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**UNITED STATES DISTRICT COURT**
**FOR THE WESTERN DISTRICT OF TEXAS**
**SAN ANTONIO DIVISION**

Marlin JULISSA MONTERROSO,

*Petitioner*,

v.

Jose Rodriguez, Jr., Warden of Dilley Processing Center, in their official capacity; Todd LYONS, in his official capacity as acting Director of U.S. Immigration and Customs Enforcement, Kristi NOEM, in her official capacity as Secretary of the U.S. Department of Homeland Security, and Pamela BONDI, in her official capacity as U.S. Attorney General; Daren MARGOLIN, Director for Executive Office for Immigration Review,

*Respondents*.

**HEARING REQUESTED**

Case No.: 5:26-cv-246

**PETITION FOR WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. § 2241**

## INTRODUCTION

1. Petitioner Marlin Julissa Monterroso (A[redacted]) is a native and citizen of Guatemala who has resided in the United States since 2012, after entering without inspection. She is the mother of two U.S. citizen children and two other children, ages 2, 10, 16, and 18. Petitioner has no criminal convictions that would render her ineligible for consideration of a bond, and she has only been arrested for driving without a license. In late-December 2025, U.S. Immigration and Customs Enforcement ("ICE") detained Petitioner, and she is currently being held at the South Texas Family Residential Center in Dilley, Texas.

2. DHS has determined that Ms. Julissa Monterroso is detained under INA § 235(b)(2)(A), 8 U.S.C. § 1225(b)(2)(A), pursuant to a July 2025 policy and the Board of Immigration Appeals' decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). Under this interpretation, Immigration Judges are stripped of jurisdiction to conduct custody redeterminations, and individuals like Ms. Julissa Monterroso are categorically denied bond hearings despite decades of contrary agency and judicial practice.

3. Ms. Julissa Monterroso's detention under § 235(b)(2)(A) violates the text and structure of the INA and its implementing regulations. That provision applies only to individuals apprehended while "seeking admission" at the border or immediately upon arrival. For decades, noncitizens long present in the interior, like Ms. Julissa Monterroso, have been detained—if at all—under INA § 236(a), 8 U.S.C. § 1226(a), which expressly provides for conditional release on bond.

4. Federal courts across the country have rejected DHS's new interpretation of § 235(b)(2) and have held that detention of long-time residents apprehended in the interior is

governed by § 236(a). These courts recognize that applying § 235(b)(2) to people who have lived in the United States for years misreads the statute and produces absurd results.

5. Most importantly, this Court has already found that individuals like Ms. Julissa Monterroso are eligible for bond because they are detained pursuant to § 236(a), and thus it ordered immigration courts subject to this court's jurisdiction to hold bond hearings to determine whether such individuals are eligible for discretionary bond.

6. Ms. Julissa Monterroso's prolonged civil detention without access to a bond hearing violates the Due Process Clause of the Fifth Amendment.

7. Ms. Julissa Monterroso respectfully requests that this Court: (a) declare that her detention is governed by § 236(a) and that she is therefore eligible for bond; (b) order Respondents to provide her with an immediate bond hearing before an Immigration Judge applying § 236(a); and (c) if Respondents fail to provide such a hearing within a reasonable time, order her released from custody under appropriate conditions of supervision.

## JURISDICTION AND VENUE

8. Ms. Julissa Monterroso is currently in the physical custody of Respondents at the South Texas Family Residential Center in Dilley, Texas.

9. This Court has jurisdiction under 28 U.S.C. § 2241 (*habeas corpus*), 28 U.S.C. § 1331 (*federal question*), 28 U.S.C. § 1651 (*All Writs Act*), 28 U.S.C. §§ 2201–2202 (*Declaratory Judgment Act*), 5 U.S.C. § 702 (*APA*), and Article I, Section 9, Clause 2 of the United States Constitution (*Suspension Clause*). Ms. Julissa Monterroso is presently in custody under color of the authority of the United States and challenges his custody as in violation of the Constitution, laws, or treaties of the United States.

10. Federal district courts have jurisdiction under § 2241 to hear habeas claims by

individuals challenging the lawfulness of their detention by ICE. See, e.g., *Zadvydas v. Davis*, 533 U.S. 678 (2001); *Demore v. Kim*, 538 U.S. 510 (2003). The Supreme Court has repeatedly upheld such jurisdiction, most recently in *Jennings v. Rodriguez*, 583 U.S. 281, 292–96 (2018).

11. Venue is proper in the Western District of Texas, San Antonio Division, pursuant to 28 U.S.C. §§ 1391 and 2241(d), because Petitioner is detained within this District at the South Texas Family Residential Center in Dilley, Texas.

## PARTIES

12. Petitioner Marlin Julissa Monterroso is a native and citizen of Guatemala unlawfully detained at the South Texas Family Residential Center in Dilley, Texas. ICE has held her in custody since late-December 2025. She is not subject to a final order of removal. Under DHS's July 2025 policy and the Board of Immigration Appeals' decision in *Matter of Yajure Hurtado*, Immigration Judges no longer have jurisdiction to redetermine custody for individuals like Ms. Julissa Monterroso. As a result, she has been categorically denied access to a bond hearing.

13. Respondent, Jose Rodriguez, Jr., the Warden of the South Texas Family Residential Center in Dilley, Texas, controls the detention center where Petitioner is confined under the authority of ICE. The Warden has direct physical custody of Petitioner and is his immediate custodian. The Warden is sued in his official capacity.

14. Respondent Todd Lyons is the Acting Director of ICE. He is responsible for the overall administration of ICE and for the implementation and enforcement of the immigration laws, including immigrant detention. As such, Mr. Lyons is a legal custodian of Petitioner. He is sued in his official capacity.

15. Respondent Kristi Noem is the Secretary of the Department of Homeland Security

(DHS). DHS is responsible for the administration of ICE, a component agency, and for the implementation and enforcement of the immigration laws. As such, Secretary Noem is a legal custodian of Petitioner. She is sued in her official capacity.

16. Respondent Pamela Bondi is the Attorney General of the United States and head of the Department of Justice, which encompasses the Board of Immigration Appeals (BIA) and the Immigration Courts. The Attorney General shares responsibility for the implementation and enforcement of the immigration laws with Respondents Lyons and Noem. Attorney General Bondi is a legal custodian of Petitioner and is sued in her official capacity.

17. Respondent Daren Margolin is the Director of the Executive Office for Immigration Review (EOIR). He has ultimate responsibility for overseeing the operation of the immigration courts and the BIA, including the conduct of bond hearings. Director Margolin is sued in his official capacity.

## FACTS

18. Petitioner Marlin Julissa Monterroso is a native and citizen of Guatemala who entered the United States without inspection in 2012. Since that time, she has made her life in this country along with her spouse and four children. She is the mother of two U.S. citizen children, and two other children.

19. In late-2025, Petitioner became detained in Clayton County, Georgia after being pulled over for driving without a license. She is now detained at the South Texas Family Residential Center in Dilley, Texas.

20. Ms. Julissa Monterroso has no criminal convictions that render her ineligible for bond. She has never been convicted of any crime that would subject her to mandatory detention under INA § 236(c). She is not subject to a final order of removal.

21. Historically, individuals like Ms. Julissa Monterroso—long-time residents apprehended in the interior of the United States and charged as inadmissible for entering without inspection—were detained under INA § 236(a), 8 U.S.C. § 1226(a), which provides for release on bond or conditional parole.

22. In July 2025, however, the Department of Homeland Security (DHS) adopted a new policy instructing that all noncitizens inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i) are to be detained under INA § 235(b)(2)(A), 8 U.S.C. § 1225(b)(2)(A), and deemed ineligible for bond.

23. On September 5, 2025, the Board of Immigration Appeals issued *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), adopting DHS's position and holding that noncitizens present in the United States without inspection are "applicants for admission" subject to mandatory detention under § 235(b)(2)(A).

24. As a result of this policy and decision, Immigration Judges lack jurisdiction to conduct custody redeterminations for individuals like Ms. Julissa Monterroso. She has been categorically denied the opportunity to seek bond, despite his long residence in the United States, his strong family ties, and his minimal record.

25. Federal district courts across the country, including this Court, have rejected DHS's new interpretation of § 235(b)(2), finding instead that detention of long-time residents like Ms. Julissa Monterroso must proceed under § 236(a). Nonetheless, ICE continues to hold her without access to a bond hearing.

## LEGAL FRAMEWORK

26. Under 8 U.S.C. § 1226(a), individuals are generally entitled to discretionary bond determinations when detained. *See* 8 C.F.R. §§ 1003.19(a), 1236.1(d). Certain noncitizens who are arrested, charged with, or convicted of specified crimes are subject to mandatory detention until

removal proceedings are concluded under 8 U.S.C. § 1226(c).

27. By contrast, 8 U.S.C. § 1225(b) applies to noncitizens encountered at the border or immediately upon arrival. Section 1225(b)(1) governs certain individuals subject to expedited removal, while § 1225(b)(2) applies to those "seeking admission" at a port of entry or just after entry.

28. Following enactment of these statutes, the Executive Office for Immigration Review issued regulations clarifying that individuals who entered the country without inspection but who were apprehended in the interior were not detained under § 1225, but instead under § 1226(a). *See* Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997) ("Despite being applicants for admission, aliens who are present without having been admitted or paroled…will be eligible for bond and bond redetermination."). For nearly three decades, this was the consistent practice.

29. In July 2025, DHS abruptly adopted a new interpretation requiring detention under § 1225(b)(2)(A) for all noncitizens charged as inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i). On September 5, 2025, the Board of Immigration Appeals issued *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), adopting DHS's view and holding that noncitizens present in the United States without admission are "applicants for admission" subject to mandatory detention under § 1225(b)(2)(A). As a result, individuals like Ms. Julissa Monterroso, who have lived in the United States for decades, are categorically denied bond hearings.

30. Over the last several months, the Western District of Texas has determined in at least a half dozen decisions that individuals like Ms. Julissa Monterroso were detained pursuant to § 1226(a) and therefore eligible for bond, thus ordering a bond hearing or immediate release. *See*

*Lopez-Arevelo v. Ripa,* 2025 WL 2691828 (W.D. Tex. Sept. 22, 2025).[1]

31. Additionally, hundreds of federal district courts across the country have agreed, holding that detention of long-term residents apprehended in the interior is governed by § 1226(a), not § 1225(b)(2). See, e.g., *Diaz v. Hyde,* Civ. No. 25-11613, --- F. Supp. 3d ----, 2025 WL 2084238 (D. Mass. July 24, 2025); *Rodriguez Vazquez v. Bostock*, Civ. No. 3:25-cv-05240, 779 F. Supp. 3d 1239 (W.D. Wash. 2025); *Gomes v. Hyde*, Civ. No. 1:25-cv-11571, 2025 WL 1869299 (D. Mass. July 7, 2025), *Garcia v. Hyde*, Civ. No. 25-11513 (D. Mass. July 14, 2025); *Rosado v. Bondi*, Civ. No. 25-02157, 2025 WL 2337099 (D. Ariz. Aug. 11, 2025); *Lopez-Benitez v. Francis*, Civ. No. 25-5937, 2025 WL 2371588, ---F. Supp.3d ---- (S.D.N.Y. Aug. 13, 2025); *Dos Santos v. Lyons*, Civ. No. 1:25-cv-12052, 2025 WL 2370988 (D. Mass. Aug. 14, 2025); *Aguilar Maldonado v. Olson*, Civ. No. 25-cv-3142, 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *Escalante v. Bondi,* Civ. No. 25-cv-3051, 2025 WL 2212104 (D. Minn. July 31, 2025); *O.E. v. Bondi*, Civ. No. 25-cv-3051, 2025 WL 2235056 (D. Minn. Aug. 3, 2025); *Arrazola-Gonzalez v. Noem*, Civ. No. 5:25-cv-01789, 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025); *Garcia Jimenez v. Kramer*, Civ. No. 25-cv-3162, 2025 WL 2374223 (D. Neb. Aug. 15, 2025); *Mayo Anicasio v. Kramer*, Civ. No. 4:25-cv-3158, 2025 WL 2374224 (D. Neb. Aug 14, 2025); *Rodriguez de Oliveira v. Joyce*, Civ. No. 2:25-cv-00291, 2025 WL 1826118 (D. Me. July 2, 2025); *Leal-Hernandez v. Noem*, Civ. No. 1:25-cv-02428, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Lopez-Campos*, Civ. No. 2:25-cv-12486, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025); *Romero v. Hyde*, Civ. No. 25-11631, --- F. Supp. 3d ----, 2025 WL 2403827 (D. Mass. Aug. 19, 2025); *Doe v. Moniz*, Civ. No. 1:25-cv-12094, 2025 WL 2576819 (D. Mass. Sept. 5, 2025); *Herrera Torralba*, Civ. No. 2:25-cv-01366, 2025 WL 2581792

[1] *Gonzalez Martinez v. Noem*, 2025 WL 2965859 (W.D. Tex. Oct. 21, 2025); *Becerra Vargas v. Bondi*, No. 5:25-cv-1023 (S.D. Tex. Nov. 12, 2025) (report and recommendation); *Rodriguez Cortina v. De Anda-Ybarra*, 2025 WL 3218682 (W.D. Tex. Nov. 18, 2025); *Dominguez Vega v. Thompson*, 5:25-cv-01439 (W.D. Tex. Nov. 19, 2025); *Dominguez Vega v. Thompson*, 5:25-cv-01439 (W.D. Tex. Nov. 19, 2025); *Galdamez Martinez v. Noem*, 2025 WL 3471575 (WD Tex. Nov. 26, 2025)

(D. Nev. Sept. 5, 2025); *Kostak v. Trump*, Civ. No. 3:25-1093, 2025 WL 2473136 (W.D. La. Aug. 27, 2025); *Simpiao v. Hyde*, Civ. No. 1:25-cv-11981-JEK, 2025 WL 2607925 (D. Mass Sept. 9, 2024); *Garcia Cortes v. Noem*, Civ. No. 1:25-cv-02677, 2025 WL 2652990 (D. Colo. Sept. 16, 2026); *Jimenez v. Warden*, Civ. No. 25-cv-326, 2025 WL 2639390 (D.N.H. Sept. 8, 2025); *Cuevas Guzman v. Andrews*, Civ. No. 1:25-cv-01015, 2025 WL 2617256 (E.D. Cal. Sept. 9, 2025); *Velasquez Salazar v. Dedos*, Civ. No. 1:25-cv-00835, 2025 WL 2676729 (D.N.M. Sept., 17, 2025); *Hasan v. Crawford*, Civ. No. 1:25-cv-1408, 2025 WL 2682255 (E.D. Va., Sept. 19, 2025); *Singh v. Lewis*, Civ. No. 4:25-cv-96, 2025 WL 2699219 (W.D.Ky., Sept. 22, 2025); *Beltran Barrera v. Tindall*, Civ. No. 3:25-cv-541, 2025 WL 2690565 (W.D.Ky., Sept. 19, 2025); *Chogllo Chafla v. Scott*, 2025 WL 2688541, (D.Me., Sept. 21, 2025); *Chiliquinga Yumbillo v. Stamper*, Civ. No. 2:25-cv-00479 (D.Me., Sept. 19, 2025).

32. Most recently, the Central District of California has certified a class of individuals similarly situated to Petitioner:

> Bond Eligible Class: All noncitizens in the United States without lawful status who (1) have entered or will enter the United States without inspection; (2) were not or will not be apprehended upon arrival; and (3) are not or will not be subject to detention under 8 U.S.C. § 1226(c), § 1225(b)(1), or § 1231 at the time the Department of Homeland Security makes an initial custody determination.

Ex. A, *Maldonado Bautista v. Santacruz Jr et al.*, No. 5:25-cv-01873-SSS-BFM, ECF No. 82 (C.D. Cal. Nov. 25, 2025) (granting petitioner's motion for class certification). The *Maldonado Bautista* court also held unlawful the Department of Homeland Security's ("DHS") policy treating all inadmissible noncitizens arrested inside the United States as "applicants for admission" subject to mandatory detention under 8 U.S.C. § 1225(b)(2). *See* Ex. B, *Maldonado Bautista v. Santacruz Jr et al.*, No. 5:25-cv-01873-SSS-BFM, ECF No. 81 (C.D. Cal. Nov. 20, 2025) (granting petitioner's motion for partial summary judgment). Finally, on December 18, 2025, the Court

issued an Order granting partial relief regarding reconsideration in *Maldonado Bautista*. See Ex. C, *Maldonado Bautista v. Santacruz Jr et al.*, No. 5:25-cv-01873-SSS-BFM, ECF No. 92 (C.D. Cal. December 18, 2025) (granting petitioner's motion for reconsideration). The Order clarifies that "[i]n spite of *Yajure Hurtado*, this Court determined that Petitioners and those similarly situated are not 'applicants for admission,' and therefore not subject to mandatory detention under § 1225". *Id.* Because the *Maldonado Bautista* court already certified a nationwide class of which Petitioner is a member, this Court must grant Petitioner's habeas petition and order Respondent to consider him detained under 8 U.S.C. § 1226 and eligible for a bond hearing immediately.

33. Further, class certification in *Maldonado Bautista* does not divest this Court of jurisdiction to hear the Petitioner's individualized habeas claim. A petition for a writ of habeas corpus, filed under 28 U.S.C. § 2241, is an inherently individualized challenge to the legality or duration of a person's detention.

34. The Supreme Court has long held that habeas corpus is "perhaps the most important writ known to the constitutional law . . . affording as it does a swift and imperative remedy in all cases of illegal restraint or confinement." *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added). "The application for the writ usurps the attention and displaces the calendar of the judge or justice who entertains it and receives prompt action from him within the four corners of the application." *Yong v. I.N.S.*, 208 F.3d 1116, 1120 (9th Cir. 2000) (citation omitted). Outside of statutory eligibility, there are no limitations to a detainee seeking habeas corpus relief for unlawful detention, and the class certification in *Maldonado Bautista* only further supports Petitioner's request for an individualized grant of relief before this Court, whether this Court finds that she is a class member of *Maldonado Bautista* or not.

35. The government's interpretation defies the INA's text and structure. Section

1226(a) explicitly applies to individuals charged as inadmissible after entry without inspection. Congress reinforced this point in 2025 by amending § 1226(c) through the Laken Riley Act to exclude from bond eligibility certain noncitizens who entered without inspection and committed crimes. If Congress had intended all such individuals to be subject to mandatory detention under § 1225(b)(2)(A), it would not have needed to create these specific carve-outs. Construing § 1225(b)(2)(A) as the government suggests renders § 1226(c)(1)(E) superfluous, in violation of the canon against surplusage. *See Corley v. United States*, 556 U.S. 303 (2009).

36. Section 1225(b), on the other hand, is limited to those arriving at ports of entry or apprehended immediately upon entry. In *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025), the Board explained that § 235(b) applies to individuals arrested without a warrant "while arriving in the United States." The Board distinguished between those apprehended "just inside the southern border" on the same day they crossed, who fall under § 235(b), and those "already present in the United States" who are detained by warrant, who fall under § 236(a). *Id.* at 69–70. Ms. Julissa Monterroso—detained in Texas more than fourteen years after her entry—is plainly in the latter category.

37. Though there are no Fifth Circuit decisions directly on point, but this approach is consistent with other circuit court precedent. In *Ortiz-Bouchet v. U.S. Att'y General*, 714 F.3d 1353 (11th Cir. 2013), the court held that noncitizens already present in the United States seeking to adjust status were not "applicants for admission." The Supreme Court has likewise recognized that mandatory detention under § 1225(b) applies "at the Nation's borders and ports of entry, where the Government must determine whether an alien seeking to enter the country is inadmissible." *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018).

38. Therefore, the mandatory detention provisions of § 1225(b)(2) do not apply to Ms.

Julissa Monterroso, who entered the United States 14 years ago and was apprehended hundreds of miles from the border. She is detained under § 1226(a) and is eligible for a bond hearing.

## CLAIMS FOR RELIEF

### COUNT 1

**Violation of 8 U.S.C. § 1226(a)**
**Unlawful Denial of Release on Bond**

39. Petitioner realleges and incorporates by reference each and every allegation contained in the preceding paragraphs as if set forth fully herein.

40. The mandatory detention provision of § 1225(b)(2) does not apply to noncitizens like Ms. Julissa Monterroso who have been residing in the United States for decades, were never apprehended at the border, and are not subject to other statutory grounds of inadmissibility. Such individuals are detained under § 1226(a) and are eligible for release on bond.

41. Respondents' decision to detain Ms. Julissa Monterroso under § 1225(b)(2)(A) unlawfully denies her access to a bond hearing in violation of the INA.

### COUNT II

**Violation of the Bond Regulations, 8 C.F.R. §§ 236.1, 1236.1, and 1003.19**

42. Petitioner realleges and incorporates by reference each and every allegation contained in the preceding paragraphs as if set forth fully herein.

43. For decades, both Congress and the agencies charged with implementing the INA have recognized that individuals who entered without inspection are detained under § 1226(a) and eligible for bond, as reflected in implementing regulations at 8 C.F.R. §§ 236.1, 1236.1, and 1003.19.

44. Despite this clear regulatory framework, Respondents have unlawfully detained

Ms. Julissa Monterroso by misapplying § 1225(b)(2).

45. Because Petitioner's detention has been unaccompanied by the procedural protections that such a significant deprivation of liberty requires, including access to a bond hearing, his continued detention violates the INA, its implementing regulations, and the Due Process Clause of the Fifth Amendment.

## COUNT III

### Violation of the Fifth Amendment Due Process

46. Petitioner realleges and incorporates by reference each and every allegation contained in the preceding paragraphs as if set forth fully herein.

47. Under the Fifth Amendment of the Constitution, no person shall be deprived of liberty without due process of law. Freedom from imprisonment and government custody lies at the core of the liberty protected by the Due Process Clause. *See Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). The protections of the Due Process Clause extend to all persons within the United States, regardless of immigration status. *Id.* at 693.

48. Respondents' detention of Ms. Julissa Monterroso under § 1225(b)(2), without the possibility of release on bond or a meaningful custody redetermination, violates his right to due process under the Fifth Amendment.

## PRAYER FOR RELIEF

WHEREFORE, Petitioner Marlin Julissa Monterroso prays that this Court grant the following relief:

1. Assume jurisdiction over this matter;
2. Order Respondents to show cause why the writ should not be granted within **three days**, pursuant to 28 U.S.C. § 2243;

3. Grant a writ of habeas corpus declaring that Petitioner's detention is governed by INA § 236(a), 8 U.S.C. § 1226(a), and ordering Respondents to provide her with an immediate bond hearing before an Immigration Judge applying § 236(a);
4. In the alternative, order Petitioner's immediate release from custody under reasonable conditions of supervision if Respondents fail to provide such a bond hearing within a reasonable period of time;
5. Expedite consideration of this action pursuant to 28 U.S.C. § 1657 because it is an action brought under chapter 153 (habeas corpus) of Title 28;
6. In the event the Court determines a genuine dispute of material fact exists regarding Petitioner's entitlement to habeas relief, schedule an evidentiary hearing pursuant to 28 U.S.C. § 2243;
7. Enter preliminary and permanent injunctive relief enjoining Respondents from further unlawful detention of Petitioner;
8. Declare that Petitioner's detention violates the INA;
9. Declare that Petitioner's detention violates the Due Process Clause of the Fifth Amendment;
10. Award reasonable attorney's fees and costs pursuant to the Equal Access to Justice Act, 5 U.S.C. § 504 and 28 U.S.C. § 2412; and
11. Grant such further relief as this Court deems just and proper.

Respectfully submitted this 19th day of January, 2026.

/s/ Lance Curtright
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