

No. _____

In the Supreme Court of the United States

KEVIN YEUNG,

Petitioner,

v.

SHANNON HUMPHREY,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE COURT OF APPEALS OF GEORGIA

PETITION FOR WRIT OF CERTIORARI

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AUGUST MMXXVI

QUESTION PRESENTED

Whether the Fourteenth Amendment required a state court to afford an unrepresented civil litigant a further opportunity to submit competent expert support before entering summary judgment, where the litigant had notice of evidentiary objections, filed post-hearing custodian affidavits concerning two of the three reports but no affidavit from the third author, the state appellate court found no demonstrated request for additional time to cure, and state law made supplementation discretionary.

PARTIES TO THE PROCEEDINGS

Petitioner, and plaintiff-appellant below is Kevin Yeung.

Respondent, and defendant-appellee below is Shannon Humphrey.

RELATED PROCEEDINGS

Superior Court of Georgia (Jackson Cty.):

Kevin Yeung v. Shannon Humphrey, No. 22CV0988 (summary-judgment order entered Oct. 22, 2024; order addressing motions for new trial and protective notice of appeal entered Jan. 17, 2025; attorney-fee order entered Mar. 11, 2025; lis-pendens order entered Apr. 1, 2026; further orders entered May 19, 2026)

Court of Appeals of Georgia:

Kevin Yeung v. Shannon Humphrey, No. A25D0228 (Feb. 11, 2025) (application for discretionary appeal from the Jan. 17, 2025 order denied)

Kevin Yeung v. Shannon Humphrey, No. A25A1330 (Oct. 29, 2025) (judgment affirming summary judgment entered)

Kevin Yeung v. Shannon Humphrey, No. A25A1735 (Feb. 18, 2026) (judgment affirming the Superior Court's Mar. 11, 2025 attorney-fee award)

Kevin Yeung v. Shannon Humphrey, No. A26A1894 (appeal from the Apr. 1, 2026 lis-pendens order; pending as of Aug. 11, 2026)

Kevin Yeung v. Shannon Humphrey, No. A26D0482 (May 14, 2026) (application for discretionary appeal dismissed as superfluous)

Kevin Yeung v. Shannon Humphrey, No. A26I0230 (Jun. 15, 2026) (application for interlocutory appeal from a May 19, 2026 order granted)

Kevin Yeung v. Shannon Humphrey, No. A26A2290 (appeal from the May 19, 2026 order; pending as of Aug. 11, 2026)

Supreme Court of Georgia:

Kevin Yeung v. Shannon Humphrey, No. S26C0493 (certiorari denied Mar. 31, 2026; reconsideration denied Apr. 21, 2026)

Kevin Yeung v. Shannon Humphrey, No. S26C0974 (petition seeking review of A25A1735 filed Mar. 7, 2026; certiorari denied Aug. 11, 2026)

Supreme Court of the United States:

Yeung v. Humphrey, No. 25A1414 (June 18, 2026) (time to petition for writ of certiorari extended to until August 19, 2026)

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The unpublished opinion of the Court of Appeals of Georgia is unreported and reproduced at App. 1–11. The Supreme Court of Georgia’s orders denying certiorari and reconsideration are reproduced at App. 12–13. The Superior Court’s summary-judgment order is reproduced at App. 14–40. Its separate order striking a supplemental expert report is reproduced at App. 41–43.

JURISDICTION

The Court of Appeals of Georgia entered judgment on October 29, 2025. The Supreme Court of Georgia denied certiorari on March 31, 2026, and reconsideration on April 21, 2026. Justice Thomas extended the time to petition for certiorari until August 19, 2026. This Court has jurisdiction under 28 U. S. C. § 1257(a), which permits review of a final judgment rendered by the highest state court in which a decision could be had when a federal right was specially set up or claimed. Whether the federal claim was timely and properly presented, and whether the judgment rests on adequate and independent state grounds, are substantial threshold questions addressed below. See pp. 7, 11–16, *infra*.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

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.”

OCGA §9–11–56(e) provides, in relevant part:

“Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in the evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith. The court may permit affidavits to be supplemented or opposed by depositions, answers to interrogatories, or further affidavits.” OCGA §9–11–56(e).

STATEMENT OF THE CASE

I. The property dispute and summary-judgment record

The underlying dispute arose when Petitioner Kevin Yeung and Respondent Shannon Humphrey owned adjoining residential properties in Jackson County, Georgia. Proceeding without counsel in the trial court, Yeung alleged that Humphrey’s swimming-pool construction and related drainage features caused water, erosion, and other damage on Yeung’s property. He sought damages and injunctive relief on nuisance and negligence-per-se theories. App. 1–2, 14–40.

Discovery was contentious. The September 18, 2024 order recited that Yeung had previously been

sanctioned for failing to respond to discovery and had persistently failed or refused to identify experts or provide reports. App. 41–43. Yeung nevertheless filed his own summary-judgment motion on March 17, 2024. It cited OCGA §9–11–56 and Federal Rule of Civil Procedure 56, identified the Aycock report, stated that two other reports were forthcoming, and requested instructions for their submission. App. 76. Humphrey opposed that motion on April 16 and filed a cross-motion on May 17. Yeung opposed the cross-motion on June 15. The cross-motion and supporting brief challenged both the admissibility and sufficiency of Yeung’s proof.

The three reports addressed by the Court of Appeals were prepared by Brent E. Wadlington of JAH Environmental Safety & Health, LLC, App. 428–432; Michael B. Thurmond, P.E., of Armentrout Matheny Thurmond, P.C., App. 435–439; and Elvin Aycock, P.E., P.H., of Atlanta Engineering Services, Inc., App. 545–554. They concerned soil conditions, drainage, runoff, and causation. Humphrey argued that the reports were unsworn, unauthenticated hearsay and lacked the required evidentiary and expert foundation.

On September 24, 2024—six days after the Cordle ruling and before entry of summary judgment—Yeung filed a clerk-stamped, three-page submission containing custodian-of-records affidavits executed by Michael B. Thurmond, Elvin Aycock, and Mark Cordle. The supplied copy contains no affidavit from Wadlington. Each affidavit states that an ‘attached record’ was made and kept in the ordinary course of business. The supplied three-page copy contains only the affidavits; absent the complete e-filing envelope, Petitioner

does not represent that no report copies accompanied the original transaction. The Thurmond and Aycock affidavits do not independently recite or expressly adopt the reports' substantive opinions, establish all expert-qualification and methodology requirements, or address every causation issue later identified by the courts. They are sworn custodian affidavits, not sworn expert reports.

Neither the trial court's summary-judgment order nor the Court of Appeals' opinion discussed the September 24 affidavits. The Court of Appeals instead described all three reports as unsworn and unauthenticated. App. 2–7. This petition does not ask the Court to decide whether the filing was procedurally authorized, whether the custodian affidavits satisfied Georgia evidence law, or whether the state courts overlooked material in the record. It presents only the narrower federal procedure question stated above.

II. The Cordle submission is not presented

A separate pre-judgment submission involving the Cordle report followed a different procedural path. On July 4, 2024, Yeung filed a supplemental report attributed to T. Mark Cordle. Humphrey moved to strike on July 26, addressing timeliness, disclosure, authentication, hearsay, and the lack of an opportunity to examine the proposed expert. Yeung filed a lengthy opposition on August 22 and attached a notarized Cordle custodian affidavit. The parties appeared for a hearing on September 5. On September 18, the court struck the Cordle submission as untimely and as inadmissible hearsay; the order described the report as unaccompanied by an affidavit. App. 41–43.

The September 24 packet included another Cordle affidavit, and Yeung's postjudgment motions asserted that the Cordle affidavit had accompanied the August 22 opposition and challenged the September 18 ruling. But the merits appeal did not enumerate error in the Cordle ruling, and the Court of Appeals' opinion expressly addressed the three other reports. App. 2–7. This petition therefore does not seek review of the Cordle order or add any question concerning that submission.

III. The summary-judgment ruling

After the September 5 hearing, the Superior Court denied Yeung's motion and granted Humphrey's cross-motion on October 22, 2024. As the Court of Appeals described the ruling, the trial court refused to consider the three reports because they were unsworn. App. 2–3. The appellate court further held that the reports were unauthenticated hearsay and that Yeung had not shown a hearsay exception or adequate foundation. App. 3–7. The state courts did not address whether the September 24 custodian affidavits cured any particular defect. Petitioner therefore does not characterize every defect as merely formal or necessarily curable.

The order did not rest solely on the reports. The court relied on Yeung's deposition admissions that he had not observed pool water crossing onto his land, did not know whether his pleaded assertions were true, did not know what caused the alleged damage, and lacked evidence supporting a chlorine-contamination allegation. It also noted the absence of photographs or video depicting water crossing the boundary, a defense video showing water moving toward the street,

defense affidavits from a civil engineer and county personnel, and the absence of competent proof of causation. App. 8–11, 19–23, 33–40. The court granted Humphrey summary judgment on nuisance and negligence *per se* and denied Yeung’s motion.

IV. The Court of Appeals’ decision

Counsel represented Yeung on the merits appeal. The opening brief argued under Georgia law that the reports, or testimony that might be derived from them, could be used at trial and that OCGA §9–11–56(e) permitted supplementation. It contended that, because Yeung had been *pro se*, the trial court should have permitted amendment once it directed that supplementation was required. A25A1330 Appellant Br. 17–18 (filed Apr. 24, 2025). The reply similarly argued that Yeung should have been afforded an opportunity to place the reports in affidavit form. A25A1330 Reply Br. 4–5 (filed June 25, 2025). Neither brief identified the Fourteenth Amendment or federal procedural due process as the source of the requested cure opportunity.

The Court of Appeals affirmed in an unpublished decision. It held that the three reports were unsworn, unauthenticated hearsay; that Yeung had identified no exception and laid no adequate foundation; and that exclusion was not an abuse of discretion. App. 3–7. It also held that Yeung had not shown that he asked the trial court for an opportunity to cure. That formulation matters: the March 17 motion requested instructions concerning two forthcoming reports, and later filings addressed affidavits, but the state appellate court found no demonstrated request for the additional pre-judgment cure opportunity

asserted here. The court also noted that Yeung had consulted several lawyers, elected to proceed *pro se*, was warned that evidence rules and applicable law would bind him, and remained subject to the rules applicable to represented parties. App. 6–7.

The Court of Appeals separately affirmed because Humphrey had negated essential elements and pointed to an absence of competent evidence. It relied on Yeung’s deposition admissions; the lack of photographs or video showing water crossing the boundary; Humphrey’s video; affidavits from a civil engineer, a code-enforcement officer, and a building inspector; Georgia’s rule for unexplained self-contradictory testimony; the failure of Yeung’s wife’s affidavit to identify the source of water she observed; and the failure of Yeung’s photographs to show runoff from Humphrey’s property. App. 7–11. Yeung did not challenge the separate negligence-per-se judgment or the denial of his own motion. App. 1, n. 1.

V. Further state review and Rule 14.1(g)(i) presentation

The federal presentation is limited. At the trial-court level, Yeung’s March 17 motion cited Federal Rule of Civil Procedure 56 as additional procedural authority and requested instructions regarding submission of two forthcoming reports. App. 76. His June 15 opposition argued admissibility under state evidence law. Neither filing identified the Fourteenth Amendment or federal procedural due process as requiring a pre-judgment cure opportunity. A reference to a federal procedural rule that did not govern the state proceeding did not itself present the constitutional question now asserted.

After judgment, Yeung’s November 1 motion for new trial and November 9 amended motion asserted that the Cordle affidavit had accompanied the August 22 filing and that expert affidavits had been e-filed again on September 24. R.2:1492–1494, 1559–1562. The amended motion invoked Georgia’s jury-trial guarantee and quoted Georgia authority for the proposition that summary judgment does not unconstitutionally deprive a litigant of a jury trial when no issue of fact exists. It did not identify the Fourteenth Amendment or formulate a federal right to an additional cure opportunity. Respondent represented in a November 8, 2024 objection that presentation of evidence had closed at the September 5 hearing and that the court had authorized later proposed orders, not additional evidence. Def.’s Objection to Pl.’s Mot. for New Trial 3–4 (filed Nov. 8, 2024). The trial court did not adopt that representation or decide the affidavits’ status in its January 17, 2025 order. That order held only that a motion for new trial was not a proper vehicle for attacking summary judgment and denied the motion and amended motion. It found the protective notice of appeal defective and held that the invalid motion did not extend the appeal period. R.2:1824–1826. It did not address the September 24 affidavits, decide whether any report could be cured, or pass upon the federal due-process theory. The Court of Appeals denied the related discretionary application in A25D0228 on February 11, 2025.

In the Court of Appeals, Yeung’s counseled briefs presented a state-law cure argument under OCGA §9–11–56(e) and decisions concerning self-represented parties, but did not identify a federal constitutional right. A25A1330 Appellant Br. 17–18;

A25A1330 Reply Br. 4–5. The Court of Appeals decided only the state evidentiary and procedural issues. App. 3–7.

Yeung’s *pro se* petition for certiorari in the Supreme Court of Georgia quoted the Fourteenth Amendment and alleged due-process and equal-protection violations in connection with denial of injunctive relief, witness confrontation, and property protection. S26C0493 Pet. 15–18 (filed Nov. 17, 2025). It did not clearly formulate the question now presented. His reply later alleged procedural due process from resolving disputed issues without meaningful evidentiary development and stated that the trial court treated technical defects as dispositive without an opportunity to cure. S26C0493 Reply 11–12, 22–23 (filed Jan. 6, 2026). The Supreme Court of Georgia denied certiorari and reconsideration without opinion. App. 12–13.

Petitioner contends that the constitutional implications of the cure argument became more concrete when the Court of Appeals made the absence of a demonstrated trial-level request part of its reasoning, and that he raised due process at the next stage. That sequence, however, does not eliminate the preservation problem. This Court ordinarily will not consider a federal claim on review of a state-court judgment unless the claim was either addressed by or properly presented to the state court whose decision is under review. *Adams v. Robertson*, 520 U.S. 83, 86–87 (1997) (per curiam); *Howell v. Mississippi*, 543 U.S. 440, 443–445 (2005) (per curiam); see also *Webb v. Webb*, 451 U.S. 493, 496–501 (1981); *Cardinale v. Louisiana*, 394 U.S. 437, 438–439 (1969). Because the Supreme Court of Georgia was silent on the

federal question, Petitioner bears the burden of showing that court had a fair opportunity to address it. *Adams*, 520 U. S., at 87; *Webb*, 451 U. S., at 501. Petitioner supplies these stage, manner, and record citations to comply with Rule 14.1(g)(i), not to suggest that the preservation objection is insubstantial.

REASONS FOR GRANTING THE PETITION

I. The question is important and recurring, although this case does not present a square conflict.

Summary judgment produces a final adjudication without trial. State courts regularly confront documentary material whose evidentiary form is deficient but whose author may be available to supply testimony, authentication, or foundation. The question whether the Constitution ever requires an express, short opportunity to correct such deficiencies before final judgment affects access to civil adjudication and the risk of erroneous deprivation.

This petition does not assert a conflict within Rule 10(a) or (b). At most, it asks the Court to consider an unsettled federal procedural question by analogy to Rule 10(c). But no court below expressly decided that federal question; the Court of Appeals resolved state evidentiary, procedural, and sufficiency issues. That feature, together with the case-specific record, is a substantial obstacle to certiorari. Nor does Petitioner ask the Court to review a merely erroneous application of Georgia evidence law or to decide whether the September 24 affidavits should have been considered.

The question is capable of a narrow answer. The asserted safeguard would apply only when a court is

preparing to enter final summary judgment; the court identifies evidentiary form or foundation as material to that disposition; the missing showing appears reasonably capable of being supplied; supplementation is permitted by governing procedure; and a short cure period would not cause unfair prejudice. The rule would not require admission of hearsay, acceptance of an expert's conclusion, reopening discovery, forgiveness of untimely disclosure, or a ruling that any existing affidavit is sufficient.

This record also shows why those limits matter. Before judgment, Thurmond and Aycok filed custodian affidavits concerning two of the three reports, and Cordle filed an affidavit concerning the separately submitted Cordle report; no Wadlington affidavit appears. The affidavits did not independently supply every expert or causation foundation; the Cordle submission had separate disclosure and timeliness problems; and the courts found multiple evidentiary gaps. Petitioner therefore does not describe every defect as technical or necessarily curable. He contends only that an express, defined opportunity could have tested whether competent affidavits or testimony from the three report authors would cure material deficiencies before final judgment.

II. The requested rule can be defined without excusing compliance or requiring legal advice.

Due process generally requires notice and an opportunity to be heard at a meaningful time and in a meaningful manner. *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950); *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965).

Determining whether an additional procedure is constitutionally required ordinarily entails consideration of the private interest affected; the risk of erroneous deprivation and probable value of additional or substitute safeguards; and the government's interests, including administrative burdens. *Mathews v. El-dridge*, 424 U. S. 319, 335 (1976).

Nelson v. Adams USA, Inc., 529 U. S. 460, 466–468 (2000), applied that principle when a court added a new party and imposed personal liability immediately, without allowing a response. *Logan v. Zimmerman Brush Co.*, 455 U. S. 422, 433–437 (1982), held that a State could not terminate a protected claim through its own procedural failure without a meaningful hearing. But Logan also emphasized that its decision did not entitle every civil litigant to a merits hearing and that a State ordinarily accords due process when it terminates a claim for failure to comply with a reasonable procedural or evidentiary rule. *Id.*, at 437–438.

Those decisions do not establish that a court must cure a litigant's evidentiary default. Unlike the claimant in Logan, Yeung had notice of summary judgment, responded, filed his own motion, cited both state and federal summary-judgment rules, received objections to the reports, litigated the Cordle motion to strike, and was warned that ordinary evidence rules applied. App. 6–7, 41–43, 76. *Piler v. Ford*, 542 U. S. 225, 231–232 (2004), held in the federal-habeas context that judges need not give *pro se* litigants specific warnings about procedural options and have no obligation to act as counsel or paralegal. *Link v. Wabash Railroad Co.*, 370 U. S. 626, 632–633 (1962), held that due process does not require advance notice of every procedural consequence and that the

adequacy of notice depends partly on what the circumstances charged the party with knowing. Link separately held a represented client bound by counsel's conduct. *Id.*, at 633–634. That latter principle does not directly govern Yeung's unrepresented conduct in the trial court.

The proposed rule must therefore be narrower than a duty to advise. It would require no explanation of how to authenticate a report, establish a hearsay exception, qualify an expert, prove causation, or evaluate an affidavit already filed. It would require only an order allowing a defined period to submit competent support after the court identifies a deficiency that will otherwise contribute to final judgment. Under Mathews, the possible value of such a safeguard is greatest when competent support is readily available and the decisive deficiency could not reasonably be understood before the court identifies it. Actual objections, prior warnings, completed discovery, prejudice, and the ability to obtain competent evidence through ordinary diligence reduce that value and increase the opposing and judicial burdens. Whether even this limited obligation follows from due process is the question presented; the existing authorities make the answer uncertain rather than established.

OCGA §9–11–56(e) confirms that Georgia courts possess procedural authority to allow supplementation, but its text is discretionary: a court “may permit” further affidavits, depositions, or interrogatory answers. Petitioner does not ask this Court to reinterpret that state rule. He argues that, in a narrow class of case-ending circumstances, federal due process constrains the exercise of the conceded discretion.

III. Federal summary-judgment practice is only an analogy.

Federal Rule of Civil Procedure 56(c)(2) permits a party to object that cited material “cannot be presented in a form that would be admissible in evidence.” When a party fails properly to support or address a fact, Rule 56(e)(1) permits—but does not require—the court to “give an opportunity to properly support or address the fact.” Fed. R. Civ. P. 56(c)(2), (e)(1). Those provisions do not govern Georgia courts and do not themselves establish a constitutional requirement.

Patel v. Texas Tech University, 941 F.3d 743, 746–748 (CA5 2019), held that the district court abused its discretion by excluding two unsworn expert reports solely because they were unsworn, without considering whether their opinions could be presented in admissible form. The Fifth Circuit then considered the reports and affirmed summary judgment on other grounds. *Patel* interprets federal Rule 56, not the Fourteenth Amendment. It is useful only to show that a cure-focused inquiry can be administered without requiring a court to accept inadmissible evidence.

Lauria v. Lieb, 152 F.4th 549, 552–553 (CA3 2025), held that unsworn allegations could not themselves create a genuine fact dispute, but could be considered when deciding whether to exercise Rule 56(e) discretion to permit supplementation. *Lauria* did not decide a constitutional notice rule. Footnote 2 catalogued a disagreement among the circuits concerning affirmative summary-judgment notices for *pro se* incarcerated litigants, but the Third Circuit expressly declined to decide that issue. *Id.*, at 553, n. 2. That disagreement is not a square constitutional conflict

and does not concern a non-incarcerated litigant proceeding in state court under OCGA §9–11–56. Petitioner relies on *Lauria* only as a federal procedural analogy, not as authority establishing the constitutional rule proposed here.

The analogy is imperfect on this record. In *Lauria*, the opposing parties had not objected to the unsworn allegations in their summary-judgment briefing. *Id.*, at 553. Here, Humphrey challenged admissibility, the Cordle motion-to-strike proceeding provided additional notice that expert form, disclosure, and foundation were disputed, Yeung’s own March 17 motion cited Federal Rule 56, and Yeung later filed custodian affidavits concerning two of the three reports. The constitutional question is therefore not whether Yeung lacked notice, whether the affidavits were sufficient, or whether the state courts misread the record. It is whether, despite that notice and the state appellate court’s finding of no demonstrated request, the court had to offer one additional, express opportunity to submit competent support before entering final judgment.

IV. The preservation and independent-state-ground obstacles are substantial.

This Court grants certiorari only for compelling reasons, Sup. Ct. R. 10, and this case has serious vehicle defects. First, the exact federal theory was not presented to the trial court or the Court of Appeals. The March 17 reference to Federal Rule 56 was procedural, and the postjudgment motions invoked state evidence law and Georgia’s jury-trial guarantee rather than federal due process. The Georgia Supreme Court received broad constitutional assertions in the petition

and the closest cure-focused formulation in the reply, then denied review without opinion. Under Adams, Webb, Cardinale, and Howell, that defect may prevent the Court from reaching the question at all.

Second, the Court of Appeals relied on independent state-law holdings: no demonstrated hearsay exception or adequate foundation, no demonstrated request for a cure opportunity, ordinary rules governing *pro se* litigants, and abuse-of-discretion review. App. 3–7. The court also affirmed on a developed set of causation and sufficiency grounds independent of the three reports. App. 7–11. Even if the Constitution required a cure opportunity, Respondent would argue that the same judgment follows from those grounds.

Third, the record does not establish what admissible testimony each author would have provided, whether each could satisfy expert-qualification and foundation requirements, or whether each opinion would address all causation gaps identified below. The Thurmond and Aycock custodian affidavits establish, at most, a claimed business-record foundation; they do not independently set out the anticipated expert testimony. There is no Wadlington affidavit, and the Cordle affidavit concerns a separate report. Thus the Court might be unable to determine whether denial of supplementation affected the judgment without additional state proceedings.

Fourth, the decision is unpublished, applies settled Georgia evidentiary rules, and expressly treats the case as an abuse-of-discretion and record-sufficiency matter. App. 1–11. Those features make the case appear fact-bound. Petitioner’s narrower submission is that the Court should separate the antecedent constitutional procedure question from the

correctness of the ultimate evidentiary and causation findings.

Petitioner does not minimize these obstacles. He identifies them because 28 U. S. C. §1257(a) and Rule 14.1(g)(i) require specification of the stage and manner in which the federal question was raised, how the state courts passed on it, and the particular record locations showing that the question was timely and properly presented. The Court should evaluate the question on the record that actually exists, including the September 24 affidavits and the postjudgment proceedings. If the Court concludes that preservation, adequate state grounds, or the record's fact-bound character prevents review, denial—not a grant, vacatur, and remand—would follow.

CONCLUSION

This Court should certiorari and reverse the judgment of the Court of Appeals of Georgia.

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