

IN THE  
**Supreme Court of the United States**

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DAVIE COUNTY, NORTH CAROLINA, *et al.*,

*Petitioners,*

*v.*

JUILIANA SWINK, ADMINISTRATRIX OF THE  
ESTATE OF DAVID RAY GUNTER, *et al.*,

*Respondents.*

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ON PETITION FOR A WRIT OF CERTIORARI TO THE  
UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

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**BRIEF OF MEDICAL RESPONDENTS  
IN SUPPORT OF PETITION FOR  
WRIT OF CERTIORARI**

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**CORPORATE DISCLOSURE STATEMENT**

Southern Health Partners, Inc., has a parent corporation named SHP Holding Company, Inc. Neither Southern Health Partners, Inc., nor SHP Holding Company, Inc., is a publicly held company and neither is owned by a publicly held company and neither has a stock ticker symbol.

Appellees below, Southern Health Partners Inc. (“SHP”), Jason Junkins, Medical Director, Fran Jackson, Manuel Maldonado, and Sandra Hunt (collectively, the “Medical Respondents”) hereby respectfully make this submission upon request of the United States Supreme Court. The Court has asked the Medical Respondents to file a response to the petition for a writ of certiorari filed by Davie County, North Carolina and Stokes County, North Carolina.

The Medical Respondents respectfully submit that Petitioners correctly argue that when a governmental entity (such as the Counties in this case) delegates the provision of medical care in a correctional facility to a third-party medical provider, the governmental entity should not be held automatically liable under Section 1983 for the acts and omissions of the employees and contractors of the third-party medical provider. The word “automatically” is critical because it denotes vicarious and/or respondeat superior liability, which directly contradicts this Court’s precedents in *Monell v. Department of Social Services*, 436 U.S. 658 (1978), and the Fourth Circuit’s own prior applications of *Monell* principles consistent with this Court’s precedents interpreting *Monell*.<sup>1</sup> Thus, the Medical Respondents agree with Petitioners that the

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1. While the Medical Respondents agree with Petitioners that liability is not automatic (therefore akin to a vicarious liability/respondeat superior theory in disguise) as was found here, the Medical Respondents emphasize, as discussed more fully below, that there are certain factual scenarios where a governmental entity could and should be found liable for their own actions and policies relative to medical care in a jail, even when they have hired a third-party company to provide medical services to the inmate population.

Fourth Circuit majority opinion represents a significant departure from this Court's interpretation and application of *Monell* liability. For nearly fifty years, the *Monell* analysis has been utilized to assess governmental liability and the impact of the governmental entity's policies and procedures when the constitutional tort of an employee is at issue. The Fourth Circuit's opinion creates a new (and impermissible) theory of liability, whereby a county can be liable for the policies, practices, customs, acts and omissions of a third-party contractor and its employees. Such a theory is inconsistent with the principles of *Monell* and its progeny for counties that delegate aspects of their constitutional responsibility to third parties. Indeed, the theory of liability created by the Fourth Circuit's opinion is traditionally not imposed on the third-party contractor itself for constitutional violations committed by its own employees in the medical setting.

The Medical Respondents would also add that the Fourth Circuit's decision implicates a host of "real world" practical concerns and disrupts a widely used and necessary practice in small and rural jails across the country, in which outsourcing medical care is prevalent because of a host of considerations, including, but not limited to, inadequate local medical and public health resources and knowledge base, the service of low populations in small rural jails, and the financial constraints of rural governments.

### **RELEVANT PROCEDURE/BACKGROUND**

While the Court is familiar with the case-specific background as provided in the opinions of the Courts that have considered and ruled on this case and the Counties'

petition, the Medical Respondents provide a few relevant points of context.

The thrust of the allegations of the Complaint is that SHP's employees and contractors failed to administer doses of Coumadin to detainee, David Gunter, while he was detained at two small, rural jails in North Carolina for fourteen consecutive days in November 2012. During his fourteen-day detention, Mr. Gunter was incarcerated at the Davie County Jail for nine days and then transferred to the Stokes County Jail for five days after which he was released. Eight days after his release, Mr. Gunter was admitted to the Hospital with a blood clot.<sup>2</sup>

The Medical Respondents do not and have never disputed that at the time of the allegations forming the basis of the Complaint, SHP was responsible for providing medical care at the Davie and Stokes County Jails pursuant to separate contracts entered between SHP and the two counties, respectively. These contracts are awarded through an RFP process, and the contract governs the total hours of on-site nursing coverage. SHP only provides medical services pursuant to contract. SHP has no other role or responsibility at these jails. This is not a "one-size-fits-all" service. It is specifically bargained-for and tailored to meet the particular needs of the particular county, given its size, population, budget, and needs of the specific population it serves, among other things. Both jails involved in this case are small jails with small inmate populations. SHP nurses were contracted to be on-site at

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2. Mr. Gunter died from an unrelated cause on June 1, 2025 (13 years after the incarceration) and during the pendency of the appeal. Plaintiff Swink was substituted on behalf of the Estate.

the jail each weekday at specified times, and nurses were available to jail staff by phone twenty-four hours per day. Plaintiff/Respondent claims that SHP and its employees and contractors provided inadequate medical care during Mr. Gunter's detention.

Requiring the Counties to shoulder automatic (i.e., vicarious) liability for the constitutional torts of the provider's employees creates a potential hurdle to providing medical care to a vulnerable population in geographically isolated areas. The specific practical concerns implicated by the Fourth Circuit's opinion will be addressed below. However, counties should be able to rely on licensed and qualified providers when exercising their constitutional mandate to provide adequate medical care in their jails without potentially exposing themselves to automatic liability under Section 1983. SHP should be responsible for its own policies, procedures and protocols without oversight by non-medical governmental employees and administrators who are not licensed medical professionals. Further, state law and licensing requirements apply to the delivery of medical services in a jail, including administering prescriptions medications, which is at the heart of Plaintiff's alleged constitutional violations in this case. A jail is not a pharmacy, and nurses must comply with state laws requiring jail medical staff to obtain prescription medications from a licensed pharmacy. In short, as already stated and as will be described herein, the provision of medical services in a jail is a nuanced and specialized area of medicine, which is why it is often necessary for small, rural jails to outsource. With these concerns in mind, the Fourth Circuit's opinion in this context is jarring. The opinion upsets years of precedent around which an entire ecosystem has been built and

which many jails in small and rural counties have come to depend.

Given these considerations, and because the overwhelming authority on this issue holds that SHP cannot be held vicariously liable for the acts of its own employees under Section 1983, the Medical Respondents support the petition for writ of certiorari and suggest the Court use this case to affirm the overwhelmingly number of circuits that have held vicarious liability does not apply to third-party companies such as SHP.

## LEGAL ARGUMENT

### **I. The Effect of the Fourth Circuit Decision is Impermissible Vicarious Liability for a Governmental Entity for the Agents of Private Contractors.**

Without re-plowing ground already covered in the Petition filed by the Counties, the Medical Respondents submit that the Counties are correct in their position that the effect of the Fourth Circuit's decision is that going forward, a governmental entity, like the Counties, can be automatically (i.e., vicariously) liable for the torts of its private contractors in the Fourth Circuit. Not only does this distort the holdings by this Court in *Monell*, its progeny and precedents of the Fourth Circuit, it has practical implications for private prison medical contractors and governmental entities that are unworkable.

Of note, and referenced but not fully briefed by Petitioners, the relevant case law stands for the proposition that there is no vicarious liability between the contractor

and the County, though there are certainly factual scenarios when the jail will have its own medical-related policies, distinct from the policies of a contracted third-party medical provider, for which *Monell* liability could attach. In other words, restoring the *Monell* status quo does not eviscerate county responsibility (or even liability) when the facts warrant it, and the Medical Respondents are certainly not suggesting that there cannot be circumstances in which the County could and should be found liable for the failure to provide constitutionally adequate medical care to prisoners.

Again, the unique and nuanced nature of the provision of health care in a jail warrants mention. Underscoring the delegation of the serious responsibility of providing medical care to prisoner populations, the Counties often bear some responsibility—not just at a global level—but also for the day-to-day delivery of medical services. Thus, many counties will have separate policies regarding the delivery of medical services in a jail. The policies are for unlicensed correctional officers and unlicensed employees. County policies are not for licensed nurses employed by SHP or physician providers contracted with SHP. It is permissible for correctional staff to administer medical or medical-adjacent care in a jail in certain limited circumstances. For example, nurses in a jail are not free to “round” on patients and must rely on correctional staff to report medical emergencies or changes in condition when an inmate is unable to report his condition because inmates must be detained in cells or pods outside of the immediate reach of medical staff where medical staff are not free to go. In some jails, correctional staff administer prescription medications to inmates, i.e., the correctional officers hand the medicine to the inmate for consumption

when security and logistics require. Further, correctional staff receive specialized training for certain medical aspects unique to their jobs. For example, correctional staff are often trained to recognize a medical emergency and to call emergency services when needed or when medical staff are not on-site. Correctional staff are often trained in life-saving medical techniques, like CPR and AED machines. Correctional staff in some small jails are trained to monitor blood sugars of diabetic detainees. And the list goes on. The practicalities of a jail often require overlapping responsibilities in the delivery of medical care. Therefore, the Medical Respondents are not suggesting that Counties or governmental entities have no need for medical-related policies of their own for which they bear responsibility if the elements of municipal liability attach. However, where, as here, the specific medical policies, procedures and protocols of a third-party provider are in question, the Fourth Circuit's new rule goes too far. Section 1983 liability for a governmental entity can only be proven through the lens of *Monell*. Therefore, the Medical Respondents join in the Counties' argument that ***automatic*** liability should not attach under the facts of this case.

**II. The Overwhelming Weight of Authority, With Few Exceptions, Holds that Vicarious Liability/ Respondeat Superior is Not Permitted under Section 1983 Between a Private Medical Contractor and Its Own Employees and Contractors.**

It is important to point out the absurd result that the Fourth Circuit majority opinion engenders in this case. Here, under current and majority law in the federal circuits, vicarious liability would not attach to SHP for the

constitutional torts of its own employees and contractors. Now, the Fourth Circuit has created a scenario where Section 1983 liability skips SHP, and the Counties—despite not employing the employees and contractors at issue in this case—can nonetheless be held vicariously liable for the alleged constitutional violations of SHP’s employees and contractors. This is an incongruous result.

While this Court has never explicitly addressed whether vicarious liability applies when private corporations are sued under Section 1983, the overwhelming majority of federal circuit courts that have considered the issue have held that private government contractors acting under the color of state law are not vicariously liable for the acts of their employees and contractors under a theory of respondeat superior. This principle has been firmly ensconced in the jurisprudence of the Fourth Circuit since the 1980s. In the seminal Fourth Circuit case on the issue, *Powell v. Shopco Laurel*, 678 F.2d 504 (4th Cir. 1982), the Fourth Circuit extended the reasoning of *Monell* to private contractors on the basis that no aspect of the *Monell* court’s reasoning justified distinguishing between governmental entities and private corporations. The Fourth Circuit specifically held Congress intended to exclude the imposition of vicarious liability because before a party could be liable under Section 1983, the party had to *cause* the deprivation of constitutional rights. *Powell*, 678 F.2d at 506. *Powell*’s reasoning has been applied in the Fourth Circuit routinely ever since.

Likewise, most of the other Circuit Courts that have considered the issue reach the same conclusion as *Powell*. See, e.g., *Rojas v. Alexander’s Dept. Store, Inc.*, 924 F.2d 406, 409 (2d Cir. 1990) (stating “[a]lthough *Monell* dealt

with municipal employers, its rationale has been extended to private businesses” and holding private employers are not liable under Section 1983 for the constitutional torts of their employees); *Green v. City of New York*, 465 F.3d 65, 82 (2d Cir. 2006) (affirming *Rojas* and holding a private hospital is not vicariously liable under Section 1983 for any constitutional torts that its employees may have committed); *Natale v. Camden County Correctional Facility*, 318 F.3d 575, 583 (3rd Cir. 2003) (applying the holding of *Monell* to private prison healthcare company and holding the contractor could not be held vicariously liable for the unconstitutional acts of its employees); *Street v. Corrections Corporation of America*, 102 F.3d 810, 817-818 (6th Cir. 1996) (extending holding of *Monell* to private corporations); *Starcher v. Correctional Medical Systems, Inc.*, 7 F. App’x 459, 465 (6th Cir. 2001) (affirming *Street* in the context of a private jail medical services provider); *Iskander v. Village of Forest Park*, 690 F.2d 126, 128 (7th Cir. 1982) (adopting reasoning of *Powell* and finding private corporations cannot be held vicariously liable for their employee’s alleged violation of constitutional rights); *Wilson v. Wexford Health Sources, Inc.*, 932 F.3d 513, 521-22 (7th Cir. 2019) (deciding not to reconsider *Iskander* and holding the medical provider could not be held vicariously liable in the context of Section 1983);<sup>3</sup> *Lux by Lux v.*

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3. Note the Seventh Circuit has been openly critical of the majority view while continuing to follow the reasoning of *Iksander*. In *Shields v. Illinois Dept. of Corrections*, the Seventh Circuit cast doubt on the reasoning of *Powell* and other cases finding that private corporations cannot be held vicariously liable in the context of a Section 1983 claim, noting the dearth of Supreme Court precedent on the issue, stating that the Court’s decision in *Monell* was made with “special solitude” to municipalities, but still ruling in line with *Iskander*. 746 F.3d 782 (7th Cir. 2014).

*Hanson*, 886 F.2d 1064, 1067 (8th Cir. 1989) (holding private corporation could not be held liable under Section 1983 because “no liability exists under the doctrine of respondeat superior”); *Smith v. Insley’s, Inc.*, 499 F.3d 875, 880 (8th Cir. 2007) (holding private corporations can only be held liable under Section 1983 through a showing that a policy or custom caused the constitutional violation and not under a theory of respondeat superior); *Tsao v. Desert Palace, Inc.*, 698 F.3d 1128, 1138-39 (9th Cir. 2012) (extending holding of *Monell* to private corporations, reasoning that the Court found no basis in reasoning underlying *Monell* to distinguish between municipalities and private entities acting under the color of state law); *BGH Holdings, LLC v. D.L. Evans Bank*, No. 24-2540, 2025 WL 1452553, at \*2 (9th Cir. May 21, 2025) (same); *Dubbs v. Head Start, Inc.*, 336 F.3d 1194, 1216 (10th Cir. 2003) (extending the holding of *Monell* to private corporations and holding private actor cannot be held liable under Section 1983 solely on a theory of respondeat superior); *Estate of Beauford v. Mesa County, Colorado*, 35 F.4th 1248, 1275 (10th Cir. 2022) (affirming *Dubbs* and holding *Monell* applies to private entities); *Harvey v. Harvey*, 949 F.2d 1127, 1129 (11th Cir. 1992) (holding that *Monell* applies to private corporations, reasoning that every circuit to consider the issue has extended the holding, as well); *Maniaci v. Georgetown*, 510 F.Supp.2d 50, 62 (D.D.C. 2007) (noting circuits that have extended *Monell* to private entities and holding that a corporation action under color of state law will only be held liable under Section 1983 for its own unconstitutional policies and not through vicarious liability).

Even in Circuits where there is no holding at the appellate level, the district courts still mostly apply

*Monell*'s rationale in the context of a corporation acting under color of state law. *See, e.g.*, [First Circuit] *Wall v. Dion*, 257 F.Supp.2d 316, 319-320 (D. Me. 2003) (following the majority view that “equates private contractors with municipalities when providing services traditionally reserved to the state” and holding private corporation cannot be held vicariously liable for employee’ constitutional violations under Section 1983); *Roy v. Hanks*, No. 18-CV-817-JL, 2019 WL 2062467, at \*7 (D.N.H. Apr. 24, 2019) (recognizing that the First Circuit has not decided whether private corporations can be held vicariously liable under Section 1983 but following the majority of courts that have ruled on the issue and held *Monell* extends to private corporations); *Vanetten v. Daigle*, No. 2:22-CV-00291-JDL, 2023 WL 4138707, at \*5 (D. Me. June 22, 2023) (holding private contracts such as defendant that provided services in a jail are generally treated as municipalities for purposes of section 1983 and therefore vicarious liability is inapplicable).<sup>4</sup>

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4. The Fifth Circuit does not have a circuit-level opinion on the matter, and the district courts are split in their application. *See Brown v. Wilson County*, No. SA-97-CA-1473-OG, 1999 WL 33290666, at \*12 (W.D. Tex. Mar. 31, 1999) (extending *Monell*'s holding to private corporations because “every circuit to consider the issue has extended the holding to private corporations as well”); *Hutchinson v. Brookshire Bros., Ltd.*, 284 F.Supp.2d 459, 47273 (E.D. Tex. 2003) (declining to extend the protections of *Monell* to a private corporation when their employees have committed a Section 1983 violation); *Phillips v. Corrections Corp. of America*, No. CIV.A. 02-0766, 2006 WL 1308142 (W.D. La. May 10, 2006) (concluding the same standards for determining Section 1983 liability for municipal entities applies to private corporations, including protection against vicarious liability); *Porter v. Wilkinson*, No. 10-CV-506, 2010 WL 3325709, at \*3 (W.D. La. Aug. 3, 2010), *report and recommendation adopted*,

If SHP is not vicariously liable for the constitutional torts of its own employees, agents and contractors under current, widely accepted precedent, then the Fourth Circuit opinion holding the Counties automatically (vicariously) liable for the constitutional torts of SHP’s employees and contractors makes even less sense.

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No. 10-CV-506, 2010 WL 3327934 (W.D. La. Aug. 23, 2010) (“just as a municipal corporation is not vicariously liable for the constitutional torts of its employees, a private corporation is not vicariously liable under § 1983 for its employees’ deprivation of others’ civil rights”); *Chapman v. Correct Care Sols.*, No. CV 16-13034, 2017 WL 535333, at \*2 (E.D. La. Jan. 19, 2017), *report and recommendation adopted*, No. CV 16-13034, 2017 WL 530342 (E.D. La. Feb. 9, 2017) (finding private corporations cannot be held vicariously liable for the actions of its employees and any claim based only on conduct of employees fails as a matter of law); *Montgomery v. Logsdon*, No. CV 20-756, 2022 WL 4245542, at \*3 (E.D. La. Apr. 25, 2022), *report and recommendation adopted*, No. CV 20-756, 2022 WL 3755040 (E.D. La. Aug. 30, 2022) (holding private corporations cannot be held vicariously liable under Section 1983 for its employees’ constitutional violations); *Belknap v. Leon Cnty., Tex.*, No. 622CV01028ADAJCM, 2023 WL 3604728, at \*8 (W.D. Tex. Apr. 3, 2023), *report and recommendation adopted*, No. 622CV01028ADAJCM, 2023 WL 3612345 (W.D. Tex. May 23, 2023), *aff’d in part, rev’d in part and remanded sub nom. Belknap v. Spinks*, No. 23-50465, 2025 WL 3014912 (5th Cir. Oct. 28, 2025) (concluding private prison contractors can be held vicariously liable for constitutional violations committed by employees); *Vernier v. Smith Cnty., Tex.*, No. 6:24-CV-00378-JCB-JDL, 2025 WL 2633208, at \*10 (E.D. Tex. Apr. 30, 2025), *report and recommendation adopted*, No. 6:24-CV-00378, 2025 WL 2491114 (E.D. Tex. Aug. 29, 2025) (distinguishing *Hutchinson* and finding private healthcare providers could not be held vicariously liable for its employees’ constitutional violations); *Wennermark v. Dewitt Cnty.*, No. 6:24-CV-00031, 2026 WL 74128, at \*4 (S.D. Tex. Jan. 9, 2026) (allowing plaintiff to amend his complaint to add a claim for vicarious liability against a private corporation).

### **III. Adopting the Fourth Circuit Minority Position Could Have Unintended Consequences.**

As noted in the Counties' Petition, the contractual arrangement between SHP and the Counties constitutes a common and widespread contractual arrangement across the country, especially in small, rural counties. Under the long-standing precedents of this and other circuits, SHP labored under the belief that it was independently responsible for its medical policies and protocols, and that its policies, procedures and protocols were separate and independent from the Counties' policies, even those County policies that relate to medical care or are medically adjacent. As already explained, a Section 1983 case related to inadequate medical care could involve both the company's policies and protocols and the governmental entities' own policies related to medical care. In this case, Plaintiff/Respondent never identified any County policy or practice that he contended was the moving force behind an alleged constitutional violation. As such, the Fourth Circuit majority opinion relies on the mere delegation of medical care and contends that certain SHP practices can support liability against the Counties. This is simply vicarious liability by another name.

The Fourth Circuit's opinion has practical implications and considerations that have been noted and could negatively impact how medical care is delivered in jails. As the Court is aware, the privatization and outsourcing of prison services has increased over the years. See Peyton Holahan, *The Perils of Privatization: Exploring the Side Effects of Privatized Correctional Health Care in Favor of A Public Delivery Model*, 29 Wash. & Lee J. Civil Rts. & Soc. Just. 329, 334 (2023). The privatization of

prisons has become a controversial topic. Micaela Gelman, *Mismanaged Care: Exploring the Costs and Benefits of Private vs. Public Healthcare in Correctional Facilities*, 95 N.Y.U. L. Rev. 1386, 1391 (2020). However, the concerns raised relative to prison privatization generally are not as relevant in the context of this case. As alluded to earlier, the Davie County and Stokes County jails are not large prison systems or even jails in large, highly populated and well-funded counties or cities. SHP provides medical services only and only services small to mid-sized municipal and county jail facilities. Because of the scarcity of medical resources, geographical remoteness of facilities in rural counties, inadequacies in local public health systems, financial and budgetary concerns of the local governments and most importantly, small inmate populations, finding qualified medical professionals and physicians to staff small jails is often difficult, and in most small, rural jails, it is not necessary for nurses to be on site 24 hours per day or every day of the week.

Another important consideration here is that medical providers are required to be specially licensed and are professionals. Each state has licensing requirements for the provision of medical services, and therefore, outsourcing must be made to qualified and licensed medical professionals. County jail administration and sheriffs are (usually) not licensed medical providers. Once the county outsources medical care to a licensed and qualified medical provider, the provider's own policies, procedures and medical protocols come into effect (in addition to the policies and procedures relative to medical care that the governmental entity already has in place). Outside of the basic fact that jails are required to provide constitutionally adequate medical care, an unlicensed

governmental official should not be and indeed is not qualified to make specific decisions relative to medical policy, procedure and protocols in a jail. Yet the Fourth Circuit's opinion ignores this critical fact. As such, the Fourth Circuit opinion could create an environment that invites direct governmental oversight over patient care which is inappropriate and unlawful. Correctional healthcare is unique and nuanced. A jail is not a hospital; there are many factors that play into how care is provided to detainees. For example, the various security concerns must be maintained to protect the nurses and medical staff; jails house detainees who may only stay for a very short time and may never use the services of a jail medical provider; many detainees come into the jail off the streets, often with no prescriptions or accurate medical history in hand; and jail populations often consist of vulnerable persons with complicated medical histories arising from mental illness or long term alcohol and drug abuse. In short, the provision of jail medical services is a specialized area of medicine, and the decision to outsource jail medical care is one where many practical considerations are in play that may not come to immediate mind to jurists. In small, rural counties like Davie and Stokes counties, where access to a robust public health system may not be close at hand, the decision to outsource medical care to a qualified provider is even more important. Collapsing the liability of the county and provider could have a chilling effect on medical professionals' willingness to serve rural jails where governmental input and considerations would take priority over sound medical knowledge and judgment regarding protocols that officials lack expertise to draft and implement.

In sum, the provision of medical care in a jail is a specialized area of medicine that requires correctional staff and medical staff to work together (albeit under separate policies) to provide constitutionally adequate and appropriate medical care in jails. The Fourth Circuit opinion upsets this delicate balance, and for the reasons stated herein should be reversed.

### CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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