IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF OKLAHOMA

Mykhailo Skutar, Petitioner v. Pamela Bondi, Attorney General; et al., Respondents.	Case No.: 5:26-CV-00036-HE **PETITIONER'S REPLY TO RESPONDENTS' RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS** **EXPEDITED HANDLING REQUESTED**

ARGUMENT

I. Respondents' revocation of Petitioner's bond was unlawful, offends due process, and requires reinstatement of the prior bond and immediate release.

Respondents' entire opposition response seems to focus on whether Petitioner is an applicant for admission subject to § 1225. Respondents' focus is misplaced. Even accepting *arguendo* Respondents' applicant for admission framing, Respondents identify no authority allowing ICE to nullify an immigration judge's final custody order and re-detain Petitioner without the process required by regulation and the Fifth Amendment. What makes Petitioner's ongoing detention unlawful in this case is the fact that ICE unilaterally revoked a bond that was previously granted *by an immigration judge* pursuant to 8 U.S.C. § 1226(a), and which ICE never appealed. *See* ECF No. 12-3. ICE lacked the authority to revoke this administratively final bond unilaterally. Prior to re-detaining Petitioner, Respondents were obligated to follow clearly established pre-deprivation procedures, in which they seek a new bond hearing based on demonstrating materially changed circumstances.[1]

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[1] *See* 8 C.F.R. § 1003.19(e) ("After an initial bond redetermination, a... request for a subsequent bond redetermination shall be made in writing **and shall be considered only upon a showing that the alien's circumstances have changed materially** since the prior bond redetermination.") (emphasis added); *Valencia Zapata v. Kaiser*, 801 F. Supp. 3d 919, 927-28 (N.D. Cal. 2025) ("if an [immigration judge] has determined the noncitizen 'should be released, the DHS may not re-arrest that noncitizen absent a change in circumstance.'") (quoting *Salcedo Aceros v. Kaiser*, No. 25-CV-06924-EMC, 2025 WL 2637503, at *1 (N.D. Cal. Sept. 12, 2025) (citing *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 968 (N.D. Cal. 2019); *Panosyan v. Mayorkas*, 854 F. App'x 787, 788 (9th Cir. 2021)); *Pablo Sequen v. Albarran*, --- F. Supp. 3d ---, 2025 WL 2935630, at *2, 12 (N.D. Cal. 2025) (same; also, "Because each of the Mathews factors supports Ms. Alvarado Ambrocio and Ms. Garcia's right to a bond hearing before an immigration judge prior to any re-arrest or detention, they have shown a likelihood of success on the merits of their

In the present case, there are no facts, circumstances, or allegations that there exist any changed circumstances regarding Petitioner's purported danger to the community or risk of flight.[2] Petitioner has not been charged with any new crimes, and his flight risk seems to have *decreased* due to his now-pending TPS application. Petitioner is married and has kids at home who dearly miss him and need him, further decreasing any concerns regarding flight risk. There is simply no basis for rearrest under the standards applicable to bonds previously granted by an immigration judge.

Respondents seem to imply that because their own interpretation of the law governing detention changed in July of 2025, that is somehow a sufficient basis for

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due-process claim."); *Hernandez-Parrilla v. Anda-Ybarra*, 2:25-CV-01224-MIS-KK, 2025 WL 3632769, at *7 (D.N.M. Dec. 15, 2025) (order granting preliminary injunction enjoining the government from detaining the petitioner without first holding a pre-deprivation hearing before an immigration judge at which the government must provide by clear and convincing evidence changed circumstances rendering the petitioner a danger or flight risk); *Y.M.M. v. Wamsley*, No. 2:25-CV-02075, 2025 WL 3101782, at *2 (W.D. Wash. Nov. 6, 2025) ("It is undisputed between the parties that Y.M.M. was not provided any notice or pre-deprivation opportunity to contest her re-detention. Respondents concede that her re-detention requires a change in circumstances but have not argued that one exists. Respondents also provide no legal arguments to maintain Y.M.M.'s detention absent a hearing or change in circumstances. Accordingly, Y.M.M. has shown that her detention violates the Due Process Clause as well as the INA, and the writ of habeas corpus is GRANTED.") (record citation omitted); *Matter of Sugay*, 17 I. & N. Dec. 637, 640 (BIA 1981) (discretion to revoke release is limited to situations in which there has been a "change [of] circumstance" since the non-citizen was initially released); *Gagnon v. Scarpelli*, 411 U.S. 778, 782 (1973) (explaining that due process requires a pre-deprivation hearing before revocation of probation); *Morrissey v. Brewer*, 408 U.S. 471, 481–82 (1972) (explaining the same in the parole context).

[2] *See Y.M.M.*, 2025 WL 3101782, at *2 (W.D. Wash. 2025) (noting that the "material change in circumstances" that must be proven relates to "whether 'the noncitizen poses a danger to the community or an unreasonable risk of flight.'") (quoting *United States v. Cisneros*, No. 19-CR-00280-RS-5, 2021 WL 5908407, at *3 (N.D. Cal. Dec. 14, 2021)).

revoking previous bonds granted under § 1226 by immigration judges as delegates of the Attorney General. This is arbitrary or capricious, and an abuse of discretion, especially where, as here, Respondents never appealed the bond order, rendering it administratively final, and where Petitioner *paid the bond which* ***has not been refunded***. In other words, Respondents treated Petitioner as an immigrant eligible for a bond under § 1226(a), actually granted Petitioner a bond, required Petitioner to pay a substantial amount in exchange for his freedom of liberty pending his removal proceedings, allowed Petitioner to develop reasonable reliance interests on the validity of that bond order, and then revoked the bond unilaterally and without process, and while preventing a new bond hearing from occurring, all while keeping Petitioner's funds. This is an arbitrary or capricious breach of contract,[3] it is a breach of Petitioner's reasonable reliance interests on the prior proceedings,[4] it offends principles of *res judicata* and *collateral estoppel* and

[3] *See United States v. Gonzales Bond and Ins. Agency, Inc.*, 728 F. Supp. 2d 1077, 1088 (N.D. Cal. 2010) ("In practice, the government has treated immigration bonds as contracts."); *Safety Nat'l Cas. Corp. v. Dep't of Homeland Sec.*, 711 F. Supp. 2d 697, 716-17 (S.D. Tex. 2008) (immigration bonds are contracts); *United States v. Minnesota Trust Co.*, 59 F.3d 87 (8th Cir. 1995) (court relied upon contract principles to determine the government's responsibilities); *United States v. Olson*, 47 F.2d 1070, 1070 (8th Cir. 1931); *Gonzales Bond and Ins. Agency, Inc.*, 728 F. Supp. 2d at 1089 ("every court to address immigration bond [breach claim]s has employed the arbitrary and capricious standard of review"); *Bahramizadeh v. INS*, 717 F.2d 1170, 1173 (7th Cir. 1983) (reviewing bond-breach determinations under the APA framework); *Castaneda v. Dep't of Justice*, 828 F.2d 501, 502 (8th Cir. 1987) (immigration bond-breach determination reviewed under the APA framework); *Ruiz–Rivera v. Moyer*, 70 F.3d 498, 500–01 (7th Cir. 1995) (determining whether "INS' decision that the bond conditions were substantially violated was plainly erroneous or inconsistent with 8 C.F.R. § 103.6(e)"); *Ahmed v. United States*, 480 F.2d 531, 534 (2d Cir. 1973).

[4] *Dep't of Homeland Security v. Regents of the Univ. of Cal.*, 591 U.S. 1 (2020) (addressing reliance interests in depth, and holding that the Secretary's Memorandum revoking DACA

the law of the case doctrine,[5] it offends every notion of fundamental fairness, it smells like an unlawful taking (with respect to Petitioner's property used to pay the monetary bond), and it smacks of both a manifest injustice and a due process violation.

Under the circumstances of the case, the question of whether Petitioner is potentially subject to § 1225 or § 1226 is not dispositive of the legality of Respondents' revocation of an administratively final bond without due process. Regardless of whether Petitioner could have been subject to § 1225 in the past, it is undisputed that Petitioner was previously granted a bond under § 1226(a), that he paid and which is administratively final and which

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was unlawful because, *inter alia*, it "failed to address whether there was 'legitimate reliance' on the DACA Memorandum."); *see also Smiley v. Citibank (South Dakota), N.A.*, 517 U.S. 735, 742 (1996) ("change that does not take account of legitimate reliance on prior interpretation... may be 'arbitrary, capricious [or] an abuse of discretion,' 5 U.S.C. § 706(2)(A).").

[5] *See, e.g., Duvall v. Atty. Gen. of U.S.*, 436 F.3d 382, 387 (3d Cir. 2006) ("Congress may be presumed, when enacting a statute granting to an agency adjudicatory authority, to mandate adherence to the doctrine of collateral estoppel. ... The structure of the INA is consistent with collateral estoppel. The Act establishes an adversarial system under which the parties bear different burdens of proof with respect to various issues. ... Imposition of this burden would be rendered largely meaningless if the INA is not interpreted to incorporate principles of collateral estoppel. Failure to satisfy the burden of proof at one hearing before one immigration judge would have no effect on the government's ability to bring successive proceedings in front of successive immigration judges. The same evidence could be introduced and the same witnesses could be interrogated, over and over, until the desired result is achieved. ... Collateral estoppel would prevent this result. It would require, consistent with the INA, that the INS present all available evidence against the individual during a single hearing. Only if the INS can do so, and satisfy its burden of proof, will it be entitled to an order of removal. ... Indeed, the INA itself recognizes that collateral estoppel will be applied in immigration proceedings."); *see also Yancey v. Thomas*, 441 F. App'x 552, 557 (10th Cir. 2011) (unpublished) ("Under Oklahoma law, '[t]he principle of res judicata as claim preclusion teaches that a final judgment on the merits of an action precludes the parties from relitigating not only the adjudicated claim, but also any theories or issues that were actually decided, or could have been decided, in that action.'").

remains in force, and which was violated by Respondents' unlawful arrest of Petitioner in the absence of any materially changed circumstances. Respondents may not revisit that custody determination absent materially changed circumstances, as required by regulation and due process.

II. Respondents misinterpret the INA.

Though this section should be wholly unnecessary in light of the arguments above, Petitioner, out of an abundance of caution, will briefly address Respondents' arguments regarding 8 U.S.C. §§ 1225, 1226.

Since the administration adopted its new position "that *all* noncitizens who came into the United States illegally, but since have been living in the United States, *must be detained* until their removal proceedings are completed," at least 362 cases were filed in federal district courts as of November 26, 2025, and "[t]he challengers have prevailed, either on a preliminary or final basis, in 350 of those cases decided by over 160 judges sitting in about fifty different courts spread across the United States." *Barco Mercado v. Francis*, --- F. Supp. 3d ---, 2025 WL 3295903, at *4 (S.D.N.Y. Nov. 26, 2025) (alteration as original); *see id.* at *4 n.22 and Appendix A (collecting cases that are incorporated by reference into this brief as support for the conclusion that Petitioner is subject to detention only under § 1226(a)). "Thus, the overwhelming, lopsided majority have held that the law still means what it always has meant." *Id.*, at *4.[6]

[6] *See also, e.g.*, *J.O.E. v. Bondi*, 2025 WL 2466670 (D. Minn. Aug. 27, 2025); *Maldonado v. Olson*, 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *Ferrera Bejarano v. Bondi*, 25-cv-03236 (D. Minn. Aug 18, 2025); *Aguilar Vazquez v. Bondi*, 25-cv-03162 (D. Minn. Aug 19, 2025); *Tiburcio Garcia v. Bondi*, 25-CV-03219 (D. Minn. Aug. 29, 2025); *Carmona-*

A. The Court has jurisdiction.

Respondents argue § 1252(g) strips this Court of jurisdiction to review any claim arising from the decision to commence proceedings against Petitioner—including the

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Lorenzo v. Trump, 2025 WL 2531521 (D. Neb. Sept. 3, 2025); *Cortes Fernandez v. Lyons*, 2025 WL 2531539 (D. Neb. Sept. 3, 2025) ; *Palma Perez v. Berg*, 2025 WL 2531566 (D. Neb. Sept 3, 2025); *Jacinto v. Trump*, 2025 WL 2402271 (D. Neb. Aug. 19, 2025); *Garcia Jimenez v. Kramer*, 2025 WL 2374223 (D. Neb. Aug. 14, 2025); *Anicasio v. Kramer*, 2025 WL 2374224 (D. Neb. Aug. 14, 2025); *Arce v. Trump*, 2025 WL 2675934 (D. Neb. Sept. 18, 2025); *Giron Reyes v. Lyons*, 2025 WL 2712427 (N.D. Iowa Sept. 23, 2025); *Sampiao v. Hyde*, 2025 WL 2607924 (D. Mass. Sept. 9, 2025); *Jimenez v. FCI Berlin*, No. 25-cv-326-LM-AJ (D.N.H. Sept. 8, 2025); *Doe v. Moniz*, 2025 WL 2576819 (D. Mass. Sept. 5, 2025); *Romero v. Hyde*, 2025 WL 2403827 (D. Mass. Aug. 19, 2025); *Martinez v. Hyde*, 2025 WL 2084238 (D. Mass. July 24, 2025); *dos Santos v. Noem*, 2025 WL 2370988 (D. Mass. Aug. 14, 2025); *Gomes v. Hyde*, 2025 WL 1869299 (D. Mass. July 7, 2025); *Choglio Chafla v. Scott*, 2025 WL 2688541 (D. Me. Sept. 21, 2025); *Chiliquinga Yumbillo v. Stamper*, 2025 WL 2688160 (D. Me. Sept. 19, 2025); *Lopez Benitez v. Francis*, 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025); *Samb v. Joyce*, 2025 WL 2398831 (S.D.N.Y. Aug. 19, 2025); *Kostak v. Trump*, 2025 WL 2472136 (W.D. La. Aug. 27, 2025); *Lopez-Arevelo v. Ripa*, 2025 WL 2691828 (W.D. Tex. Sept. 22, 2025); *Hasan v. Crawford*, 2025 WL 2682255 (E.D. Va. Sept. 19, 2025); *Beltran Barrera v. Tindall*, 2025 WL 2690565 (W.D. Ky. Sept. 19, 2025); *Singh v. Lewis*, 2025 WL 2699219 (W.D. Ky. Sept. 22, 2025); *Pizarro Reyes v. Raycraft*, 2025 WL 2609425 (E..D. Mich. Sept. 9, 2025); *Lopez-Campos v. Raycraft*, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025); *Rodriguez Vazquez v. Bostock*, 779 F. Supp. 3d 1239 (W.D. Wash. 2025); *Caicedo Hinestroza v. Kaiser*, 2025 WL 2606983 (N.D. Cal. Sept. 9, 2025); *Hernandez Nieves v. Kaiser*, 2025 WL 2533110 (N.D. Cal. Sept. 3, 2025); *Vasquez Garcia et al. v. Noem*, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025); *Arrazola-Gonzalez v. Noem*, 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025); *Lepe v. Andrews*, No. 2025 WL 2716910 (E.D. Cal. Sept. 23, 2025) ; *Jabara Oliveros v. Kaiser*, 2025 WL 2677125 (N.D. Cal. Sept. 18, 2025); *Castellanos v. Kaiser*, 2025 WL 2689853 (N.D. Cal. Sept. 18, 2025); *Rosado v. Figueroa*, 2025 WL 2337099 (D. Ariz. Aug. 11, 2025); *Valdez v. Holt*, No. CIV-25-1250-R, 2025 WL 3709021 (W.D. Okla. Dec. 22, 2025); *Colin v. Holt, et al.*, No. CIV-25-1189-D, 2025 WL 3645176 (W.D. Okla. Dec. 16, 2025); *Escarcega v. Olson*, No. CIV-25-1129-J, 2025 WL 3243438 (W.D. Okla. Nov. 20, 2025); Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 FR 10312, 10323, 62 FR 10312-01, 10323 (from 1996 to 2025, Respondents explicitly contended that "[d]espite being applicants for admission, [noncitizens] who are present without having been admitted or paroled (formerly referred to as [noncitizens] who entered without inspection) will be eligible for bond and bond redetermination.").

"basis on which DHS chooses to commence removal proceedings." ECF No. 12 at 15. But the Supreme Court finds this interpretation "implausible" because "the mention of three discrete events along the road to deportation was [not] a shorthand way of referring to all claims arising from deportation proceedings." *AAADC*, 525 U.S. at 482. And, in *Jennings*, the Supreme Court reaffirmed this narrow reading, explaining that *AAADC* "did not interpret [§ 1252(g)] to sweep in any claim that can technically be said to 'arise from' the three listed actions of the Attorney General." 583 U.S. at 294. Petitioner is challenging his detention without a pre-deprivation hearing related to his previously granted bond, not the commencement of the removal proceedings. As such § 1252(g) has no application to this case. *See, e.g., Reno v. American-Arab Anti-Discrimination Comm.* ("*AAADC*"), 525 U.S. 471, 482-85 (1999). Petitioner is only challenging his indefinite and prolonged civil detention without so much as the opportunity for a pre-deprivation or post-deprivation bond hearing; his claim falls outside the narrow jurisdictional limitations of § 1252(g).[7]

As numerous courts have previously held, § 1252(b)(9) is inapplicable in the present context because Petitioner does not challenge anything arising from any action taken or

[7] *See, e.g., Gutierrez v. Baltasar*, 2025 WL 2962908, at *3 (D. Colo. Oct. 17, 2025) (finding "§ 1252(g) does not deprive the Court of jurisdiction to consider the narrow legal questions of whether Mr. Gutierrez's detention under 8 U.S.C. § 1225 violates the INA and whether he is entitled to a bond hearing under § 1226's discretionary detention framework" because these " 'purely legal' questions fit the exception to § 1252(g)'s jurisdiction-stripping provision, as they can be decided in the abstract on an undisputed factual record and do not challenge the Attorney General's discretionary authority"); *Maldonado v. Olson*, 795 F. Supp. 3d 1134, 1144-45 (D. Minn. 2025) (thoroughly explaining why § 1252(g) has no application); *Munoz v. Holt*, No. CIV-25-1190-G, 2025 WL 3476590, at *2-3 (W.D. Okla. Nov. 20, 2025) (R&R rejecting jurisdictional challenge premised on § 1252(a)(5), (b)(9), and (g)).

proceeding brought to remove Petitioner, but instead challenges a separate and wholly collateral question relating solely to detention authority.[8]

As to § 1226(e), Judge Susan Richard Nelson wrote, "Respondents' position that detention is mandatory for all who enter without inspection would effectively remove discretion, and would render § 1226(e) inapplicable, and § 1252(g) irrelevant. Congress would not have enacted § 1226(e) if § 1252(g) already broadly barred review of custody determinations." [9] Other Courts have rejected the same or similar § 1226(e) jurisdiction-related arguments presented by Respondents.[10]

B. The canon against surplusage and other canons of interpretation support(s) Petitioner's reading of the INA.

Generally, courts do not "adopt an interpretation of a congressional enactment which renders superfluous another portion of that same law." *Sudan v. Harrison*, 139 S.

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[8] *Jennings v. Rodriguez*, 583 U.S. 281, 294-95 (2018) (holding § 1252(b)(9) "does not present a jurisdictional bar" when "detained aliens" "are not asking for review of an order of removal; they are not challenging the decision to detain them in the first place or to seek removal; and they are not ... challenging any part of the process by which their removability will be determined"); *see also Cabalerro v. Baltazar*, 2025 WL 2977650, at *4 (D. Colo. Oct. 22, 2025) (finding § 1252(b)(9) does not present a jurisdictional bar to a noncitizen challenging "the legality of his continued detention without a bond hearing"); *cf. Nielsen v. Preap*, 586 U.S. 392, 402 (2019) (holding § 1252(b)(9) did not strip the court of jurisdiction to address the issue of mandatory detention without bond under § 1226(c)).

[9] *Maldonado v. Olson*, 795 F. Supp. 3d 1134, 1145 (D. Minn. 2025); *Belsai D.S. v. Bondi*, --- F. Supp. 3d ---, 2025 WL 2802947, at *5 (D. Minn. Oct. 1, 2025) (same).

[10] *See, e.g., Lopez-Arevelo v. Ripa*, 801 F. Supp. 3d 668, 679 (W.D. Tex. 2025); *Demore*, 538 U.S. at 517 (§ 1226(e) "contains no explicit provision barring habeas review, and ... that its clear text does not bar respondent's constitutional challenge to the legislation authorizing his detention without bail"); *Velasco Lopez v. Decker*, 978 F.3d 842, 850 (2d Cir. 2020); *Leonardo G.Z. v. Noem*, No. 25-CV-0600-SHE-MTS, 2025 WL 3755590, at *4 n.12 (N.D. Okla. Dec. 29, 2025).

Ct. 1048, 1058 (2019). In fact, this "canon against surplusage is strongest when an interpretation would render superfluous another part of the same statutory scheme." *Chicago v. Fulton*, 141 S. Ct. 585, 591 (2021) (quoting *Yates v. United States*, 574 U.S. 528, 543 (2015)). Respondents' reading of the INA presents significant surplusage issues by reading "seeking admission" out of the provision at 8 U.S.C. § 1225(b)(2)(A), as discussed above. Adopting Respondents' reading would also render the entire Laken Riley Act ("LRA"), passed in 2025, a dead letter.

Respondents' interpretation of 8 U.S.C. § 1225(b)(2) renders the entire LRA superfluous. In the LRA, Congress added language to 8 U.S.C. § 1226(c) that directly references people who have entered without inspection or who are present without authorization. *See* Laken Riley Act, PL 119-1, January 29, 2025, 139 Stat 3. Pursuant to these amendments, an alien who "is inadmissible under paragraph (6)(A), (6)(C), or (7) of section 212(a) of this title; and is charged with, is arrested for, is convicted of, admits having committed, or admits committing acts which constitute the essential elements of any burglary, theft, larceny, shoplifting, or assault of a law enforcement officer offense, or any crime that results in death or serious bodily injury to another person" is subject to mandatory detention. 8 U.S.C. § 1226(c)(1)(E).

If everyone inadmissible under 8 U.S.C. § 1182(a)(6)(A) is already subject to mandatory detention under 8 U.S.C. § 1225(b)(2), then there would be no need for the LRA. Those present without admission who commit crimes would not require a separate provision to mandate detention. That would render an entire provision of the INA surplusage and run afoul of the maxim that "[w]hen Congress acts to amend a statute, we

presume it intends its amendment to have real and substantial effect." *Pierce Cnty. v. Guillen*, 537 U.S. 129, 145 (2003). Respondents' only response to this assertion is that, while some redundancy would result, redundancies are common in statutory drafting. This suggests that this is a minor redundancy. It is not. Respondents' reading swallows the LRA whole.

C. Factually, Petitioner does not appear to be an applicant for admission.

Petitioner has two pending applications, one for asylum, and another for TPS. However, the BIA has previously held that "[a] grant of asylum is not an 'admission' to the United States." *Matter of V-X-*, 26 I&N Dec. 147, 147, 150-52 (BIA 2013). The Supreme Court has held that a grant of TPS does not constitute an "admission" either. *Sanchez v. Mayorkas*, 593 U.S. 409 (2021). Thus, if neither of Petitioner's pending applications could constitute an "admission," even after being granted, it is difficult to discern how those applications render Petitioner an applicant for admission.

CONCLUSION

The Court must grant Petitioner's writ of habeas corpus, and order Respondents to: (1) reinstate Petitioner's previous bond granted under § 1226(a), (2) immediately release Petitioner, (3) provide Petitioner with a *pre-deprivation* bond hearing before any further bond revocation decisions are made, and (4) demonstrate materially changed circumstances regarding Petitioner's danger or risk of flight before revoking bond.

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Respectfully submitted,

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