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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

Lissa Mel Hatanaka, aka Lissa Melissa
Mel-Turdiv, 

Petitioner,

v.

United States Citizenship and
Immigration Services, et al.,

Respondents.

No. 25-cv-02448-PHX-SMB-ESW

**RESPONSE TO PETITION FOR
WRIT OF HABEAS CORPUS
(DOC. 1)**

INTRODUCTION

Respondents Fred Figueroa, Warden, Eloy Detention Center; John E. Cantu, Field Office Director, U.S. Immigration and Customs Enforcement (“ICE”), U.S. Department of Homeland Security (“DHS”); Todd M. Lyons, Acting Director of ICE; Kristi Noem, Secretary of DHS; and Pam Bondi, Attorney General of the United States, (“Respondents”), by and through undersigned counsel, hereby respond to the Petition for Writ of Habeas Corpus (Doc. 1).

I. FACTUAL BACKGROUND.

Petitioner, Mel Hatanaka, aka Lissa Melissa Mel-Turdiv (“Petitioner”), is a citizen of Israel, born on , in Uzbekistan. *See* Doc. 9, Exhibit A, Declaration of Deportation Officer Sergio Cabrera ¶ 5. On September 6, 2018, Petitioner was admitted

1 into the United States on a B-2 nonimmigrant visitor visa, with authorization to remain
2 until March 5, 2019. *Id.* ¶ 6. Petitioner exceeded the authorization period, overstaying her
3 visa, and on August 23, 2019, in the United States District Court, District of Maryland in
4 Baltimore, MD, she was convicted of the offense of conspiracy to commit wire fraud and
5 sentenced to one year and one day imprisonment with five years of supervision. *Id.* ¶ 7.

6 On November 19, 2019, Petitioner was encountered by ICE, Enforcement and
7 Removal Operations (ERO) in Boston at a Federal Correctional Institution in Danbury,
8 Connecticut after serving out her sentence of incarceration. Doc. 9, Exhibit A ¶ 8. On the
9 same date, ICE ERO Boston issued an Immigration Detainer, Form I-247.¹ *Id.* Petitioner
10 was taken into ICE custody where she remained until May 8, 2020, when she was released
11 on an Order of Release on Recognizance. *Id.* ¶ 9. At this time, Petitioner was served with
12 a Notice to Appear (“NTA”) in removal proceedings (Form I-862) via regular mail. *Id.*
13 This NTA was never filed in immigration court. *Id.* ¶ 11.

14 On July 7, 2020, Petitioner filed a Form I-589 Application for Asylum and
15 Withholding of Removal with United States Citizenship and Immigration Services
16 (“USCIS”). Doc. 9, Exhibit A ¶ 10. On May 17, 2021, ICE ERO Los Angeles Fugitive
17 Operations Team located and took Petitioner into custody. *Id.* ¶ 11. Petitioner was served
18 with a final administrative removal order (Form I-851) pursuant to Immigration and
19 Nationality Act (“INA”) section 237(a)(2)(A)(iii), 8 U.S.C. § 1227(a)(2)(A)(iii), as an alien
20 convicted of an aggravated felony after admission into the United States. *Id.* On the same
21 date, Petitioner was released from ICE custody on an order of supervision (“OSUP”). *Id.*

22 On May 24, 2021, ICE served Petitioner with a notice regarding a reasonable fear
23 interview and referred her case to the Asylum Pre-Screening Officer to schedule a
24 reasonable fear interview. Doc. 9, Exhibit A ¶ 12. On October 4, 2021, USCIS
25 administratively closed Petitioner’s Form I-589 Application for Asylum and Withholding
26

27 ¹ An immigration detainer is a request the ICE makes to local law enforcement such
28 as a jail or prison to hold a prisoner for an additional 48 hours beyond their scheduled
release time, in which time ICE may apprehend the individual to pursue removal
proceedings based on criminal grounds.

1 of Removal because, now that the Petitioner was in removal proceedings, only the
2 Immigration Judge (“IJ”) had jurisdiction to grant her applications for asylum and
3 withholding of removal. *See* 8 C.F.R. § 208.2.

4 On October 25, 2021, Petitioner filed a Form I-360 Petition for Amerasian,
5 Widow(er), or Special Immigrant with USCIS. Doc. 9, Exhibit A ¶ 14. On July 5, 2021,
6 Petitioner did not appear for her reasonable fear interview. *Id.* ¶ 15. On December 12,
7 2023, USCIS denied Petitioner’s Form I-360. *Id.* ¶ 16. On May 15, 2025, after USCIS
8 denied adjustment of status in connection with Petitioner’s Form I-130, Petition for Alien
9 Relative, ICE took Petitioner into custody and issued her a Notice to Appear in removal
10 proceedings. *Id.* ¶ 17. On June 12, 2025, the IJ dismissed the Notice to Appear.² *Id.* ¶
11 18. On July 11, 2025, Petitioner filed an appeal of the IJ’s order dismissing the prior NTA
12 with the Board of Immigration Appeals (“BIA”). *Id.* ¶ 19. The appeal remains pending.
13 *Id.* ¶ 20.

14 **II. ARGUMENT.**

15 **A. Petitioner’s Detention is Statutorily Authorized Under 8 U.S.C. § 1231 and** 16 **Constitutionally Permissible Under *Zadvydas*.**

17 Civil immigration detention of aliens pending a decision on whether the alien is to
18 be removed from the United States is governed by 8 U.S.C. § 1226. The statute provides
19 “an alien may be arrested and detained pending a decision on whether the alien is to be
20 removed from the United States” and that pending such decision, except as provided under
21 subsection (c), the alien may be detained or released on bond or conditional parole. *See*
22 8 U.S.C. § 1226(a). Section 1226(c) states that the Attorney General “shall” take into
23 custody any alien who is inadmissible or deportable because of certain criminal
24

25
26 ² ICE moved to dismiss this NTA when it realized Petitioner was already subject to
27 a final administrative removal order issued on May 17, 2021. The newly filed NTA, the IJ
28 order dismissing the NTA, and the appeal of the order dismissing the NTA, do not affect
the finality of the administrative removal order issued on May 17, 2021 and therefore, as
argued in full below, Petitioner remains detained subject to a final order under 8 U.S.C. §
1231.

1 convictions, when the alien is released from serving a sentence of incarceration. This
2 includes convictions for aggravated felonies, like the conviction received by Petitioner.

3 However, detention of aliens who have been ordered removed is governed by
4 8 U.S.C. § 1231, not 8 U.S.C. § 1226(c). *See Zadvydas v. Davis*, 533 U.S. 678, 683 (2001).
5 Section 1231(a) provides for mandatory detention of aliens ordered removed during a
6 90-day “removal period,” that begins when the removal order becomes final.³ 8 U.S.C. §
7 1231(a)(1)(A)–(B), (a)(2). That has occurred here. Petitioner was ordered removed
8 pursuant to a Final Administrative Removal Order issued under 8 U.S.C. § 1228(b) on May
9 17, 2021. Doc. 9, Exhibit A ¶ 11. Section 1228(b) authorizes expedited removal
10 proceedings for non-permanent resident aliens deportable for having committed an
11 aggravated felony. *See* 8 U.S.C. § 1228(b)(1)–(2).

12 As the name suggests, a Final Administrative Removal Order is administratively
13 final when issued because there is no BIA review of such an order—instead, an alien
14 subject to such an order may seek immediate judicial review of the order under 8 U.S.C. §
15 1252. *See* 8 U.S.C. § 1228(b)(3). Petitioner did not seek judicial review of her removal
16 order and therefore the “removal period” began to run under 8 U.S.C. § 1231(a)(1)(B)(i)
17 as of the date the order was issued: May 17, 2021. Doc. 9, Exhibit A ¶ 11.

18 However, Petitioner was released from ICE custody on the date she was issued her
19 final administrative removal order, May 17, 2021, pursuant to an Order of Supervision
20 (“OSUP”). Doc. 9, Exhibit A ¶ 11. Nevertheless, the detention, release, and removal of
21 aliens subject to a final order of removal is governed by 8 U.S.C. § 1231. Pursuant to
22 8 U.S.C. § 1231(a), the Attorney General has 90 days to remove an alien from the United
23 States after an order of removal becomes final. During this “removal period,” detention of
24 the alien is mandatory. *Id.* After the 90-day period, if the alien has not been removed and
25 remains in the United States, his detention may be continued, or he may be released under
26

27 ³ Even though detention is mandatory during the 90-day removal period, ICE still
28 has discretion to release on an OSUP if for instance there is insufficient bed space to detain,
or if any other internal administrative considerations prevent detention.

1 the supervision of the Attorney General. 8 U.S.C. § 1231(a)(3) and (a)(6). ICE may detain
2 an alien for a “reasonable time” necessary to effectuate the alien’s removal. INA § 241(a),
3 8 U.S.C. § 1231(a). However, indefinite detention is not authorized by the statute.
4 *Zadvydas v. Davis*, 533 U.S. 678, 689 (2001).

5 In *Zadvydas*, the Supreme Court defined six months as a presumptively reasonable
6 period of detention for aliens, like Petitioner, who are detained under section 1231(a). *See*
7 *Zadvydas*, 533 U.S. at 701-702. *Zadvydas* places the burden on the alien to show, after a
8 detention period of six months, that there is “good reason to believe that there is no
9 significant likelihood of removal in the reasonably foreseeable future.” *Id.* at 701. If the
10 alien makes that showing, the Government must then introduce evidence to refute that
11 assertion to keep the alien in custody. *See id.*; *see also Xi v. I.N.S.*, 298 F.3d 832, 839-40
12 (9th Cir. 2002). The court must “ask whether the detention in question exceeds a period
13 reasonably necessary to secure removal. It should measure reasonableness primarily in
14 terms of the statute’s basic purpose, namely, assuring the alien’s presence at the moment
15 of removal. Thus, if removal is not reasonably foreseeable, the court should hold continued
16 detention unreasonable and no longer authorized by statute.” *Zadvydas*, 533 U.S. at 699.

17 Petitioner incorrectly asserts that she is detained under 8 U.S.C. § 1226(c), but since
18 she is subject to a final administrative removal order, her detention is governed by 8 U.S.C.
19 § 1231(a). Therefore, to be entitled to release from detention, Petitioner has the burden to
20 show that her removal is not likely to occur in the reasonably foreseeable future. *Zadvydas*,
21 533 U.S. at 701. Only then does the burden shift to the Government to show that removal
22 is significantly likely to occur in the reasonably foreseeable future. *Id.* Petitioner has not
23 even alleged let alone established her burden to show that his removal is unlikely in the
24 reasonably foreseeable future or that her 104-day-long detention pursuant to her final
25 administrative removal order violates *Zadvydas*.

26 In *Zadvydas*, the Supreme Court designated six months, or 180 days, as a
27 presumptively reasonable time period to allow the Government to remove an alien detained
28 under 8 U.S.C. § 1231(a), but an alien is not automatically entitled to release after six

1 months of detention. *Id.* at 701 (“This 6 month presumption, of course, does not mean that
2 every alien not removed must be released after six months. To the contrary, an alien may
3 be held in confinement until it has been determined that there is no significant likelihood
4 of removal in the reasonably foreseeable future.”) (emphasis added). The passage of time
5 alone is insufficient to establish that no significant likelihood of removal exists in the
6 reasonably foreseeable future. *Lema v. I.N.S.*, 214 F. Supp. 2d 1116, 1118 (W.D. Wash.
7 2002). In *Lema*, where the alien had been detained for more than a year, the district court
8 held that the passage of time was only the first step in the analysis, and that the alien must
9 then provide good reason to believe that no significant likelihood of removal exists in the
10 reasonably foreseeable future. *Id.* Petitioner cannot establish that her removal is not likely
11 to occur in the reasonably foreseeable future. As an initial matter, Petitioner’s detention is
12 not prolonged and is within the six-month presumptively reasonable period under
13 *Zadvydas*. Petitioner has only been detained since May 15, 2025, a period of 104 days.
14 Doc. 9, Exhibit A ¶ 17.

15 In *Zadvydas*, the Court emphasized that the “basic purpose” of immigration
16 detention is “assuring the alien’s presence at the moment of removal” and concluded this
17 purpose was not served by the continued detention of aliens whose removal was not
18 “reasonably foreseeable.” *Zadvydas*, 533 U.S. at 699. Removal was not reasonably
19 foreseeable in *Zadvydas* because no country would accept the deportees or because the
20 United States lacked an extradition treaty with their home countries. Similarly, in *Clark v.*
21 *Martinez*, 543 U.S. 371, 386 (2005), an alien’s removal to Cuba was not reasonably
22 foreseeable when the Government conceded “that it is no longer even involved in
23 repatriation negotiations with Cuba.” *Id.* at 386. And in *Nadarajah v. Gonzales*, 443 F.3d
24 1069 (9th Cir. 2006), the Court of Appeals relied on the apparent impossibility of removal
25 in holding that an alien’s continued detention was not authorized where the Board of
26 Immigration Appeals had twice awarded the alien asylum, as well as protection under the
27 Convention Against Torture, yet his detention continued for over five years while the
28 Government appealed the decisions. *Id.* at 1081. The Ninth Circuit held that Nadarajah had

1 successfully demonstrated that, as a result of the asylum and CAT determinations, there
2 was a “powerful indication of the improbability of his foreseeable removal.” *Id.*

3 Here, however, this case is distinguishable from *Zadvydas*, *Clark*, and *Nadarajah*
4 because Petitioner is an alien whose detention is not prolonged at 104 days. She is also an
5 alien that the Government lawfully can remove pursuant to a valid administratively final
6 order of removal. Petitioner’s detention is both statutorily authorized and constitutional.

7 **B. The Government is Not Required to Show “Changed Circumstances” or**
8 **Provide Advance Notice Prior to Revoking an OSUP.**

9 Petitioner asserts that ICE has the authority to re-arrest a noncitizen and revoke their
10 bond, only where there has been a change in circumstances since the individual’s release
11 and that the noncitizen must be given a bond hearing before a neutral adjudicator prior to
12 their rearrest or detention. In support of that assertion, Petitioner relies primarily on
13 8 U.S.C. § 1226(b), *Matter of Sugay*, 17 I. & N. Dec. 637 (BIA 1981), and *Saravia v.*
14 *Sessions*, 280 F. Supp. 3d 1168 (N.D. Cal. 2017), *aff’d sub nom. Saravia for A.H. v.*
15 *Sessions*, 905 F.3d 1137 (9th Cir. 2018), but Petitioner’s reliance is misplaced because her
16 detention is governed by 8 U.S.C. § 1231(a)(6). For example, 8 U.S.C. § 1226(b) states
17 that “[t]he Attorney General at any time may revoke a bond or parole authorized under
18 subsection (a), rearrest the alien under the original warrant, and detain the alien.” 8 U.S.C.
19 § 1226(b).

20 Petitioner relies heavily on *Matter of Sugay*, which stated that “where a previous
21 bond determination has been made by an immigration judge, no change should be made by
22 a District Director [of ICE] absent a change in circumstances.” 17 I. & N. Dec. at 640. In
23 Petitioner’s case, no bond determination was ever made by an immigration judge, so *Matter*
24 *of Sugay* is inapplicable. *Saravia* addressed ICE’s authority to arrest unaccompanied
25 minors without final removal orders who had previously been placed with sponsors by the
26 Office of Refugee Resettlement (“ORR”). 280 F. Supp. 3d at 1177. There, the court held
27 that “DHS must have probable cause to believe that, notwithstanding ORR’s prior
28 determination, the minor is now a danger to himself or the community, or a flight risk.” *Id.*

1 at 1196 (citing 8 U.S.C. § 1232(c)(2)(A)). The court analogized the process due to the
2 minors to that owed to aliens subject to 8 U.S.C. § 1226(b), which applies to aliens who
3 have not yet been ordered removed. Since Petitioner is not an unaccompanied minor and
4 has been ordered removed, *Saravia* is also inapplicable. Petitioner also cites *Hernandez v.*
5 *Sessions*, 872 F.3d 976 (9th Cir. 2017), but that case involved “a class of non-citizens in
6 removal proceedings who are detained under 8 U.S.C. § 1226(a)” *Id.*

7 In addition, Petitioner string cites several cases many of which concern aliens
8 subject to pre-final removal order detention in which the primary consideration is ensuring
9 the alien’s presence at their future removal proceedings and in which bond hearings are
10 largely available by regulation. *See* Doc. 1 at p. 21 (citing *Ortega v. Bonnar*, 415 F. Supp.
11 3d 963, 966 (N.D. Cal. 2019) (petitioner was awaiting Ninth Circuit review of removal
12 order so detention was governed by 8 U.S.C. § 1226(a)); *Vargas v. Jennings*, No. 20-cv-
13 5785-PJH, 2020 WL 5074312, at *1 (N.D. Cal. Aug. 23, 2020) (involving alien who had
14 not been ordered removed and considering whether he was subject to detention under
15 8 U.S.C. § 1226(a) or 8 U.S.C. § 1226(c)); *Jorge M.F. v. Jennings*, 534 F. Supp. 3d 1050,
16 1053 (N.D. Cal. 2021) (same as *Ortega*); *Garcia v. Bondi*, No. 3:25-CV-05070, 2025 WL
17 1676855, at *4 (N.D. Cal. June 14, 2025)(detention governed by 8 U.S.C. § 1226); *Diaz v.*
18 *Kaiser*, No. 3:25-CV-05071, 2025 WL 1676854, at *4 (N.D. Cal. June 14, 2025) (detention
19 governed by 8 U.S.C. § 1226); *Guillermo M.R. v. Polly Kaiser*, No. 3:25-cv-05436-RFL
20 (N.D. Cal. June 30, 2025) (detention governed under 8 U.S.C. § 1226). Here, Petitioner is
21 subject to post final order detention under 8 U.S.C. § 1231(a)(6). The purpose of that
22 detention is to effectuate removal—not to ensure presence at removal proceedings.
23 Accordingly, the reasoning underlying the cases Petitioner cites is distinguishable.

24 Here, the regulation governing the revocation of Petitioner’s OSUP is 8 C.F.R.
25 241.4(l)(2). The Government was not required to show changed circumstances to revoke
26 release in its discretion. *Id.* Indeed, by its plain terms, 8 C.F.R. § 241.4(l)(2) does not
27 require a “change in circumstances.” Petitioner has failed to plead that Respondents
28 violated 8 C.F.R. § 241.4 or any procedural due process rights created thereunder. Rather,

1 Respondents properly revoked Petitioner's prior order of supervision in accordance with
2 the agency's regulations.

3 **C. Petitioner is Not Entitled to a Pre-Detention Hearing**

4 The Due Process Clause did not prohibit ICE from re-detaining Petitioner.
5 Moreover, there is no statutory or regulatory requirement that entitles Petitioner to a "pre-
6 deprivation" hearing, much less one involving burden-shifting against the government. *See*
7 *generally* 8 U.S.C. § 1231(a)(6); 8 C.F.R. § 241.4. For this Court to read one into the
8 immigration custody statute would be to create a process that the current statutory and
9 regulatory scheme do not provide for. *See Johnson v. Arteaga-Martinez*, 596 U.S. 573,
10 580-82 (2022). Thus, Petitioner can cite no liberty or property interest to which due process
11 protections attach.

12 Petitioner's reliance on *Morrissey v. Brewer*, 408 U.S. 471 (1972) and its progeny is
13 misplaced. *Morrissey* arose from the due process requirement for a hearing for revocation
14 of parole. *Id.* at 472–73. It did not arise in the context of immigration. Moreover, in
15 *Morrissey*, the Supreme Court reaffirmed that "due process is flexible and calls for such
16 procedural protections as the particular situation demands." *Id.* at 481. In addition, the
17 "[c]onsideration of what procedures due process may require under any given set of
18 circumstances must begin with a determination of the precise nature of the government
19 function." *Id.* With respect to the precise nature of the government function, the Supreme
20 Court has long held that "Congress regularly makes rules" regarding immigration that
21 "would be unacceptable if applied to citizens." *Mathews v. Diaz*, 426 U.S. 67, 79-80
22 (1976). Under these circumstances, Petitioner does not have a cognizable liberty interest
23 in a pre-detention hearing, but even assuming she had one, it would be reduced based on
24 the immigration context.

25 The procedural process provided to Petitioner, if re-arrested, is constitutionally
26 adequate in the circumstances and no additional process is required. "Procedural due
27 process imposes constraints on governmental decisions which deprive individuals of
28 'liberty' or 'property' interests within the meaning of the [Fifth Amendment] Due Process

1 Clause.” *Mathews v. Eldridge*, 424 U.S. 319, 332 (1976). “The fundamental requirement
2 of [procedural] due process is the opportunity to be heard ‘at a meaningful time and in a
3 meaningful manner.’” *Id.* at 333 (quoting *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965)).
4 To determine whether procedural protections satisfy the Due Process Clause, courts
5 consider three factors: (1) “the private interest that will be affected by the official action”;
6 (2) “the risk of an erroneous deprivation of such interest through the procedures used, and
7 the probable value, if any, of additional or substitute procedural safeguards”; and (3) “the
8 Government’s interest, including the function involved and the fiscal and administrative
9 burdens that the additional or substitute procedural requirement would entail.” *Id.* at 335.

10 The first factor favors Respondents. The Supreme Court has long recognized that
11 due process as applied to aliens in matters related to immigration does not require the same
12 strictures as it might in other circumstances. In *Mathews v. Diaz*, the Court held that, when
13 exercising its “broad power over naturalization and immigration, Congress regularly makes
14 rules regarding aliens that would be unacceptable if applied to citizens.” *Diaz*, 426 U.S. at
15 79-80. In *Demore*, the Court likewise recognized that the liberty interests of aliens are
16 subject to limitations not applicable to citizens. 538 U.S. at 522 (citing *Zadvydas*, 533 U.S.
17 at 718 (Kennedy, J., dissenting)). Accordingly, while the Ninth Circuit has recognized the
18 individuals subject to immigration detention possess at least a limited liberty interest, it has
19 also recognized that aliens’ liberty interests are less than full. *See Diouf v. Napolitano*, 634
20 F.3d 1081, 1086-87 (9th Cir. 2011). Because Petitioner’s liberty interest is less than that
21 at issue in *Morrissey*, this factor does not indicate that Petitioner must be afforded a
22 pre-detention hearing.

23 The second *Mathews* factor also favors Respondents. Under the existing procedures,
24 aliens including Petitioner face little risk of erroneous deprivation. As explained above,
25 there is no risk of erroneous deprivation because section 1231(a)(6) unquestionably
26 authorizes Petitioner’s detention to execute her final removal order and ICE is required to
27 give Petitioner additional procedures under the Post Order Custody Review Regulations in
28 8 C.F.R. § 241.4. These regulations require periodic custody reviews in which Petitioner

1 will have the opportunity to submit documents in support of her release, including
2 documentation about flight risk and dangerousness. *See generally* 8 C.F.R. § 241.4(e)-(f)
3 (listing factors to be considered in custody determinations). These procedures are more
4 than adequate and unquestionably provide Petitioner notice and opportunity to be heard
5 during her detention.

6 The third *Mathews* factor—the value of additional safeguards relative to the fiscal
7 and administrative burdens that they would impose—weighs heavily in favor of
8 Respondents. Petitioner’s proposed safeguard—a pre-deprivation hearing—adds little
9 value to the system already in place in which she will receive periodic reviews to ensure
10 her removal remains reasonably foreseeable and in which the entire purpose of her
11 detention is to effectuate his removal. Petitioner’s proposed safeguard would disrupt the
12 removal process. Because the hearing Petitioner proposes would, by definition, involve a
13 non-detained individual, there would be hurdles to efficiently scheduling a hearing. There
14 is no administrative process in place for giving an alien with a final order of removal a
15 hearing resembling a bond hearing before an immigration judge. Petitioner’s proposed
16 safeguard presents an unworkable solution to a situation already addressed by the current
17 procedures. *See* 8 C.F.R. § 241.4.

18 Respondents recognize that Petitioner is making an individualized challenge here.
19 However, the additional procedure she requests would have a significant impact on the
20 removal system. It would require ICE and the Executive Office of Immigration Review to
21 set up a novel administrative process for Petitioner who—for all intents and purposes—
22 represents a large portion of the final order alien population. Therefore, considering all of
23 the *Mathews* factors together, due process does not require a pre-deprivation hearing prior
24 to the revocation of an OSUP issued in connection with a final administrative removal
25 order.

26 **III. CONCLUSION.**

27 For the foregoing reasons, the Court should deny the habeas petition.
28

1 Respectfully submitted this 27th day of August, 2025.

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4 District of Arizona

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