CASE NO. 22-7779

ORIGINAL

Supreme Court, U.S.
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IN THE SUPREME COURT OF THE UNITED STATES

ZOHN WANG KUB YANG,

Petitioner,

v.

DAN CROMWELL,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI AND REQUIRED SHORT APPENDIX FOR PETITIONER

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QUESTION PRESENTED

In ***Miranda v. Arizona***, 384 U.S. 436 (1966), this Court announced a prophylactic rule protecting the Fifth Amendment right against self-incrimination. That rule generally prohibits prosecutors and criminal trial courts from admitting into evidence against a criminal defendant any self-incriminating statement made by that defendant while he was in custody, unless the defendant first received certain warnings spelled out in ***Miranda***. The question before this Court is:

Whether the totality of the law enforcement officers' words or actions made during the questioning of Petitioner in this case when they told Petitioner he could not leave the hospital amounted to custodial interrogation control over the Petitioner for ***Miranda*** purposes?

DISCLOSURE STATEMENT

The undersigned counsel for Petitioner furnishes the following list in compliance with S. Ct. Rules 14 and 33.1:

1. The full name of every party that attorney represents in this case:

   Zohn Wang Kub Yang

2. The names of all law firms whose partners or associates have appeared for the party in the case or are expected to appear for the party in this court:

   None at this time

3. Any parent corporation and any publicly held company that own 10% or more of stocks of shares.

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The Seventh Circuit's decision denying Petitioner's request for a certificate of appealability (Pet. app. 1a) is not published. The district court's decision and order denying Petitioner's petition for federal habeas corpus relief (Pet. app. 2a-8a), and confirming the judgment dismissing the case (Pet. app. 9a) also is not published.

JURISDICTION

The Seventh Circuit entered judgment on February 28, 2023. Pet. app. 1a. This petition for writ of certiorari is being timely filed on May 26, 2023. This Court has jurisdiction under 28 U.S.C. § 1254 (1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Relevant Constitutional and Statutory provisions are as follows: U.S. Const. amend. V; 18 U.S.C. § 3501(a)-(b); 28 U.S.C. § 1254(1); and 42 U.S.C. § 1983.

INTRODUCTION

The issue in this case is whether the definition of interrogation can extend to words or actions by law enforcement officers that they should have known were reasonably likely to elicit an incriminating response when questioning a criminal suspect without first providing warnings under ***Miranda v. Arizona***, 384 U.S. 436 (1966). The answer to that question is yes. ***Miranda*** does establish a prophylactic rule of evidence designed to protect a criminal defendant's Fifth Amendment right against compelled self-incrimination at trial. And because a ***Miranda*** violation occurs when a prosecutor independently chooses to introduce the unwarned statement as part of the state's trial evidence, the courts and prosecutors can be the proximate cause of that violation. For both of these independent reasons, there is a violation of Petitioner Zohn Yang's rights in these

circumstances.

Here, the issue arises from the efforts of Daniel Running and his colleague Wang Lee, Neenah Police Department investigators, to investigate a domestic assault against the immobilized wife of Petitioner whom had been transported to a local hospital. Also, Petitioner was driven by his pastor to the hospital where his wife had been taken. After the patient identified Petitioner Zohn Yang as the alleged perpetrator, Running and Lee questioned Petitioner Zohn Yang at the hospital and eventually received his signed confession to the assault. During Yang's state criminal proceedings, the trial judge concluded that the confession was admissible at trial - even though Running and Lee had not given Yang a ***Miranda*** warning - because Yang allegedly was not in custody when the questioning occurred. Pet. App. 3a-4a. In this later-filed Section 2254 action, the district court also found that Running and Lee did not use coercive techniques to extract an involuntary confession or fabricate evidence, and the district court accordingly rejected Yang's claims under the Fifth and Fourteenth Amendments. Pet. App. 6a-8a. Further, the Seventh Circuit denied Yang's request for a certificate of appealability, holding that the court found "no substantial showing of the denial of a constitutional right." Pet. App. 1a.

The Seventh Circuit's decision was wrong, and this Court should overturn it for either of two independent reasons.

First, Yang can establish the violation of a constitutional right. Here Yang alleges a deprivation of his Fifth and Fourteenth Amendment rights against self-incrimination at trial. While establishing a violation of ***Miranda*** may not per se establish a violation of the Fifth Amendment, but this Court recognized in ***Dickerson v. United States***, 530 U.S. 428 (2000), that the prophylactic ***Miranda*** rule has constitutional underpinnings and cannot be overturned by statute. Thus, the Seventh Circuit's

contrary ruling was mistaken, as this Court from ***Dickerson*** pointed out.

Second, assuming that the introduction of Yang's un-Mirandized statement at the state criminal trial violated his Fifth and Fourteenth Amendment rights, the state court and prosecutor were the proximate cause of that violation. ***Miranda's*** exclusionary rule is a rule of evidence directed at courts and prosecutors. ***United States v. Patane***, 542 U.S. 630, 637 (2004) (plurality op.). A ***Miranda*** violation can therefore occur at trial when an unwarned statement is introduced against the defendant during the prosecution's case-in-chief.

In denying a certificate of appealability of action under 28 U.S.C. § 2253(c)(2), the Seventh Circuit adopted a rule that threatens the basic structure of this Court's ***Miranda*** precedents. The Court has consistently emphasized that the scope of the ***Miranda*** rule should be "close-fit" to its prophylactic purpose, and has accordingly tailored that rule based on a balancing of different interests. ***Id.*** at 639-40. The decision below cuts against that close tailoring by encouraging police from receiving unwarned confessions even in circumstances where no such encouragement is warranted. And it wrongly subjects criminal defendants to pervasive conviction risks in connection with routine investigation.

The decision below should be reversed.

STATEMENT OF THE CASE

A. The Domestic Assault And Yang's Confession

On April 27, 2015, Investigator Running and his colleague Lee responded to a Theda Clark Medical Center to investigate allegations that the hospital had initiated lockdown procedures when Yang's wife made statements that Yang had intentionally struck her with the car and intended to harm her, leaving her partially incapacitated. Pet. App. 3a. The law enforcement officers

immediately restricted Yang's movements in the hospital, after which he was transported to a small hospital room by Running with the door closed. At that point, Sergeant Lee arrived on the scene, entered the room, and started to question Yang about his wife's injuries. Pet. App. 4a. According to the district court, Lee questioned Yang "in a conversational manner" and Yang then made an incriminating statement without further prompting. Pet. App. 3a-4a. Running nor Lee gave Yang a ***Miranda*** warning because Yang was not under arrest or in custody. Pet. App. 7a.

The Wisconsin Court of Appeals later described the actions by law enforcement as to Running and Lee telling Yang "we can't let you go anywhere" and Yang must stay with the officers. *See* ***State v. Yang***, 2021 WI App 27, ¶¶ 5, 13-14, 397 Wis. 2d 241, 959 N.W. 2d 75 (WI Ct. App. Mar. 9, 2021)(unpublished). Further, Yang was unable to speak with his relatives because - due to his restraint- he was unable to go to the bathroom, where police officers were posted outside the door of the bathroom and his hospital room at all times. And police officers discussed ways to subdue Yang in the event he attempted to escape from the bathroom. ***Id.***

Yang was arrested for attempted first-degree intentional homicide and endangering safety, and charged in state court. Pet. App. 2a. After considering the circumstances under which Yang was questioned, the state prosecutor concluded that Yang had neither been under arrest nor 'in custody' for purposes of ***Miranda***, and thus that his confession was admissible at trial. Pet. App. 7a. The state trial court agreed, rejecting Yang's effort to exclude the confession under ***Miranda***. ***Id***. After hearing the victim's conflicting accounts, the jury returned a verdict of guilty on all charges and Yang was sentenced to a total of 40 years. Pet. App. 2a.

B. Yang's Federal Habeas Corpus Action Under Section 2254

After his state direct appeal, Yang filed a federal habeas corpus action under 28 U.S.C. § 2254 alleging that the state violated his Fifth and Fourteenth Amendment rights against self-incrimination, particularly that Running and Lee took a custodial, un-Mirandized statement that was later used against Yang at his state criminal trial. *See Pet. App. 6a-7a.* The district court declined to grant Yang's habeas petition. The district court determined the state court's decision was not an unreasonable application of clearly established Supreme Court law and did not involve an unreasonable determination of fact as to whether Lee had "improperly coerced or compelled" Yang's statement under the Fifth Amendment by considering the totality of the circumstances surrounding the questioning - including its location, length, and manner, as well as whether Lee provided a ***Miranda*** warning. ***Id.*** at 7a-8a. Consequently, the district court rejected Yang's claim that his incriminating statement was a *continuation* of his interrogation, and returned a verdict for the state. Id. at 9a.

C. The Seventh Circuit's Decision

Yang appealed to the Seventh Circuit. He sought a certificate of appealability based on the argument that the district court should have focused on this Court's decision in ***Rhode Island v. Innis***, 446 U.S. 291, 299 (1980) to find the totality of the words or actions on the part of law enforcement officers that they should have known were reasonably likely to elicit the incriminating statement introduced at Yang's criminal trial was taken in a custodial setting without ***Miranda*** warnings - even absent any proof of coercion or fabrication of evidence.

The Seventh Circuit disagreed, holding that it found "no substantial showing of the denial of a constitutional right" regarding the use of an un-Mirandized statement against a defendant in a

criminal proceeding does not violate the Fifth Amendment and may not support any rights protected by the Constitution. ***Id.*** at 1a. The panel therefore denied Yang's request for a certificate of appealability.

SUMMARY OF ARGUMENT

The Seventh Circuit erred in holding that Yang did not make a substantial showing of the denial of a constitutional right based on a violation of ***Miranda's*** exclusionary rule. That decision must be rejected as a matter of law, for at least two independent reasons.

First, a criminal defendant who establishes that an unwarned statement was introduced against him at a criminal trial in violation of ***Miranda*** does thereby establish that he has been deprived of a "right[], privilege[], or immunit[y] secured by the Constitution." 42 U.S.C. § 1983. The Seventh Circuit's decision mistakenly treated Yang's claim regarding an alleged violation of ***Miranda's*** exclusionary rule as stating a claim for a violation of the Fifth Amendment right against self-incrimination. But the two are not equivalent: This Court has consistently recognized that ***Miranda's*** exclusionary rule is a prophylactic rule that sweeps more broadly than the Fifth Amendment itself.

In ***Dickerson***, this Court held that ***Miranda*** set out a constitutional rule that cannot be overturned by Congress or a state legislature. 530 U.S. at 444. Thus, a criminal defendant who asserts that law enforcement authorities elicited an unwarned statement when he was in custody at a hospital that was introduced against him in violation of ***Miranda*** has a claim for relief under Section 2254.

Allowing a cause of action under Section 2254 for alleged ***Miranda*** violations would not upset the careful balance that this Court has struck when crafting the scope of the ***Miranda*** rule.

This Court has emphasized the need to maintain the "closest possible fit" between ***Miranda*** and the Fifth Amendment privilege against self-incrimination. ***Patane***, 542 U.S. at 643. Applying that approach, the Court has held that ***Miranda*** bars the introduction of unwarned statements presented in the prosecution's case-in-chief at a criminal trial.

Second, because ***Miranda*** creates a prophylactic evidentiary rule governing the admission of an unwarned statement at trial, violations of ***Miranda*** are the result of a prosecutor and judges' conduct. When an officer in the field takes a lawful, unwarned statement, he is entitled to presume that prosecutors and judges will construe the law correctly in determining whether the statement is admissible. Here, for example, the Wisconsin prosecutor responsible for Yang's case exercised her own "independent prosecutorial judgment" when concluding that Yang's incriminating statement was admissible under ***Miranda.*** And four different Wisconsin state judges agreed. Yang should not be held responsible for those decisions.

The Seventh Circuit's causation holding - which allows an error of law committed by the prosecutor and state courts to go unchecked - is wrong and provides an independent basis for reversal.

The Seventh Circuit's approach - not holding state prosecutors and judges liable when they affirmatively introduce the un-Mirandized statement - completely reverses the normal presumption of regularity that is attributed to prosecutors' and judges' conduct. It also misunderstands the nature and scope of ***Miranda,*** as ***Miranda*** does in fact forbid the subsequent admission of such unwarned statements at trial. Yet under the Seventh Circuit's approach, virtually any unwarned statement with regard to a criminal suspect in custody at a hospital might not give rise to a Miranda-based Section 2254 action for relief - even where the prosecutor and judge has acted entirely unlawful. The

Seventh Circuit's judgment should be reversed.

ARGUMENT

I. YANG'S CLAIMS AGAINST STATE FOR TAKING UNWARNED STATEMENT

Yang's claim against State officials under ***Miranda v. Arizona***, 384 U.S. 436 (1966), does state a cause of action under Section 2254 for two independent reasons. First, a violation of Miranda's prophylactic evidentiary rule does equate to a violation of a defendant's Fifth Amendment rights, when such an unwarned statement is introduced at his criminal trial. Second, if the Fifth Amendment is violated in such circumstances, the State officer is the proximate cause of the violation.

A. Miranda Establishes An Evidentiary Rule That Applies To Criminal Trials.

Miranda is most famous for the warnings that many Americans could recite based simply on having watched a few police dramas on TV, at least as far as the "right to remain silent." The decision is rooted in the Self-Incrimination Clause of the Fifth Amendment, which is framed in terms of a narrower right. It provides that "[n]o person … shall be compelled in any criminal case to be a witness against himself." U.S. Const. amend. V.

The Self-Incrimination Clause thus establishes a "prohibition on compelling a criminal defendant to testify against himself at trial." ***United States v. Patane***, 542 U.S. 630, 637 (2004) (plurality op.) (citing ***Chavez v. Martinez***, 538 U.S. 760, 764-68 (2003) (plurality op.)); *see also* ***Chavez***, 538 U.S. at 777-79 (Souter, J., concurring in the judgment). In that respect, the Clause gives criminal defendants a "self-executing" right to the exclusion of evidence, such that "'those subjected to coercive police interrogations have an automatic protection from the use of their involuntary statements (or evidence derived from their involuntary statements) in any subsequent

criminal trial."' ***Patane,*** 542 U.S. at 640 (quoting ***Chavez,*** 538 U.S. at 769).

In ***Miranda***, this Court recognized the need to provide an extra layer of protection for defendants' Fifth Amendment right against self-incrimination. The Court noted that when police question criminal suspects held in government custody, those circumstances can create "inherently compelling pressures" making it hard to determine whether a suspect's statements are truly voluntary. ***Miranda***, 384 U.S. at 467. That potentially "jeopardize[s]" the defendant's "privilege against self-incrimination" if the statements are subsequently used against the defendant at trial. ***Id.*** at 478; *see also* ***Dickerson v. United States***, 530 U.S. 428, 435 (2000).

To guard against this danger, ***Miranda*** developed a "system for protecting the [Fifth Amendment] privilege" in custodial interrogations. 384 U.S. at 471. Specifically, it created an evidentiary rule generally excluding from a criminal trial any testimonial statements made by the defendant while being interrogated in police custody, unless that defendant has been expressly advised of certain rights. Under ***Miranda***, police wishing to obtain testimonial evidence in those circumstances must inform the suspect of the warning for which ***Miranda*** is now best known - that "he has the right to remain silent, that anything he says can be used against him in a court of law, that he has the right to the presence of an attorney, and that if he cannot afford an attorney one will be appointed for him prior to any questioning." ***Id.*** at 479. Without such warnings, "no evidence obtained as a result of interrogation can be used against him" as part of the prosecution's case-in-chief at trial." ***Id.***

Additionally, the Court has repeatedly emphasized that "[t]he Miranda rule is not a code of police conduct"; it does not "operate[] as a direct constraint on police"; and "police do not violate

... the Miranda rule ... by mere failures to warn." ***Patane***, 542 U.S. at 637, 642 n.3. As Justice Marshall noted, Miranda leaves law enforcement "free to interrogate suspects without advising them of their constitutional rights." ***New York v. Quarles***, 467 U.S. 649, 686 (1984) (Marshall, J., dissenting). For that reason, the Court in ***Chavez*** rejected a Section 1983 claim based simply on an officer's failure to read Miranda warnings before a custodial interrogation. *See* 538 U.S. at 772 ("Chavez's failure to read Miranda warnings to Martinez did not violate Martinez's constitutional rights and cannot be grounds for a § 1983 action."); ***id.*** at 789 (Kennedy, J., concurring in relevant part and dissenting in part) ("[F]ailure to give a Miranda warning does not, without more, establish a completed violation when the unwarned interrogation ensues.").

Rather than imposing a direct constraint on officers, Miranda instead establishes an evidentiary "exclusionary rule" prohibiting the use of most unwarned self-incriminatory testimonial statements as part of the prosecutor's case-in-chief at a subsequent criminal trial. ***Chavez***, 538 U.S. at 772; ***id.*** at 790 (Kennedy, J., concurring in relevant part) ("Miranda mandates a rule of exclusion."). ***Miranda's*** "focus" on "the admissibility of statements [at trial]," ***Patane***, 542 U.S. at 642 n.3, reflects its goal of protecting the Fifth Amendment privilege against self-incrimination, which by its terms protects a defendant only against being forced to serve as a "witness against himself" in "any criminal case," U.S. Const. amend. V (emphasis added); *see* ***Chavez***, 538 U.S. at 766-67.

In this way, ***Miranda*** establishes "recommended 'procedural safeguards"' designed to "help police officers conduct interrogations without facing a continued risk that valuable evidence would be lost" at trial. Michigan v. Tucker, 417 U.S. 433, 443 (1974). But the mere failure to give a Miranda warning does not itself violate "the Constitution (or even the Miranda rule, for that matter)." ***Patane***, 542 U.S. at 637.

For all these reasons, Yang can argue that State officials consummated a constitutional violation at the moment they improperly introduced the unwarned statement taken by police police at the hospital without first providing him with Miranda warnings. Indeed, Yang's counsel expressly claimed that argument in the trial court.

B. A Violation Of Miranda Does Equate To A Violation Of The Fifth Amendment

To prevail on his Section 2254 theory, Yang must establish that when an officer fails to provide a ***Miranda*** warning - and the criminal defendant's unwarned statement is then improperly introduced at trial by the prosecutor - the defendant has necessarily been deprived of his Fifth Amendment right against self-incrimination. That proposition is sound. This Court has consistently described ***Miranda*** as establishing a "prophylactic" rule whose core purpose is to "safeguard the [Fifth Amendment] constitutional guarantee against self-incrimination." ***J.D.B. v. North Carolina***, 564 U.S. 261, 269 (2011); *see also, e.g.*, ***Howes v. Fields,*** 565 U.S. 499, 507 (2012) (noting that Miranda adopted a "set of prophylactic measures") (quoting ***Maryland v. Shatzer***, 559 U.S. 98, 103 (2010)); ***Montejo v. Louisiana,*** 556 U.S. 778, 794 (2009) (describing "Miranda's prophylactic protection"); ***Patane,*** 542 U.S. at 636 ("[T]he Miranda rule is a prophylactic ...."); ***Chavez***, 538 U.S. at 772 ("[T]he Miranda exclusionary rule [is] a prophylactic measure ...."); ***id.*** at 780 (Scalia, J., concurring in part in the judgment) ("Section 1983 does not provide remedies for violations of judicially created prophylactic rules, such as the rule of Miranda ...."); ***Brecht v. Abrahamson***, 507 U.S. 619, 629 (1993) ("the Miranda prophylactic rule"); ***Michigan v. Harvey***, 494 U.S. 344, 350 (1990) ("the prophylactic Miranda rules"); ***Oregon v. Elstad***, 470 U.S. 298, 309 (1985) ("prophylactic Miranda procedures"); ***Quarles,*** 467 U.S. at 657 (noting Miranda's "prophylactic rule protecting the Fifth Amendment's privilege against self-incrimination"); ***Michigan v. Mosley***,

423 U.S. 96, 112 (1975) (Brennan, J., dissenting) (noting that "a prophylactic rule was fashioned" in Miranda); ***Michigan v. Payne***, 412 U.S. 47, 53 (1973) (describing Miranda as a "prophylactic constitutional rule[]"). The Court's repeated description of Miranda as a "prophylactic rule" squares with Miranda itself, which described its holding as having delineated a "system for protecting" the Fifth Amendment privilege against self-incrimination. ***Miranda***, 384 U.S. at 471.

Miranda protects the Fifth Amendment privilege by excluding unwarned statements that might have been the product of coercion, even if there was no actual coercion in real life. This Court has explained that the "Fifth Amendment prohibits use ... only of compelled testimony." ***Elstad***, 470 U.S. at 306-07. And ***Miranda*** "creates a presumption of compulsion" when police receive a self-incriminating custodial statement that is not preceded by ***Miranda*** warnings. ***Id.*** at 307. In that sense, ***Miranda*** creates a presumption that admitting an unwarned statement would violate the Fifth Amendment's prohibition on the introduction of compelled statements, and so "unwarned statements that are otherwise voluntary within the meaning of the Fifth Amendment must nevertheless be excluded from evidence under Miranda." ***Id.***

Here, Yang argues that his Fifth Amendment right against self-incrimination was violated when the prosecutor used his custodial, unwarned statement against him in a criminal trial. And the Fifth Amendment itself prohibits the trial use of statements that are actually "compelled." ***Elstad***, 470 U.S. at 306-07; *see also* ***Chavez***, 538 U.S. at 772-73; ***Quarles***, 467 U.S. at 658 n.7 ("[A]bsent actual coercion by the officer, there is no constitutional imperative requiring the exclusion of ... evidence ....").

Thus, for Yang to establish a violation of his Fifth Amendment rights at his criminal trial, he must show that he was actually "compelled" to become a "witness against himself." U.S. Const.

amend. V. Yang was given the chance to make that showing, and succeeded: The Wisconsin Court of Appeals in his state direct appeal found that Sergeant Lee did actually compel Yang's self-incriminating statement. *See* ***State v. Yang***, 2021 WI App 27, ¶¶ 5, 13-14. So as a matter of adjudicated fact - unchallenged here - Yang's self-incriminating statement was compelled. And "police [can] violate the [Self-Incrimination] Clause by taking unwarned though [in]voluntary statements." ***Patane***, 542 U.S. at 632.

Yang's argument that his statement should have been excluded from his criminal trial under ***Miranda*** because the judge at that trial failed to apply ***Miranda's*** presumption of coercion. The Seventh Circuit itself failed to recognize this: As the court observed, the admission of an unwarned statement may not violate ***Miranda*** where the police questioning at issue did not rise to the level of a "substantial showing of the denial of a constitutional right" for inadmissibility than the ***Miranda*** standard. Pet. App. 1a. So Yang's allegation that he was in custody for ***Miranda*** purposes when Sergeant Lee questioned him does establish, on its own, that a coerced or compelled statement was introduced against him at his criminal trial. And that supports Yang's Fifth Amendment claim, since it is only the "admission into evidence … of confessions obtained through coercive custodial questioning" that violates "the right protected by the text of the Self-Incrimination Clause." ***Chavez,*** 538 U.S. at 772 (emphasis added).

The bottom line here is simple: criminal defendants should not be held responsible for legal misjudgments by prosecutors and judges acting independently, without meaningful law enforcement officer input or control, months or years after the fact. Criminal defendants should be entitled to assume that those government actors will follow the law and faithfully apply ***Miranda***. This Court should reject the Seventh Circuit's decision to deny Yang's request for certificate of

appealability because the law enforcement officials in his case were responsible for violating that rule. That result is not only proper under this Court's precedents, but also necessary to maintain the integrity and coherence of this Court's ***Miranda*** jurisprudence. The Seventh Circuit's decision in this case allows Yang's unsworn statements to be used at trial even though Yang was in custody at the time he made his self-incriminating statement. As the state courts correctly recognized, there was a ***Miranda*** problem here, *see* ***State v. Yang***, 2021 WI App 27, ¶¶ 5, 13-14, and therefore a need for exclusion of Yang's statement. By those lights, Yang had suffered a violation of the Fifth Amendment, including the ***Miranda*** rule: Yang's statement was not voluntarily made, and it was made in a custodial setting in a hospital that would have triggered the need for ***Miranda*** warnings. This Court should reject the Seventh Circuit's rule and hold that law enforcement officers can be held liable in these circumstances.

CONCLUSION

The Seventh Circuit's judgment should be reversed.

Dated and signed this 26th day of May, 2023.

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