No. 18-27

IN THE

Supreme Court of the United States

ESTATE OF JUANITA JACKSON, ESTATE OF ELVIRA NUNZIATA, ESTATE OF JOSEPH WEBB, ESTATE OF ARLENE TOWNSEND, ESTATE OF OPAL LEE SASSER, ESTATE OF JAMES HENRY JONES,

Petitioners,

v.

RUBIN SCHRON,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

BRIEF IN OPPOSITION

G. Eric Brunstad, Jr.
DECHERT LLP
90 State House Square
Hartford, CT 06103
(860) 524-3999

Benjamin E. Rosenberg
Counsel of Record
Katherine M. Wyman
DECHERT LLP
1095 Avenue of the Americas
New York, New York 10036
(212) 698-3500
benjamin.rosenberg@dechert.com

Counsel for Respondent

QUESTION PRESENTED

This matter arises out of the chapter 7 bankruptcy case of Fundamental Long Term Care, Inc. ("FLTCI"). In the proceedings below, Petitioners asserted various claims against Respondent and others. Because the claims were at least "related to" FLTCI's bankruptcy case, the Bankruptcy Court possessed jurisdiction to hear them under 28 U.S.C. §§ 1334 & 157. In addition, Petitioners consented to the Bankruptcy Court's final adjudication of their claims.

In connection with an overall $24 million settlement that the Bankruptcy Court approved and the dismissal of all claims against Respondent with prejudice, the court enjoined further proceedings against Respondent on the same or related claims. Having consented to the Bankruptcy Court's final resolution of their claims, Petitioners do not now challenge the court's approval of the settlement or the dismissal of the action; rather they challenge only (and for the first time on appeal) the court's authority to enter its injunction under the All Writs Act, 28 U.S.C. § 1651.

The question presented is whether the Bankruptcy Court had the authority to enjoin further litigation against Respondent in the context of approving the settlement and dismissing Petitioners' claims.

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STATEMENT

A. Factual Background

Petitioners are six Probate Estates that commenced various state court tort actions against a number of individuals and nursing home companies, including Trans Health Management, Inc. ("THMI") and its former parent, Trans Healthcare, Inc. ("THI"). App. at 2, 4.

In March 2006, THMI sold all of its assets to Fundamental Long Term Care Holdings ("FLTCH"). *Id.* at 4-5. THI then sold all of its stock in THMI to the debtor, FLTCI. *Id.* at 5. (These transactions have been referred to collectively as the "March 2006 Transaction.") THMI and FLTCI immediately became defunct; THI entered receivership and wound down. *Id.*

Following the March 2006 Transaction, THI and THMI failed to defend Petitioners' lawsuits and defaulted. *Id.* at 7. Petitioners then pursued "empty chair" damages trials and were awarded massive jury verdicts, totaling more than $1 billion. *Id.*

Seeking to collect the large damage awards, Petitioners pursued two paths. First, they filed state court collection actions against a wide range of third parties. *Id.* Respondent was one of the third parties initially targeted in these collection

actions. *Id.* Petitioners generally alleged that he and others received fraudulent transfers from or should be deemed alter egos of THI and THMI. In other cases, Petitioners sought simply to add the third parties to the existing judgments, claiming that they were the "real part[ies] in interest," based on a January 2012 settlement agreement with THI's Receiver (the "January 2012 Settlement"). *See id.* at 18 n.5.[1]

Second, one of the Petitioners filed a state court action against FLTCI, THMI's parent, which also defaulted and was added to a judgment. *Id.* at 7-8. This Petitioner then initiated the bankruptcy proceeding against

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[1] Petitioners purported to add the third parties as "real part[ies] in interest," *id.*, under a Florida procedural rule permitting a motion to alter or amend a judgment to conform with evidence presented at trial. *See* Fla. R. Civ. P. 1.530(g), App. at 204. Needless to say, the attempt to add third parties to a final judgment when they had not received notice of the action or any form of process prior to the trial runs afoul of basic principles: "It is elementary that one is not bound by a judgment in personam resulting from litigation in which he is not designated as a party or to which he has not been made a party by service of process." *Zenith Radio Corp. v. Hazeltine Research, Inc.,* 395 U.S. 100, 110 (1969); *see also Nelson v. Adams USA, Inc.*, 529 U.S. 460 (2000).

FLTCI, in which the Petitioners were the chief creditors. *Id.*

B. The Bankruptcy Court Proceedings

After the commencement of FLTCI's bankruptcy case, a trustee was appointed (the "Trustee"), who soon expressed her intent to pursue various adversary proceedings alleging fraudulent transfer and alter ego claims against the same individuals and companies targeted in Petitioners' state court actions. App. at 8. The Bankruptcy Court concluded that it would be appropriate to enjoin parallel litigation that could lead to inconsistent outcomes and interfere with the administration of the FLTCI's bankruptcy estate (the "Estate"), and that the Bankruptcy Court would be an appropriate venue to litigate all of those claims in a single proceeding. *Id.* at 8-9.

Petitioners then commenced the underlying adversary proceeding in this matter in the Bankruptcy Court against sixteen defendants, including Respondent.[2] *Id.* at 9. The Trustee joined the adversary proceeding as a Plaintiff. *Id.* In their joint Amended Complaint – a 228-page,

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[2] Petitioners repeatedly refer to Respondent as a "third-party." Petition for Writ of Certiorari ("Pet.") at 14, 16, 26, 29. Though Respondent does not dispute that he is a stranger to FLTCI, THI, and THMI, he is a Defendant in the underlying litigation.

1,201-paragraph document – the Plaintiffs averred that the Bankruptcy Court had subject-matter jurisdiction and that the adversary proceeding was a "core proceeding." Bk893-DE-109 ¶¶ 25-26. They also orally indicated that they would consent to the entry of final judgment on their claims. *See* Bk22258-DE-1233 at 39:9-13; *see also* App. at 116 (no parties objected to the entry of a final order or judgment).

Respondent moved to dismiss the claims against him, and the Bankruptcy Court granted the motion. App. at 10-11, 146-198. In doing so, the Bankruptcy Court carefully evaluated Petitioners' allegations and found that they consisted of "conclusory allegations" attributing the wrongdoing of other Defendants to Respondent based on an agency theory, and "contradictory" allegations that Respondent owned a portion of another Defendant. *Id.* at 182, 186. As the court concluded, these allegations were insufficient to state a claim against Respondent.

Petitioners amended their Complaint by re-alleging the previous claims and adding several more. *Id.* at 11-12. The claims included assertions of fraudulent transfer, alter ego, aiding and abetting breach of fiduciary duty, and abuse of process, based on the Defendants' alleged involvement in the March 2006 Transaction and the January 2012 Settlement. *Id.* at 12, 29. The amendment, however, did not remedy the

deficiencies in the previous complaint. In particular, Respondent was not "alleged to have committed *any* act individually" and Petitioners also failed to provide any non-conclusory allegation supporting any theory of derivative liability. *Id.* at 12. The Bankruptcy Court again dismissed all claims against Respondent, this time with prejudice. *Id.* at 11-12.

Thereafter, Petitioners continued litigating their remaining claims against the other Defendants. *Id.* at 12-13. After a 12-day trial, they negotiated compromises with the remaining Defendants that would result in payments of approximately $24 million to the Estate, ultimately benefitting Petitioners. *Id.* at 13. Under applicable bankruptcy law, the Bankruptcy Court could only approve the settlement upon a determination that it was "fair and equitable." *Protective Comm. for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424, 441 (1968). The court concluded that the compromises would be "fair and equitable" only if a permanent injunction were in place protecting Respondent. App. at 14.

In conjunction with its approval of the settlement, the Bankruptcy Court entered a permanent injunction in Respondent's favor on December 16, 2015. *Id.* at 107-09. The injunction barred Petitioners from pursuing (1) any claims against Respondent "arising out of the nucleus of

facts set forth" in the Second Amended Complaint; (2) Petitioners' pending state-court judgment-enforcement actions against Respondent; and (3) any claims against Respondent as the "real party in interest" in pending state-court cases involving three of the Petitioners. *Id.* at 108-09. The Bankruptcy Court explained that the injunction was "necessary to aid in this Court's jurisdiction, to protect this Court's prior judgments, and to make compromises this court approved by separate orders [as] fair and equitable." *Id.* at 108.

C. The Appeal

Petitioners appealed the Bankruptcy Court's determinations to the District Court and the Eleventh Circuit, both of which affirmed. App. at 1-46, 49-76.

In the Eleventh Circuit, Petitioners argued that the injunction should be reversed on the theory that (1) the Bankruptcy Court lacked subject-matter jurisdiction to enjoin the state court actions, and (2) the injunction did not satisfy any of the exceptions to the Anti-Injunction Act, 28 U.S.C. § 2283. In a thorough and well-reasoned opinion, the Eleventh Circuit determined that the Bankruptcy Court indeed had jurisdiction to enjoin the state court cases, which were "related to" the bankruptcy proceeding because their outcome would affect the administration of the Estate. *Id.* at 19-23. The

Bankruptcy Court also had the authority to enter the injunction under both the "relitigation exception" and the "necessary in aid of its jurisdiction" exception to the Anti-Injunction Act. *Id.* at 23-29.

In seeking further review in this Court, Petitioners do not challenge these rulings. Nor do they challenge the Bankruptcy Court's dismissal with prejudice of all of their claims or its approval of the settlement. Instead, they put forward a new argument: that bankruptcy courts have no authority to enter injunctive relief under the All Writs Act, 28 U.S.C. § 1651.

REASONS FOR DENYING THE PETITION

The petition should be denied for five reasons. First, Petitioners did not raise their argument regarding the All Writs Act in the court below. Because this Court is one of review, not first view, certiorari is unwarranted.

Second, there is no conflict among the courts of appeals regarding the availability of the All Writs Act in bankruptcy proceedings. All of the Courts of Appeals to have addressed the question agree that a bankruptcy court that possesses subject-matter jurisdiction over an action may grant relief with respect to that action under the Act. Thus, contrary to Petitioners' argument, this case does not involve a disagreement among the Courts of Appeals on the

question presented, but rather the application of settled principles to unique facts.

Third, the court below did not decide the question presented in a manner that conflicts with a prior decision of this Court. Fourth, the question presented is not one of manifest public importance. Finally, the court below correctly decided the case.

I. Petitioners Did Not Raise Their Argument Below.

Petitioners did not argue before the Eleventh Circuit that bankruptcy courts lack authority under the All Writs Act. Rather, Petitioners maintained that, by entering its injunction, the Bankruptcy Court exceeded its authority under the Act, on the theory that the injunction did not fall within one of the exceptions to the separate Anti-Injunction Act, 28 U.S.C. § 2283. As discussed more fully below, the Eleventh Circuit correctly rejected Petitioners' theory, finding that the injunction was both "necessary in aid of [the Bankruptcy Court's] jurisdiction" and "to protect or effectuate it judgments." App. at 24.

Because Petitioners did not raise the question presented in the court below, it is inappropriate for review in this Court. *See, e.g., Cutter v. Wilkinson*, 544 U.S. 709, 718 n.7 (2005)

(noting that the Supreme Court is "a court of review, not of first view").

II. There Is No Circuit Split Regarding the Application of the All Writs Act in Bankruptcy Proceedings.

Petitioners assert that there is a "significant debate . . . whether bankruptcy courts can even use the All Writs Act." Pet. at i. Whatever that debate may be, however, it has not materialized into a split of authority among the Courts of Appeals.

A number of circuit courts have determined that the bankruptcy courts may issue orders under the All Writs Act. *See Central W. Va. Energy Co. v. Wheeling Pittsburgh Steel Corp.*, 245 F. App'x 415, 426 (6th Cir. 2007) (ruling that bankruptcy court had authority to enjoin state court counterclaim under the All Writs Act); *E.E.O.C. v. Rath Packing Co.*, 787 F.2d 318, 325 (8th Cir. 1986) ("The All Writs Act, 28 U.S.C. §1651, authorizes bankruptcy courts to issue stays."); *see also Findlay v. Laughead (In re Johns-Manville Corp.)*, 27 F.3d 48, 49 (2d Cir. 1994) (order jointly entered by District Court and Bankruptcy Court was authorized under the All Writs Act); *Matter of Carroll*, 850 F.3d 811, 815 (5th Cir. 2017) (affirming injunction issued by bankruptcy court and noting that "[f]ederal courts also have authority to enjoin vexatious litigants under the All Writs Act").

Similarly, a number of lower courts have likewise agreed that bankruptcy courts may exercise authority under the Act. *See Kristan v. Turner (In re Kristan)*, 395 B.R. 500, 511 (1st Cir. B.A.P. 2008) ("The All Writs Act grants federal courts, including the bankruptcy courts, the authority to limit access to the courts by vexatious and repetitive litigants."); *Kovalchick v. Dolbin (In re Kovalchick)*, 371 B.R. 54, 60-61 (Bankr. M.D. Pa. 2006) (exercising All Writs Act authority to enjoin filing of meritless pleadings), *appeal dismissed*, No. 3:06cv1066, 2006 WL 2707428 (M.D. Pa. Sept 19, 2006); *Alkasabi v. Rampart Acquisition Corp.*, No. H-09-4116, 2011 WL 1232341, at *8 (S.D. Tex. Mar. 31, 2011) (affirming bankruptcy court order and noting that "the All Writs Act, 28 U.S.C. § 1651(a) . . . gives bankruptcy courts the power to regulate vexatious litigation."); *In re Blumeyer*, No. 98-43254-293, 2006 WL 4446481, at *1 (E.D. Mo. Oct. 4, 2006) ("The All-Writs Act, 28 U.S.C. 1651(a), gives all federal courts the power to enjoin a litigant from filing complaints and motions if the litigant has used the judicial process as a forum to harass the court and other litigants."); *Melcher v. Richardson (In re Melcher)*, BAP No. NC-13-1168, 2014 Bankr. LEXIS 1586, at *29 (9th Cir. BAP Dec. 7, 2015) ("[T]he All Writs Act is

available as an aid to bankruptcy courts in the exercise of their jurisdiction.").[3]

Critically, Respondent has been unable to locate a single decision reaching a contrary conclusion. Petitioners support their view by referencing only two sources – a dissenting opinion authored by Justice Stevens more than twenty years ago, and an order issued by a bankruptcy court in 1989 that did not in fact rule that bankruptcy courts lack authority under the All Writs Act, stating expressly that it was a question was "not necessary to address." *See Celotex Corp. v. Edwards,* 514 U.S. 300, 329 n.16 (1995) (Stevens, J., dissenting); *In re Alwan Bros.*

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[3] In addition to the decisions cited above, determining that bankruptcy courts may grant relief under the All Writs Act, additional decisions have found similar authority under section 105 of the Bankruptcy Code, 11 U.S.C. § 105. *See, e.g., In re GSF Corp.*, 938 F.2d 1467, 1475 n.6 (1st Cir. 1991) (noting that the All Writs Act "provides Article III courts with statutory authority to issue" a relitigation injunction, and section 105 was intended to extend the same authority to bankruptcy courts); *Big Shanty Land Corp. v. Comer Props., Inc.*, 61 B.R. 272, 284 (N.D. Ga. 1985) (stating that the power granted to bankruptcy courts by section 105 "necessarily entails the authority to enter injunctions in aid of jurisdiction" and comparing it to the All Writs Act). Section 105 thus supplies an additional statutory basis for the Bankruptcy Court's authority in this matter.

Co., 105 B.R. 886, 895 n.10 (Bankr. C.D. Ill. 1989). Moreover, in both cases, the point is discussed merely in a footnote.

Simply put, even if Petitioners had properly raised the question below, there is no circuit split justifying this Court's review. Rather, courts that have addressed the question agree that bankruptcy courts have authority to issue all writs "necessary or appropriate in aid of their respective jurisdictions" under the All Writs Act. In this instance, the Bankruptcy Court simply took the relevant, long-settled principles and applied them to the unique facts of this case. Accordingly, certiorari review is not warranted.

III. The Court Below Did Not Decide the Question Presented in Conflict with a Prior Decision of this Court; Nor Is the Matter One of Manifest Public Importance.

Even assuming that Petitioners had properly raised the issue below, it is plain that the court below did not decide the question presented in a manner that conflicts with a prior decision of this Court. Among other reasons, this Court has not previously addressed the question. Further, the issue is not one of manifest public importance. Accordingly, certiorari should be denied for these additional reasons.

IV. The Decision Below Was Correctly Decided

Finally, certiorari should be denied because the decision below is entirely correct. First, the bankruptcy court had jurisdiction finally to adjudicate Petitioners' claims, including by entering an order dismissing them with prejudice, because the court had subject matter jurisdiction under 28 U.S.C. §§ 1334 & 157, and because Petitioners consented to the court's final adjudication of their claims. Second, because the Bankruptcy Court possessed the necessary subject matter jurisdiction, it follows that the court also had the authority to enter injunctive relief in aid of its jurisdiction. The Eleventh Circuit correctly rejected Petitioners' challenges to the injunction on the grounds they raised, and its judgment is correct.

A. The Bankruptcy Court Had Jurisdiction.

Bankruptcy courts have jurisdiction over "all civil proceedings arising under title 11, or arising in or related to cases under title 11," 28 U.S.C. § 1334(b), referred to them under 28 U.S.C. § 157. As this Court has explained, the phrase "related to" in section 1334 suggests "a grant of some breadth" and provides jurisdiction over "more than simple proceedings involving the property of the debtor or the estate." *Celotex,* 514 U.S. at 307-08. Moreover, the test that the

Eleventh Circuit applies for determining the breadth of "related to" jurisdiction is one this court has implicitly endorsed: that "related to" jurisdiction extends to any civil proceedings that "could *conceivably* have any effect on the estate being administered in bankruptcy." App. at 19 (quoting *Pacor Inc. v. Higgins*, 743 F.2d 984, 994 (3d Cir. 1984)) (emphasis original). In *Celotex*, this Court further conveyed its agreement with "the views expressed by the . . . Third Circuit in *Pacor, Inc. v. Higgins*" that, "Congress intended to grant comprehensive jurisdiction to the bankruptcy courts so that they might deal efficiently and expeditiously with all matters connected with the bankruptcy estate." *Celotex*, 514 U.S. at 308 & n.6.

The Eleventh Circuit correctly applied that test in this case to conclude that the Bankruptcy Court had jurisdiction over all of the claims covered by the injunction, because those claims could "conceivably" affect the administration of the bankruptcy estate. App. at 20-23. The court used the specific example of Petitioners' state-law claims filed under Florida Statute § 56.29, which sought a determination that Respondent received fraudulent transfers from THMI and/or THI and was liable for the default judgments against those companies to the extent of the transfer. *Id.* If a state court were to determine that a transfer from THI or THMI to Respondent was *not* fraudulent, the Eleventh Circuit reasoned that the debtor "would have a hard time succeeding on its own

fraudulent-transfer claim," based on the same transaction. *Id.* at 21-22. On the other hand, if a state court determined that such a transfer was fraudulent, the debtor's claims for recovery would be commeasurably strengthened. *Id.* at 22.

Petitioners make much of the Eleventh Circuit's use of their state-court § 56.29 claims, rather than their "real-party-in-interest" claims, to illustrate the scope of the Bankruptcy Court's jurisdiction. Pet. at 13; *see* App. at 20-23. However, the same reasoning applies to both sets of claims. The purported factual basis for the "real party in interest" claims is the January 2012 Settlement, not the March 2006 Transaction, but Petitioners and the Trustee likewise offered the January 2012 Settlement as a basis for recovery from Respondent in their adversary proceeding. A final decision regarding the terms and operation of the Settlement in state court would affect the outcome of related claims in the adversary proceeding, and vice versa. But even if the Eleventh Circuit had misapplied the test for "related to" jurisdiction – the validity of which is not challenged – it would not justify review in this Court. *See* Supreme Court Rule 10 (the mis-application of correctly stated precedent is not generally grounds for certiorari review).

Petitioners also imply that the Bankruptcy Court lacked their consent to enter final judgment on their non-core claims. *See* Pet. at 20, 22. In their complaint, however, Petitioners averred

that their claims were "core." Bk893-109 ¶ 26; *see Executive Benefits Ins. Agency v. Arkison*, 134 S. Ct. 2165, 2171-72 (2014). They also orally indicated consent to the Bankruptcy Court's entry of a final judgment, Bk22258-DE-1233 at 39:9-13, and no party made any timely objection. App. at 116. The Bankruptcy Court thus had the authority to enter a final judgment, even as to non-core claims. *See Wellness Int'l Network, Ltd. v. Sharif*, 135 S. Ct. 1932, 1940, 1942, 1947 (2015); *Executive Benefits Ins. Agency*, 134 S. Ct. at 2172.

B. The Bankruptcy Court Properly Exercised Its Authority.

The All Writs Act allows federal courts to issue "all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law." 28 U.S.C. § 1651(a). Having jurisdiction to finally hear and determine Petitioners' claims, the Bankruptcy Court's entry of its injunction was a proper exercise of this authority. The Eleventh Circuit upheld the injunction based on precedent allowing federal courts to enter injunctions under the All Writs Act so long as they fall within one of three exceptions to the Anti-Injunction Act, 28 U.S.C. § 2283.

The Eleventh Circuit correctly concluded that the injunction was authorized to the extent it served "to protect or effectuate" the Bankruptcy Court's judgment – the "relitigation" exception. App. at 24-25. This Court has defined the

relitigation exception as "narrow" and explained that it permits "an injunction to prevent state litigation of a claim or issue 'that previously was presented to and decided by the federal court.'" *Smith v. Bayer Corp.*, 564 U.S. 299, 306 (2011). Consistent with *Smith*, the injunction covered claims "specifically asserted in the Second Amended Complaint against [Respondent]," which were considered by the Bankruptcy Court and dismissed with prejudice. App. at 25. Petitioners do not challenge the Eleventh Circuit's interpretation of *Smith* or present any contrary authority regarding this issue.

The Eleventh Circuit also correctly reasoned that the injunction was authorized as "necessary in aid of [the Bankruptcy Court's] jurisdiction." App. at 25-29. This Court has permitted such an injunction where it is necessary "to prevent a state court from so interfering with a federal court's consideration or disposition of a case as to seriously impair the federal court's flexibility and authority to decide that case." *Atl. Coast Line R.R. Co. v. Bhd. of Locomotive Eng'rs,* 398 U.S. 281, 295 (1970). The Eleventh Circuit has interpreted this precedent to allow federal courts to enjoin state court suits that could impede their ability to resolve a lengthy and complex multi-party proceeding through the approval of a settlement. *See Juris v. Inamed Corp.*, 685 F.3d 1294, 1339 (11th Cir. 2012); *Wesch v. Folsom* , 6 F.3d 1465, 1470 (11th Cir.

1993); *Battle v. Liberty Nat'l Life Ins., Co.* 877 F. 2d 877, 880-83 (11th Cir. 1989).

Petitioners do not suggest that the rule applied in *Juris*, *Wesch*, and *Battle* conflicts with this Court's precedent or the law in any other circuit. Instead, they object that the various settlements in this case were not "expressly conditioned" on an injunction. Pet. at 13; *id.* at 25-27 ("[T]he real-party-in-interest claim will have no impact on the settlement, because it is an order issued separate and apart from the settlement."). In doing so, they essentially ignore the Bankruptcy Court's prior ruling that it could not approve those settlements in the absence of an injunction, because doing so would not be "fair and equitable." *See* App. at 103-06. As noted, bankruptcy courts are required to approve settlements in bankruptcy cases, and the standard for approval is whether the settlement is "fair and equitable." *TMT Trailer Ferry, Inc.*, 390 U.S. at 424. In any event, even if the Eleventh Circuit misapplied correctly-stated precedent permitting the issuance of an injunction to facilitate a complex settlement, further review on that basis would not be warranted. *See* Supreme Court Rule 10.

CONCLUSION

For the foregoing reasons, the Court should deny the petition.

Respectfully submitted,

Benjamin E. Rosenberg
Counsel of Record
Katherine M. Wyman
DECHERT LLP
1095 Avenue of the Americas
New York, New York 10036
(212) 698-3500

G. Eric Brunstad, Jr.
DECHERT LLP
90 State House Square
Hartford, CT 06103
(860) 524-3999

Counsel for Respondent

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