IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 26-cv-00897-CNS-CYC

EDDY DESIRE RUKUNDO,

Petitioner,

v.

JUAN BALTAZAR,[1] Warden of Aurora Contract Detention Facility;
GEORGE VALDEZ,[2] Acting Director for the Denver Field Office of Immigration and Customs
Enforcement;
TODD M. LYONS, Acting Director, Immigration and Customs Enforcement;
MARKWAYNE MULLIN,[3] Secretary of the Department of Homeland Security; and
TODD BLANCHE,[4] Attorney General,

Respondents.

RESPONSE TO ORDER TO SHOW CAUSE (ECF No. 5)

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[1] Juan Baltazar is substituted pursuant to Fed. R. Civ. P. 25(d).
[2] Geoge Valdez is substituted pursuant to Fed. R. Civ. P. 25(d).
[3] Markwayne Mullin is substituted pursuant to Fed. R. Civ. P. 25(d).
[4] Todd Blanche is substituted pursuant to Fed. R. Civ. P. 25(d).

This responds to the Court's Order to Show Cause as to why the Petition for Writ of Habeas Corpus (Petition) should not be granted. *See* ECF No. 5. Petitioner is subject to mandatory detention under 8 U.S.C. § 1231(a)(1)(A) because his order of removal became final on February 27, 2026, and he is within the statutory 90-day removal period. Even if Petitioner were held under § 1226(a), as he asserts, his claims would fail.

FACTUAL BACKGROUND

Petitioner is a citizen of Burundi who entered the United States in 2013 with an F-1 student visa. *See* ECF No. 1 at 5. That same year, the University of Delaware terminated his student status because he did not register with the university. *See* ECF No. 1-1 at 8. Petitioner filed an application for asylum (I-589) in 2014. *See id.*

Starting in 2021, Petitioner was convicted of multiple crimes. Based on an incident in August 2021, he was convicted of driving to endanger. *See* ECF No. 1 ¶ 24. Based on an incident in May 2023, he was convicted of operating under the influence. *See id.* He was arrested after he pulled his car into a gas station for gas and then fell asleep in his car after buying a piece of pizza. *See* ECF No. 1-1 at 21. There were open bottles of alcohol in his car, he smelled of alcohol, and the station attendant said that Petitioner "staggered" into the store. *See id.* Then based on an incident in February 2024, he was convicted of violating conditions of release by consuming alcohol. *See id.*

ICE detained Petitioner on August 27, 2024. *See* ECF No. 1 ¶ 28. He has been in removal proceedings, and detained, since. *See id.*

The immigration court set a hearing for December 20, 2024, for Petitioner's asylum claim and related relief. *See id.* ¶ 29. Before that hearing was held, Petitioner hired new counsel and requested a continuance to prepare, which the immigration court granted. *See id.* ¶¶ 29-30. The hearing was reset to May 9, 2025 (and later reset to May 20, 2025, on the immigration court's own initiative). *See id.* ¶ 31.

At the hearing on May 20, 2025, the immigration judge found that Petitioner established that he was a victim of past persecution on account of his ethnicity and family membership when he was detained without cause for about two weeks in Burundi and beaten about six times. *See* ECF No. 1-1 at 27. However, the immigration judge denied asylum because Petitioner was not deserving of a favorable exercise of discretion because of his recent and recidivist criminal history. *See id.* at 28. The immigration judge also denied protection under the Convention Against Torture[5] (CAT) because the immigration judge found that it was not more likely than not that he would be tortured if returned to Burundi. *See id.* at 29. The immigration judge also denied withholding of removal[6] because the immigration judge found that a change in circumstances (the passage of 10 years after his detention and beatings without any evidence that anyone was searching for him to mistreat him again) rebutted the presumption that the past persecution established a well-founded fear of future persecution. *See id.* at 27-28. Petitioner appealed that decision. *See* ECF No. 1 ¶ 36.

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[5] The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, S. Treaty Doc. No. 100-20, 1465 U.N.T.S 85 (entered into force for United States Nov. 20, 1994). Implemented through 8 C.F.R. § 208.16(c).
[6] *See* 8 U.S.C. § 1231(b)(3)(A).

Petitioner sought bond on March 30, 2025. *See id.* ¶ 32. The immigration judge denied bond, finding that DHS had met its burden to demonstrate its burden[7] to show that Petitioner was a danger to the community based on information DHS submitted at the hearing. *See id.* ¶ 32. Petitioner appealed that decision, and the Board of Immigration Appeals (BIA) affirmed. *See id.*

On the appeal of the decision on the immigration judge regarding asylum, CAT protection, and withholding of removal, the BIA affirmed in part and remanded in part in a decision issued February 27, 2026. The BIA affirmed the immigration judge's decision to deny asylum and CAT protection. *See* ECF No. 1-1 at 28-30. The BIA remanded on the immigration judge's decision to deny withholding because it found that the immigration judge erred in finding that a change in circumstances (the passage of 10 years after his detention and beatings in Burundi without any evidence that anyone was searching for him to mistreat him again) rebutted the presumption that the past persecution established a well-founded fear of future persecution. *See id.* at 28.

Petition complains about his conditions of confinement, including about the size of his cell and its temperature, the availability of mental-health and dental treatment, and other conditions. *See* ECF No. 1 ¶¶ 41-46.

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[7] The bond hearing was held in Massachusetts. *See* ECF No. 1 ¶ 32. The First Circuit, which includes Massachusetts, has held that at immigration-bond hearings, the government bears the burden of proof regarding dangerousness or flight risk. *See Hernandez-Lara v. Lyons*, 10 F.4th 19, 39 (1st Cir. 2021). In this district, courts are split on that issue. *See e.g.*, *Basri v. Barr,* 469 F. Supp. 3d 1063, 1066-71 (D. Colo. 2020) (due process does not require that government bear burden at immigration-bond hearing), *Ramirez v. Bondi*, No. 25-cv-1002-RMR, 2025 WL 1294919, at *7 (D. Colo. May 5, 2025) (holding the opposite). The latter case is on appeal to the Tenth Circuit.

In this habeas case, Petitioner brings two claims. In Claim I, he alleges violations of his Fifth Amendment right to due process because: (1) the *Singh* factors, *see Singh v. Choate*, No. 19-cv-00909-KLM, 2019 WL 394396, at *5 (D. Colo. Aug. 21, 2019), show that his detention is unconstitutionally prolonged; (2) the immigration judge's decision on dangerousness was erroneous because the evidence the DHS submitted did not met its burden and the immigration judge did not meaningfully consider alternatives to detention; and (3) Petitioner's conditions of confinement violate substantive due process. *See* ECF No. 1 at 14. In Claim II, brought under the Administrative Procedure Act, Petitioner alleges that the immigration judge's bond decision was arbitrary and capricious because: (1) DHS submitted "only paltry evidence," (2) there was no evidence that any member of the community had been harmed; and (3) alternatives to detention (such as allowing release to a treatment program) were not considered. *See* ECF No. 1 at 15.

ARGUMENT

I. Petitioner is subject to mandatory detention under 8 U.S.C. § 1231(a)

Petitioner alleges that he is detained under 8 U.S.C. § 1226(a). He is not. He is detained under 8 U.S.C. § 1231.

As noted above, on May 20, 2025, an immigration judge issued an order of removal for Petitioner. *See* ECF No. 1 ¶ 35. Relevant here, the immigration judge's removal order was not a final order of removal because Petitioner appealed the immigration judge's denial to the BIA, and specifically the immigration judge's denial of asylum, CAT protection, and withholding of removal. *See* ECF No. 1 ¶ 36. But, as

discussed below, the order of removal *did* become a final order of removal once the BIA dismissed the appeal regarding his claims for asylum and CAT protection on February 27, 2026. *See* 8 C.F.R. § 1241.1(a)-(c) (order of removal becomes final "[u]pon dismissal of an appeal by the [BIA]"); ECF No. 1-1 at 30 ("we dismiss the appeal with respect to the respondent's claim for asylum. . . . [w]e will dismiss the appeal with respect to the respondent's claim for withholding of removal under CAT."). As such, Petitioner has been subject to mandatory detention under § 1231 since that date, and he remains subject to mandatory detention under that provision. *See* 8 U.S.C. § 1231(a)(2)(A); *see also* 8 U.S.C. § 1231(a)(1)(B).

Section 1231(a) provides for a 90-day "removal period" following a final removal order.[8] The removal period is the 90-day period during which DHS "shall remove the alien from the United States." *Id.* § 1231(a)(1)(A). Under § 1231(a), "[d]uring the removal period," DHS "*shall* detain the alien." 8 U.S.C. § 1231(a)(2) (emphasis added).

The immigration judge's order of removal became a final order of removal once the BIA dismissed the appeal related to his application for asylum on February 27, 2026. *See* 8 C.F.R. § 1241.1(a). Accordingly, February 27, 2026, is the start of the 90-day statutory removal period. *See Zadvydas v. Davis*, 533 U.S. 678, 682 (2001) ("When an alien has been found to be unlawfully present in the United States and a final

[8] As cited above, 8 C.F.R. § 1241.1(a) states that an order of removal becomes final upon dismissal of an appeal by the BIA. The relevant statute, 8 U.S.C. § 1231(a)(1)(B) provides that the removal period begins with the order of removal becomes "administratively final." That is defined as when the BIA "affirms such order." 8 U.S.C. § 1101(a)(47)(B)(i). Thus, the statutory definition is essentially the same as the regulatory definition.

order of removal has been entered, the Government ordinarily secures the alien's removal during a subsequent 90-day statutory 'removal period,' during which time the alien normally is held in custody.").[9]

The removal order became final when the BIA dismissed the appeal related to his applications for asylum and CAT protection because an appeal of an asylum decision is different from an appeal of a withholding decision. In *Johnson v. Guzman Chavez,* 594 U.S. 532, 536 (2021), the Court reiterated its distinction between withholding-only relief and asylum in *INS v. Aguirre-Aguirre*, 526 U.S. 415, 419 (1999), noting that "a grant of asylum permits an alien *to remain in the United States* and to apply for permanent residency after one year," while "withholding only bars deporting an alien *to a particular country or countries*." (emphasis added). Accordingly, because Petitioner appealed the denial of his application for asylum in the immigration judge's removal order to the BIA, which impacted his ability to remain in the United States, the immigration judge's order of removal did not become a final order of removal until the BIA dismissed that appeal on February 27, 2026. *See* 8 C.F.R. § 1241.1(a).

That Petitioner's withholding proceeding continues after remand from the BIA does not disturb the finality of his removal order because withholding only affects *to where* he may be removed and does not grant him a right to remain in the United States. "If an immigration judge grants an application for withholding of removal, he

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[9] *Zadvydas* definitively settled the question of when prolonged detention can violate due process, and importing the *Singh* factors into the post-removal-order context would be contrary to the Supreme Court's holding. But in any event, Petitioner's post-removal-order detention is not prolonged.

prohibits DHS from removing the alien to that particular country, not from the United States. *The removal order is not vacated or otherwise set aside.* It remains in full force, and DHS retains the authority to remove the alien to any other country authorized by the statute." *Guzman,* 594 U.S. at 535-36 (modified). Thus, "the finality of the order of removal does not depend in any way on the outcome of the withholding-only proceedings." *Id.* at 539.

Thus, because the BIA dismissed Petitioner's asylum appeal on February 27, 2026, Petitioner has been in detention pursuant to a final order of removal for about one month as of the date of this response, and his detention remains mandatory under § 1231(a)(1)(A) and lawful pursuant to *Zadvydas.*

II. Even if Petitioner were detained under § 1226, his detention would be lawful.

As explained above, Petitioner is subject to mandatory detention under § 1231(a)(1)(A), so the Court should dismiss the Petition on that basis. However, even if he were detained under § 1226, as Petitioner alleges, his detention would be lawful.

The Supreme Court has a "longstanding view that the Government may constitutionally detain deportable aliens during the limited time necessary for their removal proceedings." *Demore v. Kim*, 538 U.S. 510, 526 (2003). This rests, in part, on the fact that "[t]he Government has a compelling interest in ensuring that removable aliens appear for their scheduled removal proceedings and are, in fact, removed." *Diaz-Ceja v. McAlennan*, Case No. 19-cv-00824-NYW, 2019 WL 2774211, at *9 (D. Colo. Jul. 2, 2019) (citing *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001)).

The statutory authority of the Attorney General to detain an alien in Petitioner's situation during removal proceedings, prior to a final order of removal, is found in 8 U.S.C. § 1226. *See Jennings v. Rodriguez*, 138 S. Ct. 830, 837 (2018) ("Section 1226 generally governs the process of arresting and detaining [deportable aliens present in the United States] pending their removal.").[10] Under 8 U.S.C. § 1226(a), the government may arrest and detain an alien "pending a decision on whether the alien is to be removed from the United States." 8 U.S.C. § 1226(a); *see also Diouf v. Napolitano*, 634 F.3d 1081, 1085 (9th Cir. 2011) ("At all times before the removal period begins and mandatory detention is authorized by § 1231(a)(2), the alien [who had remained in the United States after the expiration of his student visa] is subject to discretionary detention under § 1226(a)."). The Attorney General has the discretion to either (1) detain the alien without bond, or (2) release the alien on bond of at least $1,500 or on conditional parole. 8 U.S.C. § 1226(a).

In Claim I, Petitioner alleges violations of his Fifth Amendment right to due process because: (1) the *Singh* factors, *see Singh v. Choate*, No. 19-cv-00909-KLM, 2019 WL 394396, at *5 (D. Colo. Aug. 21, 2019), show that his detention is unconstitutionally prolonged; (2) the immigration judge's decision on dangerousness was erroneous because the evidence the DHS submitted did not met its burden and the immigration judge did not meaningfully consider alternatives to detention; and

[10] As Respondents have argued in other cases, § 1225(b) also provides for *mandatory* detention for aliens who are "applicants for admission" who have not been admitted into the United States. This section does not apply to Petitioner, who was previously admitted on a visa.

(3) Petitioner's conditions of confinement violate substantive due process. *See* ECF No. 1 at 14. These arguments fail.

A. *Singh* does not mandate release.

Petitioner asserts that *Singh* shows that the length of his detention violates due process. *See* ECF No. 1 ¶ 58. That argument fails because the claim in *Singh* was that "prolonged detention *without a bond hearing* violates the Fifth Amendment's Due Process Clause." *Singh*, 2019 WL 3943960, at *4 (emphasis added). The *Singh* court found that "in weighing these factors the Court concludes that Petitioner's continued, lengthy detention, *without any individualized bond hearing* has become unreasonable in violation of the Due Process Clause." *Id.* at *7 (emphasis added). For relief, the *Singh* court ordered a bond hearing and did not order immediate relief. Thus, *Singh* does not stand for the proposition that prolonged detention requires immediate release. Instead, it requires in certain circumstances that a bond hearing be provided. Here, Petitioner had a bond hearing in March 2025. *See* ECF No. 1 ¶ 32. Thus, he has not established any violation of due process under *Singh*. In any case, Petitioner is now subject to mandatory detention under § 1231(a)(1)(A), as explained above, so his detention does not violate due process.

B. The immigration judge's bond decision did not violate due process.

Under § 1226(a), the Attorney General may exercise her discretion to either detain or release an alien on bond or conditional parole. 8 U.S.C. § 1226(a)(1)–(2); *see also* 8 C.F.R. § 236.1(c)(8) (providing that an authorized officer may exercise discretion to release an alien if the alien demonstrates that release would not pose a danger and

the alien is likely to appear at future proceedings). An immigration judge's discretionary decision with respect to the grant or denial of a bond is not reviewable. 8 U.S.C. § 1226(e) ("The Attorney General's discretionary judgment regarding the application of this section shall not be subject to review."). The Tenth Circuit has confirmed that "to the extent [the petitioner] challenges the agency's discretionary bond decision . . . the court lack[s] jurisdiction" pursuant to § 1226(e). *Mwangi v. Terry*, 465 F. App'x 784, 787 (10th Cir. 2012). However, the Court has jurisdiction under 28 U.S.C. § 2241 to consider Petitioner's constitutional claim. *See Demore*, 538 U.S. at 517.

Petitioner claims that the immigration judge's decision violated due process because the evidence DHS submitted did not meet its burden and the immigration judge did not meaningfully consider alternatives to detention. *See* ECF No. 1 ¶ 59. Petitioner is wrong, and the Court should reject Petitioner's invitation to second-guess the immigration judge's weighing of evidence.

Burden. The immigration judge's decision regarding the burden did not violate due process. At the bond hearing, DHS presented police reports and other information. *See* ECF No. 1 ¶ 32. That included information regarding Petitioner's three convictions discussed above—driving to endanger, based on an incident in August 2021; operating under the influence, based on an incident in May 2023; and violating conditions of release by consuming alcohol, based on an incident in February 2024. *See* ECF No. 1 ¶ 24. The immigration judge found that Petitioner was a danger to the community. *See* ECF No. 1 ¶ 32. In bond proceedings, driving under the influence weighs heavily regarding dangerousness. *See Matter of Siniauskas*, 27 I. & N. Dec. 207, 207–09 (BIA

2018). Petitioner does not allege that he presented any information regarding his dangerousness at the bond hearing. With nothing from Petitioner and three convictions since 2021 relating to driving and alcohol use, the immigration judge's decision is reasonable under any standard.

Petitioner's argument seems to be that this Court should weigh the evidence presented to the immigration judge. But the Court's limited review of an immigration bond decision does not allow for re-weighing evidence. *See, e.g.*, *A.A. v. Baltazar*, No. 25-cv-03174-CNS, ECF No. 24, at 1–2 (D. Colo. Dec. 17, 2025) (denying motion to enforce as essentially "an appellate brief seeking reversal of the Immigration Judge's . . . bond order" and emphasizing that the district court's task is "not to review the [bond] hearing evidence *de novo*"); *Morgan v. Oddo*, No. 3:24-CV-221, 2025 WL 2653707, at *6 (W.D. Pa. Sept. 16, 2025) (motion to enforce for alleged due-process deficiencies in immigration-bond hearing "does not provide opportunity to reweigh the evidence submitted at the bond hearing"). Therefore, the immigration judge's decision on dangerousness does not violate due process.

Consideration of alternatives to detention. Due process does not require an immigration judge to consider alternatives to detention. *See Demore*, 538 U.S. at 530 ("Detention during removal proceedings is a constitutionally permissible part of that process."). To the contrary, the Supreme Court has reiterated that "the government need not use the 'least burdensome means to accomplish its goal' to comport with the Due Process Clause." *Id.* at 528. As the Fourth Circuit concluded in *Miranda v. Garland*, 34 F.4th 338, 364 (4th Cir. 2022), in rejecting the argument that due process

mandates an immigration judge to consider alternatives to detention and ability to pay at bond hearings: "Requiring the procedures [the noncitizen] requests would in effect be constitutionalizing immigration policy decisions. That is not our job." Thus, Petitioner's claim regarding alternatives to detention fails.

In any case, Petitioner is now subject to mandatory detention under § 1231(a)(1)(A), as explained above, so his detention does not violate due process and immigration judge's prior decision on bond is not relevant.

C. Petitioner's conditions of confinement do not violate substantive due process.

Petitioner's substantive-due-process claim premised on the conditions of confinement at the detention center fails. An allegation that a detainee's conditions of confinement violates due process "does not establish that such a violation would justify immediate release, as opposed to injunctive relief that would leave [him] detained while ameliorating any unconstitutional conditions" at his detention facility. *Doe v. Bostock*, No. C24-0326-JLR-SKV, 2024 WL 3291033, at *8 (W.D. Wash. Mar. 29, 2024) (citation omitted), *adopted by* 2024 WL 2861675 (W.D. Wash. June 6, 2024); *accord Rosa v. McAleenan*, 583 F. Supp. 3d 850, 878 (S.D. Tex. 2019); *Rodas Godinez v. ICE*, No. 2:20-cv-466 KWR/SMV, 2020 WL 3402059, at *3 (D.N.M. June 19, 2020); *see also Glaus v. Anderson*, 408 F.3d 382, 387 (7th Cir. 2005) ("[T]he appropriate remedy [for inadequate medical treatment] would be to call for proper treatment, or to award [the inmate] damages; release from custody is not an option."); *Gomez v. United States*, 899 F.2d 1124, 1127 (11th Cir. 1990) (appropriate remedy for unconstitutional prison conditions "is to require the discontinuance of any improper practices, or to require

correction of any condition causing cruel and unusual punishment"; "relief . . . does not include release from confinement"). "Unconstitutional conditions of confinement—even conditions that create a risk of serious physical injury, illness, or death—do not warrant release," and "[a] demand for release does not convert a conditions-of-confinement claim into a proper habeas request." *Enwonwu v. Joyce*, No. 6:25-CV-0232, 2025 WL 2112712, at *3 to *4 (W.D. La. May 14, 2025) *habeas pet. dismissed as moot by* No. 2:25-cv-00336-SDN, slip op. (D. Me. July 28, 2025), ECF No. 31; *accord Basri*, 469 F. Supp. 3d at 1066-71 (D. Colo. 2020). Thus, Petitioner's allegations regarding his conditions of confinement do not support his request for immediate release.

III. Petitioner's APA claim does not entitle him to release.

In this claim, Petitioner alleges that the immigration judge's bond decision in March 2025 was arbitrary and capricious because: (1) DHS submitted "only paltry evidence," (2) there was no evidence that any member of the community had been harmed; and (3) alternatives to detention (such as allowing release to a treatment program) were not considered. Petitioner's APA claim fails for at least three reasons.

First, Petitioner is subject to mandatory detention under § 1231(a)(1)(A), so his argument about a bond hearing when he was held under § 1226 is irrelevant.

Second, Petitioner's APA claim fails because habeas relief is available. Relief under the APA is only available if there is "no other adequate remedy in a court." 5 U.S.C. 704. Here, Petitioner seeks release for detention, so his relief, if any is available, is under habeas. *See Trump v. J. G. G.*, 604 U.S. 670, 674 (2025)

(Kavanaugh, J. concurring) (claim seeking release must be brought under habeas corpus proceedings and not the APA).

Third, Petitioner's claims also fail on the merits.

"Paltry evidence." Petitioner's allegation that the immigration judge's bond decision regarding dangerousness violated the APA because the DHS only submitted "paltry evidence" fails. DHS presented evidence of three convictions since 2021 relating to driving and alcohol use. Petitioner does not allege that he presented any evidence that would establish that he was not a danger to the community. The immigration judge's decision was not arbitrary or capricious.

No evidence of harm to community. Petitioner's argument that the immigration judge's decision on dangerousness was arbitrary and capricious for lack of evidence of harm to the community also fails. Petitioner's convictions for driving and alcohol use show potential harm to the community. "Drunk driving is an extremely dangerous crime." *Begay v. United States*, 553 U.S. 137, 141 (2008), *abrogated on other grounds, Johnson v. United States*, 576 U.S. 591 (2015). It takes "a grisly toll on the Nation's roads, claiming thousands of lives, injuring many more victims, and inflicting billions of dollars in property damage every year." *Birchfield v. North Dakota*, 579 U.S. 438, 443 (2016). The immigration judge was not required to wait until Petitioner killed or injured someone while driving drunk to see the danger in Petitioner's pattern of driving and alcohol abuse. The immigration judge's consideration of Petitioner's three convictions since 2021 relating to driving and alcohol use was not arbitrary or capricious.

Alternatives to detention. Petitioner does not identify any statutory, regulatory, or other authority that would require the immigration judge to consider alternatives to detention in making the bond determination. As discussed above, consideration of alternatives to detention is not required by due process. *See* above § II.B. And Petitioner does not allege that he argued for any alternatives to detention at the bond hearing. Therefore, the fact that the immigration judge did not consider alternatives to detention does not show that his decision was arbitrary and capricious.

CONCLUSION

The Court should deny the Petition.

Dated: April 3, 2026.

Respectfully submitted,

PETER MCNEILLY
United States Attorney

s/ Timothy Bart Jafek
Timothy Bart Jafek
Assistant United States Attorney
1801 California Street, Suite 1600
Denver, Colorado 80202
Telephone: (303) 454-0100
Fax: (303) 454-0407
timothy.jafek@usdoj.gov

Counsel for Respondents

CERTIFICATE OF SERVICE

I certify that on April 3, 2026, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send notification of such filing to the all persons who have registered for such notifications.

I also certify that on the same date I am causing the foregoing to be delivered to the following non-CM/ECF participants in the manner (mail, email, hand delivery, etc.) indicated by the nonparticipant's name:

none.

s/ Timothy Bart Jafek
Timothy Bart Jafek