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7 **UNITED STATES DISTRICT COURT**
8 **SOUTHERN DISTRICT OF CALIFORNIA**

9
10 **GIRMAY NEGASI,**
11 **Petitioner,**
12 **v.**
13 **JEREMY CASEY, Warden at Imperial**
Regional Detention Facility,
14 **Respondent.**
15

Case No.: 26-cv-1858-AGS

Traverse in support of petition for writ of habeas corpus

16
17 **INTRODUCTION**

18 Girmay Negasi has been detained pending his immigration proceedings for
19 over nine months under the mandatory detention provisions of 8 U.S.C.
20 § 1225(b)(1)(B)(ii). Contrary to Respondents’ arguments, Mr. Negasi’s nine-
21 month detention absent an individualized assessment of the need to detain him is
22 now unreasonably prolonged. “Arbitrary civil detention is not a feature of our
23 American government.” *Rodriguez v. Marin*, 909 F.3d 252, 256 (9th Cir. 2018).
24 This Court should “join[] the majority of courts across the country in concluding
25 that [his] unreasonably prolonged detention under 8 U.S.C. § 1225(b) without an
26 individualized bond hearing violates due process.” *Kydyrali v. Wolf*, 499 F. Supp.
27 3d 768, 772 (S.D. Cal. 2020) (Battaglia, J.). Mr. Negasi should be ordered
28 released under the Due Process Clause.

STATEMENT OF RELEVANT FACTS

Mr. Negasi is an Ethiopian national. Exhibit A, Decl. of Girmay Negasi at ¶ 1. He faces political persecution in Ethiopia for [REDACTED] [REDACTED]. *Id.* Mr. Negasi entered the United States on July 12, 2025, seeking asylum. *Id.* at ¶¶ 2–3. He has been detained while fighting his immigration case for over nine months. *Id.* at ¶ 2.

During his time in custody, Mr. Negasi has been transferred repeatedly without explanation. First, he was transferred from the Otay Mesa Detention Center (“OMDC”) in California to the San Luis Detention Center (“SLDC”) in Arizona. *Id.* at ¶ 4. Mr. Negasi spent about two months in Arizona. *Id.* This caused delays in his immigration proceedings. *Id.* at ¶ 6. Then, Mr. Negasi was transferred from SLDC back to California, but this time to the Imperial Regional Detention Facility (“IRDF”). *Id.* at ¶ 5. This caused further delays in his immigration proceedings. *Id.* at ¶ 6.

On January 27, 2026, the immigration judge (“IJ”) denied Mr. Negasi’s asylum application. *Id.* at ¶ 7. Mr. Negasi timely filed an appeal to the Board of Immigration Appeals (“BIA”) on February 1, 2026. *Id.* at ¶ 8. He has heard nothing from the BIA in nearly three months. *Id.* His appeal remains pending. *Id.*

In the meantime, Mr. Negasi is suffering in detention. [REDACTED] [REDACTED]. *Id.* at ¶ 11. Mr. Negasi has PTSD and finds it extremely difficult to be in detention, trapped in confined spaces, surrounded by other men. *Id.* He is especially anxious when he uses the bathroom and the showers at the detention facility. *Id.* In addition, Mr. Negasi is unable to reach his family from custody, which has left him very depressed. *Id.*

I. Section 1252(g) does not deprive this Court of jurisdiction on any issue in this petition.

First, § 1252(g) does not bar review of “all claims arising from deportation proceedings.” *Reno v. Am -Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482

1 (1999). Instead, courts “have jurisdiction to decide a purely legal question that does
2 not challenge the Attorney General’s discretionary authority.” *Ibarra-Perez v.*
3 *United States*, 154 F.4th 989 at 996 (9th Cir. 2025) (cleaned up).

4 Section 1252(g) “does not prohibit challenges to unlawful practices merely
5 because they are in some fashion connected to removal orders.” *Id.* Instead, 1252(g)
6 is “limited . . . to actions challenging the Attorney General’s discretionary decisions
7 to initiate proceedings, adjudicate cases, and execute removal orders.” *Arce v.*
8 *United States*, 899 F.3d 796, 800 (9th Cir. 2018). It does not apply to arguments
9 that the government “entirely lacked the authority, and therefore the discretion,” to
10 carry out a particular action. *Id.* at 800. Thus, § 1252(g) applies to “discretionary
11 decisions that [the Secretary] actually has the power to make, as compared to the
12 violation of his mandatory duties.” *Ibarra-Perez*, 154 F.4th at 999.

13 The same logic applies to all of Mr. Negasi’s claims, because he challenges
14 only violations of ICE’s mandatory duties under the Constitution. Accordingly,
15 “[t]hough 8 U.S.C § 1252(g), precludes this Court from exercising jurisdiction over
16 the executive’s decision to ‘commence proceedings, adjudicate cases, or execute
17 removal orders against any alien,’ this Court has habeas jurisdiction over the issues
18 raised here, namely the lawfulness of [Mr. Negasi’s] continued detention.” *Y.T.D.*
19 *v. Andrews*, No. 25-CV-01100-JLT, 2025 WL 2675760, at *5 (E.D. Cal. Sept. 18,
20 2025). Many courts agree. *See, e.g., Kong v. United States*, 62 F.4th 608, 617 (1st
21 Cir. 2023) (“§ 1252(g) does not bar judicial review of Kong’s challenge to the
22 lawfulness of his detention,” including ICE’s “fail[ure] to abide by its own
23 regulations”); *Cardoso v. Reno*, 216 F.3d 512, 516 (5th Cir. 2000) (“[S]ection
24 1252(g) does not bar courts from reviewing an alien detention order[.]”); *Parra v.*
25 *Perryman*, 172 F.3d 954, 957 (7th Cir. 1999) (1252(g) did not apply to a “claim
26 concern[ing] detention”); *J.R v. Bostock*, No. 25-CV-01161-JNW, 2025 WL
27 1810210, at *3 (W.D. Wash. June 30, 2025) (1252(g) did not apply to claims that
28 ICE was “failing to carry out non-discretionary statutory duties and provide due

1 process”); *D.V.D. v. U.S. Dep’t of Homeland Sec.*, 778 F. Supp. 3d 355, 377–78 (D.
2 Mass. 2025) (1252(g) did not bar review of “the purely legal question of whether
3 the Constitution and relevant statutes require notice and an opportunity to be heard
4 prior to removal of an alien to a third country”).

5 **II. The Fifth Amendment’s Due Process Clause prohibits prolonged**
6 **immigration detention without a bond hearing, contrary to**
7 **Respondents’ arguments.**

8 Mr. Negasi’s habeas petition raises a claim that the Fifth Amendment’s Due
9 Process Clause countermands the government’s statutory authority to detain
10 immigrants without bond hearings when that detention becomes prolonged.

11 As Respondents note, Mr. Negasi is detained under one such statute, 8
12 U.S.C. § 1225(b). “Section 1225 applies to ‘applicants for admission’—
13 noncitizens who ‘arrive[] in the United States,’ or are ‘present’ in the United
14 States but have ‘not been admitted.’” *Banda v. McAleenan*, 385 F. Supp. 3d 1099,
15 1111 (W.D. Wash. 2019). It “applies to, among others, noncitizens initially
16 determined to be inadmissible because of . . . lack of valid documentation.” *Id.*
17 That includes persons who, like Mr. Negasi, make credible asylum and other fear-
18 based claims whose asylum case remains pending. *See* 8 U.S.C.
19 § 1225(b)(1)(B)(ii).

20 In years past, the Ninth Circuit applied the constitutional avoidance canon
21 to hold that § 1225(b) implicitly entitled detained immigrants to bond hearings
22 every six months. *Rodriguez v. Robbins*, 804 F.3d 1060, 1087–89 (9th Cir. 2015).
23 But the Supreme Court overruled that precedent in *Jennings v. Rodriguez*, holding
24 that the statute does not entitle detainees to bond hearings or otherwise impose
25 “any limit on the length of detention.” 583 U.S. 281, 297 (2018). *Jennings* did not
26 address whether prolonged, mandatory detention without bond hearings violates
27 due process. *Id.* at 312.¹ “In the wake of *Jennings*, district courts have grappled

28 ¹ The Supreme Court’s later decision in *Dep’t of Homeland Sec. v. Thuraissigiam*,
591 U.S. 103 (2020), also poses no barrier to granting relief on this detention-based

1 with how to address due process challenges to prolonged mandatory detention
2 under § 1225(b).” *Banda*, 385 F. Supp. 3d at 1116.

3 But after a full evaluation, “[n]early all district courts that have considered
4 the issue agree that prolonged mandatory detention pending removal proceedings,
5 without a bond hearing, will—at some point—violate the right to due process.”
6 *Id.* (cleaned up) (collecting cases); *accord Amado v. U.S. Dep’t of Justice*, No. 25-
7 CV-2684-LL-DDL, 2025 WL 3079052, *3–*5 (S.D. Cal. Nov. 4, 2025). Indeed,
8 the Ninth Circuit has “grave doubts that any statute that allows for arbitrary
9 prolonged detention without any process is constitutional or that those who
10 founded our democracy precisely to protect against the government’s arbitrary
11 deprivation of liberty would have thought so.” *Rodriguez*, 909 F.3d at 256–57.

12 Thus, “a noncitizen detained under § 1225(b) for a prolonged period
13 without an individualized bond hearing may assert a constitutional right to due
14 process.” *Amado*, 2025 WL 3079052 at *4 (collecting cases).

15 As relevant to that claim, the government contends that two Supreme Court
16 precedents foreclose due process challenges in this context. First, the government
17 argues that arriving immigrants like Petitioners have no due process rights per
18 *Department of Homeland Security v. Thuraissigiam*, 591 U.S. 103, 138–40
19 (2020). This Court should reject that disturbing argument, as “[m]ost courts”
20 have. *Gao v. LaRose*, No. 25-CV-2084-RSH-SBC, 2025 WL 2770633, at *3 (S.D.
21 Cal. Sept. 26, 2025); *see also Abdul Kadir v. Larose*, No. 25-CV-1045-LL-MMP,
22 2025 WL 2932654, at *4 (S.D. Cal. Oct. 15, 2025); *Cong v. Noem*, No. 25-CV-
23 3730-GPC-DEB, 2026 WL 76566, at *3 (S.D. Cal. Jan. 9, 2026); *Kydyrali*, 499 F.
24 Supp. 3d at 772; *Mardian v. Mayorkas*, 25-CV-3467-JLS (granting petition for
25 arriving noncitizen, even though the government made this same argument);
26 *Raeva v. Mayorkas*, 25-CV-3175-JO (same); *Abdul-Samed v. Warden of Golden*
27 _____
28 due process claim. *See Lopez-Arevelo v. Ripa*, No. EP-25-CV-337-KC, 2025 WL
2691828, at *7–9 (W.D. Tex. Sept. 22, 2025).

1 *State Annex Det. Facility*, No. 25-CV-98-SAB-HC, 2025 WL 2099343, at *6
2 (E.D. Cal. July 25, 2025); *Hernandez v. Wofford*, No. 25-CV-986-KES-CDB-HC,
3 2025 WL 2420390, at *3 (E.D. Cal. Aug. 21, 2025); *Padilla v. ICE*, 704 F. Supp.
4 3d 1163, 1171–72 (W.D. Wash. 2023).

5 That is because “*Thuraissigiam* addressed a noncitizen’s right to challenge
6 *admission*, not detention.” *Abdul Kadir*, 2025 WL 2932654, at *4; *accord Cong*,
7 2026 WL 76566, at *3 (“Though *Thuraissigiam* limits an arriving noncitizen’s due
8 process rights regarding admission, the court did not address the issue of prolonged
9 detention.”) This case is the reverse. To see why, it helps to unpack what exactly
10 *Thuraissigiam* addressed.

11 *Thuraissigiam* considered whether a petitioner apprehended 25 yards from
12 the border could challenge his expedited removal under the Due Process Clause.
13 592 U.S. at 107. The Court answered “no.” According to the Court, “the ‘political
14 department of the government’ had plenary authority to *admit or exclude* aliens
15 seeking initial entry, and thus ‘an alien in respondent’s position has only those rights
16 regarding admission that Congress has provided by statute.’” *Gao*, 2025 WL
17 2770633, at *3 (emphasis added) (quoting *Thuraissigiam*, 591 U.S. at 139–40).
18 Thus, the Court held that (1) because the political branches have the absolute right
19 to *admit or exclude* arriving noncitizens, (2) arriving noncitizens have “only those
20 rights *regarding admission*” that Congress chooses to provide.

21 From those propositions, it does not follow (1) that the political branches
22 have the absolute right to *detain* arriving immigrants forever, for no reason, with
23 no process, or (2) that arriving noncitizens have only those rights regarding
24 *detention* that Congress chooses to provide. “Nowhere in that decision did the
25 Supreme Court suggest that arriving aliens being held under § 1225(b) may be held
26 indefinitely and unreasonably with no due process implications, nor that such aliens
27 have no due process rights whatsoever.” *A L. v. Oddo*, 761 F. Supp. 3d 822, 825
28 (W.D. Pa. 2025).

1 Nor would it make sense to draw that inference from *Thuraissigiam*. “Due
2 process, as [the Supreme] Court often has said, is a flexible concept that varies with
3 the particular situation.” *Zinermon v Burch*, 494 U.S. 113, 127 (1990). Courts must
4 individually “determine what procedural protections the Constitution requires in a
5 particular case,” *id.*, not assume that the procedures due in one context are the same
6 procedures due in another. Because *Thuraissigiam* arose in the expedited removal
7 context, it does not answer the question of what process is due in the detention
8 context. Again, Mr. Negasi does not ask this Court to order his legal *admission*; he
9 merely seeks an end to his prolonged detention in a prison-like environment.

10 The government’s other leading Supreme Court case, *Shaughnessy v. United*
11 *States ex rel. Mezei*, 345 U.S. 206, 207-09 (1953), is even less on point. “The *Mezei*
12 Court explicitly grounded its decision in the special circumstances of a national
13 emergency and the determination by the Attorney General that Mezei presented a
14 threat to national security.” *Rosales-Garcia v. Holland*, 322 F.3d 386, 413–14 (6th
15 Cir. 2003); *accord Amado*, 2025 WL 3079052, at *5 (“*Mezei* involved a noncitizen
16 who was permanently excluded from the United States on security grounds, not a
17 detainee raising their due process rights in the context of detention without a bond
18 hearing.”).

19 Yet here, no one has ever deemed Mr. Negasi a danger or even a flight risk,
20 much less an emergency threat to national security. Indeed, that is the entire premise
21 of this petition: that the government cannot detain Mr. Negasi indefinitely without
22 any showing that that detention is necessary to serve a government interest. Plus,
23 the Supreme Court has since called into question *Mezei*’s continued validity. *See*
24 *Kydyrali*, 499 F. Supp. 3d at 772.

25 **III. Mr. Negasi prevails under any due process factor standard.**

26 The government’s erroneous arguments do not end there. As a last-ditch
27 effort, it argues that even if Mr. Negasi has a due process right against prolonged
28 detention without even a bond hearing, his claim fails on its facts. *See Gov.*

1 Return at 9–11, ECF No. 11. But courts regularly have granted bond hearings for
2 people detained for similar—or lesser—amounts of time. *See, e.g., Raeva v*
3 *Mayorkas*, 25-CV-3175-JO (about 11 months); *Mardian v. Mayorkas*, 25-CV-
4 3467-JLS (about 13 months); *Malyshko v. Warden*, 26-CV-69-RBM (about 13
5 months); *Brissett v. Decker*, 324 F. Supp. 3d 444, 452 (S.D.N.Y. 2018) (“over
6 nine months”); *Perez v. Decker*, No. 18-CV-5279-VEC, 2018 WL 3991497, at *5
7 (S.D.N.Y. Aug. 20, 2018) (“more than nine months”); *Masood v. Barr*, No. 19-
8 CV-07623-JD, 2020 WL 95633, at *2 (N.D. Cal. Jan. 8, 2020) (“nearly nine
9 months”). Indeed, “[c]ourts have found detention over seven months without a
10 bond hearing weighs toward a finding that it is unreasonable.” *Amado*, 2025 WL
11 3079052 at *5 (collecting cases).

12 Mr. Negasi has been detained for more than nine months. Exhibit A at ¶ 2.
13 Thus, he clearly satisfies the first, and “most important factor” in assessing if a bond
14 hearing is constitutionally required. *Banda*, 385 F. Supp. 3d at 1118.

15 As for the other factors, courts generally agree that the following are also
16 relevant:

- 17 (1) “the likely duration of future detention,” and
18 (2) “the delays in the removal proceedings caused by the petitioner and the
19 government.”

20 *See Sanchez-Rivera v. Matuszewski*, No. 22-cv-1357-MMA-JLB, 2023 WL
21 139801, at *5–6 (S.D. Cal. Jan. 9, 2023) (surveying different approaches). Some
22 courts also consider:

- 23 (3) “the conditions of detention,” and
24 (4) “the likelihood that the removal proceedings will result in a different
25 final order.”

26 *Id.* Mr. Negasi would prevail under any of these factor tests.

27 First, Mr. Negasi has reason to anticipate significant future detention. He
28 has been denied asylum and has timely filed his appeal to the BIA. Exhibit A at

1 ¶¶ 7–8. All told, “[t]his process may take up to two years or longer.” *Banda*, 385
2 F. Supp. 3d at 1119. Because “Petitioner’s future detention can last several more
3 months or even years[,]” this factor favors Mr. Negasi. *Abdul Kadir v. Larose*,
4 2025 WL 2932654, at *5.

5 Second, the delay factor is at best neutral here. Respondents have
6 transferred Mr. Negasi from OMDC in California to SLDC in Arizona and then to
7 IRDF back in California without explanation. Exhibit A at ¶¶ 4–5. These transfers
8 caused delays in his immigration proceedings. *Id.* at ¶ 6. In addition, Mr. Negasi’s
9 appeal to the BIA was filed nearly three months ago and he has heard nothing
10 from the BIA since. *Id.* at ¶ 8. These delays are all attributable to Respondents.

11 Third, Mr. Negasi’s conditions of confinement weigh in favor of a bond
12 hearing. His confinement at IRDF is indistinguishable from penal confinement.
13 And these prison-like conditions are especially challenging for Mr. Negasi
14 because of what happened to him in Mexico. [REDACTED]

15 [REDACTED] *Id.* at ¶ 11. He is suffering
16 from PTSD and finds it very difficult to be in detention, trapped in confined
17 spaces, surrounded by other men. *Id.* Mr. Negasi is also unable to reach his family
18 from custody, which has left him depressed. *Id.*

19 Fourth, there is a significant likelihood that Mr. Negasi will prevail on his
20 asylum claim. He faces persecution in Ethiopia because of his political opinions.
21 *Id.* at ¶ 1.

22 Because all the factors weigh in favor of Mr. Negasi, this Court must grant
23 the petition.

24 CLAIM AND PRAYER FOR RELIEF

25 For the reasons just given, the Fifth Amendment Due Process Clause
26 prohibits the government from continuing to detain Petitioner.

27 Accordingly, Petitioner respectfully requests that this Court:

28 **1. Order Respondents to immediately release Petitioner from custody.**

1 “In recent months, courts across the country have ordered the release of
2 detainees in similar situations.” *Moctezuma v. Henkey*, No. 1:25-CV-
3 00741-BLW, 2026 WL 18809, at *5 (D. Idaho Jan. 2, 2026) (given that
4 the government’s repeated use of unlawful detention policies across the
5 country, causing petitioners to “sit in jail waiting for a judicial
6 decision,” the court would order immediate release instead of causing
7 additional delay through a bond hearing) (citing *Lepe v. Andrews*, 801 F.
8 Supp. 3d 1104 (E.D. Cal. 2025); *J.U. v. Maldonado*, No. 25-cv-4836,
9 2025 WL 2772765, at *10 (E.D.N.Y. Sept. 29, 2025); *Rosado v.*
10 *Figueroa*, No. 25-cv-2157, 2025 WL 2337099, at *19 (D. Ariz. Aug. 11,
11 2025); *Pinchi v. Noem*, No. 25-cv-05632, 2025 WL 1853763, at *4
12 (N.D. Cal. July 4, 2025). *Santiago v. Noem*, No. EP-25-CV-361, 2025
13 WL 2792588, at *13-14 (W.D. Tex. Oct. 2, 2025) (“Without a
14 legitimate interest in her detention, immediate release appropriately
15 remedies Respondents’ violation of [Petitioner’s] due process rights
16 through her continued detention.”). Order, ECF No. 14 at 19, *Miri v.*
17 *Bondi*, No. 5:26-CV-00698-MEMF (C.D. Cal. March 5, 2026) (“Miri’s
18 prompt release is the remedy that will best return Miri to the status quo
19 and restore his position as it was prior to the detention that Miri
20 contends was in violation of his constitutional and statutory
21 protections.”).

- 22 **2. In the alternative, order a prompt § 1226(a) bond hearing, with**
23 **safeguards and oversight provided by this Court. See Order, ECF**
24 **No. 13, *Sandesh v. LaRose*, No. 3:26-CV-00846-JES (S.D. Cal. March**
25 **5, 2026). Specifically, the Court should order:**

26 (1) Respondents provide Petitioner with a hearing and individualized
27 bond determination within ten days of its order. *Id.*

28 (a) At that hearing, the government shall bear the burden of

1 establishing by clear and convincing evidence that Petitioner
2 poses a danger or flight risk, while further specifying that
3 concerns about interrupting court schedules is not a ground to
4 deny bond. *Id.*

5 (b) The IJ shall consider alternative conditions of release and
6 Petitioner's ability to pay bond if he or she determines bond is
7 appropriate. *Id.*

8 (c) Respondents shall make a complete record of the bond
9 hearing available to Petitioner and his counsel. *Id.*

10 (2) Respondents are ordered to file a Notice of Compliance within
11 five days of providing Petitioner with the bond hearing, including
12 apprising the Court of the results of the hearing. *Id.*

13 (3) Prohibit ICE from invoking the automatic stay provisions under 8
14 C.F.R. § 1003.19(i)(2) to defeat the IJ's bond determination.

15 3. Order all other relief that the Court deems just and proper.
16

17 Respectfully submitted,

18
19 Dated: April 13, 2026

s/ Camille Fenton

20 _____
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EXHIBIT A

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10 **UNITED STATES DISTRICT COURT**
11 **SOUTHERN DISTRICT OF CALIFORNIA**

12 **GIRMAY NEGASI,**
13 **Petitioner,**
14 **v.**
15 **JEREMY CASEY, Warden at Imperial**
16 **Regional Detention Facility,**
17 **Respondent.**

18 Case No.: 26-cv-1858-AGS

19 **Declaration of Mr. Negasi**

20 I, Girmay Negasi, declare:

- 21 1. I was born in Ethiopia. I face political persecution in Ethiopia for 
22 
- 23 2. I entered the United States on July 12, 2025. I was taken into immigration
24 custody that day. I have been detained ever since. It has been over nine
25 months.
- 26 3. I came here to seek asylum.
- 27 4. I was in detention at the Otay Mesa Detention Center ("OMDC") for about
28 twenty days before I was transferred to the San Luis Detention Center
("SLDC"). No one explained to me why I was transferred. I spent about
two months at SLDC.
5. I was then transferred from SLDC to the Imperial Regional Detention
Facility ("IRDF") on October 2, 2025. No one explained this transfer to me
either. I have been here ever since.

- 1 6. These transfers delayed my immigration proceedings.
- 2 7. On January 27, 2026, the immigration judge ("IJ") denied my asylum
- 3 application.
- 4 8. I timely filed my appeal of that decision to the Board of Immigration
- 5 Appeals ("BIA") on February 1, 2026. My appeal is still pending. I have
- 6 had no news from the BIA.
- 7 9. I have never received a bond hearing.
- 8 10. I am not trying to delay my case. I would like it to go as fast as possible.
- 9 11. I am having a very difficult time in detention. I am suffering from PTSD
- 10 because [REDACTED] It is very difficult
- 11 for me to be in detention, trapped in confined spaces, surrounded by other
- 12 men. I am especially stressed and anxious when I use the bathroom and the
- 13 showers at the detention facility. I am also unable to reach my family from
- 14 custody, which makes me very depressed.
- 15 12. I have never committed any crime.
- 16 13. I do not have money to hire a lawyer.

17 I, Camille Fenton, declare under penalty of perjury that I reviewed this declaration
18 with Girmay Negasi using a Tigrinya interpreter, and he confirmed that it was true
19 and correct.

20 Date: March 31, 2026 Signed: /s/ Camille Fenton

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