

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
ABILENE DIVISION

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ANTONIO DE JESUS GALLEGOS  
HERNANDEZ,

Petitioner,

v.

KRISTI NOEM, et al.,

Respondents.

Civil Action No. 6:25-CV-00087-H

**RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS AND REQUEST  
FOR INJUNCTIVE RELIEF**

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## Table of Contents

I.	Background.....	1
II.	Argument and Authorities .....	2
	A. Petitioner has not exhausted administrative remedies. .... <b>Error! Bookmark not defined.</b>	
	B. Petitioner is not entitled to any relief, because he is an applicant for admission who may properly be subjected to mandatory detention under 8 U.S.C. § 1225 without any requirement for a bond hearing. ....	3
	C. Congress intended to mandate detention for all applicants for admission under § 1225.....	7
	D. The Due Process Clause does not entitle Petitioner to any relief. ....	10
III.	Conclusion.....	13

## Table of Authorities

### Cases

<i>Barrios Sandoval</i> , 2025 WL 3048926.....	9
<i>Canal Auth. of State of Fla. v. Callaway</i> , 489 F.2d 567 (5th Cir. 1974) .....	13
<i>Chavez v. Noem</i> , No. 3:25-CV-02325, 2025 WL 2730228 (S.D. Cal. Sept. 24, 2025) .....	9
<i>Demore v. Kim</i> , 538 U.S. 510 (2003) .....	7, 8, 11, 12
<i>Dep't of State v. Muñoz</i> , 602 U.S. 899 (2024) .....	12
<i>DHS v. Thuraissigiam</i> , 591 U.S. 103 (2020). .....	12
<i>Florida v. United States</i> , 660 F. Supp. 3d 1239 (N.D. Fla. 2023) .....	6
<i>Garibay-Robledo</i> , 1:25-CV-00177, 2025 WL 2638672.....	10
<i>Jennings v. Rodriguez</i> , 583 U.S. 281 (2018) .....	passim
<i>Lee v. Gonzalez</i> , 410 F.3d 778 (5th Cir. 2005) .....	3
<i>Martinez v. Att'y Gen. of U.S.</i> , 693 F.3d 408 (3d Cir. 2012) .....	8
<i>Matter of M-S-</i> , 27 I&N Dec. 509 (A.G.2019).....	6
<i>Matter of Q. Li</i> , 29 I&N Dec 66 (BIA 2025).....	6
<i>Matter of Yajure Hurtado</i> , 29 I&N Dec. 216 (BIA 2025).....	5, 6, 8

*McCarthy v. Madigan*,  
503 U.S. 140 (1992) ..... 2

*Olalde v. Noem*, No. 1:25-CV-0168, 2025 WL 3131942 E.D. Miss. Nov. 10, 2025) ..... 9

*Pena v. Hyde*,  
2025 WL 2108913 (D. Mass. July 28, 2025) ..... 9

*Reed v. Goertz*,  
598 U.S. 230 (2023) ..... 11

*Vargas Lopez v. Trump*,  
No. 8:25-CV-00526, 2025 WL 2780351 (D. Neb. Sept. 30, 2025) ..... 9

*Wong Wing v. United States*,  
163 U.S. 228 (1896) ..... 7

**Statutes**

8 U.S.C. § 1225 ..... passim

8 U.S.C. § 1225(a) ..... 8

8 U.S.C. § 1225(a)(1) ..... 2, 6, 8

8 U.S.C. § 1225(b) ..... 4, 5, 7, 8

8 U.S.C. § 1225(b)(1) ..... 2, 4, 8

8 U.S.C. § 1225(b)(2) ..... passim

8 U.S.C. § 1225(b)(2)(A) ..... 1, 2, 3, 5

8 U.S.C. § 1226 ..... 8

8 U.S.C. § 1226(a) ..... 4

8 U.S.C. § 1226(c) ..... 9

8 U.S.C. § 1229a ..... passim

28 U.S.C. § 2241 ..... 1

**Other Authorities**

Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (“IRRIRA”)..... 6

INA § 223 ..... 6

INA § 235(a)(1)..... 6

INA § 235(b) ..... 6

INA § 235(b)(2)(A) ..... 3

Petitioner seeks a writ of habeas corpus pursuant to 28 U.S.C. § 2241 to challenge his recent detention by Immigration and Customs Enforcement (ICE). He alleges that he cannot be subject to mandatory immigration detention but rather must be given an individualized bond hearing in connection with his pending removal proceeding. Petitioner also brings a related claim under the Administrative Procedure Act (APA) to challenge a decision issued by the Board of Immigration Appeals (BIA) addressing whether aliens who enter the United States unlawfully (e.g., without inspection or admission), and are then placed in removal proceedings, are entitled to a bond hearing or instead are subject to mandatory detention. Finally, in addition to the habeas petition, Petitioner seeks a temporary restraining order that likewise asserts that he is entitled to an individualized bond determination. This Court should deny the TRO request and as explained herein, Petitioner is not entitled to any relief on his habeas petition.

### **I. Background**

The petitioner is a native and citizen of Mexico. App. p.5. Petitioner was previously removed on April 13, 2010, and convicted of Illegal Entry (INA § 101(a)(43)(O), 8 USC 1325), with a sentence of 3 days to serve. App. p. 3. Petitioner was later removed again on June 22, 2010. *Id.* On December 31, 2011, Petitioner was arrested in Dallas County, Texas for Possession of a Controlled Substance; the charge is still pending. Petitioner was again removed on September 9, 2014. *Id.*

Petitioner subsequently re-entered the United States as a family unit on February 17, 2024; Petitioner entered the United States as an arriving alien after applying for admission at Paso del Norte Port of Entry in El Paso, Texas. App. p. 5. Petitioner

expressed a fear of return to Mexico and was released. Petitioner was placed into removal proceedings through issuance of a Notice to Appear and was charged as removable under INA § 212(a)(6)(A)(i)(I). *Id.* Thereafter on July 15, 2024, Petitioner filed his I-589, Application for Asylum and for Withholding of Removal and Convention Against Torture with the Immigration Court. App. p. 10.

On September 23, 2025, Petitioner reported to Dallas ERO Field Office and was arrested and detained. Petitioner has not requested bond and has a master hearing set for December 4, 2025. App. p. 12.

## **II. Argument and Authorities**

### **A. An APA claim is not available.**

Petitioner's attempt to proceed under the APA fails. By the APA's terms, it is available only for final agency action "for which there is no other adequate remedy in a court." 5 U.S.C. § 704. Petitioner's APA claim is independently barred by this limitation in § 704.

In *Trump v. J.G.G.*, 604 U.S. 670 (2025) the Supreme Court held that where immigration detainees' claims "necessarily imply the invalidity of [] confinement," those claims "must be brought in habeas." 604 U.S. 670, 672 (2025) (internal quotation marks and citation omitted). As noted by Justice Kavanaugh in a concurrence, "given 5 U.S.C. § 704, which states that claims under the APA are not available when there is another 'adequate remedy in a court,' I agree with the Court that habeas corpus, not the APA, is the proper vehicle here." *Id.* at 674 (Kavanaugh, J. concurring).

Here, as in *J.G.G.*, habeas is an "adequate remedy" through which Petitioner can

challenge any future denial of a bond hearing. Thus, even if his APA claim had merit, which it does not, the result would be the same as that in habeas—the government would presumably be required to hold a bond hearing to assess whether detention can continue. For this reason, Petitioner is not entitled to any relief on his APA claim.

**B. Petitioner is not entitled to any relief, because he is an applicant for admission who may properly be subjected to mandatory detention under 8 U.S.C. § 1225 without any requirement for a bond hearing.**

Petitioner’s detention is statutorily authorized by section 1225. Pursuant to 8 U.S.C. § 1225(b)(2)(A), “in the case of an alien who is an applicant for admission, if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a proceeding under section 1229a [removal proceedings].” 8 U.S.C. § 1225(b)(2)(A). The Supreme Court has held that section 1225(b)(2)(A) is a mandatory detention statute and that aliens detained pursuant to that provision are not entitled to bond. *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018)(“Both § 1225(b)(1) and § 1225(b)(2) authorize the detention of certain aliens.”).

Petitioner falls squarely within section 1225(b)(2)(A)’s mandatory detention requirement as Petitioner is an “applicant for admission” to the United States. An “applicant for admission” is an alien present in the United States who has not been admitted. 8 U.S.C. § 1225(a)(1). Congress’s broad language here is unequivocally intentional—an undocumented alien is to be “deemed for purposes of this chapter an applicant for admission.” *Id.* Regardless of Petitioner’s characterization, he is “deemed” an applicant for admission based on Petitioner’s failure to seek lawful admission to the

United States before an immigration officer, which is undisputed. *See generally* ECF 1. And because Petitioner has not demonstrated to an examining immigration officer that he is “clearly and beyond a doubt entitled to be admitted,” Petitioner’s detention is mandatory. 8 U.S.C. § 1225(b)(2)(A). Thus, Petitioner is properly detained pursuant to section 1225(b)(2)(A), which mandates that Petitioner “shall be” detained.

The Supreme Court has confirmed an alien present in the country but never admitted is deemed “an applicant for admission” and that “detention must continue” “until removal proceedings have concluded” based on the “plain meaning” of 8 U.S.C. § 1225. *Jennings*, 583 U.S. at 289, 299. Like this case, at issue in *Jennings* was the statutory interpretation. The Supreme Court reversed the Ninth Circuit Court of Appeal’s imposition of a six-month detention time limit into the statute. *Id.* at 297. The Court clarified there is no such limitation in the statute and reversed on these grounds, remanding the constitutional Due Process claims for initial consideration before the lower court. *Id.* But under the words of the statute, as explained by the Supreme Court, section 1225 includes aliens like the Petitioner who are present but have not been admitted and they shall be detained pending their removal proceedings. *Id.* at 287. Specifically, the Supreme Court declared, “an alien who ‘arrives in the United States,’ *or* ‘is present’ in this country but ‘has not been admitted,’ is treated as ‘an applicant for admission.’” *Id.* at 287 (emphasis on “or” added). In doing so, the Court explained both aliens captured at the border and those illegally residing within the United States would fall under section 1225. This would include Petitioner as an alien who is present in the country without being admitted.

The BIA's recently issued published decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), is consistent with these principles. In its decision, the BIA affirmed "the Immigration Judge's determination that he did not have authority over [a] bond request because aliens who are present in the United States without admission are applicants for admission as defined under section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), and must be detained for the duration of their removal proceedings." *Id.* at 220.

The BIA concluded that aliens "who surreptitiously cross into the United States remain applicants for admission until and unless they are lawfully inspected and admitted by an immigration officer. Remaining in the United States for a lengthy period following entry without inspection, by itself, does not constitute an 'admission.'" *Id.* at 228. To hold otherwise would lead to an "incongruous result" that rewards aliens who unlawfully enter the United States without inspection and subsequently evade apprehension for a number of years. *Id.* In so concluding, the BIA rejected the alien's argument that "because he has been residing in the interior of the United States for almost 3 years . . . he cannot be considered as 'seeking admission.'" *Id.* at 221. The BIA determined that this argument "is not supported by the plain language of the INA" and creates a "legal conundrum." *Id.* If the alien "is not admitted to the United States (as he admits) but he is not 'seeking admission' (as he contends), then what is his legal status?" *Id.* (parentheticals in original).

The decision in *Matter of Yajure Hurtado* is consistent not only with the plain language of § 1225(b)(2), but also with the Supreme Court's 2018 decision in *Jennings*.

Specifically, in *Jennings*, the Supreme Court explained that § 1225(b) applies to all applicants for admission, noting that the language of § 1225(b)(2) is “quite clear” and “unequivocally mandate[s]” detention. 583 U.S. at 300, 303.

Similarly, relying on *Jennings* and the plain language of §§ 1225 and 1226(a), the Attorney General recognized in *Matter of M-S-* that §§ 1225 and 1226(a) describe “different classes of aliens.” 27 I&N Dec. 509, 516 (AG 2019). And in *Matter of Q. Li*, the BIA also held that an alien who illegally crossed into the United States between ports-of-entry and was apprehended without a warrant while arriving is detained under § 1225(b). 29 I&N Dec. 66, 71 (BIA 2025). These decisions make clear that all applicants for admission are subject to detention under § 1225(b). *See also Florida v. United States*, 660 F. Supp. 3d 1239, 1275 (N.D. Fla. 2023) (explaining that “the 1996 expansion of § 1225(b) to include illegal border crossers would make little sense if DHS retained discretion to apply § 1226(a) and release illegal border crossers whenever the agency saw fit”).

Given that section 1225 is the applicable detention authority for all applicants for admission—both arriving aliens and aliens present without admission alike, regardless of whether the alien was initially processed for expedited removal proceedings under § 1225(b)(1) or placed directly into removal proceedings under § 1229a—and further given that both “§§ 1225(b)(1) and (b)(2) mandate detention of aliens throughout the completion of applicable proceedings,” *Jennings*, 583 U.S. at 302, Petitioner has no grounds to complain that he is subject to mandatory detention and is not entitled to a bond hearing.

Petitioner is properly considered an applicant for admission (specifically, an alien present without admission), and he was placed into removal proceedings under § 1229a. He is therefore subject to detention pursuant to § 1225(b)(2)(A) and there is no requirement that he be eligible for bond.

**C. Congress intended to mandate detention for all applicants for admission under § 1225.**

Congress provided that mandatory detention pending removal proceedings is the norm—not the exception—for those who enter the country without inspection and who lack documents sufficient for admission or entry. *See* 8 U.S.C. § 1225(b)(2). And for good reason: detention pending removal proceedings is the historical norm and, in this context, reflects the reality that aliens have avoided inspection by sneaking into the United States. *See Demore v. Kim*, 538 U.S. 510, 523 (2003) (citing *Wong Wing v. United States*, 163 U.S. 228, 235 (1896)). When Congress enacted 8 U.S.C. § 1225(b) as part of the immigration reforms of 1996, it determined that treating all unadmitted aliens similarly in terms of detention and removal eliminated unintended consequences and perverse incentives that pervaded the prior system, under which undocumented aliens who entered without inspection received more procedural protections—including the ability to seek release on bond—than those who presented themselves for inspection at ports of entry. In essence, the pre-1996 law favored those that entered the U.S. illegally and clandestinely, which Congress sought to end. Through mandatory detention of applicants for admission, Congress further ensured that the Executive Branch can give effect to the provisions for removal of aliens. *See Demore*, 538 U.S. at 531.

The legislative history is instructive. As explained by the BIA in *Yajure Hurtado*, before the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (“IRRIRA”), the INA provided for inspection of only immigrants arriving at a port of entry. *Id.* at 222. Aliens in the United States were put into removal proceedings but were bond eligible. *Id.* at 223.

Congress acted, in part, to remedy the “unintended and undesirable consequence” of having created a statutory scheme where aliens who entered without inspection “could take advantage of the greater procedural and substantive rights afforded in deportation proceedings,” including the right to request release on bond, while aliens who had “actually presented themselves to authorities for inspection were restrained by ‘more summary exclusion proceedings,’” and were subject to mandatory custody. (Citing *Martinez v. Att’y Gen. of U.S.*, 693 F.3d 408, 413 n.5 (3d Cir. 2012). . . Thus, after the 1996 enactment of the IIRIRA, aliens who enter the United States without inspection or admission are “applicants for admission” under section 235(a)(1) of the INA, 8 U.S.C. § 1225(a)(1), and subject to the inspection, detention, and removal procedures of section 235(b) of the INA.

*Id.* at 223.

This history supports the result required by the plain language of the statute itself. In the absence of controlling authority, this Court should follow the multitude of district courts that have carefully interpreted the plain language of the INA and found aliens like the Petitioner subject to mandatory detention under § 1225(b)(2). Although the Respondents acknowledge that there are district court decisions that hold to the contrary<sup>1</sup> (including cases identified by Petitioner (*see* ECF No. 1 ¶ 26-27)), it bears mention that

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<sup>1</sup> *But see* *Buenrostro-Mendez v. Bondi*, No. H-25-3726, 2025 WL 2886346, at \* 3(S.D. Tex. Oct. 7, 2025); *Vieira v. De Anda-Ybarra*, \_\_\_ F. Supp. 3d \_\_\_, No. EP-25-cv-432-DB, 2025 WL 2937880, at \*4-5 (W.D. Tex. Oct. 16, 2025); *Gonzales Martinez v. Noem*, No. EP-25-cv-430-KC, 2025 WL 2965859, at \*4 (W.D. Tex. Oct. 21, 2025); *Santiago v. Noem*, No. EP-25-cv-361-KC, 2025 WL 2792588, at \*7-10 (W.D. Tex. Oct. 2, 2025); *Hernandez-Fernandez v. Lyons*, No. 5:25-cv-773-JKP, 2025 WL 2976923, at \*7-8 (W.D. Tex. Oct. 21, 2025).

(1) none of these decisions are binding, (2) *Hurtado* carries far more weight considering the BIA's subject-matter expertise on the matter and the thoroughness of its analysis, and (3) many of the courts that have ruled against the Government "appear to defer substantially to each other." *Olalde*, 2025 WL 3131942, at \*1. Many district courts have adopted the Respondents' and the BIA's interpretation. *See, e.g., Barrios Sandoval*, 2025 WL 3048926 (denying habeas relief to inadmissible alien present in the country for 3 years without admission or parole because the alien is an "applicant for admission" subject to mandatory detention under §1225(b)(2); *Olalde v. Noem*, No. 1:25-CV-0168, 2025 WL 3131942 (E.D. Miss. Nov. 10, 2025); *Vargas Lopez v. Trump*, No. 8:25-CV-00526, 2025 WL 2780351 (D. Neb. Sept. 30, 2025) (denying habeas relief to inadmissible alien in the country for 12 years based on 1225(b)(2) and inapplicability of 1226); *Chavez v. Noem*, No. 3:25-CV-02325, 2025 WL 2730228 (S.D. Cal. Sept. 24, 2025) (denying injunctive relief to inadmissible alien based on 1225(b)(2)); *accord Pena v. Hyde*, 2025 WL 2108913 (D. Mass. July 28, 2025) (albeit in a different context, but adopted the reasoning at issue here when it stated that a Brazilian national who entered the country illegally in 2005 "remains an applicant for admission" in 2025).

Indeed, as this Court reasoned in *Garibay-Robledo*, 1:25-CV-00177, 2025 WL 2638672, "the plain language of the mandatory-detention provision weighs *heavily against* the petitioner's assertion that he is subject only to discretionary detention," and that the argument to the contrary "*flatly contradicts* the statute's plain language and the history of legislative changes enacted by Congress." *Id.* at \*4. This Court in *Garibay-Robledo* conducted a review of legislative history and further noted that by defining

“applicants for admission” broadly enough to encompass both arriving aliens and illegal entrants, Congress removed the previously existing incentives to enter the country illegally. *Id.* at \*6-7.

Respondents respectfully maintain that this Petitioner is an applicant for admission subject to mandatory detention under § 1225(b)(2) in light of the legislative history and the reasoning outlined by the Supreme Court in *Jennings*. The contrary decisions of other districts should not be followed and should not override the clear congressional mandate of detention under the provisions of 8 U.S.C. §1225(b). According, the Court should not order a bond hearing or release under the reasoning of those decisions.

**D. The Due Process Clause does not entitle Petitioner to any relief.**

The Due Process Clause provides no relief to Petitioner. Mandatory detention under § 1225(b)(2) is constitutionally permissible—particularly where, as here, Petitioner has been detained for a very short period of time. Specifically, his next immigration hearing is on November 26, 2025. Resolution one way or another is undoubtedly forthcoming. Petitioner’s ample available process in his current removal proceedings demonstrate no lack of Procedural Due Process—nor any deprivation of liberty “sufficiently outrageous” required to establish a Substantive Due Process claim. *See generally Reed v. Goertz*, 598 U.S. 230, 236 (2023). Congress simply made the decision to detain him pending removal which is a “constitutionally permissible part of that process.” *See Demore v. Kim*, 538 U.S. 510, 531 (2003).

The Supreme Court has held that detention during removal proceedings, even without access to a bond hearing, is constitutional. In *Demore v. Kim*, the Supreme Court

upheld the constitutionality of § 1226(c), which mandates the detention of certain aliens during removal proceedings without access to bond hearings. 538 U.S. 510, 522 (2003). The Court “recognized detention during deportation proceedings as a constitutionally valid aspect of the deportation process,” and reaffirmed its “longstanding view that the Government may constitutionally detain deportable aliens during the limited period necessary for their removal proceedings.” *Id.* at 523, 526. The Court further explained that “when the Government deals with deportable aliens, the Due Process Clause does not require it to employ the least burdensome means to accomplish its goal.” *Id.* at 528. With respect to due process concerns, the Court recognized that it “has firmly and repeatedly endorsed the proposition that Congress may make rules as to aliens that would be unacceptable if applied to citizens.” *Id.* at 522.

Here, Petitioner is being detained for the limited purpose of removal proceedings and determining his removability. Such detention is not punitive or done for other reasons than to address removability, which will occur in the removal proceedings. Whether framed as a substantive or procedural due process claim, the principles set forth in *Demore* govern this case. Substantive due process protects “only ‘those fundamental rights and liberties which are, objectively, deeply rooted in this Nation’s history and tradition.’” *Dep’t of State v. Muñoz*, 602 U.S. 899, 910 (2024) (quoting *Washington v. Glucksberg*, 521 U.S. 702, 720–21 (1997)). Any substantive due process claim therefore fails here because “the through line of history” is that the federal government has “sovereign authority to set the terms governing the admission and exclusion of noncitizens.” *Id.* at 911, 912. Indeed, Congress in exercising this “broad power over

naturalization and immigration . . . regularly makes rules that would be unacceptable if applied to citizens.” *Demore*, 538 U.S. at 522 (internal quotation marks and citation omitted). Consistent with these principles, the Supreme Court has long recognized that “the Government may constitutionally detain deportable aliens during the limited period necessary for their removal proceedings.” *Id.* at 526.

Similarly, Petitioner cannot succeed on a procedural due process claim. Such a claim fails because where Congress has substantively mandated detention pending removal proceedings, an alien cannot displace that substantive choice with a procedural due process claim. As discussed, aliens are not entitled to bond hearings as a matter of substantive due process. *See Demore*, 538 U.S. at 523–29. Under *Demore*, Congress may reasonably determine—as it did here—to subject aliens who were never inspected or admitted to this country to detention without bond while the government determines their removability. And “an alien in [that] position has only those rights regarding admission that Congress has provided by statute.” *DHS v. Thuraissigiam*, 591 U.S. 103, 140 (2020). Congress has not created any procedural rights to a bond hearing for applicants for admission. *See Jennings*, 583 U.S. at 297. “Read most naturally,” § 1225 “mandate[s] detention of applicants for admission until certain proceedings have concluded.” *Id.* And the statute says nothing “whatsoever about bond hearings.” *Id.* No procedural due process claim is stated.

**E. The Court should decline to issue any temporary relief.**

As discussed above and as this Court previously determined, there is no basis for granting temporary relief because no likelihood of success on the merits can be shown.

*See Canal Auth. of State of Fla. v. Callaway*, 489 F.2d 567, 572 (5th Cir. 1974).

Moreover, Petitioner has no likelihood of success (or actual success) on the merits, so he is not entitled to temporary relief.

### **III. Conclusion**

Petitioner is lawfully detained pending removal proceedings, and he does not claim any immigration status that would entitle him to immediate release from custody. The petition for writ of habeas corpus and request for injunctive relief should be denied.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

On November 25, 2025, I electronically submitted the foregoing document with the clerk of court for the U.S. District Court, Northern District of Texas, using the electronic case filing system of the court. I hereby certify that I have served all parties electronically or by another manner authorized by Federal Rule of Civil Procedure 5(b)(2).

/s/ Ann E. Cruce-Haag  
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