

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Frank George Rogers, individually and
derivatively as a member and on behalf of
Exodus Aircraft, LLC,

Plaintiffs,

vs.

Joshua Brett Kimbrell, Liliya Shcherba
Robertson Kimbrell, Exodus Airways, LLC,
Thomas Blake Whitaker,

Defendants.

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

C.A. NO.: 2025-CP-23-04210

**PLAINTIFFS' MEMORANDUM OF LAW
IN SUPPORT OF THEIR PETITION FOR
RULE TO SHOW CAUSE AND IN
RESPONSE TO DEFENDANT JOSHUA
KIMBRELL AND LILIYA KIMBRELL'S
ANSWER**

Plaintiffs respectfully submit this Memorandum of Law in support of their Petition for Rule to Show Cause and in response to Defendants Joshua Brett Kimbrell and Liliya Kimbrell's Answer to Plaintiffs' Petition for Rule to Show Cause.

UNDISPUTED FACTS

A number of facts alleged in Plaintiffs' Petition for Rule to Show Cause are admitted by the Defendants Josh Kimbrell and Liliya Kimbrell ("Kimbrell Defendants"). Specifically, the Defendants admit that the TRO was entered on July 11, 2025. The Kimbrell Defendants further admit that the Consent Preliminary Injunction was executed by them on July 21, 2025, and they received notice of the Consent Preliminary Injunction via ECF notice to their counsel when the Order was entered by this Court on July 22, 2025.

APPLICABLE LAW

"The power to punish for contempt is inherent in all courts. Its existence is essential to the preservation of order in judicial proceedings, and to the enforcement of the judgments, orders and writs of the courts, and consequently to the due administration of justice." *Floyd v. Floyd*, 365 S.C.

at 73, 615 S.E.2d at 474 (quoting *Curlee v. Howle*, 277 S.C. 377, 382, 287 S.E.2d 915, 917 (1982)); *State v. Stanley*, 365 S.C. 24, 38, 615 S.E.2d 455, 462 (Ct. App. 2005); see also *In re Brown*, 333 S.C. 414, 420, 511 S.E.2d 351, 355 (1998)(“The power to punish for contempt is inherent in all courts and is essential to preservation of order in judicial proceedings.”). “Contempt results from the willful disobedience of an order of the court.” *Bigham v. Bigham*, 264 S.C. 101, 104, 212 S.E.2d 594, 596 (1975); *Smith v. Smith*, 359 S.C. 393, 396, 597 S.E.2d 188, 189 (Ct. App. 2004); S.C. Code Ann. § 20-7-1350 (Supp. 2004) (A party may be found in contempt of court for the willful violation of a lawful court order.). “A willful act is one which is ‘done voluntarily and intentionally with the specific intent to do something the law forbids, or with the specific intent to fail to do something the law requires to be done; that is to say, with bad purpose either to disobey or disregard the law.’” *Widman v. Widman*, 348 S.C. 97, 119, 557 S.E.2d 693, 705 (Ct. App. 2001) (quoting *Spartanburg County Dep't of Soc. Servs. v. Padgett*, 296 S.C. 79, 82-83, 370 S.E.2d 872, 874 (1988)). When a contemnor is unable, without fault on her part, to obey an order of the court, she shall not to be held in contempt. See *Smith-Cooper v. Cooper*, 344 S.C. 289, 301, 543 S.E.2d 271, 277 (Ct. App. 2001). In order to find willful disobedience, contempt requires the court order to be unequivocal. See *Knight v. Austin*, 396 S.C. 518, 522-23, 722 S.E.2d 802, 804 (2012); *Welchel v. Boyter*, 260 S.C. 418, 421, 196 S.E.2d 496, 498 (1973) (holding that, in order for contempt to lie, the language of a court order’s commands must be clear and certain).

The determination of contempt ordinarily resides in the sound discretion of the trial judge. *State v. Bevilacqua*, 316 S.C. 122, 129, 447 S.E.2d 213, 217 (Ct. App. 1994). “In a proceeding for contempt for violation of a court order, the moving party must show the existence of a court order and the facts establishing the respondent's noncompliance with the order.” *Hawkins v. Mullins*, 359 S.C. 497, 501, 597 S.E.2d 897, 899 (Ct. App. 2004); *Eaddy v. Oliver*, 345 S.C. 39, 42, 545

S.E.2d 830, 832 (Ct. App. 2001). “Once the moving party has made out a prima facie case, the burden then shifts to the respondent to establish his or her defense and inability to comply with the order.” *Widman*, 348 S.C. at 120, 557 S.E.2d at 705. “[B]efore a court may find a person in contempt, the record must clearly and specifically reflect the contemptuous conduct.” *Id.* 348 S.C. at 119, 557 S.E.2d at 705.

A. Direct v. Constructive Contempt

“Direct contempt is defined as contemptuous conduct occurring in the presence of the court.” *State v. Kennerly*, 331 S.C. 442, 450, 503 S.E.2d 214, 219 (Ct. App. 1998), *aff’d* by 337 S.C. 617, 524 S.E.2d 837 (1999) (citing *State v. Goff*, 228 S.C. 17, 88 S.E.2d 788 (1955)). “South Carolina courts have always taken a liberal and expansive view of the ‘presence’ and ‘court’ requirements. This State’s courts have held the ‘presence of the court’ extends beyond the mere physical presence of the judge or the courtroom to encompass all elements of the system.” *Kennerly*, 337 S.C. at 620, 524 S.E.2d at 838. “[T]he court consists not of the judge, the jury, or the jury room individually, but all of these combined. The court is present wherever any of its constituent parts is engaged in the prosecution of the business of the court according to the law.” *Id.* at 620-21, 524 S.E.2d at 838 (citing *Goff*, 228 S.C. at 23, 88 S.E.2d at 791).

“Constructive contempt is contemptuous conduct occurring outside the presence of the court.” *Kennerly*, 331 S.C. at 451, 503 S.E.2d at 219 (citing *Toyota of Florence, Inc. v. Lynch*, 314 S.C. 257, 442 S.E.2d 611 (1994))(emphasis added). “The distinction between direct and constructive contempt is important because it determines how the contempt proceedings must be brought.” *Id.* “A rule to show cause for direct contempt may be issued without a supporting affidavit or verified petition.” *Id.* However, a charge of constructive contempt brought by a rule to show cause must be based on an affidavit or verified petition. *Id.* “The failure to support the

rule to show cause by an affidavit or verified petition is a fatal defect.” *Lynch*, 314 S.C. at 267, 442 S.E.2d at 617.

B. Civil v. Criminal Contempt

In *Poston v. Poston*, the South Carolina Supreme Court detailed the differences between civil and criminal contempt. *See* 331 S.C. 106, 502 S. E.2d 86 (S.C. 1998). The Court explained that the “major factor in determining whether a contempt is civil or criminal is the purpose for which the power is exercised, including the nature of the relief and the purpose for which the sentence is imposed. The purpose of civil contempt is to coerce the defendant to do the thing required by the order for the benefit of the complainant. The primary purpose of criminal contempt is to preserve the court’s authority and to punish for disobedience of its orders.” *Id.* at 111 (internal citations and quotations omitted).

“An unconditional penalty is criminal in nature because it is solely and exclusively punitive in nature. The relief cannot undo or remedy what has been done nor afford any compensation and the contemnor cannot shorten the term by promising not to repeat his offense.” *Id.* (internal citations and quotations omitted). Critically, “if the relief provided is a sentence of imprisonment, ... it is punitive if the sentence is limited to imprisonment for a definite period.” *Id.* at 112 (quoting *Hicks v. Feiock*, 485 U.S. 624, 632, 108 S. Ct. 1423, 1430 99 L. Ed. 2d 721, 732 (1988) (citing *Gompers v. Buck’s Stove & Range Co.*, 221 U.S. 418, 442, 31 S. Ct. 492, 498, 55 L. Ed. 797, 806 (1911)).

“In civil contempt cases, the sanctions are conditioned on compliance with the court’s order.” *Id.* at 112. “Civil contempt differs from criminal contempt in that it seeks only to ‘coerc[e] the defendant to do’ what a court had previously ordered him to do.” *Turner v. Rogers*, 131 S. Ct. 2507, 2516, 180 L. Ed. 2d 452 (2011) (alteration in original) (quoting *Gompers*, 221 U.S. at 442

(1911)). “[O]nce a civil contemnor complies with the underlying order, he is purged of the contempt and is free.” *Id.*

Civil contempt must be shown by clear and convincing evidence. *Poston*, 331 S.C. at 113, 502 S.E.2d at 89 (1998). Criminal contempt must be shown beyond a reasonable doubt. *Id.* In determining whether a contempt sanction is criminal or civil, one must identify the purpose for which the sanction is imposed. Whereas civil contempt is either coercive or remedial in nature, criminal contempt is purely punitive. *Id.* at 111, 502 S.E.2d at 88. Incarceration may be either civil or criminal. *Id.* at 112, 502 S.E.2d at 89. The distinguishing factor is whether the incarceration is for a definite period of time, which is the hallmark of criminal contempt, or whether the contemnor may avoid or cut short the incarceration by complying with the court's directive, which indicates civil contempt. *Id.* The difference between the two is substantial because the constitutional safeguards provided in the Sixth Amendment may be triggered in criminal contempt proceedings. *DiMarco v. DiMarco*, 393 S.C. 604, 607-08, 713 S.E.2d 631, 633 (2011). Intent for purposes of criminal contempt is subjective, not objective, and must necessarily be ascertained from all the acts, words, and circumstances surrounding the occurrence. *State v. Passmore*, 363 S.C. 568, 572, 611 S.E.2d 273, 275 (Ct. App. 2005) (citing *State v. Bevilacqua*, 316 S.C. at 129, 447 S.E.2d at 217 (Ct. App. 1994)).

In *Bloom v. Illinois*, 391 U.S. 194, 88 S. Ct. 1477, 20 L. Ed. 2d 522 (1968) the Supreme Court held prosecutions for serious criminal contempts are subject to the jury trial protections of the Sixth Amendment. Subsequently, in *Codispoti v. Pennsylvania*, 418 U.S. 506, 94 S. Ct. 2687, 41 L. Ed. 2d 912, (1974), the Supreme Court held criminal defendants sentenced to imprisonment of more than six (6) months are entitled to a jury trial. See *Curlee*, 277 S.C. at 383, 287 S.E.2d at 918 (1982); *Passmore*, 363 S.C. at 572, 611 S.E.2d at 275. “Incarceration under certain factual

circumstances may be included as a component of civil contempt.” *Cheap-O's Truck Stop, Inc. v. Cloyd*, 350 S.C. 596, 609, 567 S.E.2d 514, 521 (Ct. App. 2002). However, unlike the constitutional protection afforded a criminal contemnor, the United States Supreme Court has held that a civil contempt proceeding resulting in incarceration does not require a jury trial. *Shillitani v. U.S.*, 384 U.S. 364, 86 S. Ct. 1531, 16 L. Ed. 2d 622 (1966).

**JOSH AND LILIYA KIMBRELL HAD KNOWLEDGE OF THE TRO AND THE
CONSENT PRELIMINARY INJUNCTION**

In their Answer to the Petition for Rule to Show Cause, the Kimbrell Defendants admit they had actual knowledge of the Consent Preliminary Injunction when they executed it on July 21, 2025, and further admit they were served with the Consent Preliminary Injunction on July 22, 2025. *See* Defendants’ Answer to Petition for Rule to Show Cause at 2. Nonetheless, the Kimbrell Defendants deny Paragraph 4 of the Petition and state they “will show unto this Court that they were vacationing out of the United States and were not served with or notified of the nature of this case, or that the Temporary Restraining Order was issued.” *See* Defendants’ Answer at 1. In response to Paragraph 5(A) of the Petition, the Kimbrell Defendants further respond that “Defendant Josh Kimbrell will show that he was not in the United States on July 13, 2025 and had no idea of the nature of this Action or of the Temporary Restraining Order having been issued.” *Id.* Finally, in response to Paragraph 5(D), the Defendants aver that they “were not in the United States on July 12, 2025, [and] had not been served with this lawsuit or the Temporary Restraining Order. These Defendants deny that they violated the Temporary Restraining Order as they had not been served with it and had no knowledge of the nature of the suit or the existence of the TRO.”

The Kimbrell Defendants’ counsel of record at the time, Vanessa Kormylo, accepted service of the pleadings on behalf of all the Defendants on July 13, 2025. *See* July 13, 2025 Email from Vanessa Kormylo to Lane Davis, attached hereto as **Exhibit A**. As such, the Kimbrell

Defendants were served on July 13th and were on notice of the existence of the TRO as of that time. Prior to this official acceptance of service by their counsel, the Kimbrell Defendants repeatedly demonstrated that they were aware of and had actual notice of the lawsuit and TRO as early as July 12, 2025. Specifically, and despite their representation that they were “vacationing out of the United States” and were not “notified of the nature of this case”, Josh Kimbrell emailed a significant number of individuals, including investors and employees of Exodus Aircraft at 4:09 PM on July 12, 2025 and stated:

This Morning I was informed that my former business partner, Frank G. Rogers, launched a preemptive, deceptive, and wrong attack against me in my capacity as your accountable manager and CE O of Exodus Aircraft. As a public official, to maximize attempts at public embarrassment, Mr. Rogers release[d] his **lawsuit against me and my sweet wife, Liliya**, to the press in South Carolina. I have copied members of my public relations team here to help cope with the distress of this situation. Liliya is deeply distressed ... As of today, my legal team will deal with Frank and his guys...

See July 12, 2025 Email from Josh Kimbrell, copying Liliya Kimbrell, attached hereto as **Exhibit B** (emphasis added). Josh Kimbrell and Liliya Kimbrell admit in the email that they were “notified of the nature of this case” as early as the “morning” of July 12, 2025.

The Kimbrell Defendants denial of any “knowledge of the nature of the suit or the existence of the TRO” as of July 12, 2025 is further undermined by the fact that Josh Kimbrell gave an unspecified number of interviews and/or statements to the press on July 12, 2025 about this case. For example, WYFF reporter, Jane Robelot, provided an in-depth report on this lawsuit and the TRO in a report on the news station’s 6 PM news show. See July 12, 2025, “South Carolina Sen. Josh Kimbrell Faces Civil Lawsuit”, at <https://www.wyff4.com/article/josh-kimbrell-lawsuit-south-carolina-business-dispute/65388537>, attached hereto as **Exhibit C**. In that report, Ms. Robelot provided excerpts from the pleadings and referenced the TRO. *Id.* In response to Ms.

Robelot’s investigation, Josh Kimbrell provided a statement that was aired on WYFF shortly after 6 PM on July 12, 2025, wherein he specifically addressed this action admitting his awareness of same. Specifically, Josh Kimbrell stated:



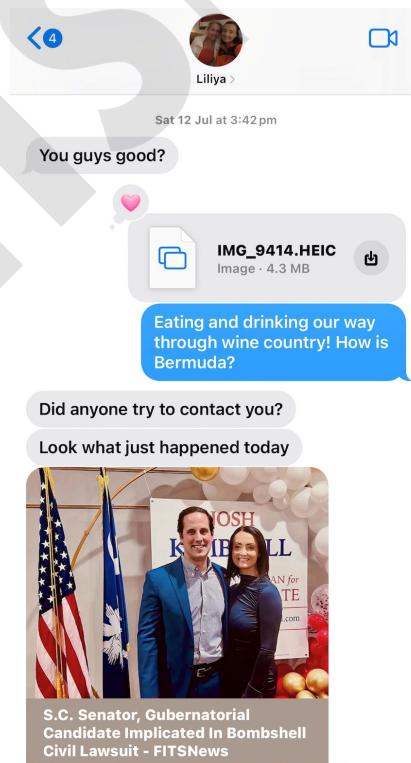
Again, contrary to their misrepresentations to this Court that they “were vacationing out of the United States and were not served with or notified of the nature of this case”, the Kimbrell Defendants also publicly acknowledged they were “notified of the nature of this case” when Josh Kimbrell provided a statement to FITSNews on July 12, 2025. *See* FITSNews, July 12, 2025, “S.C. Senator, Gubernatorial Candidate Implicated in Bombshell Civil Lawsuit: Republican lawmaker and his wife accused of stealing millions from his business partner”,

[https://www.fitsnews.com/2025/07/12/s-c-senator-gubernatorial-candidate-implicated-in-](https://www.fitsnews.com/2025/07/12/s-c-senator-gubernatorial-candidate-implicated-in-bombshell-civil-lawsuit/)

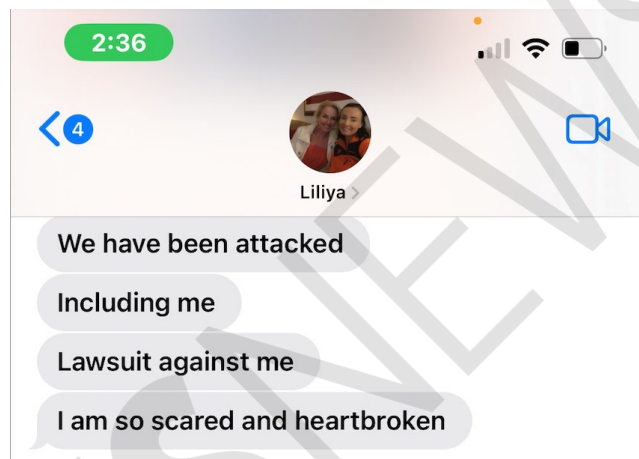
[bombshell-civil-lawsuit/](https://www.fitsnews.com/2025/07/12/s-c-senator-gubernatorial-candidate-implicated-in-bombshell-civil-lawsuit/), attached hereto as **Exhibit D**. Just like the WYFF news article, the FITSNews article references the TRO and notes that it blocks “any sale of assets, diversion of funds or extraordinary expenditures” as well as preserving “all documents, emails, correspondence, business records, text messages and evidence of any kind’ potentially related to

the lawsuit.” *Id.* The article goes on to state that the TRO was entered on Friday, July 11, 2025, before noting that FITSNews contacted Kimbrell about the lawsuit, to which he responded that “he was ‘stunned’ and ‘disappointed’”. He further claimed the allegations contained in the complaint were “ludicrous,’ ‘not true’ and ‘simply inaccurate’”. *Id.* Kimbrell went on to say that the allegations in the complaint “are a bunch of lies” and that the action is “a completely misrepresented, ridiculous thing. It’s a completely absurd set of misrepresentations.” *Id.* Again, Kimbrell provided the same “official statement” he provided to WYFF wherein he referred to the action as an “uncorroborated case of lawfare.” *Id.*

Defendant Josh Kimbrell was not the only Defendant to acknowledge notice of this action and the TRO. On July 12, 2025, the same day she deleted her entire email mailbox, Liliya Kimbrell texted a number of Exodus Aircraft employees, including the flight attendant, Kelly Collins. At 3:42 PM on July 12, 2025, Liliya Kimbrell reached out to Ms. Collins and texted her a copy of the FITSNews article referenced above.



See July 12, 2025 Texts from Liliya Kimbrell to Exodus Aircraft Employee, Kelly Collins, attached hereto as **Exhibit E**. Echoing her husband’s email referencing this lawsuit as an “attack”, Liliya Kimbrell goes on to state: “we have been attacked”. *Id.* Critically, and contrary to the representation to this Court in the Defendants’ answer to the Petition for Rule to Show Cause, Liliya Kimbrell admits that, despite being in Bermuda, she was fully aware of the “nature of this action” and that she was a defendant in this action subject to the restraints of the TRO. Specifically, on the afternoon of July 12, 2025, Liliya Kimbrell texted:



Id.

The Defendants’ counsel, Vanessa Kormylo, accepted service on behalf of all the Defendants on the afternoon of July 13, 2025. As of that time, the Defendants were officially on notice of this action and the TRO. In addition, the Kimbrell Defendants had notice and knowledge of the complaint and TRO on July 12, 2025, at least a full day before their counsel accepted service as evidenced by the above-referenced emails, text messages, and news interviews. Josh and Liliya Kimbrell were on notice on July 12, 2025. As such, the Kimbrell Defendants willfully violated the TRO, including by contacting investors, employees, customers, and suppliers, and deleting emails on July 12, 2025 and later as outlined in Plaintiff’s Petition for Rule to Show Cause.

THE DEFENDANTS' VIOLATION OF THIS COURT'S ORDER IS ONGOING AND CONTINUED AFTER PLAINTIFFS FILED THIS PETITION

Plaintiffs filed this Petition on August 21, 2025, more than forty days after this Court entered the Temporary Restraining Order and a month after this Court entered the Consent Preliminary Injunction. At that time, the Kimbrell Defendants had repeatedly and willfully violated both the TRO and the Consent Preliminary Injunction. This willful violation of this Court's unequivocal orders has continued through the date of this filing.

As an initial matter, Plaintiffs averred in their Petition that the Kimbrell Defendants violated both orders by, among other things, failing to "surrender to Plaintiffs' counsel all business records and all information in [Josh Kimbrell's] possession." These business records and information are necessary for the continued operation of the Exodus Aircraft, LLC business, which includes the safe operation of an aircraft. Unfortunately, even after the filing of this Petition, the Kimbrell Defendants continued to violate both the TRO and the Consent Preliminary Injunction by failing to surrender necessary business records and information.

Specifically, the undersigned counsel for Plaintiffs sent counsel for the Kimbrell Defendants a letter on August 13, 2025 demanding that the Defendants turn over all business records and information in their possession in compliance with the Preliminary Consent Order. *See* August 13, 2025 Letter from Mr. Wilkins to Mr. Brannon, attached hereto as **Exhibit F**. Plaintiffs demanded that Josh Kimbrell immediately surrender Exodus Aircraft Tax Returns, vendor files with onvoices, documents related to Priority 1, documents related to AIC Title Service, and various credit card statements. *Id.* Counsel also demanded a list of vendors utilized by Exodus and copies of any outstanding invoices. Unfortunately, despite this written demand

that the Kimbrell Defendants comply with this Court's unequivocal orders, the Kimbrell Defendants have failed to surrender any of the business records requested by the Plaintiffs.

The Kimbrell Defendants' ongoing and continuing violation of the Consent Preliminary Injunction is not limited to their failure to surrender business records and information. The Kimbrell Defendants have also continued to violate Provision 5 the Consent Preliminary Injunction. Specifically, Provision 5 of the Consent Preliminary Injunction provides that "no action shall be undertaken by the Enjoined Parties that would impact the rights or obligations of Exodus or its stakeholders, including but not limited to Enjoined Parties refraining from any contact with any of Exodus's customers, employees, or vendors." Upon information and belief, the Kimbrell Defendants have continued to engage in conduct that would impact the rights or obligations of Exodus and its stakeholders. For example, on October 13, 2025, Josh Kimbrell emailed at least two investors to discuss the current litigation and his opinion that Plaintiff, Frank Rogers, has damaged Exodus Aircraft, LLC. *See* October 13, 2025 Email from Josh Kimbrell, attached as **Exhibit G**. In this email, sent to investors in violation of the TRO and the Consent Preliminary Injunction, Josh Kimbrell admits that he has continued to speak with former employees, including the former maintenance director, as well as vendors and customers. He details all the areas in which he believes Frank Rogers and Exodus Aircraft are "undermin[ing] the investment" made by the investors of Exodus Aircraft. He suggests that Exodus Aircraft has "lost several large contract opportunities because of the hostile takeover". *Id.* Josh Kimbrell even goes so far as to falsely represent to these investors that Exodus Aircraft engages in "sub-par maintenance practices", a scurrilous accusation to be bandied about concerning a charter airplane that is intended to hurt and "impact the rights and obligations of the company" of the company by implying that it would be dangerous to fly on the aircraft owned by Exodus Aircraft.

The failure to turn over necessary corporate records and information, along with this defamatory email to current investors, plainly demonstrates the Kimbrell Defendants have continued to intentionally violate the TRO and the Consent Preliminary Injunction. The Kimbrell Defendants have displayed a willful disregard for this Court and the two Orders is has already issued. Left unchecked, the Kimbrell Defendants' flouting of this Court's Orders will undoubtedly continue. As such, Plaintiffs respectfully request this Court find Josh Kimbrell and Liliya Kimbrell in contempt of both the TRO and the Consent Preliminary Injunction.

CONCLUSION

In consideration of the foregoing, and for all those reasons more fully set forth in Plaintiffs' Petition for Rule to Show Cause, Plaintiffs respectfully request this Court issue an Order granting all relief requested by way of their Petition for Rule to Show Cause, including but not limited to: contempt sanctions, whether criminal or civil; striking Defendants' answer, defenses, and counterclaims; a spoliation inference; an order to immediately turn over for forensic inspection all computers and other devices wherein corporate records and communications are stored; attorneys' fees and costs; and investigation and forensic investigation fees and costs.

Respectfully submitted:

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October 24, 2025