

No. 17-_____

In the
Supreme Court of the United States

IN RE CURT GILGENBACH and
CATHERINE GILGENBACH, and Their
Heirs, Successors, Assigns and Agents.

Petitioners.

On Petition for Extraordinary Writ of Mandamus
to the United States Circuit Court for the Seventh Circuit

PETITION FOR
EXTRAORDINARY WRIT OF MANDAMUS

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JUNE 18, 2018

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QUESTIONS PRESENTED

1. Is the “Judiciary Act of 1891 (26 Stat. 826)” and the “Judiciary Act of 1925 (43 Stat. 936)” unconstitutional acts as the federal constitution identifies the people’s right to appeal to the United States Supreme Court?

2. Does the Congress have the authority to diminish a constitutional right through enacting legislation, namely “Judiciary Act of 1891 (26 Stat. 826)” and the “Judiciary Act of 1925 (43 Stat. 936)” that limits the people’s right to appeal to the United States Supreme Court?

3. Does the District Court, Seventh Circuit Court of Appeals and Supreme Court have jurisdiction to hear claims based on a United States Land Patent No. 18364, that was issued by Congress and President Polk in 1845, where Illinois, DuPage county, and the Village of Glendale Heights and Bloomingdale Township now wish to tax and regulate the property, but failed to reserve rights for future taxation, regulation, and zoning prior to the Land Patent being granted?

4. Assuming the District Court, the Seventh Circuit Court of Appeals and Supreme Court does have jurisdiction to hear the matter, does the District Court have power to issue a permanent injunction against Illinois, DuPage county, the Village of Glendale Heights and the Bloomingdale Township from asserting a right or interest to assess and collect a property tax on Petitioners non-commercially used private property, when Illinois, DuPage county, the Village and Township failed to reserve any future right, title or interest to tax, regulate or zone the subject property prior to

termination of the Patent proceedings, though they are wrongfully asserting the same in the present time?

5. Has Judge/Magistrate Andrea R. Wood failed to perform her duty in properly assessing our claims, though in her opinion our matter was deemed frivolous?

PARTIES TO THE PETITION

Petitioners

- Curt Gilgenbach and Catherine Gilgenbach,
husband and wife
- Their heirs, successors, assigns and agents.

Respondents

- Village of Glendale Heights Illinois
- State of Illinois
- DuPage County, Illinois
- Bloomingdale Township, Illinois
- United States

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PETITION FOR EXTRAORDINARY WRIT OF MANDAMUS

Involves a Treaty

1. This case is based on the Treaty of Peace.

Involves a United States Land Patent

2. This case involves a United States Patent. (App.50a).

Denial of Our Right to Appeal as a Matter of Right to Supreme Court

3. This case involves the denial of our right to appeal to the United States Supreme Court (App. 162a, 173a)), and the unconstitutionality of two United States statutes: the "Judiciary Act of 1891 (26 Stat. 826)" and the "Judiciary Act of 1925 (43 Stat. 936), which prevent us from exercising our constitutional rights of direct appeal," mainly, we only have a privilege of appeals only available through a "discretionary" writ application, which is unconstitutional.

Failure to Comply with Fed. R. Civ. P. Rule 55(a)

4. This case involves the failure of Court Clerks, and United States Judicial Officer, Andrea R. Wood to comply with Fed. Rules of Civil Procedure, Rule 55(a) which requires entry of default upon failure of a party to defend the lawsuits. (App.1a)

Failure of United States to Protect Our Private Property Rights

5. This case involves the denial by a federal judge, our right of having the United States protect our interests under a federal Patent granted in 1845, by Congress and President James K. Polk, which Illinois and DuPage county, the Village of Glendale Heights and Bloomingdale Township failed to reserve certain rights it now wishes to encroach upon, by way of property taxation, and failure to pay, which would result in an unlawful forced sale of our land, including coercion, through threats, violence and menace to ourselves and our property, if not said extortion demands (payment of taxes) are not complied with. (App.1a)

According to our understanding, government is based on giving our consent, and, we have not consented to the foregoing, yet we were forced to filing suit to prevent said actions from taking place. (App.25a)



DECISIONS BELOW

The order of the United States Seventh Circuit Court of Appeals denying Petitioners' motion for mandamus was entered on January 5, 2018. (*See* Appendix ("App.") at 15a.) The United States District Court for the Northern District of Illinois denied Petitioners' motion for entry of default judgment on May 10, 2018. (App.1a).



JURISDICTION

This Petition for Extraordinary Writ of Mandamus is filed pursuant to Sup. Ct. R. 20.4(a). This Court has jurisdiction under U.S. Constitution Article III, § 2, 28 U.S.C. §§ 2241, 1254(1) and 1651 to review the Court of Appeals' decision by extraordinary writ of mandamus.

This Court has full power in its discretion to issue the writ of mandamus to a federal district court, although the case be one in respect of which direct appellate jurisdiction is vested in the circuit court of appeals, this Court having ultimate discretionary jurisdiction by certiorari, but such power will be exercised only where a question of public importance is involved, or where the question is of such a nature that it is peculiarly appropriate that such action by this Court should be taken. Pp. 287 U.S. 245, 287 U.S. 248.

It first is necessary to determine whether, under these facts, we have jurisdiction to issue the writ. Section 716, Rev. Stats. (§ 262 of the Judicial Code, U.S.C. Title 28, § 377), provides that this Court and other federal courts "shall have power to issue all writs not specifically provided for by statute, which may be necessary for the exercise of their respective jurisdictions, and agreeable to the usages and principles of law."

As early as 1831 it was settled that this Court does have power to issue a mandamus directed to a federal Circuit Court commanding that court to sign

a bill of exceptions, such action being in the nature of appellate jurisdiction. *In re Crane*, 5 Pet. 190, 30 U.S. 193. In *Marbury v. Madison*, 1 Cranch 137, 5 U.S. 175, it was held (Page 287 U.S. 246) that to warrant the issue of a mandamus by this Court, in cases where original jurisdiction had not been conferred by the Constitution (*See Kentucky v. Dennison*, 24 How. 66, 65 U.S. 9), it must be shown to be an exercise of appellate jurisdiction, or to be necessary to enable the court to exercise its appellate jurisdiction. *McClellan v. Carland*, 217 U.S. 268, 217 U.S. 280, laid down the general rule applicable both to this Court and to the Circuit Courts of Appeals, that the power to issue the writ under R.S. § 716 is not limited to cases where its issue is required in aid of a jurisdiction already obtained, but that, "where a case is within the appellate jurisdiction of the higher court, a writ of mandamus may issue in aid of the appellate jurisdiction which might otherwise be defeated by the unauthorized action of the court below."

See also Delaware, L. & W. R. Co. v. Rellstab, 276 U.S. 1, 276 U.S. 5; *In re Babcock*, 26 F.2d 153, 155; *Barber Asphalt Paving Co. v. Morris*, 132 F. 945, 952-956.

"However that may be, we think it clear that, where the subject concerns the enforcement of the equity rules which by law it is the duty of this Court to formulate and put in force, and in a case in which this Court has the ultimate discretion to review the case on its merits, it may use its power of mandamus and deal directly with the district court in requiring it to conform to them. *Ex parte Abdu*, 247 U.S. 27,

247 U.S. 28; *Ex parte Crane*, 5 Pet. 190, 30 U.S. 192-194.

Petitioner has made the showing necessary for the issuance of a writ of mandamus by this Court under the All Writs Act, 28 U.S.C. 1651(a).

The “remedy of mandamus is a drastic one,” *Kerr v. United States Dist. Court*, 426 U.S. 394, 402 (1976), and “only exceptional circumstances amounting to a judicial ‘usurpation of power’ will justify the invocation of this extraordinary remedy,” *Will v. United States*, 389 U.S. 90, 95 (1967) (quoting *De Beers Consol. Mines, Ltd. v. United States*, 325 U.S. 212, 217 (1945)).

Writs of mandamus are granted by this Court as a matter of “discretion sparingly exercised” and only upon a showing that “the writ will be in aid of the Court’s appellate jurisdiction, that exceptional circumstances warrant the exercise of the Court’s discretionary powers, and that adequate relief cannot be obtained in any other form.” Sup. Ct. R. 20.1.

“[T]he party seeking issuance of the writ must show that there is ‘no other adequate means to attain the relief he desires’ and satisfy the burden of demonstrating that the right to issuance of the writ is ‘clear and indisputable.’” Stephen M. Shapiro et al., *Supreme Court Practice* 663 (10th ed. 2013) (quoting *Kerr*, 426 U.S. at 403).

Petitioners have satisfied this exacting standard.



RULE 20 STATEMENT

A. Parties Against Whom Relief is Sought

Petitioners respectfully request that this Court direct the Clerk of Court in the United States District Court for the Northern District of Illinois enter default judgment in favor of Petitioners against the Respondents who are:

- United States
- State of Illinois
- DuPage County, Illinois
- Bloomingdale Township, Illinois
- Village of Glendale Heights Illinois

B. Relief Sought

1. Supreme Court to place a stay on the Seventh Circuit's affirmance, and a stay the \$1000 sanctions, so as to allow the matter to be heard, reviewed, and upon reversal strike the sanctions of the 7th Circuit.

2. That the Court hear this matter as a matter of Right, not as a matter of discretion per The Judiciary Acts of 1891 and 1925, which is unconstitutional

3. That a direct appeal to the Supreme Court, as a matter of Right, because the "Judiciary Act of 1891," and, the "Judiciary Act of 1925" were unconstitutional, as the federal constitution allows for direct appeal, through filing of our NOTICE TO APPEAL.

4. Reverse and remand the District Court's order dismissing the case, and Reverse the Seventh Circuit's order Affirming the matter, because:

- A. The Supreme Court has already ruled on the issues of Land Patents and rights as described herein numerous occasions identified above.

To recap: when a party that failed to make any reservations at the patent proceedings and issuance of the Land Patent, they now have no right, title or interest in the property, and have no right to now attempt or exercise zoning, taxation of property, or regulate the use of the property. *See Alejandro Barker v. Downey Harvey*, 181 U.S. 481, 21 S.Ct. 690, 45 L.Ed. 963 (1901); *Summa Corporation v. California State Lands Commission*, 466 U.S. 198, 104 S.Ct. 1751, 80 L.Ed.2d 237 (1984); *Cherokee Nation v. the State of Georgia*, 30 U.S. 1, 5 Pet. 1, 8 L.Ed. 25 (1825); *Seminole Tribe Florida v. Florida*, 517 U.S. 44, 116 S.Ct. 1114, 134 L.Ed.2d 252 (1996); *Cherokee Nation of Oklahoma v. United States*, 782 F.2d (C.A. 10 (Okl.) 1986).

- B. The United States, Illinois state, DuPage county, the Village of Glendale Heights, and Bloomingdale Township failed to make reservations to zone, tax the land (property and real estate) and regulate the land/property/real estate, because they failed, refused and neglected to reserve any right within

the time set by congress to reserve any rights prior to the close of the Patent proceedings, and prior to the President signing the Land Patent. Therefore, the United States, Illinois, DuPage county, Village of Glendale Heights, and Bloomingdale Township have no right, title or interest under the Land Patent to Zone, Tax or Regulate Gilgenbachs' land/real estate, in the present time.

This court held: California cannot at this late date assert its public trust easement over petitioner's property, when petitioner's predecessors-in-interest had their interest confirmed without any mention of such an easement in the federal patent proceedings. The interest claimed by California is one of such substantial magnitude that regardless of the fact that the claim is asserted by the State in its sovereign capacity, this interest must have been presented in the patent proceedings or be barred. Cf. *Barker v. Harvey*, 181 U.S. 481, 21 S.Ct. 690, 45 L.Ed. 963; *United States v. Title Ins. & Trust (Page 199) Co.*, 265 U.S. 472, 44 S.Ct. 621, 68 L.Ed. 1110; *United States v. Coronado Beach Co.*, 255 U.S. 472, 41 S.Ct. 378, 65 L.Ed. 736. Pp. 205-209. 31 Cal.3d 288, 182 Cal.Rptr. 599, 644 P.2d 792, *reversed and remanded*.

5. Zoning, Taxation, and Regulation of the land/property is unlawful under the Land Patent, though the State, County, Township and Village have been

doing so under color of authority, therefore, extorting payments under menace, threats, and if not complied with, would use any type of force to obtain compliance.

6. We require the District Court to permanently enjoin the United States, Illinois, DuPage county, Bloomingdale Township, and Village of Glendale Heights from asserting or enforcing (non-existent) any type of "zoning, taxation of our land (non-commercial use of our privately used real estate, and regulation thereof) as the Land Patent contains no reservations allowing respondents to do so.

7. We require this court to mandate that the District Court to order Illinois, DuPage county, Bloomingdale Township and Village of Glendale to return all assessments and collections of various tax monies received by them related to the land/real estate, taken since 1968 up to the present time with interest.

8. The Supreme Court to make a binding rule of Court instructing the district courts and the Court of Appeals that anyone without counsel has a level playing field equal or better to parties that have counsel including equal or better that paid counsels privileges.

9. The Supreme Court make a rule of Court that anyone requesting entry of default against a non-defending party has the right for the Entry to be made forthwith, without a judge's approval.

10. The Supreme Court instruct the lower courts by the Rules of Court, that anyone presenting redress claim for a violation of their rights under a United States Land Patent, the Court has jurisdiction over the matter,

11. Any supplemental relief as may be right and just.

12. Remand to District Court, mandating the Clerk/Judicial Officer thereof to enter defaults of the United States, Illinois, DuPage, Bloomingdale Township, Village of Glendale Heights, and proceed if unopposed to enter final judgment and issuance of permanent injunctions, and return of all taxes listed on assessment bills since 1968.

13. Declare that Illinois state laws regarding the sale of land/real estate are unconstitutional and uncollectable because Illinois failed to assert any future interest in asserting rights to tax the sale of land/real estate at the time of the Patent proceedings.

14. In the event this is rejected for any reason, we require the grounds to be stated in writing with specificity as why it is rejected.

C. Why Petitioners Have Filed for Relief in This Court

The Petitioners sought the entry of default judgment at the trial court. (App.1a). On appeal to the United States Seventh Circuit Court of Appeals, Petitioners requested mandamus to direct the District Court's entry of default judgment, which was denied. (App.15a). Because this motions and appeals for default judgment were denied in the trial court and appeals court, the relief sought is not available in any other court. Thus, Petitioners present this Extraordinary Writ for Mandamus to this Court.



STATEMENT OF THE CASE

A. Overview of Case

This matter arose due to a matter filed in the United States District Court, seeking the United States to protect Petitioner's Land, Rights and Interest(s) as a successor or assign under a United States Land Patent, No. 18364, issued by President James K. Polk in 1845 to William Fleeto, his heirs, successors and assigns forever. (App.25a)

The grant contained no reservations to the United States, the State of Illinois, DuPage county, Bloomingdale Township, the Village of Glendale Heights for zoning, regulation or taxation of the property in the future. The use of the words "to William Fleeto, his heirs, successors, and assigns forever" implies a warranty by the United States to protect the property from encroachment by any persons who failed to make any reservations at the time of the patent proceedings and failed, yet wished now to assert a right, or some interest in the future. (App.50a)

In this matter, it has come known to Petitioner after much personal research and information pertaining to property taxation by Illinois and DuPage county. This research commenced because Illinois appears to have wrongfully increased property/land taxes significantly since Petitioner acquired Title to the land in the Year Nineteen Hundred and Eighty Six (1986). (App.25a)

Petitioners started commencing performing searches into the property's records held in the county's land records departments, then expanded into records held by the United States. It became known to Petitioner's that under the language of Mr. Fleeto's Land Patent, that there were no reservations for zoning, taxation or regulation of the land to the United States, Illinois, DuPage county, the Bloomingdale Township or the Village of Glendale Heights.

Upon this discovery, it became known that it appears that Illinois in cooperation with DuPage county, the Township and Village acted in concert, performed its own survey and placed the property into what's now become known as "tract, lot and section" in the county's maps. What was not noted was any indication in the county's new plat maps and field notes, any notation that the land was subject to any land patents, including the fact that there were no reservations for "zoning, regulation or taxation." (App. 50a)

Upon this discovery, we filed our matter in the federal court, in the Year Two thousand-seventeen, against the United States, Illinois, DuPage county, Bloomingdale Township, and the Village of Glendale Heights. (App.25a)

B. Statement Of Facts

1. On 3/07/2017 petitioners filed our "in rem" claims.
2. On 3/08/2017 petitioners issued summonses to Bloomingdale Township, DuPage county, State of Illinois, United States, Village of Glendale Heights.

3. 3/14/2017, SUMMONS returned Executed as to DuPage county.

4. 3/27/2017, SUMMONS returned Executed as to United States.

5. 4/05/2017, REQUEST for Entry of Default filed for DuPage county.

7. 4/7/2017, SUMMONS returned Executed to Bloomingdale Township.

8. 4/18/2017, REQUEST for Entry Default for United States.

9. 4/21/2017, SUMMONS returned Executed to Illinois state.

10. 5/01/2017, REQUEST for Entry Default for Bloomingdale Township.

11. 5/3/2017 SUMMONS returned Executed as to Village of Glendale Heights Illinois.

12. 5/15/2017 REQUEST FOR ENTRY DEFAULT for Illinois state.

13. 5/25/2017 REQUEST FOR ENTRY DEFAULT as to Village of Glendale Heights Illinois.

14. 8/09/2017 USCA unsigned order (No. 17-2011) the COA (erroneously) claims that the United States was not served process, and will be uninvolved in the appeal. Our rebuttal responses were filed with the COA and how that the United States was served by process server on 3/27/2017 and it is also up to the clerk to further serve the United States as well.



**REASONS FOR GRANTING THE PETITION
FOR EXTRAORDINARY WRIT OF MANDAMUS**

**I. GIVEN THAT ALL PARTIES WERE PROPERLY SERVED,
AND THE RULES OF CIVIL PROCEDURE WERE
FOLLOWED, THE LOWER COURTS HAD AN
OBLIGATION TO ENTER DEFAULT JUDGMENT**

A. All Parties Were Served

Each of the parties were served by process server of the respective counties. Each of the parties failed to answer our in rem claims and defend, we therefore filed our “requests for entry of defaults” against each respondent. (App.69a, 77a, 85a, 93a, & 101a)

B. Clerk of the Court Refused to Enter Defaults

When we discovered that the clerk of the Court failed to enter default, based on inadequate reasons, each of the clerks, when put on inquiry, why the entry of defaults were not entered according to the Fed. R. Civ. P., Rule 55(a)¹, each of them, including their supervisors replied with the following:

C. Judge Directed Clerks Not to Enter Defaults

Judge Andrea R. Wood, directed the clerks not to enter the default as per 55(a). Ms. Andrea R. Wood

¹ Fed. R. Civ. P., Rule 55. Default; Default Judgment. (a) Entering a Default. When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, and that failure is shown by affidavit or otherwise, the clerk must enter the party's default, per Rule 55(a).

has been obstructing justice, and her decisions are found to be erroneous, *i.e.*, based on a third party law firm identified as STORINO RAMELLO & DURKIN mis-handling Judge Andrea R. Wood's decision making process, as well as her failing to provide honest government services; and, failing in her fiduciary duties to us. Therefore, her decisions are not personal to herself, but were drafted at arms length by somebody that is not qualified to perform under the judicial branch, *i.e.*, a non-governmental source.

D. Appeals Were Filed But Issues Were Ignored

We appealed the erroneous dismissal that were created and drafted by an un-qualified non-judicial department third party law firm, STORINO RAMELLO & DURKIN with the Seventh Circuit Court of Appeals. The District Court's decision was erroneously affirmed as a frivolous suit by the same third party firm. The Seventh Circuit's judges included:

DIANE P. WOOD, *Chief Judge*

JOEL M. FLAUM, *Circuit Judge*

DIANE S. SYKES, *Circuit Judge*

It appears that DIANE P. WOOD is related by blood to ANDREA R. WOOD. Therefore, the decision was tainted, and unconstitutional.

E. Judicial Officers Took Oath to Support & Defend the Constitution and the People and Our Property

United States Judicial Officer/Magistrates Andrea R. Wood, Joel M. Flaum and Diane S. Sykes took their oaths to support and defend the federal constitution

(1789) and protect and defend us, the people, and our property, yet each remains delinquent in performing their duties to ensure that Petitioner has his day in court, *i.e.*, our right to appeal, under the federal constitution.

F. Each Judge Failed in Their Fiduciary Duty to Perform Honestly

Since each of the Court of Appeal judges have made their order (without a signature) dismissing the matter, we have asked through correspondence to sign a final order/judgment, so that we may appeal, yet each has failed, refused or neglected to do so. This is the main reason for bringing this application.

G. Notices of Appeal Filed in Supreme Court but Were Rejected

Petitioners filed our Notices of Appeal to the Supreme Court, but was rejected by the Clerk (Exhibit 1), therefore, it appears we have no direct right of appeal, no direct right of appeal is found within the Federal Rules of Civil Procedure, nor the Rules of the Supreme Court. Therefore, we have no other option but to apply for this application. The Judiciary Act of 1891 (26 Stat. 826) and the Judiciary Act of 1925 (43 Stat. 936) seems wrong that we have no right to direct appeal to the Supreme Court.

II. CASES OF SIMILAR MAGNITUDE INVOLVING LAND PATENT RIGHTS OR NO RIGHTS

We have discovered similar cases of substantial magnitude, regarding reservations of rights, or failure to reserve rights or interests:

- *Allejandro Barker v. Downey Harvey, Jesus Quevas et al.*, 181 U.S. 481, 21 S.Ct. 690, 45 L.Ed. 963 (1901);
- *Summa Corporation v. California State Lands Commission*, 466 U.S. 198, 104 S.Ct. 1751, 80 L.Ed.2d 237 (1984);
- *Cherokee Nation v. the State of Georgia*, 30 U.S. 1, 5 Pet. 1, 8 L.Ed. 25 (1825);
- *Seminole Tribe Florida v. Florida*, 517 U.S. 44, 116 S.Ct. 1114, 134 L.Ed. 2d 252 (1996);
- *Cherokee Nation of Oklahoma v. United States*, 782 F.2d (C.A. 10 (Okla.) 1986).



CONCLUSION

From the information provided, it does appear to applicants that Judicial Officer Andrea R. Wood, erroneously dismissed the case, though she had jurisdiction to hear, and settle the matter brought forth.

Further, it does appear that the Seventh Circuit Court of Appeal erroneously affirmed the District Court's order, and did have jurisdiction to hear the case and reverse the matter, but it failed in its fiduciary duty to reverse the matter.

Further, it does appear that the Seventh Circuit judge, DIANE P. WOOD, is directly related to ANDREA R. WOOD, therefore, the Seventh's decision was contrary to their fiduciary duties.

Further, it does appear that the law firm STORINO, RAMELLO and DURKIN, was hired by the Village of Glendale Heights, which also wrote the decision for judge Andrea R. Wood, which disposed of the matters.

Further, the Court Clerk and deputies failed, refused and neglect to comply with Entering the Defaults of the Respondents under Fed. R. Civ. P., Rule 55(a): "... the clerk must enter the party's default, per Rule 55(a)." However, the clerks failed in their fiduciary duties to perform entering the defaults as required.



FINAL CLOSING ASSERTION OF OUR RIGHTS UNDER THE LAND PATENT

We claim that our predecessors-in-interest had their interest confirmed without any mention by the Respondents of such "zoning, taxation or regulation" in the federal patent proceedings or in the Land Patent papers itself. We as successors or assigns have the same rights as our predecessors-in-interest. The recent interest claimed by the United States under the United Nations Agenda 21 (we the people never consented to join UN, and do not consent now), Illinois, DuPage county, Bloomingdale Township, and the Village of Glendale Heights (to zone, tax or regulate) is one of such substantial magnitude that regardless of the fact that the claim has been asserted by the United States (under the United Nations, Agenda 21), Illinois, DuPage, Bloomingdale Township and Village of Glendale Heights in their sovereign capacity going back to

at least in 1967 (when assessments and collection for property taxes began), these interests must have been presented in the patent proceedings or be barred. Their individual, joint or several failures to assert any in to zone, tax or regulate does not exist, and are barred from asserting any of these interest, though they have been asserting a right to tax, when the taxes on land/real estate are not paid, the respondents erroneously and without right force a sale, and if the previous owners do not move, the force of the state/county will and has used tremendous force to maintain this erroneous right to tax and enforce tax sales, when there is no clear right under the Patent to do so. When a sale is done, there are no usual court proceedings, or trial. Wherefore, there is no due process, or judgment requiring a sale.

Respectfully submitted,

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JUNE 18, 2018