**UNITED STATES DISTRICT COURT**
**FOR THE SOUTHERN DISTRICT OF OHIO WESTERN DIVISION**

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| MOSAWAR AZALYAR,<br><br>Petitioner,<br><br>v.<br><br>Kevin RAYCRAFT, Acting Field Office Director of Enforcement and Removal Operations, Columbus Field Office, Immigration and Customs Enforcement; Kristi NOEM, Secretary, U.S. Department of Homeland Security; U.S. DEPARTMENT OF HOMELAND SECURITY; Pamela BONDI, U.S. Attorney General; EXECUTIVE OFFICE FOR IMMIGRATION REVIEW; Richard JONES, Lead Administrator of BUTLER COUNTY CORRECTIONAL COMPLEX<br><br>Respondents. | Case No. 1:25-cv-00916-MRB-SKB<br><br>**District Judge Michael Barrett** |

# PETITIONER'S BRIEF IN SUPPORT OF PETITION FOR WRIT OF HABEAS CORPUS

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## ISSUES PRESENTED

1. Are Respondents unlawfully detaining Petitioner without a bond hearing under 8 U.S.C. § 1225(b)(2)(A), which applies to inspection and detention of recent arrivals at or near the border?

2. Does this Court have jurisdiction?

3. Should this Court exercise its discretion to waive prudential exhaustion requirements and proceed to the merits of Petitioner's habeas corpus petition, which raises urgent statutory and constitutional claims regarding Petitioner's ongoing unlawful detention?

## INTRODUCTION

Petitioner Mosawar Azalyar entered the United States over 3 years ago. Since then, he has built a life for himself. He is employed and fully supports himself here in the United States. But on December 10, 2025, Petitioner was taken into immigration custody.

At the onset of this action, Petitioner asserted that he was a member of the recent *Maldonado* class and is thus being detained under § 1226. In light of evidence provided by Respondents with their responsive brief, Petitioner does not contend that he is being held § 1225(b)(2)(A).

This action proceeds under the due process claim asserted in the initial petition. Though Petitioner was granted a bond hearing after filing the present action, it was not constitutionally-adequate because the government has directed IJs to deny bond to parties like Petitioner. This action challenges the continued detention of Petitioner under these circumstances. He is being held without the most basic form of due process: a constitutionally-adequate bond hearing to determine if incarceration is justified. For at least half a century, consistent with Supreme Court precedent, the government has provided bond hearings to individuals placed in deportation proceedings after having entered the United States—including those who entered without inspection. Indeed, for more than a century, noncitizens who enter the United States, even unlawfully, have been protected by due process. See *Yamataya v. Fisher*, 189 U.S. 86, 100-01 (1903). But in 2019, Attorney General Barr issued *Matter of M-S*, 27 I. & N. Dec. 509 (A.G. 2019), which held that 8 U.S.C. § 1225(b)(1)(B)(ii) requires similarly-situated Plaintiffs' detention—without a bond hearing—unless the Department of Homeland Security ("DHS") grants discretionary release on parole. *Id.* at 515-17.

Petitioner was apprehended after entering the United States; he has been determined by DHS to have a credible fear of persecution or torture—meaning he has a "significant possibility" of prevailing on his asylum and withholding of removal claims, 8 U.S.C.§ 1225(b)(1)(B)(v)—and he is being detained pending removal proceedings on his applications for relief. Yet, as a result of *Matter of M-S-* and *Matter of Q. Li*, Petitioner faces months or even years of incarceration, even where he poses no flight risk or danger that justifies his imprisonment.

## STATEMENT ON JURISDICTION

This Court had jurisdiction pursuant to 28 U.S.C. §§ 1331 and 2241 and the Suspension Clause, U.S. Const., Art. I, § 9, clause 2. This Court has jurisdiction under 28 U.S.C. § 1292(a)(1). Respondents argue that this Court does not have jurisdiction under § 1252(e)(3), § 1252(g), and § 1252(b)(9). Petitioner addresses each below.

### I. 8 U.S.C. § 1252(e)(3) does not bar review of Petitioner's claims.

Here, Petitioner does not challenge a determination made under 8 U.S.C. § 1225(b) such as whether he is inadmissible, or has credible fear, or should be removed, nor does he challenge the validity of the system of detention. Rather, on an individual basis, he petitions to be afforded a constitutionally-adequate bond hearing after obtaining a positive credible fear finding. Rather than "challenging the validity of the statutory scheme itself" or a written policy, Petitioner is challenging "the lawfulness of his detention without a bond hearing" because the mandatory detention statute simply does not apply to him. *Rivero v. Noem et al.*, No. 1:25-CV-1294, 2025 U.S. Dist. LEXIS 234009, 2025 WL 3438303, at *2 (W.D. Mich. Dec. 1, 2025). Thus, § 1252(e)(3) does not preclude jurisdiction. *See, e.g., id.; Ardon-Quiroz v. Assistant Field Dir.*, No. 25-CV-25290, 2025 U.S. Dist. LEXIS 233669, 2025 WL 3451645, at *3 (S.D. Fla. Dec. 1,

2025) (collecting cases for proposition that § 1252(e)(3) does not deprive [*15] federal courts of jurisdiction in such situations).

**II. 8 U.S.C. § 1252(g) does not bar review of Petitioner's claims.**

In *Hamama v. Adducci*, the Sixth Circuit confirmed that the "district court's jurisdiction over the detention-based claims [was] independent of its jurisdiction over the removal-based claims." *Hamama*, 912 F.3d at 877; see also *Moussa v. Jenifer*, 389 F.3d 550, 554 (6th Cir. 2004); *Zadvydas v. Davis*, 533 U.S. 678, 121 S. Ct. 2491, 150 L. Ed. 2d 653 (2001). Though the government argues that 8 U.S.C. § 1252(g) bars jurisdiction in this case because a decision regarding Petitioner's detention "aris[es] from the decision or action by the [Secretary of Homeland Security] to commence proceedings," that is not the case. In fact, this court recently considered that argument in *Alonso-Portillo v. Bondi*, 2025 U.S. Dist. LEXIS 167908, *18. After noting that applying § 1252(g)'s jurisdiction stripping language to detention would make meaningless the three categories listed in the statute of commencing proceedings, adjudicating cases, and executing removals, this court concluded that "the decision under § 1226(a) to detain a non-criminal noncitizen here unlawfully pending a removal determination falls outside of the jurisdiction-divesting provisions set forth in § 1252(g)."

Indeed, "[f]or over 100 years, habeas corpus has been recognized as the vehicle through which noncitizens may challenge the fact of their detention." *Malam v. Adducci*, 452 F. Supp.3d 643, 649 (E.D. Mich. 2020) (citing *Chin Yow v. U.S.S.* 8, 13, 28 S. Ct. 201, 52 L. Ed. 369 (1908)). Here, Petitioner is arguing that his detention without a constitutionally-adequate bond hearing is unlawful; in other words, Petitioner challenges the fact of his ongoing detention, independent from his removal. Accordingly, § 1252(g) does not inhibit this Court from reviewing such detention-based claims. See, e.g., *Zhen v. Doe*, No. 3:25-CV-1507, 2025 U.S.

Dist. LEXIS 151787, 2025 WL 2258586, at *2-4 (N.D. Ohio Aug. 7, 2025); *Resendiz v. Noem*, No. 4:25-CV-159, 2025 U.S. Dist. LEXIS 254523, 2025 WL 3527284, at *2 (W.D. Ky. Dec. 9, 2025). *Bartolon v. Bondi*, 2025 U.S. Dist. LEXIS 261729, *13, 2025 LX 528629.

**III. 8 U.S.C. § 1252(b)(9) does not bar review of Petitioner's claims.**

Respondents' invocation of 8 U.S.C. § 1252(b)(9) is also improper as applied to Petitioner because he is challenging his detention not his removal. *Bartolon v. Bondi*, 2025 U.S. Dist. LEXIS 261729, *15, 2025 LX 528629. Under this provision, "judicial review of all questions of law and fact, including interpretation and application of constitutional and statutory provisions, arising from any action taken ... to remove an alien from the United States" is exclusively funneled to the Courts of Appeals. 8 U.S.C. § 1252(b)(9), (a)(5). In *Jennings v. Rodriguez*, the Supreme Court rejected an "expansive interpretation of § 1252(b)(9)" and determined that "questions of law" as to whether "certain statutory provisions require detention without a bond hearing" do not "arise from" the decision to remove an alien. 583 U.S. 281, 292-94, 138 S. Ct. 830, 200 L. Ed. 2d 122 (2018). Here, Petitioner's detention-based claim squarely contests his detention under 8 U.S.C. § 1225 and whether he is entitled to a bond hearing. As such § 1252(b)(9), does not bar this Court's jurisdiction. *See, e.g., Ramirez v. Lewis, et al.*, No. 4:25-CV-143, 2025 U.S. Dist. LEXIS 256601, 2025 WL 3553676, at *2 (W.D. Ky. Dec. 11, 2025) (citing *DHS v. Regents of the Univ, of Cal.*, 591 U.S. 1,19, 140 S. Ct. 1891, 207 L. Ed. 2d 353 (2020)); *Guerra v. Noem*, No. 1:25-CV-1341, 2025 U.S. Dist. LEXIS 225782, 2025 WL 3204289, at *4 (W.D. Mich. Nov. 17, 2025); *Alonso v. Tindall*, No. 3:25-CV-652, 2025 U.S. Dist. LEXIS 217084, 2025 WL 3083920, at *2 n.5 (W.D. Ky. Nov. 4, 2025).

## ARGUMENT

"Arbitrary civil detention is not a feature of our American government. . . . Civil detention violates due process outside of 'certain special and narrow nonpunitive circumstances.'" *Rodriguez v. Marin*, 909 F.3d 252, 256 (9th Cir. 2018) (quoting Zadvydas v. Davis, 533 U.S. 678, 690 (2001)). Petitioner is entitled to the basic due process of a bond hearing with constitutional safeguards.

### A. Petitioner Has a Due Process Right to a Bond Hearing

#### I. Petitioner Has Due Process Rights

Because Petitioner entered the country prior to being apprehended, the Due Process Clause undisputedly protects him. He was detained after entering the United States and passing a credible fear screening, and is not an "arriving noncitizen" who was detained at a port-of-entry before entering the country.

U.S. Supreme Court cases long have established a bright line between individuals apprehended at a port-of-entry, and those who are detained after having entered the country, even unlawfully. "[O]nce [a noncitizen] enters the country, the legal circumstance changes, for the Due Process Clause applies to all 'persons' within the United States, including [noncitizens], whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001); see also *Mathews v. Diaz*, 426 U.S. 67, 77 (1976) (due process protects every person within the United States, "[e]ven one whose presence in this country is unlawful, involuntary, or transitory").

The government has acknowledged to the Supreme Court that noncitizens who enter the country unlawfully, even for very brief periods of time, have due process rights:

> JUSTICE BREYER: A person who runs in illegally, a person who crosses the border illegally, say, from Mexico is entitled to these

rights when you catch him.

[Government Counsel]: He's entitled to procedural due process rights.

Tr. of Oral Argument at 25:18-22, Clark v. Martinez, 543 U.S. 371 (2005) (Nos. 03-878, 03-7434), https://www.supremecourt.gov/oral_arguments/argument_ transcripts/2004/03-878.pdf.

However, the government, as confirmed in *Matter of M-S-* and *Matter of Q, Li,* now asserts that because Petitioner is seeking admission to the United States, he lacks due process rights to challenge his detention or request a constitutionally-adequate bond hearing, despite being apprehended after entering the country. *See* Gov't Br. 18 ("Applicants for admission whom DHS places in § 1229a removal proceedings are similarly subject to detention and ineligible for a custody redetermination hearing before an IJ. Specifically, aliens present without admission placed in 8 U.S.C. § 1229a removal proceedings are both applicants for admission as defined in 8 U.S.C. § 1225(a)(1) and aliens "seeking admission," as contemplated in 8 U.S.C. § 1225(b)(2)(A). *Such aliens are subject to detention under 8 U.S.C. § 1225(b)(2)(A) and thus ineligible for a bond redetermination hearing before the IJ.*") (emphasis added). As such, it is misleading for the government to assert that Petitioner's bond hearing provided due process because the government at the same time explicitly states throughout their responsive brief that he is "ineligible for a bond redetermination hearing before the IJ." *See* Gov't Br. 11-12. The government cannot have it both ways. The bond hearing provided to Petitioner on December 23, 2025, was not constitutionally adequate because the government has directed all immigration judges to deny bond in situations like this one.

## II. Substantive Due Process Requires a Constitutionally-Adequate Bond Hearing

"Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty" protected by the Due Process Clause.

*Zadvydas*, 533 U.S. at 690. Immigration detention, like all civil detention, is justified only where "a special justification . . . outweighs the 'individual's constitutionally protected interest in avoiding physical restraint.'" *Zadvydas*, 533 U.S. at 690 (quoting *Kansas v. Hendricks*, 521 U.S. 346, 356 (1997)); see also *United States v. Salerno*, 481 U.S. 739, 747 (1987). The purpose of immigration detention is to effectuate removal should an individual ultimately lose her immigration case, and to protect against danger and flight risk during that process. *Zadvydas*, 533 U.S. at 690-91. The justification of "preventing flight ... is weak or nonexistent where removal seems a remote possibility at best." *Zadvydas*, 533 U.S. 678, 690 (2001).

"Any detention incidental to removal *must 'bear[ ] [a] reasonable relation*'" to valid government purposes, *Hernandez*, 872 F.3d at 990 (quoting *Zadvydas*, 533 U.S. 690) (emphasis added), and be accompanied by "*adequate procedural protections* to ensure that the government's asserted justification . . . outweighs the individual's constitutionally protected interest" in liberty. Id. at 990 (internal quotation marks omitted) (emphasis added).

With *Matter of M-S-* and *Matter of Q. Li* now in effect and immigration judges directed to deny bond to individuals like Petitioner, the only procedure available to Petitioner to challenge his detention would be a discretionary parole determination made by a DHS officer. In the Respondents' responsive brief, they confirm this. *See* Gov't Br. 29-30 ("Importantly, applicants for admission *may only be released from detention if DHS invokes its discretionary parole authority* under 8 U.S.C. § 1182(d)(5). DHS has the exclusive authority to temporarily release on parole any alien applying for admission to the United States on a case by-case basis for urgent humanitarian reasons or significant public benefit."). (internal quotations omitted) (emphasis added). Petitioner is aware of this authority as he was previously released pursuant to discretionary parole by DHS after his initial entry in the United States.

Respondents have no legitimate interest in detaining Petitioner because he poses no flight risk or danger—even as he awaits a final determination on their right to remain. See *Hernandez*, 872 F.3d at 994. This is especially true given that asylum officers already have determined that Petitioner has bona fide protection claim, which gives him the right to remain in the United States while his applications for protection are adjudicated. *See* H.R. Rep. No. 104-469, pt.1, at 158 (1995) ("If the [noncitizen] meets [the credible fear] threshold, the [noncitizen] is permitted to remain in the United States to receive a full adjudication of the asylum claim . . . ."). And it's even more concerning that Respondents are now asserting, three years after releasing Petitioner from their custody pursuant to the DHS parole authority, that they now have a legitimate interest in detaining Petitioner—who has no criminal background, no travel documents, and has simply worked and supported himself in the United States since his release.

### III. Procedural Due Process Requires a Constitutionally-Adequate Bond Hearing

Procedural due process likewise requires individualized bond hearings before an IJ. First, Petitioner has a profound interest in preventing his arbitrary detention. Second, the parole process creates an unacceptable risk of the erroneous deprivation of Petitioner's liberty.

Respondents claim that Petitioner has due process in their responsive brief for two reasons: (1) the parole process provides due process, and (2) the existing bond request provides due process. See Gov't Br. 11-12 (Re: bond hearing) and 29-30 (Re: parole). As noted above, the Respondents' assertion that the existing bond hearing process provides any due process protection to my client is false. *See supra* at 5-6.

The parole process consists merely of a custody review conducted by low-level Immigration and Customs Enforcement ("ICE") detention officers. *See* 8 C.F.R. § 212.5. It

includes no hearing before a neutral decision maker, no record of any kind, and no possibility for appeal. *See id.* Instead, ICE officers make parole decisions—that can result in months or years of incarceration—by merely checking a box on a form that contains no factual findings, no specific explanation, and no evidence of deliberation. *See*, e.g., *Abdi v. Duke*, 280 F. Supp. 3d 373, 404-05 (W.D.N.Y. 2017); *Damus v. Nielsen*, 313 F. Supp. 3d 317, 324-25, 341 (D.D.C. 2018). As *Zadvydas* recognized, "the Constitution may well preclude granting an administrative body the unreviewable authority to make determinations implicating fundamental rights." 533 U.S. at 692 (internal quotation marks omitted). *See also Morrissey*, 408 U.S. at 486-87 (requiring a neutral decision-maker for parole revocation hearings); *St. John v. McElroy*, 917 F. Supp. 243, 251 (S.D.N.Y. 1996) (due process is not satisfied by parole reviews, but requires an "impartial adjudicator" to review detention since, "[d]ue to political and community pressure, the INS . . . has every incentive to continue to detain").

Moreover, civil immigration detention is not punishment for a crime. Thus, it can only be justified "where a special [non-punitive] justification . . . outweighs the individual's constitutionally protected interest" in liberty—usually only by a finding that such detention is necessary to prevent their flight or protect against dangers to the community. *Zadvydas*, 533 U.S. at 690 (cleaned up); *see also United States v. Salerno*, 481 U.S. 739, 750 (1987). A hearing on whether such a special justification necessitates civil detention is the most basic protection required by the Fifth Amendment. *See Zadvydas*, 533 U.S. at 690; *Foucha v. Louisiana*, 504 U.S. 71, 79 (1992); *Kansas v. Hendricks*, 521 U.S. 346, 357 (1997); *Addington v. Texas*, 441 U.S. 418, 428 (1979). And the nature of that hearing is governed by the classic balancing test from *Mathews v. Eldridge*, 424 U.S. 319, 334–35 (1976). That test weighs (1) the nature of "the private interest"

being deprived; (2) "the risk of erroneous deprivation" and (3) the "fiscal and administrative burdens" posed by providing additional process. *Id.* All three *Mathews* factors favor Petitioner.

As to the private interest, Petitioner invokes "the most elemental of liberty interests—the interest in being free from physical detention by one's own government." *Hamdi v. Rumsfeld,* 542 U.S. 507, 529 (2004). Meanwhile, the government's interest in detaining Petitioner is limited to ensuring his appearance at future immigration proceedings (i.e., "flight risk") and preventing danger to the community. *See Zadvydas*, 533 U.S. at 690. But because Respondents will deny Petitioner a constitutionally-adequate bond hearing, there will be nothing "in the record demonstrating that [Petitioner] is a flight risk or a danger to the community." *Lopez Benitez*, 2025 WL 2371588, at *12. Therefore, the risk of erroneously depriving Petitioner of physical freedom is unbearably high. *See Lopez-Campos*, 2025 WL 2496379, at *9 ("the risk of erroneously depriving [petitioner] of his freedom is high if the IJ fails to assess his risk of flight and dangerousness."). Without the constitutionally-adequate bond hearing, Petitioner will never be able to present the compelling reasons that he is neither a flight risk nor a danger. Nor can administrative cost justify denying bond hearings. *See Hernandez, 872 F.3d at 994.* Respondents have provided bond hearings pursuant to *Matter of X-K-* for more than a decade prior to *Matter of M-S-*, and even more generally for at least 50 years. Respondents cannot argue now that providing bond hearings it has provided for years imposes excessive burdens. Indeed, Respondents share an interest in maintaining bond hearings and ensuring accurate custody determinations.

**B. This Court Should Waive Any Prudential Exhaustion Requirement.**

Respondents have asked this Court to require Petitioner to first seek a bond hearing in immigration court, or to appeal their jurisdictional bond denials to the BIA, before seeking habeas relief. But for a habeas corpus petition under § 2241, the exhaustion of administrative remedies is not a statutory or jurisdictional requirement, but rather a prudential matter of this Court's

discretion. *See Shearson v. Holder*, 725 F.3d 588, 593 (6th Cir. 2013).

Respondents cite to *Portillo v Bondi*, a recent decision in this Court, which the Court excused prudential exhaustion requirements. *Alonso-Portillo v. Bondi*, 2025 U.S. Dist. LEXIS 167908, *20, 2025 LX 370365, 2025 WL 2483393 *citing Salvador F.-G.*, 2025 U.S. Dist. LEXIS 111539, 2025 U.S. Dist. LEXIS 111539, *16 ("The Court likewise has found no clear statement from Congress that exhaustion is required before a noncitizen seeks habeas review to challenge pre-removal detention."); *J.C.G.*, 2025 U.S. Dist. LEXIS 8279, *20 (excusing exhaustion requirement as futile). Respondents assert that unlike in *Portillo*, where Petitioner has been denied bond and appealed to the BIA, the Petitioner in the matter at hand should be found to have not exhausted the administrative remedies because his bond request is still pending. *See* Gov't Br. 12. However, unlike in *Portillo*, the Petitioner here is not challenging the IJ's decision to not grant bond, but rather the undisputed fact that the IJ does not have the authority, under *Matter of M-S-* and *Matter of Q. Li*, to have a constitutionally-adequate bond hearing at all. "No statute requires an alien to exhaust administrative remedies before challenging detention. And courts can excuse a failure to exhaust if the case presents a substantial constitutional question." *Lopez*, 458 F. Supp. 2d at 176. Here, Petitioner raises a substantially different constitutional question than in *Portillo*. As such, the metric for what is required for exhaustion is substantially different. It would be futile to require Petitioner to seek bond first and then appeal to the BIA when it is denied, because the IJ does not have authority to grant him bond due to existing BIA decisions.

Petitioner briefly runs through the four primary circumstances when courts waive prudential exhaustion requirements—all of which strongly favor waiver here.

First, exhaustion would be futile because the administrative agency "has predetermined the disputed issue" by having a "clearly stated position" that the petitioner is not eligible for the relief

sought. *Shearson*, 725 F.3d at 594.

Second, courts waive prudential exhaustion requirements when the "legal question is fit for resolution and delay means hardship." *Shalala v. Illinois Council on Long Term Care*, 529 U.S. 1, 13 (2000) (cleaned up). On average, the BIA took over six months to decide bond appeals in 2024, with hundreds of cases taking a year or longer to resolve. *See Rodriguez*, 779 F. Supp. 3d at 1245. Here, the "delays inherent in the administrative process . . . would result in the very harm that the bond hearing was designed to prevent: prolonged detention without due process." *Hechavarria v. Whitaker*, 358 F. Supp. 3d 227, 237 (W.D.N.Y. 2019) (cleaned up). Meanwhile the legality of Petitioner's detention is a pure question of statutory interpretation and constitutional due process analysis.

Third, waiver is appropriate when a petitioner raises "non-frivolous" constitutional questions that cannot be adequately addressed through the administrative process. *Bangura v. Hansen*, 434 F.3d 487, 494 (6th Cir. 2006). Since the "BIA lacks authority to review constitutional challenges," *Sterkaj v. Gonzales*, 439 F.3d 273, 279 (6th Cir. 2006), "[n]either an immigration judge nor the Board of Immigration Appeals is positioned to properly adjudicate" Petitioner's due process claim. *Lopez Benitez*, 2025 WL 2371588, at *14.

Fourth, waiver of prudential exhaustion is appropriate because there is no need for IJs or the BIA to "make a factual record" or "apply [their] expertise." *McGee v. United States*, 402 U.S. 479, 484 (1971). There are no factual disputes, obviating any need for factual development.

Finally, the need for waiver is amplified in the context of a habeas corpus petition, which demands a "swift" remedy in the face of illegal detention. *Fay v. Noia*, 372 U.S. 391, 400 (1963). *See also* 28 U.S.C. § 2243. Requiring prior administrative exhaustion will serve only to prolong that illegal detention. Indeed, "[w]hen the liberty of a person is at stake, every day that passes is a

critical one," thus necessitating habeas petitions to "be met with a sense of urgency." *Lopez-Campos*, 2025 WL 2496379, at *5. Unsurprisingly, then, this Court regularly waives prudential exhaustion requirements in § 2241 habeas actions, including in recent actions. This Court should again exercise its discretion to do so here and proceed to the merits of this petition.

**CONCLUSION**

For the foregoing reasons, Petitioner respectfully urges this Court to grant Petitioner's habeas corpus petition and order Respondents to immediately release him from custody unless he is provided with a constitutionally adequate bond hearing within seven (7) days.

Respectfully submitted on December 24, 2025.

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