No. _____

IN THE

Supreme Court of the United States

JEFFREY G. HUTCHINSON,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

On Petition for a Writ of Certiorari to the Supreme Court of Florida

PETITION FOR A WRIT OF CERTIORARI

THIS IS A CAPITAL CASE

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CAPITAL CASE

QUESTION PRESENTED

1. Whether the Florida Supreme Court contravened *Giglio v. United States* and procedural due process by requiring heightened specificity in pleading?

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PETITION FOR A WRIT OF CERTIORARI

Petitioner, **JEFFREY G. HUTCHINSON**, a death-sentenced Florida prisoner, was the appellant in the Florida Supreme Court. Respondent, the State of Florida, was the appellee below. Petitioner respectfully urges that this Honorable Court issue its writ of certiorari to review the judgment and decision of the Florida Supreme Court. *Hutchinson v. State*, No. SC21-18, 2022 WL 2167292 (Fla. June 16, 2022).

CITATION TO OPINION BELOW

The decision of the Florida Supreme Court is reported at 2022 WL 2167292 (Fla. June 16, 2022), and is attached to this petition as Exhibit 1. (App. 1). Petitioner's Motion for rehearing was denied on August 4, 2022, and is attached to this petition as Exhibit 2. (App. 11).

STATEMENT OF JURISDICTION

Petitioner invokes this Court's jurisdiction to grant the Petition for Writ of Certiorari to the Florida Supreme Court on the basis of 28 U.S.C. § 1257. The Florida Supreme Court issued an opinion denying relief on June 16, 2022, and denied rehearing on August 4, 2022.

CONSTITUTIONAL PROVISIONS INVOLVED

The Fifth Amendment provides, in relevant part:

> No persons . . . shall . . . be deprived of life, liberty, or property, without due process of law.

The Fourteenth Amendment provides, in relevant part:

> [N]or shall any state deprive any person of life, liberty, or property, without due process of law . . . .

PROCEDURAL HISTORY[1]

On October 5, 1998, Petitioner was indicted by an Okaloosa County, Florida, grand jury and charged with four counts of first-degree murder. (R1. 24-26). The jury found him guilty as charged on January 18, 2001. Petitioner's trial began on January

[1] The following symbols will be used to designate references to the record: "R" refers to the record on appeal to the Florida Supreme Court; "PCR" refers to the initial postconviction record on appeal; "SPCR" refers to the record of this successive postconviction case on appeal. All other references are self-explanatory.

8, 2001. The jury found him guilty as charged on all count son January 18, 2001. (R23. 2383-84).

Petitioner waived his right to a jury during the penalty phase of his trial. (R13. 2408). The penalty phase before the trial court was held on January 25, 2001. The trial court also conducted a *Spencer*[2] hearing, and then sentenced Petitioner to life imprisonment for the murder of Renee Flaherty, and to death for each of the murders of Logan, Amanda and Geoffrey Flaherty on February 6, 2001. (R14. 2714).

The trial court found the following aggravating circumstances were proven beyond a reasonable doubt: (1) Petitioner was previously convicted of another (contemporaneous) capital felony; and (2) victim less than 12 years of age. The court found a third aggravating circumstance with respect to one decedent only: the offense was heinous, atrocious and cruel.

The trial court found one statutory mitigator: Petitioner had no significant history of prior criminal activity (significant weight).

The trial judge also found the following non-statutory mitigating factors: (1) Petitioner was security officer of the year and the quarter with Spokane Security Police at Deaconess Hospital (minimal weight); (2) he is a decorated military veteran of the Gulf War (significant weight); (3) he was a soldier in the U.S. Army for eight years and received a general discharge under honorable conditions (slight weight); (4) he is a father of a fifteen year old son and has provided financial and emotional support for his son, despite divorce from his son's mother (some weight); (5) he has

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[2] *Spencer v. State*, 615 So. 2d 688, 690-91 (Fla. 1993).

potential for rehabilitation and productivity while in prison (some weight); (6) he has been diagnosed with Gulf War Illness (minimal weight); (7) he was diagnosed with a form of Attention Deficit Disorder (little weight); (8) he never abused illegal drugs (little weight); (9) he provided financial and emotional support to his family (slight weight); (10) he has the ability to show compassion (slight weight); (11) he is a high school graduate (little weight); (12) he is an accomplished athlete and motorcycle racing competitor (no weight); (13) he was active in disseminating information about Gulf War Illness to others who may have suffered from this syndrome (little weight); (14) he has a history of employment and worked several jobs prior to being diagnosed with Gulf War Illness (slight weight); (15) he has demonstrated religious faith and has utilized services of the jail's ministry while incarcerated prior to trial (little weight); (16) he comes from a large family and receives tremendous moral support (slight weight); (17) he is an accomplished motorcycle mechanic (slight weight); (18) while incarcerated Petitioner designed mechanical improvements to motorcycle engines and is seeking patents to these designs (slight weight); (19) the 911 tape indicates the emotional distress he experienced due to the deaths of the victims (little weight); (20) he has several friends in the United States and abroad who have provided moral support (little weight); and (21) his use of alcohol at the time of the offense (some weight).

Petitioner appealed his conviction and sentence on direct appeal to the Florida Supreme Court. The following issues were raised on direct appeal: (1) the trial court improperly instructed the jury; (2) the trial court erred in admitting certain testimony

as an excited utterance; (3) the trial court erred in repeatedly overruling objections to the State's closing argument; (4) the trial court erred in denying Petitioner's motion for mistrial; (5) the trial court erred in denying Petitioner's motions for judgments of acquittal; (6) the trial court erred in denying Petitioner's motion for a new trial; (7) the trial court erred in considering Section 921.141(5)(a), Florida Statutes, as an aggravating factor; (8) the trial court erred in finding that the murder of the children occurred during the course of an act of aggravated child abuse; (9) the trial court erred in finding heinous, atrocious or cruel as an aggravating factor in the murder of Geoffrey Flaherty; and (10) the death sentences were not constitutionally proportional. *Hutchinson v. State*, 882 So. 2d at 949-50.

On July 1, 2004, the Florida Supreme Court affirmed Petitioner's judgments of conviction and sentences. *Hutchinson v. State*, 882 So. 2d 943 (Fla. 2004). The mandate was issued on July 22, 2004. Petitioner did not file a petition for writ of certiorari in the United States Supreme Court. (PCR6. 1024-25).

Petitioner filed his initial motion for postconviction relief in 2005. He asked to proceed *pro se* when he learned his attorneys had missed his federal habeas deadline. Petitioner filed numerous *pro se* pleadings that were ultimately stricken. (PCR3. 573-74). On March 29, 2007, new registry counsel was appointed to represent Petitioner in his initial postconviction. (PCR4. 672-74). After an evidentiary hearing, Petitioner's postconviction motion was denied. The Florida Supreme Court affirmed. *Hutchinson v. State*, 17 So. 3d 696 (Fla. 2009).

Petitioner did not receive federal habeas review because his attorneys failed to file a timely federal petition. *Hutchinson v. Florida*, No. 5:09-cv-261-RS, 2010 WL 3833921 (N.D. Fla. Sept. 28, 2010); *see also Hutchinson v. Florida*, 677 F.3d 1097, 1099 (11th Cir. 2012).

On January 11, 2017, Petitioner filed a successive Rule 3.851 motion to raise claims under *Hurst v. Florida* and *Hurst v. State*. The circuit court denied the motion, and the Florida Supreme Court affirmed. *Hutchinson v. State*, 243 So. 3d 880 (Fla. 2018), *cert denied, Hutchinson v. Florida*, 139 S. Ct. 261 (Oct. 1, 2018).

On June 12, 2020, Petitioner filed a successive Rule 3.851 motion with claims of newly discovered evidence and violations of *Brady v. Maryland* and *Giglio v. United States*. On July 16, 2020, the circuit court struck the motion without prejudice to refile a facially sufficient pleading within 60 days. (SPCR. 184-87). On September 14, 2020, Petitioner filed his Second Amended Successive Motion for Postconviction Relief. (SPCR. 191-261). On December 4, 2020, the circuit court summarily denied the motion. (SPCR. 305-714). The Florida Supreme Court affirmed. *Hutchinson v. State*, No. SC21-18, 2022 WL 2167292 (Fla. June 16, 2022). Rehearing was denied on August 4, 2022.

FACTS RELEVANT TO QUESTIONS PRESENTED

Billy Taylor, Creighton and Deanna Adams, Renee Flaherty, and Petitioner became friends roughly two and a half months before the crime. (R2. 404-05; R22. 663-64; R24. 1110). On the night of the murders, Mr. Taylor and the Adamses were the first to arrive at Petitioner's house just after police arrived. Two days later, they

visited Petitioner at the jail. (R2. 402-03; R22. 665-68, 712; R24. 1113-15, 1118-22). The Adamses, particularly Deanna, remained in close contact with Petitioner for the next year while he awaited trial and helped him gather information for his defense. (PCR6. 1022-24, 1135-37). As short time after the murders, the Adamses moved into the crime scene house and Ms. Adams found bullet fragments in the bedroom wall that police had missed in the original investigation. (R22. 714-15).

The Adamses suddenly ceased communication with Petitioner before trial. (R22. 669-71; R24. 1114-15, 1120-22, 1128). Mr. Taylor and the Adamses were under tremendous pressure as subjects of state and federal criminal investigations into two bank robberies that occurred in 1998 and 1999. Mr. Taylor was arrested for the robberies on August 21, 1999. An information was filed by Walton County prosecutors against Mr. Taylor on November 17, 1999; however, the case was nolle prossed on December 7, 1999. At the time of trial, no federal indictment had been returned by a grand jury.

During pretrial discovery in Petitioner's capital case, the State disclosed the Walton County information charging Mr. Taylor with the robberies, as well as a federal grand jury testimony of the Adamses. (R10. 1836, 1894). The defense is allowed to presume that the State will meet its discovery/*Brady* obligations and, thus, that this was the only information the State was aware of regarding the investigations into the bank robberies.

During Deanna Adams's deposition and proffered testimony at Petitioner's trial, she acknowledged the bank robbery investigation, pressure from law

enforcement, and Mr. Taylor's arrest contributed to the Adamses' decision to stop supporting Petitioner. (R7. 1211-12, 1215-17; R24. 1129, 1139-40, 1143).[3] Mrs. Adams testified that ,"[w]hen Lee Taylor got arrested, I said—I mean I honestly felt like the State was after me or my family for helping Jeff, and at that point I said, 'My family first, this is it.' I said, 'Jeff, I can't talk to you any more.'" (R24. 1139-40). "I felt like it happened, that they targeted Lee and questioned my husband because of the contact we were having with Jeff. I felt like they were, you know, trying to get us for having contact with Jeff—for being his friend." (*Id.*).

Mr. Adams' testimony was proffered as well. Mr. Adams was told by federal and Walton County authorities that he was being investigated. (R22. 657-58). Additionally, while Mr. Adams was aware that the charges against Mr. Taylor were dropped, Mr. Adams was not told if they had ceased investigating him. (*Id.*).

The Adamses also suggested that it was their recognition of Petitioner's voice on the 911 call recording that finally caused them to stop supporting him, although that recording had been played repeatedly in the media following the murders, and the Adamses continued contact with Petitioner for at least a year afterward.

The Adamses were critical witnesses for the prosecution and testified with certainty that the voice on the 911 call immediately after the murders. (R22. 674; R24. 1148). Defense counsel attempted to cross examine the Adamses about biases

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[3] The Adamses also suggested that it was their recognition of Petitioner's voice on the 911 call recording that finally caused them to stop supporting him, although that recording had been played repeatedly in the media following the murders, and the Adamses continued contact with Petitioner for at least a year afterward.

they had against Petitioner, as well as any benefit they may have received for their testimony—i.e., the State not charging them with the bank robberies—or pressure they felt to testify a certain way.

The State objected to this line of questioning. The prosecutor protested the defense's assertions that Mr. Adams was a "suspect" in the bank robberies and insisted that there was no reason that Mr. Adams would be biased. (R22. 650). The prosecutor pressed that Mr. Taylor was the only person charged, and that while Mr. Adams was questioned he was not a "suspect." (*Id.*). The prosecutor argued, "[t]he word suspect is demeaning, Judge, and no one other than Mr. Cobb has used it here today. . . . He—to say that Mr. Creighton Adams is a suspect—he was only questioned, Judge, in relation to the fact that he was taller than Mr. Taylor and a close friend of Mr. Taylor." (*Id.*). After hearing Mr. Adam's proffered testimony, the trial court limited counsel's inquiry of Mr. Adams. (R22. 660-61). The court ruled that "there is nothing on this record to indicate at this time that that particular scenario as set forth on this proffer would in any way have any relevance whatsoever to the case at hand . . . in this witness' bias in his testimony. Therefore, I'm going to deny the request for impeachment on those grounds and defense counsel would be instructed not to raise that issue in the presence of the jury." (R22. 660-61).

In his initial postconviction motion, Petitioner claimed trial counsel was ineffective for not impeaching the Adamses on the bank robberies. The circuit court denied the claim because the trial judge had instructed counsel not to raise that issue in the presence of the jury. (PCR6. 1088).

FOIA Request and Appeal

In November 2017, Petitioner's federal counsel interviewed Mr. Taylor and Mr. Adams. At this meeting, they agreed for the first time to sign a release to allow Petitioner's federal counsel to submit a FOIA request to the FBI for their records. Thereafter, federal counsel submitted Freedom of Information Act (FOIA) requests to the FBI. Even though the requests were received by the FBI and placed on the "complex request medium processing track," counsel was informed by email that the estimated disclosure time was February 2020.

On December 20, 2018, and February 12, 2019, the Department of Justice (DOJ) disclosed voluminous FBI records on the bank robbery investigations of Creighton Adams and Billy Taylor. (SPCR. 245-61). Of the 519 pages of relevant FBI documents on either Mr. Adams or Mr. Taylor, 413 pages pertaining to Mr. Adams were released with heavy redactions, and 381 pages pertaining to Mr. Taylor were released with heavy redactions. (SPCR. 245, 255). However, a total of 244 pages were completely deleted (106 deleted pages for Mr. Adams and 138 deleted pages for Mr. Taylor). (SPCR. 248, 250, 251; SPCR. 258, 260, 261).

Petitioner objected and appealed the deletions and redactions to the DOJ. The appeal on Mr. Adams was denied on June 13, 2019 (SPCR. 242-44), and the appeal on Mr. Taylor was denied on July 12, 2019 (SPCR. 252-54). Petitioner's successive Rule 3.851 motion based on the FBI disclosures was filed on June 12, 2020, within one year of the denial of the DOJ appeal. *Cf.* Fla. R. Crim. P. 3.851(e)(2)(C); (SPCR. 58-85).

The new disclosures show that there was significantly more information on the bank robberies, Mr. Taylor, and the Adamses than what the State's witnesses portrayed to Petitioner's jury. There was ample evidence in the FOIA disclosures that the Adamses were facing imminent prosecution for two armed bank robberies and that the perceived threat of a conviction and lengthy prison sentence could have compelled them to testify favorably for the State.

The records reflect an extensive ten-year investigation into Mr. Taylor and Mr. Adams. The records indicate FBI agents' certainty that the two men were responsible for the Regions Bank robberies. (SPCR. 158, 167, 170, 173-74). The FBI records not that "despite the fairly certain guilt of Taylor, the US Attorney's Office in the Northern District of Florida has declined" to prosecute and "[e]fforts to change the AUSA's mind" were "met without success." (SPCR. 158-60, 217-19). The agents also document their discovery that the Adamses fabricated their alibis, yet the AUSA refused to prosecute. (SPCR. 218-19, 229).

The FBI records warn in each report that "subjects . . .[Taylor and Adams] should be considered armed and dangerous"[4] (SPCR. 214, 217), and "[a]t the time of captioned robbery [August 7, 1998] both the Taylor and [Adams] families reportedly were having significant financial problems." (SPCR. 215). Yet, ten days after the 1998 robbery, Mr. Adams purchased a 1993 Harley Davison for $6,000 in cash. (SPCR.

[4] Bank tellers described the shotgun used in the bank robberies as the same weapon found at the Flaherty crime scene, a Mossberg pistol-grip shotgun, suggesting Mr. Taylor's and Mr. Adams's familiarity with that specific firearm. The masks used in the bank robberies appear to be the same type of mask (black ski mask) described by Petitioner in his initial statement to police. (SPCR. 234, 236, 237, 239-40; R11. 1999).

226). Yet, during the course of the investigation and Deanna Adams's grand jury testimony, they claimed to have paid only $2,500 from Ms. Adams' "savings." (*Id*). Additionally, on August 27, 1998—twenty days after the robbery—Mr. Adams bought a 1990 Ford Bronco. The FBI estimated the value at $9,800. (SPCR. 226-27). The FBI report containing this information was dated January 4, 2000 (before Petitioner's trial).

Despite these purchases, Mr. Adams advised investigators during an August 20, 1999, interview[5] that in April 1998 he had a judgment entered against him for failure to make payments on a loan from Pen Air Credit. (SPCR. 221). Additionally, Mr. Adams had not been making payments on his home loan and he was placed in foreclosure by March 1999. (SPCR. 221). At the time of his statements to the FBI and Walton County Sheriff's Office (WCSO), his attorney was recommending that he declare bankruptcy. (SPCR. 221).

Mr. Adams told the interviewers about his relationship with both Mr. Taylor and Petitioner. Mr. Adams told the interviewers he had been introduced to Petitioner in June 1989. Mr. Adams then said Petitioner had murdered his family.[6] (SPCR. 222). This was before Petitioner's trial. Thought the names are redacted in this section it is obvious Mr. Adams is referring to Petitioner.

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[5] This interview took place at the Okaloosa County Sheriff's Office, conducted by an FBI agent and a Walton County Sheriff's Office investigator. (SPCR. 220).

[6] The robbery of the Paxton Regions Bank occurred on August 7, 1998. The crime for which Petitioner was charged occurred on September 11, 1998. Mr. Taylor was not arrested for the bank robbery until August 26, 1999. The Adamses were called before a grand jury on the bank robberies on September 23, 1999.

Petitioner's successive Rule 3.851 motion based on the FBI disclosures was filed on June 12, 2020, within one year of the denial of the DOJ appeal. *Cf.* Fla. R. Crim. P. 3.851(e)(2)(C).

FLORIDA SUPREME COURT'S RULINGS

I. *GIGLIO* CLAIM

In response to Petitioner's *Giglio* claim, the Florida Supreme Court held that Petitioner failed to identify with any specificity any false or misleading testimony by a State witness at trial. Thus, Petitioner's claim was legally insufficient. *Id*. at *9.

REASONS FOR GRANTING THE WRIT

I. THIS COURT SHOULD REVIEW WHETHER THE FLORIDA SUPREME COURT CONTRAVENED *GIGLIO V. UNITED STATES* AND PROCEDURAL DUE PROCESS BY REQUIRING HEIGHTENED SPECIFICITY IN PLEADING

Due process precludes the State from presenting either false or misleading evidence and/or false or misleading argument. *Giglio v. United States*, 405 U.S. 150, 153 (1972) ("As long ago as *Mooney v. Holohan*, 294 U.S. 103, 112 (1935), this Court had made clear that deliberate deception of a court and jurors by the presentation of false evidence is incompatible with 'rudimentary demands of justice.'")

To establish a *Giglio* violation, it must be shown that: (1) the testimony given was false; (2) the prosecutor knew the testimony was false; and (3) the statement was material. *Guzman v. Secretary, Department of Corrections*, 663 F.3d 1336, 1348 (Fla. 2011). Under *Giglio*, false testimony is material "if there is any reasonable likelihood that the false testimony could have affected the judgment of the jury." *United States v. Agurs*, 427 U.S. 97, 103 (1976). "*Giglio* violations can arise from the 'negligence or

design' of any state officer who had actual or constructive knowledge of the falsity." *Giglio v. United States*, 405 U.S. 150, 154 (1972). This includes police and prosecutors. *Guzman*, 663 F.3d at 1349. Further, the government, as the beneficiary of the *Giglio* violation, bears the burden to prove that the presentation of false testimony at trial was harmless beyond a reasonable doubt. *Id.* at 1348.

The Florida Supreme Court violated Petitioner's due process rights by creating heightened pleading requirements that acted as an arbitrary barrier to postconviction *Giglio* relief. *Giglio* created a constitutionally protected liberty interest, and the Florida Supreme Court's application of the law must comport with due process. *Evitts v. Lucey*, 469 U.S. 387, 399-401 (1985) (states "must nonetheless act in accord with the dictates of the Constitution—and, in particular, in accord with the Due Process Clause"); *see also Dist. Attorney's Office v. Osborne*, 557 U.S. 52, 69 (2009) (quoting *Medina v. California*, 505 U.S. 437, 446, 448 (1992)) (A prisoner's liberty interest, while limited, is infringed where "the State's procedures for postconviction relief 'offend[] some principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental,' or '"transgresses any recognized principle of fundamental fairness in operation."').

In Petitioner's initial brief to the Florida Supreme Court, Petitioner pled that the prosecutor knew there was an intense, on-going FBI investigation of the Adamses and their involvement in the bank robberies, and that Mr. Adams was a suspect in the crimes. Yet, the prosecutor presented the Adams' testimony with the impression that their only motivation for testifying against Petitioner was the selfless quest for

justice. In addition to falsely asserting that Mr. Adams was not a suspect and not under investigation (R22. 650), the prosecutor elicited testimony attempting to show that the Adamses only desired to "help" Petitioner to bolster their credibility:

> Q: You were looking at every nook and cranny of that house to try to find anything that might relate to the charges against him, correct?
>
> A: [Mrs. Adams]: That's right.
>
> Q: And you were trying to help him not to hurt him, right?
>
> A: [Mrs. Adams]: That's right.
> …
>
> Q: Okay, Now, Mrs. Adams, you didn't call Don Adams . . . Because at the time you were trying to help Jeff?
>
> A: [Mrs. Adams]: Right.
> …
>
> Q: Was that because at the time you were trying to hurt Jeffrey Hutchinson or help Jeffrey Hutchinson?
>
> A: [Mr. Adams]: Help.

(R29. 2049, 2052, 2069).

Later, in closing argument the prosecutor argued:

> Maybe, the defense is there was no scientific voice identification procedure of Jeffrey Hutchinson's voice on that tape. Well, you consider the credibility of Deanna Adams and Creighton Adams' testimony. They were his best friends. The only thing that they've ever done to Jeff Hutchinson that hurt him in any way was come here and tell the truth.
>
> They told the truth. You remember when Deanna Adams was on that stand and Mr. Cobb in cross examination said tell me about Jeff's relationship with Renee, what you saw, she told the truth. . . . When he asked her, did you find anything in that house when you moved in there? She told the truth. Yes, we found a piece of lead the size of a pencil eraser. . . . They helped him in every way they could and the only way

> they could have helped him more would be if they didn't come here and tell the truth, but they did, and that is the evidence of this case. . . .

(R29. 2195-96).

Although Mr. Elmore did not ask the Adamses to directly deny under oath that they had any motivation to testify favorably for the State, the questions asked and arguments made by the State misled the court and the jury. Due process is violated where the prosecutor's elicited testimony misleads or gives a false impression. *See Brown v. Wainwright*, 785 F.2d 1457, 1465 (11th Cir. 1986) ("The constitutional concerns address the realities of what might induce a witness to testify falsely, and the jury is entitled to consider those realities in assessing credibility."); *see also Tessin v. Cain*, 482 F. Supp. 2d 764, 773 (E.D. La. 2007) ("Despite the technical accuracy of these statements a false impression was created in the jury. *Giglio* and *Napue* prohibit the State from obtaining convictions based on such false impressions. . . . the State not only failed to correct the testimony, but actively participated in misleading the jury on this point during closing arguments.").

Petitioner submits that this Court should grant certiorari to review the Florida Supreme Court's requiring heightened specificity in pleading, even when Petitioner met the requirements of *Giglio v. United States* by pleading the Adamses' testimony was false, the prosecutor knew the testimony was false, and the Adamses' testimony was material to Petitioner's conviction.

CONCLUSION

Petitioner, Jeffrey Hutchinson, requests that certiorari review be granted, that this Court vacate the decision of the Florida Supreme Court, and remand Petitioner's capital case to the Florida Supreme Court to correct the court's *Giglio* error.

Respectfully submitted,

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October 2022