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Legislative and Regulatory Activities Division
Office of the Comptroller of the Currency
400 7th Street SW, Suite 3E-218
Washington, DC 20219

Submitted via <https://www.federalregister.gov>

**Re: Docket ID OCC-2018-0008, “Reforming the Community Reinvestment Act
Regulatory Framework”**

Dear Comptroller Otting,

Please stop your attack on the Community Reinvestment Act.

The CRA holds banks accountable to the needs of communities they have historically ignored or preyed upon. The federal statute requires each bank regulator, including the OCC, “to use its authority when examining financial institutions, to encourage such institutions to help meet the credit needs of the local communities.” 12 USC 2901(b). Instead, the OCC is here acting, alone and without the formal support of its peer bank regulators, to dramatically lower the bar and make it easier for banks to pass CRA exams without consideration to the needs of local communities and by taking CRA away from its focus on low- and moderate-income (LMI) neighborhoods. We call on the OCC to withdraw this problematic ANPR.

The California Reinvestment Coalition is a statewide network of more than 300-member non-profit organizations that work to build a just, inclusive, and sustainable economy. Our members include affordable housing developers, community development financial institutions (CDFIs), small business lenders and technical assistance providers, tenants’ rights organizations, legal services providers, and other direct service and advocacy community-based non-profits that work in LMI communities across the state in both urban and rural geographies.

In the last five years, we have worked with banks across California to form public, measurable CRA plans to lend, invest, and provide financial services worth over \$25 billion in LMI communities by 2026. We work with our members and bank representatives to negotiate commitments that will meet the needs of local communities in the bank’s assessment areas. We work with lenders of all



CALIFORNIA REINVESTMENT COALITION

types, those that specialize in mortgage lending, those that are primarily small business lenders, and several commercial banks that specialize in community development lending. In each case, we have been able to develop detailed plans that community members and the public can access to know the banks' commitments and develop local initiatives that work.

The CRA has done tremendous good for California and the country. Every year, the California Reinvestment Coalition asks banks to respond to a detailed survey about their CRA activity in California; on average a little over 20 banks respond, including some of the largest banks in the country. The banks that responded with 2016 data indicated they lent over \$27 billion in 2016 in LMI communities throughout California, and had over \$31 billion in total CRA activity, including investments, philanthropy, and contracting with minority- and women-owned businesses.

The National Community Reinvestment Coalition estimates that the changes contemplated by the ANPR would result in a dramatic loss in CRA activity if enacted. California stands to lose the most of any state. As the 5th largest economy in the world, the loss of over \$25 billion to our state's LMI communities would dramatically and severely contribute to wealth and income inequality, affecting some of the most vulnerable populations including immigrants, communities of color, seniors, and children.

This ANPR lacks credibility because it places a greater focus on lowering the bar for banks regarding their CRA obligations than on the people that CRA is intended to benefit.

The ANPR opens the door to proposals that would undermine the original intent of the CRA – to better meet the credit and capital needs of LMI communities. We join with community advocates across the country to call on the OCC to withdraw the ANPR and to engage collaboratively with stakeholders and the other prudential regulators to develop a process that will amplify the impact of CRA for those it was intended to benefit, rather than lowering the bar for banks in meeting their statutory obligations.

The CRA has been critical for ensuring depository institutions meet the credit needs of LMI people in the communities they serve. It was a landmark response to red-lining practices that targeted communities of color, practices that continue today. In 2016, CRC filed a complaint with the Department of Housing and Urban Development alleging redlining by OneWest Bank against neighborhoods of color in the Bank's location of branches and lending patterns. CRA is a fundamental financial pillar of community and economic development. With the wealth gap growing in this country, CRA is needed now more than ever to ensure equitable investment in low- and moderate income communities.

The evolution of the banking sector, and especially technological change that has transformed the delivery of financial services, has created the opportunity for the CRA to have even greater impact in the communities it was originally intended to serve. There is a need to undertake CRA reform that puts the credit needs of low- and moderate income communities first. Unfortunately, the OCC's approach to CRA



CALIFORNIA REINVESTMENT COALITION

reform represented in this ANPR is fundamentally flawed. The ANPR ignores a decade or more of work around the concept of CRA reform.

In collaboration with the OCC and FDIC, the Federal Reserve has been engaged in a multiyear process aimed at reforming the CRA to more effectively meet the credit needs of our nation's diverse communities and respond to the evolution of the financial services industry. In May 2016, the Federal Reserve solicited advice on CRA reform from the Community Advisory Council. Interagency Q&As were published in July 2016. Governor Brainard has recently made speeches addressing CRA Reform which outlined specific guideposts that reflect a balance of input from industry and community-serving organizations and that represent a step forward in this discussion that intentionally builds on a robust process.

In contrast, the simplistic "one ratio" or "one metric" approach to CRA ratings proposed in the ANPR is a poison pill for any package of CRA regulatory change. This approach would have banks report the total amount of CRA investments as a percentage of total assets, eliminating the vast majority of CRA requirements. "One ratio" is a self-policing mechanism that will lower the bar for CRA compliance and reduce investment in low-and moderate-income communities. With more than 98% of banks receiving a satisfactory or better rating, the banking industry is not having difficulty meeting the requirements established by existing CRA regulations. There is no reasonable argument that the bar for CRA compliance needs to be lowered. If enacted, the "one ratio" approach will be subject to ongoing question and revision, introducing even greater uncertainty for the banking industry in the CRA examination process.

The "one ratio" approach removes the role that community groups play in making CRA work.

Community input is critical to the success of CRA and should not be silenced. The idea for a one-size fits all single measure based on asset size cuts out the voice of community members that currently work to make banks aware of where credit and capital are most needed. Data furnished by banks to CRC indicate that those that had CRA agreements invested roughly twice as much in communities as banks without such agreements. Community needs assessments, and community input, are integral to understanding the context of CRA activities and should be kept, if not strengthened, as part of CRA exams.

Many banks have local CRA teams, with staff and resources devoted to the many different markets in California because they have a local obligation to serve the areas where they take deposits. This includes staff who understand the local needs, know the organizations working in the city, and understand the range of government programs that support them. This has led to a multitude of programs, partnerships, products, and financing deals to further the mission of local nonprofits and CDCs. Without this obligation, we risk losing this long-term base of knowledge and resources that can continually respond to local needs. We must also ensure that any metrics system doesn't inadvertently reduce the



CALIFORNIA REINVESTMENT COALITION

incentive to make impactful loans and investments that may be smaller or more complicated, nor that it allows volume to take precedence of quality.

With one target numerical goal, banks will seek the easiest, largest deals and simply stop when the goal is reached. And with little to no local obligation, those dollars could be concentrated in one or two areas and potentially neglect large geographies entirely. Rural communities are most likely to suffer from this approach.

The OCC makes multiple mentions of identifying ways to simplify and clarify the CRA and believes that one numerical goal will do so, describing it as “transparent and objective”. With 98% of banks passing CRA exams, this is a solution to a problem that does not exist. We have no problem with banks being allowed to seek guidance on whether a particular loan or investment might qualify, but beyond that, there appears to be little uncertainty about passing an exam. Lack of clarity is not the issue. Perhaps there should be even more uncertainty to push banks to do more. What uncertainty exists serves a valuable role in pushing banks to continuously seek out more ways to reinvest, and to strive for activities that are innovative and responsive to local needs, further ensuring that they pass, or excel, on a CRA exam. This uncertainty is an integral part of the CRA process that should be maintained. In fact, in order to have CRA implementation better respond to rural community needs, CRC has recommended that regulators designate such communities as “full scope” assessment areas for banks on a rotating basis, so that this uncertainty would incentivize banks to better serve all of their “limited scope” areas for fear their performance in these underserved communities might be subject to greater scrutiny without advanced notice.

Further, the ANPR suggests creating new assessment areas, outside of branch networks but where banks do considerable business, and then looking at that activity “in the aggregate”. And the idea of looking at one ratio suggests it could happen for all assessment areas together, as Mr. Otting suggested in his June 2018 testimony before the Senate Banking Committee, “Establishing clearer, more transparent metrics for what banks need to do to achieve a certain CRA rating would allow stakeholders to understand how a bank is working to meet the credit needs of its community, provide a more objective base for examiner ratings, and allow regulators to report on aggregate activity to show a bank’s overall performance .” Both are problematic on many levels, but it also raises statutory questions as it would go against the requirement to evaluate individual assessment areas.

Former FDIC Chairman Martin J. Gruenberg, who is currently still on the FDIC board, also raised similar concerns in a speech issued on October 29, 2018. “A reliance on a single ratio of CRA performance could allow banks to pick and choose which communities to serve and which products and services to offer in those communities. It is not clear how it would be made compliant with the statutory requirement that the CRA evaluation be presented separately for each metropolitan area in which a bank maintains one or more branches. Such an approach could also undermine the incentive that banks currently have to



CALIFORNIA REINVESTMENT COALITION

develop constructive partnerships with community organizations. It is these partnerships between community organizations and banks that have been central to community development in low- and moderate-income neighborhoods... around the country.”

Banks must be evaluated on the quantity and quality of their activities within the local communities they serve and based on the needs of these local communities, with credit for positive activities and consequences for harmful behavior. A one-ratio concept cannot capture the depth and nuance needed to respond to truly local needs within individual communities.

If banks are striving for one large target goal for dollars invested, they will choose to focus on larger deals, while shying away from smaller dollar loans: 1-4 family home loans to LMI borrowers, loans under \$50,000 to very small businesses, loans to nonprofit developers for rural or special needs housing, loans and investments in land trusts or worker cooperatives, community development grants, and more. These are greatly needed and any retrenchment would only exacerbate existing disparities.

In Chairman Gruenberg’s remarks, he highlights the important of community: *“From the outset, the agencies made clear that the institutions would be evaluated on their **outreach and engagement with the community**, their compliance with antidiscrimination and other consumer protection statutes, and the geographic distribution of their loans. **The intention to address redlining on the basis of income and race was evident, as was the community-based focus of the law.**”*¹

This means making it easy for community members to comment on exams and merger or branch applications; proactively soliciting community input from a variety of stakeholders, especially at times of mergers and expansions, but also for exams; and ensuring that the performance context is rooted in local community needs with both quantitative and qualitative data. In fact, banks should be required to develop a proactive CRA plan at the time of mergers to ensure that the newly expanded institution leads to more resources for local communities, and not fewer, as is too often the case. A simple metrics and formula system does not allow for this type of input or qualitative analysis.

The CRA supports communities by holding banks accountable.

We appreciate that the OCC’s June 2018 memo instructs CRA examiners to determine whether banks are meeting the goals in CRA plans required in conditional merger approvals. Any conditional merger approval, however, must include a bona fide plan that focuses lending, investment, and service on LMI borrowers and communities. In fact, CRC analysis of CIT Bank performance, under the CRA Plan it essentially negotiated with the OCC as part of its conditional merger approval, found that approximately HALF of the “CRA activity” CIT conducted in accordance with its CRA Plan did not involve LMI residents or communities.

¹ <https://www.fdic.gov/news/news/speeches/spoct2918.html>



CALIFORNIA REINVESTMENT COALITION

CRA examiners must also assess bank compliance with community benefit agreements (CBAs) that are negotiated with community groups and include clear goals. In addition, a passing CRA rating must not become a safe harbor providing expedited merger approvals. Bank performance and/or local community needs may have changed since the last CRA exam, necessitating analysis of whether the merger will confer public benefits.

The ANPR also raises the question about whether banks should receive CRA credit for investments and activities that do not target LMI borrowers or areas. The very notion that CRA would not focus on LMI communities exclusively undermines the intent of CRA and ignores that it was created for the very purpose of addressing red-lining. There should not be any broadening beyond investments that target LMI borrowers and LMI areas for credit on a CRA exam, and all CRA activities in LMI areas should be counted only to the extent they directly benefit LMI residents. The purpose of the CRA was to increase access to credit for communities historically marginalized by the financial services sector and encourage banks to meet the credit needs of LMI communities. Counting other types of investments for CRA credit would undermine the Congressional intent behind passing CRA as a response to redlining and take the focus away from LMI communities. Broadening the activities that count for CRA credit should not be considered because it would allow banks to choose easier investments unrelated to LMI borrowers instead of serving the LMI communities where they do business as the CRA intended. If allowed, history tells us that banks would revert to choosing the easiest, most lucrative activities that counted towards this single performance number test instead of serving the real financial needs of their communities.

CRA should continue to be focused on activity in LMI communities. Higher income communities do not lack for financial services. Having branches in LMI areas must continue to be a focus of the CRA. Additional services in LMI communities, such as improved access through technology should count towards CRA so long as this does not replace branch access. Many communities across California still rely on cash, in-person or multilingual financial services, which are best handled through branches.

The problems with the one ratio concept are exacerbated as the OCC seeks to **expand the activities that count for CRA credit**, thus inflating the total number of dollars reinvested to count towards that one metric. This includes counting more activities outside of assessment areas, expanding the universe of activities that automatically qualify for CRA credit, and quantifying non-monetary activities such as service hours. Questions 10, 16, and 21, among others, ask about whether and how activities benefiting LMI people and communities should count. The fact that this the word “whether” is even raised is concerning. The CRA was passed as a direct response to redlining and disinvestment – lack of access to capital and banking – for LMI people and communities, and people and communities of color and lack of investment supporting community development needs, such as housing and jobs. The CRA as currently enforced is still very much needed: too many low income, Black, Latino, indigenous, rural, and immigrant communities still lack access to the safe and affordable loans, investments, and household financial services they need and for which they are qualified.



CALIFORNIA REINVESTMENT COALITION

It is appropriate to ask how the CRA can better be targeted to serve these populations, but under a one-metric/one-ratio system being proposed, banks would have little incentive to offer loans and investments with the features and at the scale needed in these communities. Offering affordable, responsible and responsive products with, for example, down payment assistance, flexible lending criteria, and language access should receive favorable consideration if they are demonstrated to be used effectively. Measuring the volume of lending and investment is important so long as these are directly correlated with the distribution of lending to LMI people. A bank that makes, say, 4 large loans, 2 of which go to LMI borrowers should compare much worse to a bank making 1,000 smaller loans, of which 250 go to LMI borrowers.

The CRA requires banks to serve the communities where they do business. As banks expand their business through technology, their CRA requirements should expand with them. Assessment areas should be expanded to reflect the broader geographical areas that banks now serve. Banks should not be allowed to use technology to increase services to certain communities at the expense of others, or to get CRA credit for activity without a corresponding obligation to meet these local credit needs. CRA exams should evaluate banks for how they are meeting the credit needs of all areas where they do business, both online and in person, and assessment areas should be expanded to take into account the technological expansion of bank services.

Regulators should maintain assessment areas around branches, and also expand how assessment areas are drawn to reflect where a bank takes deposits, makes loans, and does business. They should strive to capture at least 75% of a bank's lending or banking activity. This is particularly important for online-only digital banks, as well as banks that have a business model that spreads their business outside of their branch network.

Examples of online only banks are numerous and growing. But there are also banks with branches that do considerable lending online and/or outside of branch networks.

Service activities are meant to utilize the expertise of the financial sector to further these goals. Thus while planting trees and hammering nails for Habitat are both laudable activities, they are not in line with the spirit of the CRA, whereas providing loans to people who need a mortgage to purchase that Habitat home, or providing financing for Habitat affiliates to build affordable housing – rental or home ownership – should of course continue to count. Likewise, providing technical expertise, such as sitting on credit committees, setting up accounting systems, providing technical support to small businesses are where banks can have a larger impact under the purpose of the CRA. Any service hours should be evaluated on how they are increasing access to banking and capital and supporting community development. Again, impact matters. We should not be quantifying these hours to count towards any numerical goal.



CALIFORNIA REINVESTMENT COALITION

Question 15 asks about the definition of community development and suggests that loans automatically count if they support projects, programs, or organizations with a mission, purpose, or intent of community or economic development. No more categories of loans should get automatic credit on CRA exams. Currently, SBICs are among the types of investments that automatically get CRA credit. Yet, barely a quarter of businesses financed through SBIC's are in LMI tracts and just 5-6% of businesses are MWBE or Veteran-owned (they are not broken out). Each SBIC, as with most investments, should be evaluated based on their performance. We also very much disagree that investments can be determined to qualify based on a mission statement. That tells you nothing about the actual work being done by the organization. If an entity is truly engaged in community development, that should be easy to demonstrate to regulators based on their activities, populations served, and outcomes and there should be an obligation to demonstrate as such. An ongoing concern has been that groups form sham or shell "nonprofit" organizations to take advantage of CRA and similar programs. Some due diligence is required of regulators to protect against this.

Purchased loans should not count nearly as much as originations on CRA exams, if at all. It is much more impactful to originate a 1-4 family, multifamily, or small business loan, rather than purchase one, and no bank should be allowed to purchase loans simply to pass a CRA exam. Banks are meant to be in the business of serving customers with loans and banking products, and must do so directly. It completely defeats the purpose of the CRA. We recognize there are some instances where purchasing loans serve a purpose, such as from a CDFI or mission driven credit union to allow them to make more loans, but those are few and far between and should be evaluated on a case by case basis. The same would apply to purchases of Mortgage Backed Securities, which in general have much less benefit than more strategic, impactful investments, such as LIHTC, EQ2's, grants, deposits, and other equity investments to support community development. As such, investments in Mortgage Backed Securities do not add value to community development and should not garner CRA credit.

The OCC should work with other regulators to strengthen CRA, not weaken it.

While the ANPR raises proposals that would undermine the original intent and effectiveness of the CRA, it fails to emphasize matters that could contribute to stronger accountability and impact assessment in the CRA rating process, including the following.

- The speed and transparency of the CRA rating process should be improved by increasing the number of trained CRA examiners, shortening the exam periods and making bank submissions public upon completion of a CRA exam.
- In order to ensure that CRA ratings are more fully informed by public input, the CRA rating criteria should include a scoring sub-element that rates how a bank engages the public, including organizations that serve LMI communities and consumers in their assessment areas.
- The small business loan part of the lending test is not as rigorous as the home lending section because the small business data is not as detailed. Therefore, small business data must be improved



CALIFORNIA REINVESTMENT COALITION

to include more categories rather than only lending to businesses above and below \$1 million in revenue. Likewise, the community development (CD) parts of the exam must be improved with annual CD data for census tracts and counties.

- The OCC's CRA exams should restore consideration of fair lending law violations. Until recently, all three bank regulators considered unlawful discrimination in lending as a factor when issuing CRA exam ratings. Disturbingly, the OCC has retreated from this policy and practice, issuing guidance to this effect that the FDIC and the Federal Reserve Board, conspicuously, did not join. At its core, CRA was a response to bank redlining of neighborhoods of color and was meant to operate in conjunction with other fair lending laws. Banks that violate fair housing and fair lending laws should not be given high CRA ratings or passing grades when they discriminate against the communities that the CRA is designed to protect. Violations of fair lending and/or consumer protection laws by banks must be considered in their CRA ratings. Ratings must be lower for banks that have a track record of failing to lend to specific racial or ethnic demographics in the markets they serve.
- It is appropriate that CRA investments in Community Development Financial Institutions (CDFIs) currently receive a special status in CRA exams. CRA investments that are intended to build the capacity of organizations that are seeking CDFI certification should receive similarly favored review. Submission of an application to the CDFI Fund for a CDFI Technical Assistance grant would be a reasonable test for whether an organization is seeking CDFI status.
- Banks should not get credit for activities that contribute to displacement and gentrification and which exacerbate and hurt community credit needs. In 2015, CRC found that First Republic Bank may have sought and received CRA credit for originating loans to speculators who purchased rent controlled buildings for the purpose of evicting all of the tenants and converting the buildings into luxury condominiums. In 2018, CRC and the Anti Eviction Mapping Project completed a research report that found that First Republic Bank originated hundreds of loans to landlords who filed hundreds of eviction petitions with the Oakland Rent Board. Regulators should analyze CRA investments in LMI census tracts, overlaid with data on real estate market appreciation and changing racial/ethnic demographics and engage local community contacts. Where regulators find clear examples of displacement and gentrification, banks should not receive credit, and should in fact, get negative credit in order to encourage CRA activities in those census tracts to only lending and investments targeted to LMI people.
- Banks should be encouraged to and get credit for serving the unique needs of LMI immigrant communities. Low income immigrant communities urgently need access to safe and affordable financial services to prepare for immigration-related emergencies, to protect their assets, and to build their economic futures. As targets of unprecedented federal action and corrosive rhetoric, immigrant families across California report feeling threatened, whether or not they have temporary or permanent authorization to reside and work in the United States. Banks should receive CRA credit for providing safe and affordable financial services for unbanked and underbanked low income immigrants, including accounts that will not overdraft with daily purchases, and offer loans to help finance immigration fees, so that families will not need to turn to predatory services.
- The CRA should be color-conscious, not color blind. The legislators who wrote the CRA clearly understood the impact of redlining on communities of color. Senator Proxmire stated: "by redlining



CALIFORNIA REINVESTMENT COALITION

let me make it clear what I am talking about. I am talking about the fact that [financial institutions] will take their deposits from a community and instead of reinvesting them in that community ... they will actually or figuratively draw a red line on map around the areas of their city, sometimes in the inner city, sometimes in the older neighborhoods, sometimes ethnic and sometimes black, but often encompassing a great area of their neighborhood.² Given these origins, and persistent disparities in lending today, the CRA should never have been color-blind. If there is any change to the populations evaluated under the CRA, it should be around access to credit and banking for people of color.

- Finally, there should be a more level playing field across the financial services sector with regard to CRA community reinvestment obligations. Non-bank mortgage companies, fintech lenders, insurance companies, and credit unions with assets in excess of \$2 billion dollars should be subject to CRA obligations and examinations. This expansion of community reinvestment requirements would likely require legislative action; nevertheless, regulators should actively communicate with members of Congress to encourage a more level playing field in the financial services industry by expanding the applicability of CRA. A strong CRA works to ensure that our economy is healthy, inclusive and equitable. Revisions to CRA regulations must put the credit needs of low- and moderate-income people and communities first.

We know who will suffer if the ideas proposed in the ANPR are adopted.

Entrepreneurs already struggle to access bank financing when their businesses are young, small, owned by people of color, or located in low income communities or communities of color. The CRA requires banks not to ignore these small businesses and incentivizes loans made to truly small businesses. The ANPR opens the door to allow banks to get credit for loans and investments in any business of any size in any neighborhood. The OCC's consideration of using SBA definitions for "small business" will take CRA sharply away from helping the vast majority of truly small business to start, grow, create jobs, and serve communities. Most small business owners will lose out as the incentives to serve them get redirected in favor of large businesses with lots of financing choices. The National Community Reinvestment Coalition estimates that California small businesses would lose almost \$2.5 billion in loans if the suggested changes were made.

The CRA has encouraged banks to maintain branches in low- and moderate-income communities and expanded access to safe, no-overdraft accounts to help them avoid cascading fees. Despite this, there are still many bank deserts, particularly in low income communities of color and rural areas, where payday lenders outnumber branches by the dozens. Banks have not developed mobile technology to serve the needs of the lowest income families in our country, those that rely on cash, those that need multi-lingual services, or those cannot afford reliable data plans. If the OCC no longer requires banks to

² https://ncrc.org/ncrc-analysis-of-the-advanced-notice-of-proposed-rulemaking-anpr/#_edn18



CALIFORNIA REINVESTMENT COALITION

maintain branches in these communities, the nation's largest banks will close them, creating even more bank deserts and driving more families into the hands of predatory check cashers and lenders.

CRA has worked for decades to enable California families to attain the American dream of homeownership and wealth building. The National Community Reinvestment Coalition estimates that the OCC proposal could result in nearly \$23 Billion LESS in California alone for home loans that remain the clearest path to wealth building in this country. The OCC should penalize discriminatory and poor reinvesting banks, and reward those that enter into Community Benefits Agreements with local organizations that identify and help the bank meet local credit needs. This approach would lead to more homeownership opportunities; the OCC proposal would lead to less.

Affordable rental housing is perhaps the most acute need in most California communities. If the OCC allows the banks to get CRA credit for more activities in more places while setting a low bar for satisfactory performance, affordable rental housing finance will drop precipitously. The overly simplistic formula for grading banks that the OCC is contemplating will mean the harder affordable housing deals are not done – those that help seniors, disabled persons, and rural communities. Further, the OCC's suggestion that lending that benefits higher income households could qualify would result in giving banks CRA credit for financing development that would price low- and moderate-income families out of their current communities. In gentrifying parts of the state, there is a need for creative financing to preserve affordable housing opportunities. But creative financing projects will take the biggest beating under an OCC system where banks could take the easiest path to comply. Banks should be encouraged to lend and invest in hard to develop communities and in creative ways that truly meet local needs and should be downgraded for financing displacement.

We need a stronger CRA, not a weaker one.

There is so much unmet need- we need banks to step up, not step away.

Respectfully submitted,

Paulina Gonzalez
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