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IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

CHUZON HERNA.,

Petitioner,

v.

CHESTNUT, et al.,

Respondents.

CASE NO. 1:25-CV-01919-JLT-SAB

OPPOSITION TO MOTION FOR TEMPORARY
RESTRAINING ORDER AND PRELIMINARY
INJUNCTION, AND HABEAS RESPONSE

Petitioner Ricardo Chuzon Herna filed a petition for writ of habeas corpus and a motion for a temporary restraining order. This Court should deny the temporary restraining order as to the petitioner as they are mandatorily detained pursuant to 8 U.S.C. § 1225(b)(1). Each of the petitioner's argument falls short of demonstrating a likelihood of success on the merits or an entitlement to the requested release.

In accordance with the Court order, Respondents acknowledge that this Court has, in similar circumstances, issued this relief in other cases, including *Salazar v. Kaiser*, No. 1:25-cv-01017-JLT-SAB, 2025 WL 2456232 (E.D. Cal. Aug 26, 2025); *Castellon v. Kaiser*, No. 1:25-cv-00968-JLT-EPG, 2025 WL 2373425 (E.D. Cal. Aug. 15, 2025); *Maklad v. Murray*, NO. 1:25-CV-00946-JLT-SAB, 2025 WL 2299376 (E.D. Cal. Aug. 8, 2025). However, in this case, Petitioner has additionally incurred a violation of release under the Alternative to Detention program; while such violations are not required to re-detain Petitioner, his violation of his conditions underscores the importance of the United States' decision to re-detain.

I. BACKGROUND

Petitioner Ricardo Chuzon-Herna is a Native and Citizen of Peru who entered the United States without inspection on or about August 31, 2024, who was subsequently detained by the Department of Homeland Security. ECF 1-1 at 2. On October 2, 2024, he was issued a Notice to Appear, finding him eligible for expedited removal under 8 U.S.C. § 1225(b)(1) because of his status pursuant to 8 U.S.C. § 1182(a)(7)(A)(i)(I) (also known as INA § 212(a)(7)(A)(i)(I)). *Id.*

He was released on the Alternative to Detention program. Exhibit 1, Petitioner's I-213 Summary at 5. While released on that program, he incurred a violation for failing to report as ordered on August 25, 2025. *Id.* On November 19, 2025, Petitioner was taken into custody and his release was canceled. *Id.*

II. LEGAL BACKGROUND

A. The Standard for Temporary Restraining Orders.

Temporary restraining orders are governed by the same standard applicable to preliminary injunctions. *See Cal. Indep. Sys. Operator Corp. v. Reliant Energy Servs., Inc.*, 181 F. Supp. 2d 1111, 1126 (E.D. Cal. 2001). Preliminary injunctions are “never awarded as of right.” *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 24 (2008) (citation omitted). A party seeking a preliminary injunction faces a “difficult task” in showing that they are entitled to such an “extraordinary remedy.” *Earth Island Inst. v. Carlton*, 626 F.3d 462, 469 (9th Cir. 2010) (internal quotation omitted).

“A plaintiff seeking a preliminary injunction must show that: (1) she is likely to succeed on the merits, (2) she is likely to suffer irreparable harm in the absence of preliminary relief, (3) the balance of equities tips in her favor, and (4) an injunction is in the public interest.” *Garcia v. Google, Inc.*, 786 F.3d 733, 740 (9th Cir. 2015) (internal quotation omitted). Alternatively, a plaintiff can show “serious questions going to the merits and the balance of hardships tips sharply towards [plaintiffs], as long as the second and third ... factors are satisfied.” *Disney Enters., Inc. v. VidAngel, Inc.*, 869 F.3d 848, 856 (9th Cir. 2017).

The purpose of a preliminary injunction “is to preserve the status quo and the rights of the parties until a final judgment issues in the cause.” *U.S. Philips Corp. v. KBC Bank N.V.*, 590 F.3d 1091, 1094 (9th Cir. 2010). A preliminary injunction may not be used to obtain “a preliminary adjudication on the

merits,” but only to preserve the status quo pending final judgment. *Sierra On-Line, Inc. v. Phoenix Software, Inc.*, 739 F.2d 1415, 1422 (9th Cir. 1984).

B. Statutory Framework for Expedited Removal Proceedings

1. Applicants for Admission

The Immigration and Nationality Act (“INA”) defines an “applicant for admission” as an “alien present in the United States who has not been admitted or who arrives in the United States (whether or not at a designated port of arrival . . .).” 8 U.S.C. § 1225(a)(1); *Dep’t of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 140 (2020) (explaining that “an alien who tries to enter the country illegally is treated as an ‘applicant for admission’” (citing INA § 235(a)(1)); *Matter of Lemus*, 25 I&N Dec. 734, 743 (BIA 2012) (“Congress has defined the concept of an ‘applicant for admission’ in an unconventional sense, to include not just those who are expressly seeking permission to enter, but also those who are present in this country without having formally requested or received such permission”). Under Section 212(a) of the INA, 8 U.S.C. § 1182(a), certain classes of noncitizens are inadmissible, and therefore ineligible to be admitted to the United States, including those “present in the United States without being admitted or paroled[.]” 8 U.S.C. § 1182(a)(6)(A)(i). However long one has been in this country, a noncitizen who is present in the United States but has not been admitted “is treated as ‘an applicant for admission.’” *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018).

2. Detention Under 8 U.S.C. § 1225

Section 1225 applies to “applicants for admission” to the United States, who are defined as “alien[s] present in the United States who [have] not been admitted” or noncitizens “who arrive[] in the United States,” whether or not at a designated port of arrival. 8 U.S.C. § 1225(a)(1). Applicants for admission, including those present without being admitted or paroled (“PWAP”) may be removed from the United States by, *inter alia*, expedited removal under 8 U.S.C. § 1225(b)(1) or removal proceedings before an Immigration Judge under 8 U.S.C. § 1229a. These noncitizens “fall into one of two categories, those covered by § 1225(b)(1) and those covered by § 1225(b)(2),” both of which are subject to mandatory detention. *Jennings*, 583 U.S. at 287 (“[R]ead most naturally, §§ 1225(b)(1) and (b)(2) mandate detention for applicants for admission until certain proceedings have concluded.”)

3. Section 1225(b)(1)

Congress established the expedited removal process in 8 U.S.C. § 1225 to ensure that the Executive could “expedite removal of aliens lacking a legal basis to remain in the United States.” *Kucana v. Holder*, 558 U.S. 233, 249 (2010); *see also Thuraissigiam*, 591 U.S. at 106 (“[Congress] crafted a system for weeding out patently meritless claims and expeditiously removing the aliens making such claims from the country.”). This provision authorizes immigration officers to order certain inadmissible noncitizens “removed from the United States without further hearing or review.” Section 1225(b)(1) applies to “arriving aliens” and “certain other” noncitizens “initially determined to be inadmissible due to fraud, misrepresentation, or lack of valid documentation.” *Id.*; 8 U.S.C. §§ 1225(b)(1)(A)(i), (iii). Section 1225(b)(1) allows for the expedited removal of any noncitizen “described in” § 1225(b)(1)(A)(iii)(II), as designated by the Attorney General or Secretary of Homeland Security—that is, any noncitizen not “admitted or paroled into the United States” and “physically present” fewer than two years—who is inadmissible under § 1182(a)(7) at the time of “inspection.” *See* 8 U.S.C. § 1182(a)(7) (categorizing as inadmissible noncitizens without valid entry documents). Whether that happens at a port of entry or after illegal entry is not relevant; what matters is whether, when an officer inspects a noncitizen for admission under § 1225(a)(3), that noncitizen lacks entry documents and so is subject to § 1182(a)(7). The Attorney General’s or Secretary’s authority to “designate” classes of noncitizens as subject to expedited removal is subject to his or her “sole and unreviewable discretion.” 8 U.S.C. § 1225(b)(1)(A)(iii); *see also American Immigration Lawyers Ass’n v. Reno*, 199 F.3d 1352 (D.C. Cir. 2000) (upholding the expedited removal statute).

The Secretary (and earlier, the Attorney General) has designated categories of noncitizens for expedited removal under § 1225(b)(1)(A)(iii) on five occasions; most recently, restoring the expedited removal scope to “the fullest extent authorized by Congress.” *Designating Aliens for Expedited Removal*, 90 Fed. Reg. 8139 (Jan. 24, 2025). The notice thus enables the U.S. Department of Homeland Security (“DHS”) “to exercise the full scope of its statutory authority to place in expedited removal, with limited exceptions, aliens determined to be inadmissible under [8 U.S.C. § 1182(a)(6)(C) or (a)(7)] who have not been admitted or paroled into the United States and who have not affirmatively shown, to the satisfaction of an immigration officer, that they have been physically present in the United States

1 continuously for the two-year period immediately preceding the date of the determination of
2 inadmissibility,” who were not otherwise covered by prior designations. *Id.* at 8139–40.

3 Expedited removal proceedings under § 1225(b)(1) include additional procedures if a noncitizen
4 indicates an intention to apply for asylum¹ or expresses a fear of persecution, torture, or return to the
5 noncitizen’s country. *See* 8 U.S.C. § 1225(b)(1)(A)(ii); 8 C.F.R. § 235.3(b)(4). In that situation, the
6 noncitizen is given a non-adversarial interview with an asylum officer, who determines whether the
7 noncitizen has a “credible fear of persecution” or torture. *Id.* §§ 1225(b)(1)(A)(ii), (b)(1)(B)(iii)(II),
8 (b)(1)(B)(iv), (v); *see also* 8 C.F.R. § 208.30; *Thuraissigiam*, 591 U.S. at 109–11 (describing the
9 credible fear process). The noncitizen may also pursue *de novo* review of that determination by an
10 immigration judge. 8 U.S.C. § 1225(b)(1)(B)(iii)(III); 8 C.F.R. §§ 1003.42(d), 1208.30(g). During the
11 credible fear process, a noncitizen may consult with an attorney or representative and engage an
12 interpreter. 8 C.F.R. § 208.30(d)(4), (5). However, a noncitizen subject to these procedures “shall be
13 detained pending a final determination of credible fear of persecution and, if found not to have such a
14 fear, until removed.” 8 U.S.C. § 1225(b)(1)(B)(iii)(IV).

15 If the asylum officer or immigration judge does not find a credible fear, the noncitizen is
16 “removed from the United States without further hearing or review.” 8 U.S.C. §§ 1225(b)(1)(B)(iii)(I),
17 (b)(1)(C); 1252(a)(2)(A)(iii), (e)(2); 8 C.F.R. §§ 1003.42(f), 1208.30(g)(2)(iv)(A). If the asylum officer
18 or immigration judge finds a credible fear, the noncitizen is generally placed in full removal proceedings
19 under 8 U.S.C. § 1229a, but remains subject to mandatory detention. *See* 8 C.F.R. § 208.30(f); 8 U.S.C.
20 § 1225(b)(1)(B)(iii)(IV).

21 Expedited removal under § 1225(b)(1) is a distinct statutory procedure from removal under
22 § 1229a. Section 1229(a) governs full removal proceedings initiated by a notice to appear and
23 conducted before an immigration judge, during which the noncitizen may apply for relief or protection.
24 By contrast, expedited removal under § 1225(b)(1) applies in narrower, statutorily defined
25 circumstances—typically to individuals apprehended at or near the border who lack valid entry
26

27 ¹ Noncitizens must apply for asylum within one year of arriving in the United States, 8 U.S.C.
28 § 1558(a)(2)(B), except if the noncitizen can demonstrate “extraordinary circumstances” that justify
moving that deadline. *Id.* § 1558(a)(2)(D).

documents or commit fraud upon entry—and allows for their removal without a hearing before an immigration judge, subject to limited exceptions. For these noncitizens, DHS has discretion to pursue expedited removal under § 1225(b)(1) or § 1229a. *Matter of E-R-M- & L-R-M-*, 25 I&N Dec. 520, 524 (BIA 2011).

4. Section 1225(b)(2)

Section 1225(b)(2) is “broader” and “serves as a catchall provision.” *Jennings*, 583 U.S. at 287. It “applies to all applicants for admission not covered by § 1225(b)(1).” *Id.* Under § 1225(b)(2), a noncitizen “who is an applicant for admission” is subject to mandatory detention pending full removal proceedings “if the examining immigration officer determines that [the] alien seeking admission is not clearly and beyond a doubt entitled to be admitted.” 8 U.S.C. § 1225(b)(2)(A) (requiring that such noncitizens “be detained for a proceeding under section 1229a of this title”); *Matter of Q. Li*, 29 I. & N. Dec. 66, 68 (BIA 2025) (explaining that proceedings under section 1229a are “full removal proceedings under section 240 of the INA”); *see also id.* (“[F]or aliens arriving in and seeking admission into the United States who are placed directly in full removal proceedings, section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), mandates detention ‘until removal proceedings have concluded.’”) (citing *Jennings*, 583 U.S. at 299). Still, DHS has the sole discretionary authority to temporarily release on parole “any alien applying for admission to the United States” on a “case-by-case basis for urgent humanitarian reasons or significant public benefit.” *Id.* § 1182(d)(5)(A); *see Biden v. Texas*, 597 U.S. 785, 806 (2022).

5. Detention Under 8 U.S.C. § 1226(a)

Section 1226(a) provides for the arrest and detention of noncitizens “pending a decision on whether the alien is to be removed from the United States.” 8 U.S.C. § 1226(a). Under § 1226(a), DHS may, in its discretion, detain a noncitizen during his removal proceedings, release him on bond, or release him on conditional parole.² By regulation, immigration officers can release a noncitizen if he demonstrates that he “would not pose a danger to property or persons” and “is likely to appear for any

² Being “conditionally paroled under the authority of § 1226(a)” is distinct from being “paroled into the United States under the authority of § 1182(d)(5)(A).” *Ortega-Cervantes v. Gonzales*, 501 F.3d 1111, 1116 (9th Cir. 2007) (holding that because release on “conditional parole” under § 1226(a) is not a parole, the alien was not eligible for adjustment of status under § 1255(a)).

1 future proceeding.” 8 C.F.R. § 236.1(c)(8). A noncitizen can also request a custody redetermination
2 (*i.e.*, a bond hearing) by an immigration judge at any time before a final order of removal is issued. *See*
3 8 U.S.C. § 1226(a); 8 C.F.R. §§ 236.1(d)(1), 1236.1(d)(1), 1003.19. At a custody redetermination, the
4 immigration judge may continue detention or release the noncitizen on bond or conditional parole. 8
5 U.S.C. § 1226(a); 8 C.F.R. § 1236.1(d)(1). Immigration judges have broad discretion in deciding
6 whether to release a noncitizen on bond. *In re Guerra*, 24 I. & N. Dec. 37, 39–40 (BIA 2006) (listing
7 nine factors for immigration judges to consider).

8 Until recently, the government interpreted Section 1226(a) to be an available detention authority
9 for noncitizens PWAP placed directly in full removal proceedings under Section 1229a. *See, e.g.*,
10 *Ortega-Cervantes*, 501 F.3d at 1116. In view of legal developments, the government has determined
11 that this interpretation was incorrect, and that Section 1225 is the sole applicable immigration detention
12 authority for *all* applicants for admission. *See Jennings*, 583 U.S. at 297 (“Read most naturally,
13 §§ 1225(b)(1) and (b)(2) thus mandate detention of applicants for admission until certain proceedings
14 have concluded”).

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III. ANALYSIS AND ARGUMENT

A. Petitioners Cannot Meet the High Bar for Injunctive Relief

1. Under the Plain Text of 8 U.S.C. § 1225, Petitioner Must Be Detained Pending the Outcome of Their Removal Proceedings

Petitioner is a noncitizen subject to expedited removal, having entered the country unlawfully on the same day that they were apprehended and determined to be inadmissible. *See* 8 U.S.C. § 1225(b)(1)(A)(i). As a noncitizen PWAP, subject to the mandatory detention framework of Section 1225(b), Petitioner is not entitled to custody redetermination hearings by immigration judges or pre-deprivation hearings before re-detention. *Jennings*, 583 U.S. at 297 (“neither § 1225(b)(1) nor § 1225(b)(2) says anything whatsoever about bond hearings”).

Just as Petitioner is not entitled to custody redeterminations by statute, their release is not otherwise authorized by statute. *Jennings*, 583 U.S. at 297 (“[R]ead most naturally, §§ 1225(b)(1) and (b)(2) mandate detention for applicants for admission until certain proceedings have concluded.”); *see also Matter of Q. Li*, 29 I & N. Dec. at 69 (“[A]n applicant for admission who is arrested and detained without a warrant while arriving in the United States, whether or not at a port of entry, and subsequently placed in removal proceedings is detained under section 235(b) of the INA, 8 U.S.C. § 1225(b), and is ineligible for any subsequent release on bond under section 236(a) of the INA, 8 U.S.C. § 1226(a).”).

Petitioner is subject to mandatory detention under Section 1225(b)(1). Additionally, as discussed above, Petitioner failed to report for a scheduled check-in with ERO, violating his ATD release. This constitutes a failure to comply with the conditions of Petitioner’s release and is evidence that Petitioner, subject to expedited removal, has a risk of flight.

2. The *Mathews* Factors Do Not Mandate a Remedy

The Supreme Court has never utilized the multi-factor “balancing test” of *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976), in addressing due process claims raised by noncitizens held in civil immigration detention, despite multiple opportunities to do so since *Mathews* was decided in 1976. *See Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1206 (9th Cir. 2022) (“[T]he Supreme Court when confronted with constitutional challenges to immigration detention has not resolved them through

express application of *Mathews*.”) (citations omitted); *id.* at 1214 (“In resolving familiar immigration-detention challenges, the Supreme Court has not relied on the *Mathews* framework.”) (Bumatay, J., concurring). Nor has the Ninth Circuit embraced the *Mathews* test. While leaving open the question of whether the *Mathews* test applies to a constitutional challenge to immigration detention, *see Rodriguez Diaz*, 53 F.4th at 1207, the Ninth Circuit has emphasized that “*Mathews* remains a flexible test that can and must account for the heightened governmental interest in the immigration detention context.” *Id.* at 1206.

In *Mathews*, the Supreme Court explained that “[p]rocedural due process imposes constraints on governmental decisions which deprive individuals of ‘liberty’ or ‘property’ interests within the meaning of the Due Process Clause of the Fifth or Fourteenth Amendment.” 424 U.S. at 332. Yet noncitizens subject to expedited removal like Petitioner, who were not admitted or paroled into the country, nor physically present for at least two years on the date of inspection — as a class — lack any liberty interest in avoiding removal or to certain additional procedures. 8 U.S.C. § 1225(b)(1)(A)(iii)(II). As to such noncitizens, “[w]hatever the procedure authorized by Congress . . . is due process.” *United States ex rel. Knauff v. Shaughnessy*, 338 U.S. 537, 544 (1950); *accord Thuraissigiam*, 591 U.S. at 138–139 (“This rule would be meaningless if it became inoperative as soon as an arriving alien set foot on U.S. soil.”); *Landon v. Plasencia*, 459 U.S. 21, 32 (1982) (“[A]n alien seeking initial admission to the United States requests a privilege and has no constitutional rights regarding his application, for the power to admit or exclude aliens is a sovereign prerogative”); *Knauff*, 338 U.S. at 542 (“At the outset we wish to point out that an alien who seeks admission to this country may not do so under any claim of right).

Thus, noncitizens amenable to expedited removal cannot assert a protected property or liberty interest in additional procedures not provided by the statute, 8 U.S.C. § 1225. *See Dave v. Ashcroft*, 363 F.3d 649, 653 (7th Cir. 2004). Instead, those noncitizens — including Petitioner — have “only those rights regarding admission that Congress has provided by statute.” *Thuraissigiam*, 591 U.S. at 140. Petitioner is entitled only to the protections set forth by statute, and “the Due Process Clause provides nothing more.” *Thuraissigiam*, 591 U.S. at 140.

That said, Respondent acknowledges that this Court has applied the *Mathews* factors in similar situations. This Court has held, on multiple occasions, that immigration detention, the economic burdens

1 imposed as a result of detention, and the potential inability to pursue a petition for review may all
2 constitute irreparable harm under the *Mathews* factors. *See, e.g., Salazar*, 2025 WL 2456232; *Castellon*
3 2025 WL 2373425; *Maklad*, 2025 WL 2299376 (E.D. Cal. Aug. 8, 2025). However, that is a harm that
4 “is essentially inherent in detention,” and therefore “the Court cannot weigh this strongly in favor of”
5 Petitioner. *Lopez Reyes v. Bonnar*, No 18-cv-07429-SK, 2018 WL 7474861 at *10 (N.D. Cal. Dec. 24,
6 2018). Further, any alleged harm from the fact of detention alone is insufficient because “detention
7 during deportation proceedings [is] a constitutionally valid aspect of the deportation process.” *Demore*
8 *v. Kim*, 538 U.S. 510, 523 (2003); *see also Reno v. Flores*, 507 U.S. 292, 306 (1993); *Carlson v.*
9 *Landon*, 342 U.S. 524, 538 (1952).

10 As to the second and third *Mathews* factors, when the government is a party,
11 the balance of equities and public interest merge. *Drakes Bay Oyster Co. v. Jewell*, 747 F.3d 1073, 1092
12 (9th Cir. 2014) (citing *Nken v. Holder*, 556 U.S. 418, 435 (2009)). Where a moving party only raises
13 “serious questions going to the merits,” the balance of hardships must “tip sharply” in her favor. *All. for*
14 *Wild Rockies v. Cottrell*, 632 F.3d 1127, 1134–35 (9th Cir. 2011) (quoting *The Lands Council v.*
15 *McNair*, 537 F.3d 981, 987 (9th Cir. 2008)).

16 Here, the government has a compelling interest in the steady enforcement of its immigration
17 laws. *See, e.g., Demore*, 538 U.S. at 523; *Stormans, Inc. v. Selecky*, 586 F.3d 1109, 1140 (9th Cir. 2009)
18 (holding that the court “should give due weight to the serious consideration of the public interest” in
19 enacted laws); *see also Ubiquity Press Inc. v. Baran*, No 8:20-cv-01809-JLS-DFM, 2020 WL 8172983,
20 at *4 (C.D. Cal. Dec. 20, 2020) (explaining that “the public interest in the United States’ enforcement of
21 its immigration laws is high”); *United States v. Arango*, CV 09-178 TUC DCB, 2015 WL 11120855, at
22 2 (D. Ariz. Jan. 7, 2015) (finding that “the Government’s interest in enforcing immigration laws is
23 enormous”). Indeed, the government “suffers a form of irreparable injury” “[a]ny time [it] is enjoined
24 by a court from effectuating statutes enacted by representatives of its people.” *Maryland v. King*, 567
25 U.S. 1301, 1303 (2012) (Roberts, C.J., in chambers) (citation omitted).

26 Petitioner’s claimed harm cannot outweigh this public interest in the application of the law,
27 particularly since courts “should pay particular regard for the public consequences in employing the
28 extraordinary remedy of injunction.” *Weinberger v. Romero-Barcelo*, 456 U.S. 305, 312 (1982)

(citation omitted). Recognizing the availability of a preliminary injunction under these circumstances would permit any noncitizen subject to expedited removal to obtain additional review, circumventing the comprehensive statutory scheme that Congress enacted. That statutory scheme — and judicial authority upholding it — likewise favors the government. While it is “always in the public interest to protect constitutional rights,” if, as here, a petitioner has not shown a likelihood of success on the merits of her claim, that public interest does not outweigh the competing public interest in enforcement of existing laws. *See Preminger v. Principi*, 422 F.3d 815, 826 (9th Cir. 2005). The public and governmental interest in applying the established procedures for noncitizens subject to expedited removal, including their lawful, mandatory detention, *see* 8 U.S.C. § 1225(b); *Jennings*, 583 U.S. at 297, is significant.

IV. WAIVER OF HEARING

Respondents do not request a hearing in this matter, and request the Court deem this opposition their opposition to relief under a temporary restraining order, preliminary injunction, and writ of habeas corpus.

V. CONCLUSION

For the foregoing reasons, the government respectfully requests that the Court deny Petitioner’s motion for a temporary restraining order, preliminary injunction, and writ of habeas corpus.

Dated: December 29, 2025

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