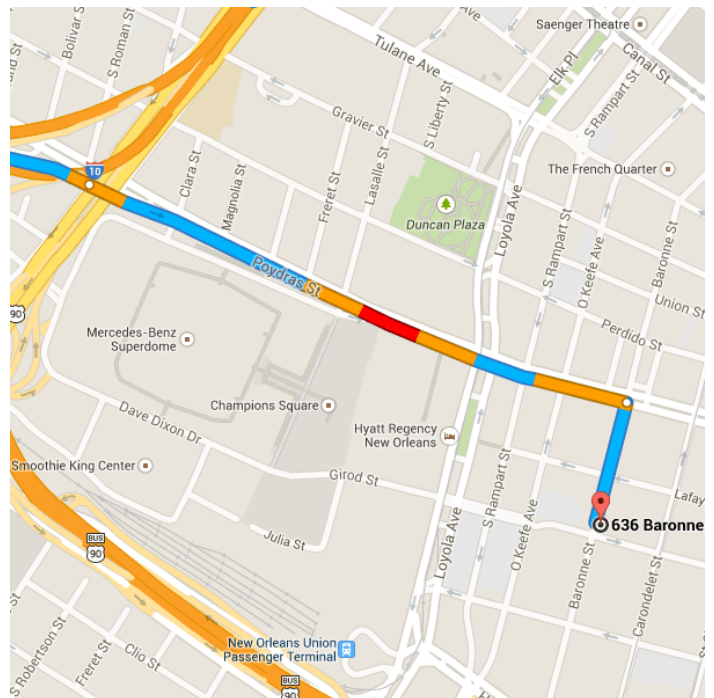
- ⤴ 3. Merge onto **I-110 S**
0.9 mi
- ⤴ 4. Merge onto **I-10 E**
3.7 mi
- ↘ 5. Keep **right** at the fork to stay on **I-10 E**
71.0 mi
- ↘ 6. Keep **right** at the fork to stay on **I-10 E**,
 follow signs for **Interstate 10 E/New Orleans Business District**
3.5 mi
- ↘ 7. Keep **right** at the fork to stay on **I-10 E**,
 follow signs for **Slidell**
0.5 mi
- ↙ 8. Take exit **234B** on the **left** to merge onto
Poydras St toward **Superdome**
0.2 mi



Continue on **Poydras St**. Drive to **Baronne St**

0.8 mi / 3 min

- ⤴ 9. Merge onto **Poydras St**
0.6 mi
- ↘ 10. Turn **right** onto **Baronne St**
0.1 mi



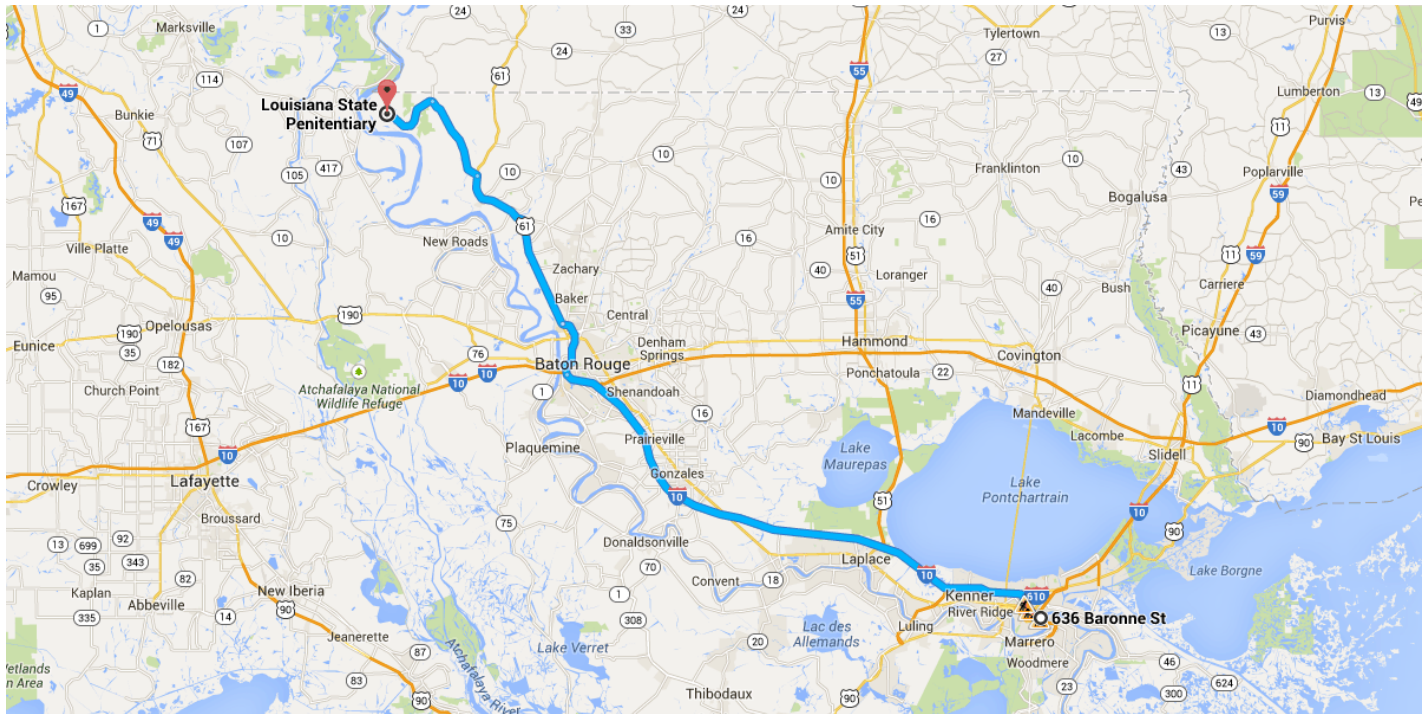
📍 636 Baronne St

New Orleans, LA 70113

These directions are for planning purposes only. You may find that construction projects, traffic, weather, or other events may cause conditions to differ from the map results, and you should plan your route accordingly. You must obey all signs or notices regarding your route.



Directions from 636 Baronne St to Louisiana State Penitentiary



○ 636 Baronne St

New Orleans, LA 70113

Get on US-90 BUS E

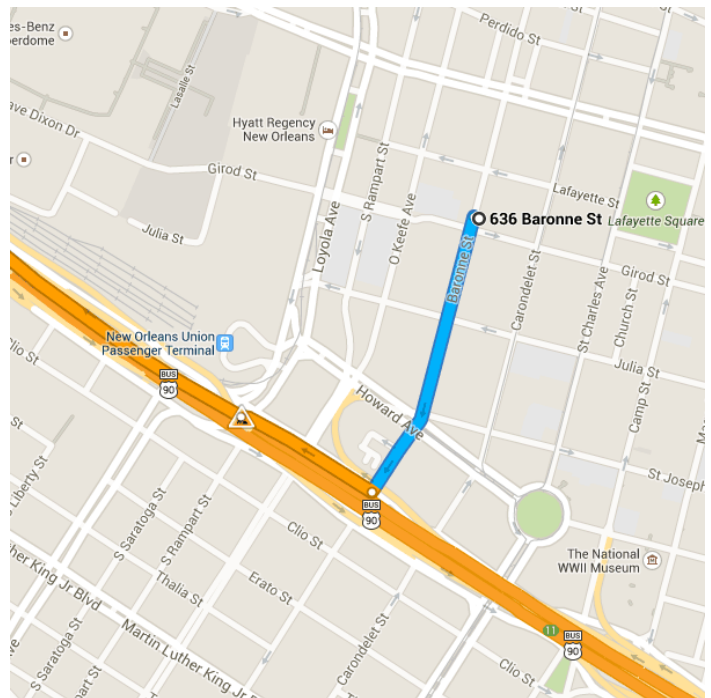
0.5 mi / 2 min

↑ 1. Head south on Baronne St toward Girod St

0.3 mi

↗ 2. Turn right to merge onto US-90 BUS E

0.2 mi



Take I-10 W to US-61 N in Baton Rouge.

Take exit 8C from I-110 N

88.5 mi / 1 h 19 min

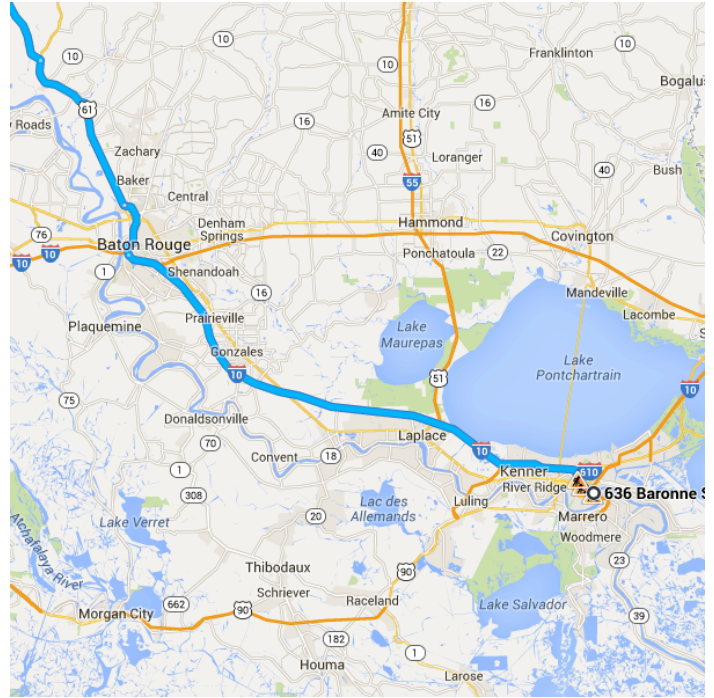
- ⤴ 3. Merge onto **US-90 BUS E**

1.5 mi
- ⤴ 4. Merge onto **I-10 W**

78.0 mi
- ↘ 5. Keep **right** at the fork to continue on **I-110 N**,
 follow signs for **Downtown/Metro Airport**

8.8 mi
- ↘ 6. Take exit **8C** to merge onto **US-61 N** toward
Natchez

0.2 mi



Follow **US-61 N** to **LA-66** in 4

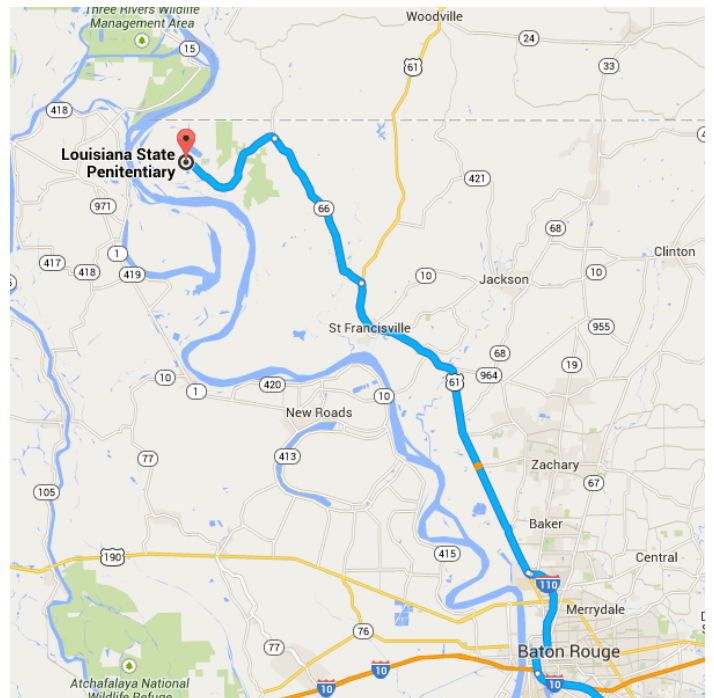
47.1 mi / 56 min

- ⤴ 7. Merge onto **US-61 N**

25.6 mi
- ↶ 8. Turn **left** onto **LA-66**

12.5 mi
- ↑ 9. Continue straight to stay on **LA-66**

9.0 mi



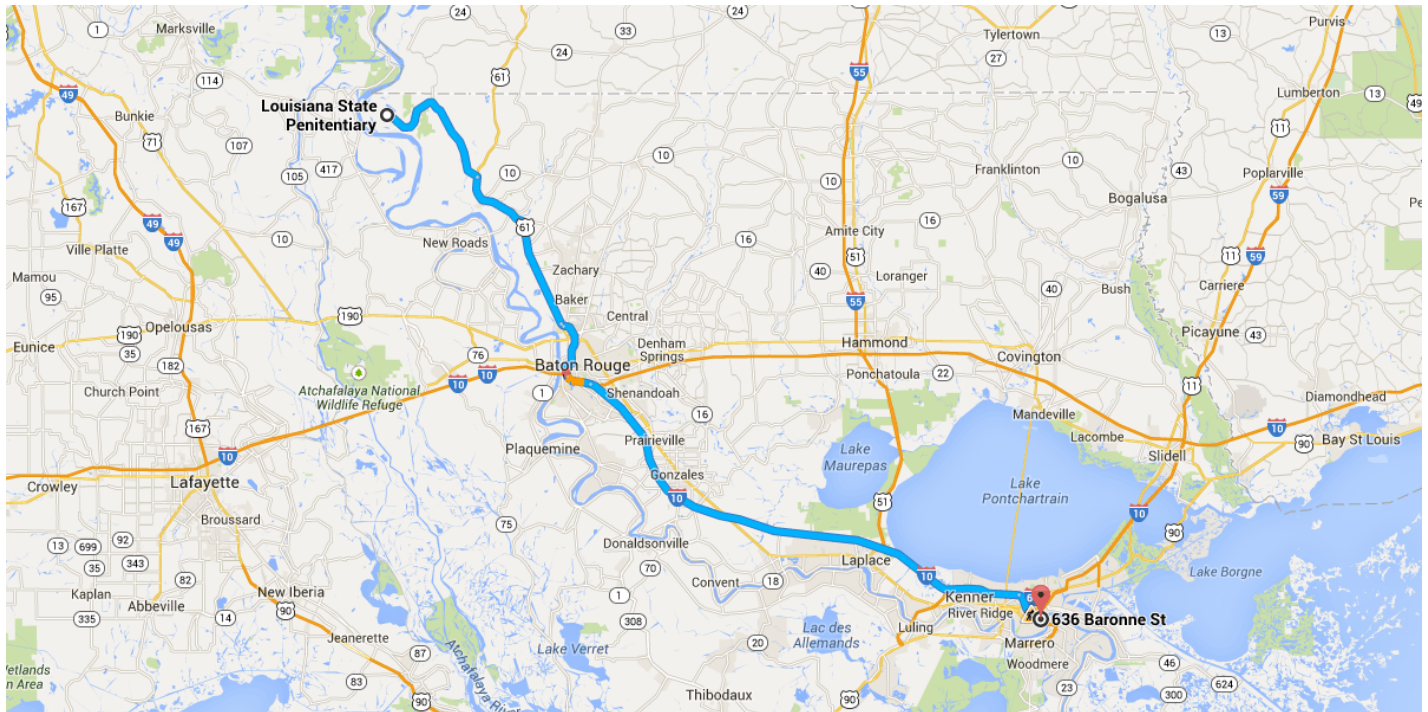
📍 Louisiana State Penitentiary

17544 Tunica Trce, Angola, LA 70712

These directions are for planning purposes only. You may find that construction projects, traffic, weather, or other events may cause conditions to differ from the map results, and you should plan your route accordingly. You must obey all signs or notices regarding your route.



Directions from Louisiana State Penitentiary to 636 Baronne St



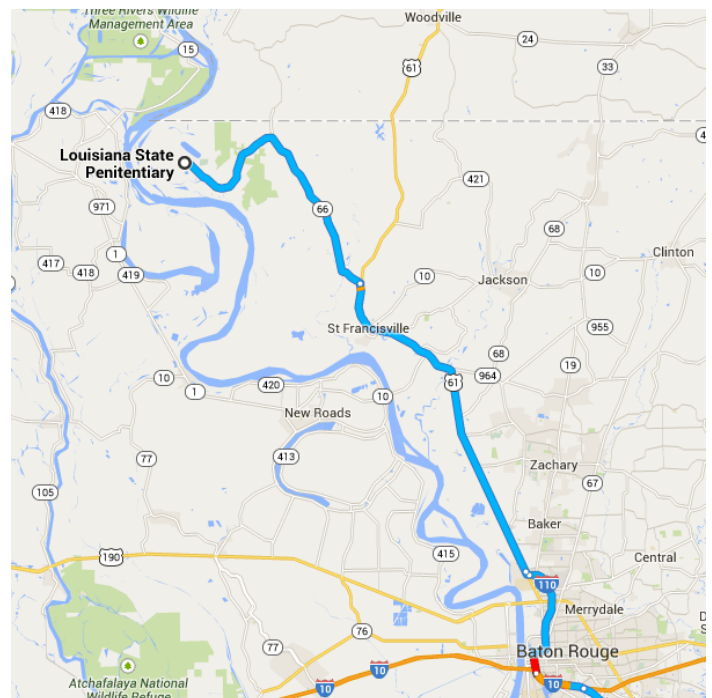
○ Louisiana State Penitentiary

17544 Tunica Trce, Angola, LA 70712

Get on **I-110 S** in Baton Rouge

47.4 mi / 57 min

- ↑ 1. Head southeast on LA-66
 _____ 21.5 mi
- ↘ 2. Turn right onto US-61 S
 _____ 25.5 mi
- ⤴ 3. Take the **Interstate 110 S** ramp to **Baton Rouge**
 _____ 0.5 mi



Take **I-10 E** to Poydras St in New Orleans.

Take exit **234B** from **I-10 E**

87.7 mi / 1 h 19 min

- ↑ 4. Continue onto **I-110 S**

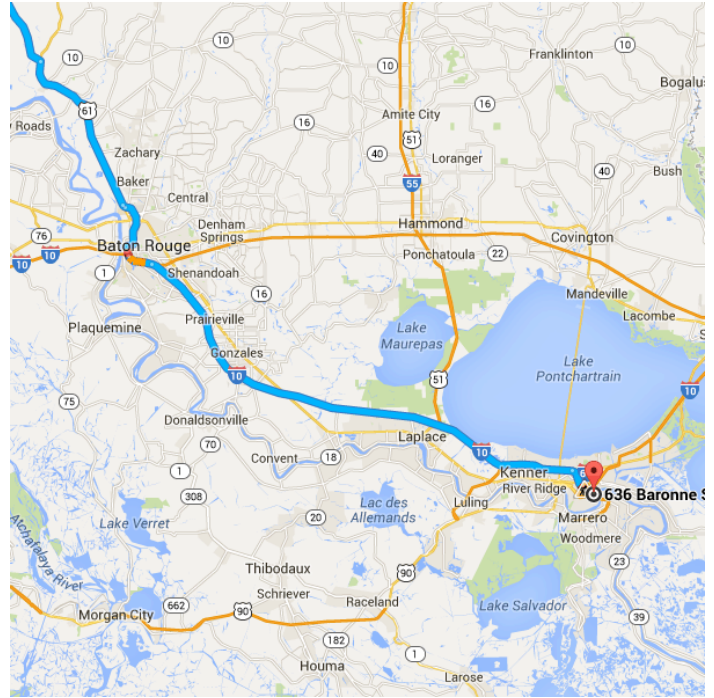
- ↗ 5. Merge onto **I-10 E**

- ↘ 6. Keep **right** at the fork to stay on **I-10 E**

- ↘ 7. Keep **right** at the fork to stay on **I-10 E**,
 follow signs for **Interstate 10 E/New Orleans Business District**

- ↘ 8. Keep **right** at the fork to stay on **I-10 E**,
 follow signs for **Slidell**

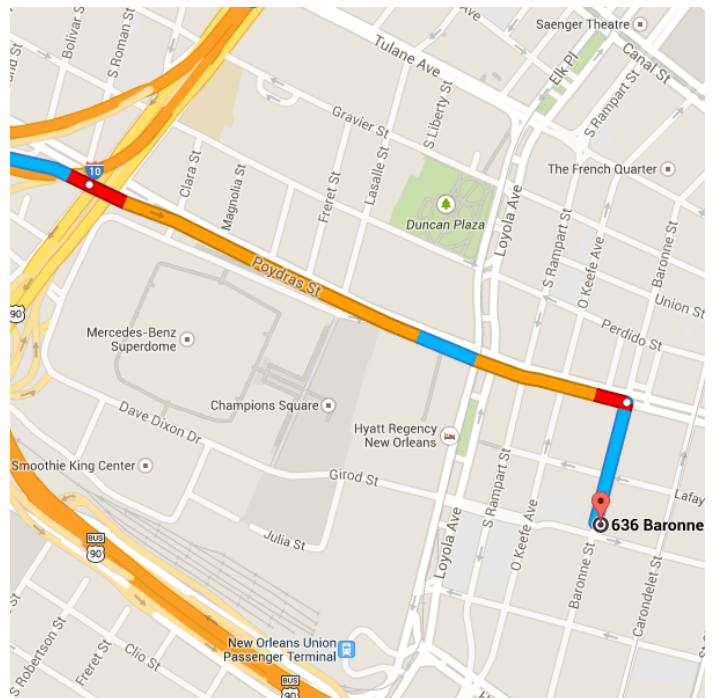
- ↙ 9. Take exit **234B** on the **left** to merge onto
Poydras St toward **Superdome**



Continue on **Poydras St**. Drive to **Baronne St**

- ↗ 10. Merge onto **Poydras St**

- ↘ 11. Turn **right** onto **Baronne St**



📍 636 Baronne St

New Orleans, LA 70113

These directions are for planning purposes only. You may find that construction projects, traffic, weather, or other events may cause conditions to differ from the map results, and you should plan your route accordingly. You must obey all signs or notices regarding your route.