

**UNITED STATES DISTRICT COURT
DISTRICT OF PUERTO RICO**

DANIELA ARROYO GONZÁLEZ; VICTORIA RODRÍGUEZ-ROLDÁN; J.G.; and PUERTO RICO PARA TOD@S,

Plaintiffs,

v.

RICARDO ROSSELLÓ-NEVARES, in his official capacity as Governor of the Commonwealth of Puerto Rico; RAFAEL RODRÍGUEZ-MERCADO, in his official capacity as Secretary of the Department of Health of the Commonwealth of Puerto Rico; and WANDA LLOVET-DÍAZ, in her official capacity as Director of the Division of Demographic Registry and Vital Statistics of the Commonwealth of Puerto Rico,

Defendants.

Civil No. 3:17-cv-01457-CCC

**STATEMENT OF MATERIAL FACTS IN SUPPORT OF
PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT**

Plaintiffs Daniela Arroyo González, Victoria Rodríguez-Roldán, J.G., and Puerto Rico Para Tod@s (“Plaintiffs”), by and through their attorneys, and pursuant to Rule 56 of the Federal Rules of Civil Procedure and Local Civil Rule 56(b), submit the following Statement of Material Facts in support of their Motion for Summary Judgment, which is filed herewith.

I. SEX AND GENDER IDENTITY

1. A person has multiple sex-related characteristics, including hormones, external and internal morphological features, external and internal reproductive organs, chromosomes, and gender identity. These characteristics may not always be in alignment. Decl. of Dr. Randi C. Ettner, Ph.D. (“Ettner Decl.”) ¶ 15.

2. Gender identity—a person’s core internal sense of their own gender—is the primary factor in determining a person’s sex. Every person has a gender identity. There is a medical consensus that gender identity is innate and that efforts to change a person’s gender identity are unethical and harmful to a person’s health and well-being. Ettner Decl. ¶¶ 15, 18, 21, 24.

3. Although there is no one definitive factor that determines gender identity, biological factors—most notably the neurodevelopmental characteristics of a person’s brain with respect to sex—play a role in gender identity development, and cannot be changed. Ettner Decl. ¶¶ 21-24.

4. The phrase “sex assigned at birth” refers to the sex recorded on a person’s birth certificate at the time of birth. Typically, a person is assigned a sex on their birth certificate solely on the basis of the appearance of external genitalia at the time of birth. Other sex-related characteristics (such as a person’s chromosomal makeup and gender identity, for example) are typically not assessed or considered at the time of birth. Ettner Decl. ¶¶ 13, 15, 38. *See also Whitaker v. Kenosha Unified Sch. Dist. No. 1 Bd. of Educ.*, No. 16-3522, 2017 WL 2331751, at *13 (7th Cir. May 30, 2017) (a designation of sex on a birth certificate determined from external genitalia alone is not “a true proxy for an individual’s biological sex.”); *Ex parte Delgado*, 165 D.P.R. 170, 198 (2005) (Rivera Pérez, J., concurring) (“The sexual classification corresponding to a person is defined at the time of the person’s birth, taking into consideration the phenotype displayed by the newborn.”).

5. External genitalia alone—the critical criterion for assigning sex at birth—is not an accurate proxy for a person’s sex. Ettner Decl. ¶ 14.

6. When there is divergence between anatomy and identity, one’s gender identity is paramount and the primary determinant of an individual’s sex designation. Ettner Decl. ¶ 17.

7. Transgender persons are people whose gender identity diverges from the sex they were assigned at birth. A transgender man's sex is male (even though he was assigned the sex of female at birth) and a transgender woman's sex is female (even though she was assigned the sex of male at birth). Ettner Decl. ¶¶ 13, 19, 20.

8. Cisgender persons are people whose gender identity aligns with the sex they were assigned at birth. A cisgender man's sex is male (and was assigned the sex of male at birth) and a cisgender woman's sex is female (and was assigned the sex of female at birth). Ettner Decl. ¶¶ 13, 18, 19.

9. The incongruence between a transgender person's gender identity and sex assigned at birth can sometimes be associated with gender dysphoria. Gender dysphoria is a serious medical condition recognized in the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders, Fifth Ed. (2013) ("DSM-V"), and by the other leading medical and mental health professional groups, including the American Medical Association and the American Psychological Association. Ettner Decl. ¶ 25.

10. Gender dysphoria refers to clinically significant distress that can result when a person's gender identity differs from the person's sex assigned at birth. If left untreated, gender dysphoria may result in psychological distress, anxiety, depression, and suicidal ideation or even self-harm. Ettner Decl. ¶¶ 25, 28.

11. Treatment of gender dysphoria is usually provided pursuant to the Standards of Care for the Health of Transsexual, Transgender, and Gender Nonconforming People, published by the World Professional Association of Transgender Health ("WPATH"). Ettner Decl. ¶ 29.

12. Medical treatment for gender dysphoria must be individualized and tailored to the medical needs of each patient. Ettner Decl. ¶ 28.

13. These treatments do not change a transgender person's sex, which is already determined by their gender identity. Instead, they affirm the authentic gender that an individual person *is*. Attempts to change a person's gender identity in order to bring it into alignment with the person's sex assigned at birth are not only unsuccessful but also dangerous, risking psychological harm and even suicide. Ettner Decl. ¶¶ 24, 32, 36.

14. Treatments for gender dysphoria align the transgender person's body and lived experience with the person's true sex. Among the steps that transgender people take to treat their gender dysphoria are: (1) social transition; (2) hormone therapy; and/or (3) gender-affirming surgery. Ettner Decl. ¶¶ 21, 33-37.

15. Social transition entails a transgender person living in accordance with the person's gender identity. For example, for a transgender woman, social transition can include, among other actions, changing her first name to a name typically associated with women, no longer using male pronouns, changing her identity documents to indicate a female gender, wearing clothing and adopting grooming habits stereotypically associated with women, and otherwise living as a woman in all aspects of life. Ettner Decl. ¶ 33.

16. Social transition requires that a transgender woman or a transgender man be recognized, respectively, as a woman or a man, respectively, and treated the same as all other women or men, respectively, by family members, coworkers, and others in the community. Ettner Decl. ¶¶ 37, 45.

17. Social transition—which often includes correcting one's identity documents to accurately reflect one's sex—is the most important, and sometimes the only, aspect of transition that transgender people undertake. Ettner Decl. ¶ 34.

18. Living in a manner consistent with one's gender identity is critical to the health and well-being of all transgender people. Ettner Decl. ¶ 33.

19. Living in a manner consistent with one's gender identity is also a key aspect of treatment for gender dysphoria for those who suffer from it. Ettner Decl. ¶¶ 38, 39.

20. Identity documents consistent with one's lived experience affirm and consolidate one's gender identity, mitigating distress and functional consequences. Changes in gender presentation and role—to feminize or masculinize appearance—and social and legal recognition are crucial components of treatment for gender dysphoria. Social transition involves dressing, grooming, and otherwise outwardly presenting oneself through social signifiers of a person's true sex as determined by their affirmed gender identity. Ettner Decl. ¶¶ 39.

21. Not every person suffering from gender dysphoria undergoes the same treatment. From a medical and scientific perspective, there is no basis for refusing to acknowledge a transgender person's true sex based on whether that person has undergone surgery or any other medical treatment. Ettner Decl. ¶¶ 28, 46.

II. PLAINTIFFS

22. Plaintiffs are three transgender individuals and an organization with transgender members who wish to amend their Puerto Rico birth certificates to accurately reflect their gender identity. Decl. of Daniela Arroyo González (“Daniela’s Decl.”) ¶¶ 5, 31; Decl. of Victoria Rodríguez Roldán (“Victoria’s Decl.”) ¶¶ 5, 26; Decl. of J.G. (“J.G.’s Decl.”) ¶¶ 5, 33; Decl. of Pedro Julio Serrano Burgos (“Serrano Decl.”) ¶¶ 4, 10.

Plaintiff Daniela Arroyo González

23. Plaintiff Daniela Arroyo González is an 18 year old woman who was born in Arecibo, Puerto Rico and who resides in Moca, Puerto Rico. Daniela’s Decl. ¶¶ 2, 4.

24. At birth, Ms. Arroyo was incorrectly designated “male” on her birth certificate, even though she is, in fact, a woman. Daniela’s Decl. ¶ 5.

25. Ms. Arroyo is transgender. Daniela’s Decl. ¶ 5.

26. Ms. Arroyo has been diagnosed with gender dysphoria. Daniela’s Decl. ¶ 14.

27. Ms. Arroyo’s gender identity and expression is female (she looks, dresses, and expresses herself as a woman). Daniela’s Decl. ¶¶ 8, 13, 14, 15.

28. Ms. Arroyo has aligned her body characteristics, appearance, and lived experience with her female gender identity. Daniela’s Decl. ¶¶ 13, 15, 16.

29. Ms. Arroyo has changed her name and corrected the gender marker on her driver’s license and social security records. Daniela’s Decl. ¶ 22.

30. Ms. Arroyo has changed her name on her birth certificate, but has been prevented from correcting the gender marker on her birth certificate by Puerto Rico’s Birth Certificate Policy. Daniela’s Decl. ¶¶ 22, 24.

31. Ms. Arroyo wishes to correct the gender marker on her birth certificate to accurately reflect her identity as a woman, as determined by her gender identity. Daniela’s Decl. ¶ 31.

32. Ms. Arroyo’s birth certificate does not reflect her true identity, is incongruent with her female identity and expression, and conflicts with her other identification documents. Daniela’s Decl. ¶¶ 24, 26, 31.

Plaintiff Victoria Rodríguez Roldán

33. Plaintiff Victoria Rodriguez-Roldan is a 28 year old woman who was born in Río Piedras, Puerto Rico and currently resides in the Washington, DC metro area. Victoria’s Decl. ¶¶ 2, 4.

34. At birth, Ms. Rodríguez-Roldán was incorrectly designated “male” on her birth certificate, even though she is, in fact, a woman. Victoria’s Decl. ¶ 5.

35. Ms. Rodríguez-Roldán is transgender. Victoria’s Decl. ¶ 5.

36. Ms. Rodríguez-Roldán has been diagnosed with gender dysphoria. Victoria’s Decl. ¶ 11.

37. Ms. Rodríguez-Roldán’s gender identity and expression is female (she looks, dresses, and expresses herself as a woman). Victoria’s Decl. ¶¶ 9, 11, 12.

38. Ms. Rodríguez-Roldán has aligned her body characteristics, appearance, and lived experience with her female gender identity. Victoria’s Decl. ¶¶ 11, 12, 13, 14.

39. Ms. Rodríguez-Roldán has changed her name and corrected the gender marker on her driver’s license, U.S. Passport, and social security records. Victoria’s Decl. ¶ 14.

40. Because as a result of Puerto Rico’s Birth Certificate Policy, it is impossible for Ms. Rodríguez-Roldán to correct the gender marker on her birth certificate, she considers it futile to correct her name on her birth certificate, as the document would still be incongruent with her other identification documents. Victoria’s Decl. ¶ 17.

41. Ms. Rodríguez-Roldán wishes to correct the gender marker on her birth certificate to accurately reflect her identity as a woman, as determined by her gender identity. Victoria’s Decl. ¶ 26.

42. Ms. Rodríguez-Roldán’s birth certificate does not reflect her true identity, is incongruent with her female identity and expression, and conflicts with her other identification documents. Victoria’s Decl. ¶¶ 16, 17, 22, 24, 25.

Plaintiff J.G.

43. Plaintiff J.G. is a 25 year old man who was born raised in the greater San Juan metropolitan area. J.G.'s Decl. ¶¶ 2, 4.

44. At birth, J.G. was incorrectly designated "female" on his birth certificate, even though he is, in fact, a man. J.G.'s Decl. ¶ 5.

45. J.G. is transgender. J.G.'s Decl. ¶ 5.

46. J.G. has been diagnosed with gender dysphoria. J.G.'s Decl. ¶ 13.

47. J.G.'s gender identity and expression is male (he looks, dresses, and expresses himself as a man). J.G.'s Decl. ¶¶ 7, 11, 13, 15.

48. J.G. has aligned his body characteristics, appearance, and lived experience with his male gender identity. J.G.'s Decl. ¶¶ 11, 12, 13, 14.

49. J.G. has changed his name and corrected the gender marker on his driver's license and social security records. J.G.'s Decl. ¶¶ 17, 18.

50. J.G. has changed his name on his birth certificate, but has been prevented from correcting the gender marker on his birth certificate by Puerto Rico's Birth Certificate Policy. J.G.'s Decl. ¶ 20.

51. J.G. wishes to correct the gender marker on his birth certificate to accurately reflect his identity as a man, as determined by his gender identity. J.G.'s Decl. ¶ 33.

52. J.G.'s birth certificate does not reflect his true identity, is incongruent with male identity and expression, and conflicts with his other identifications. J.G.'s Decl. ¶¶ 21, 22, 24, 33.

53. J.G.'s transgender status is not publicly known, including not being known by his current employer or co-workers. J.G.'s Decl. ¶ 14.

Plaintiff Puerto Rico Para Tod@s

54. Organizational Plaintiff Puerto Rico Para Tod@s is a nonprofit organization dedicated to securing, protecting, and defending the equal civil rights and welfare of lesbian, gay, bisexual, and transgender (“LGBT”) people and their families in Puerto Rico. It works to fulfill its mission through education, legislative advocacy, grassroots organizing, and coalition-building. Its activities include advocating to enact nondiscrimination protections for LGBT people in public accommodations, the workplace, and housing; training law enforcement officers about hate crimes and LGBT awareness; and conducting workshops in schools about LGBT issues and bullying. Serrano Decl. ¶¶ 4, 6, 7.

55. Puerto Rico Para Tod@s has hundreds of members across Puerto Rico, including multiple transgender members who desire to change the gender marker on their Puerto Rico birth certificates to accurately reflect their gender identity. Serrano Decl. ¶¶ 4, 5, 6, 7.

56. As a result of Puerto Rico’s Birth Certificate Policy, transgender members of Puerto Rico Para Tod@s born in Puerto Rico have birth certificates that reflect the sex they were incorrectly assigned at birth. Serrano Decl. ¶ 10. They desire to correct their Puerto Rico birth certificates to accurately reflect their sex, as determined by their gender identity, but are prevented from doing so by Puerto Rico’s Birth Certificate Policy. *Id.*

III. PUERTO RICO’S BIRTH CERTIFICATE POLICY

57. The Vital Statistics Registry Act (the “Act”) provides that all birth certificates must include, *inter alia*, a newborn’s place of birth, residence, given name and surnames, date of birth, parents’ names, and sex. *See* 24 L.P.R.A. § 1133.

58. In his official capacity as Governor of Puerto Rico, Defendant Ricardo Roselló Nevares executes the laws of the Commonwealth, including the Act, and supervises the official

conduct of all executive and ministerial officers who implement and enforce the Act. *See* 3 L.P.R.A. § 1; P.R. Const. art. IV, § 4.

59. In his official capacity as Secretary of the Department of Health, Defendant Rafael Rodríguez Mercado's duties include, *inter alia*, "prepar[ing], caus[ing] to be printed, and furnish[ing] to the keepers of the Registers, all books, printed matter and forms to be used for the registration of births . . . occurring or taking place in the Commonwealth of Puerto Rico." 24 L.P.R.A. § 1231. In addition, Secretary Rodríguez Mercado "prepare[s] and distribute[s] such detailed instruction . . . as may be necessary for the uniform application [of the Act]." *Id.*

60. In her official capacity as the Director of the Division of Demographic Registry and Vital Statistics, pursuant to 24 L.P.R.A. § 1071, Defendant Wanda Llovet Díaz is "in charge of all matters connected with the registration of births, marriages and deaths which may occur or take place in Puerto Rico." 24 L.P.R.A. § 1071.

61. Recognizing that the information in a birth certificate may sometimes be inaccurate or need updating, the Act and the regulations promulgated and enforced by Defendants permit the correction of errors and updating of birth certificate records.

62. For example, pursuant to 24 L.P.R.A. § 1231, any omissions or defects appearing on any birth certificate before being registered and filed may be corrected by Defendants, and any corrections, additions, or amendments after a birth certificate has been registered and filed may be made pursuant to a court order. Changes, additions, or modifications of a name or surname can also be made pursuant to court order.

63. In addition, under 24 L.P.R.A. § 1136, following the adoption of a child, a birth certificate reflecting only the names of the adoptive parents must be substituted for the original registered birth certificate. The original registration certificate of the birth of the adoptee, the

decision of the court, and other documents are kept in a sealed envelope and are considered highly confidential documents.

64. No specific statute or regulation prohibits the correction of the gender marker on a birth certificate in order to accurately reflect the sex of a transgender person. Nonetheless, the Supreme Court of Puerto Rico in *Ex parte Delgado*, 165 D.P.R. 170 (2005), held that the Act, 24 L.P.R.A. § 1231, enforced by Defendants, does not permit transgender people to correct the gender markers on their birth certificates. *See* 165 D.P.R. at 193-94 (“[I]t is not appropriate to authorize the change requested on the birth certificate of the petitioner to change petitioner’s sex, because the Demographic Registry Law does not expressly authorize it.”).

65. Defendants, thus, enforce a policy and practice, based on that interpretation of the Act, which categorically prohibits transgender persons born in Puerto Rico from correcting the gender marker on their birth certificates to accurately reflect their sex, as determined by their gender identity. *See* Defs.’ Mot. to Dismiss (ECF No. 22) at 5-6 (“Defendants’ actions . . . [are based] on [the] Vital Statistics Registry Act of Puerto Rico.”); *id.* at 12 (“[T]he change in the sex marker in the birth certificate cannot be allowed by the ‘policies and practices’ of the Department of Health that the plaintiff challenges as unconstitutional.”). *See also* Daniela’s Decl. ¶ 23; Victoria’s Decl. ¶ 15; J.G.’s Decl. ¶ 19; Serrano Decl. ¶ 9.

66. Furthermore, in issuing name changes on birth certificates, Puerto Rico’s practice is to show a strike-out line through any information corrected, as delineated in 24 L.P.R.A. § 1231.

67. Taken in conjunction, these applications of the Act by Defendants constitute the Birth Certificate Policy challenged by Plaintiffs.

IV. THE HARMS INFLICTED UPON TRANSGENDER PERSONS, INCLUDING PLAINTIFFS, BY THE BIRTH CERTIFICATE POLICY

68. Being unable to correct the gender marker on one's identity documents, including one's birth certificate, means that transgender people are forced to display documents that indicate their birth-assigned sex (typically assumed based only by the appearance of genitalia at birth), rather than their actual sex as determined by their gender identity and their lived experience. This discordance creates a myriad of deleterious social and psychological consequences. Ettner Decl. ¶ 38.

69. The inability to access identity documents, such as birth certificates, that accurately reflect one's true sex is harmful and exacerbates gender dysphoria, kindling shame and amplifying fear of exposure, as the *sine qua non* of the gender dysphoria diagnosis is the desire to be regarded in accordance with one's true sex as determined by one's gender identity. Ettner Decl. ¶¶ 41, 44.

70. The forced disclosure of the transgender status of Plaintiffs and other transgender persons by way of an inaccurate birth certificates exposes them to prejudice, discrimination, distress, harassment, and violence. Ettner Decl. ¶¶ 41, 42; Daniela's Decl. ¶¶ 20, 27, 30; Victoria's Decl. ¶¶ 19, 21; J.G.'s Decl. ¶¶ 24, 28, 29; Serrano Decl. ¶¶ 11, 12. *See also* Ex. B at 7 ("Nearly one-third (32%) of respondents who have shown an ID with a name or gender that did not match their gender presentation were verbally harassed, denied benefits or service, asked to leave, or assaulted.").¹

71. These concerns are even more acute for transgender people, like Daniela, J.G. and transgender members of Puerto Rico Para Tod@s, who live in Puerto Rico, where transgender

¹ Except where otherwise specified, exhibit numbers herein (e.g., Ex. _) refer to exhibits to the Declaration of Omar Gonzalez-Pagan.

people face high levels of violence and stigma. Daniela's Decl. ¶¶ 20, 30; Victoria's Decl. ¶ 23; J.G.'s Decl. ¶ 29; Serrano Decl. ¶ 11; Ex. C; Ex. D.

72. Having a birth certificate incorrectly identifying the sex of a transgender person is also a significant barrier to their ability to function successfully as their true selves in seeking employment and gaining access to other private and public services, entitlements, and benefits. *See, e.g.*, J.G.'s Decl. ¶ 23; Ex. B at 7.

73. For example, while J.G. was looking for employment, he was asked to provide his birth certificate to human resources as he was being considered for a job. The prospective employer noticed and commented on the discrepancy, and J.G. was forced to reveal his transgender status. J.G.'s Decl. ¶ 25.

74. Having an inaccurate birth certificate also serves as a barrier to transgender persons' exercise of constitutional rights, such as the right to vote. Daniela's Decl. ¶ 25; J.G.'s Decl. ¶¶ 26, 27. *See also Veasey v. Perry*, 71 F. Supp. 3d 627, 670 (S.D. Tex. 2014) ("It is important that birth certificates be accurate in order for individuals to use them to obtain identification."), *aff'd in part, vacated in part, rev'd in part, sub nom. Veasey v. Abbott*, 830 F.3d 216 (5th Cir. 2016) (en banc).

75. In order to vote in primaries and general elections in Puerto Rico, voters must present their voter identification cards at the voting polls. Daniela's Decl. ¶ 25; J.G.'s Decl. ¶ 27. *See also* 16 L.P.R.A. § 4069.

76. Indeed, in April 2016, J.G. sought to update the name and correct the gender marker on his Puerto Rico voter identification card. And while he was able to update the name, J.G. was not allowed to correct the gender marker on my voter identification card. The staff at the local board of registration requested J.G.'s birth certificate in order to make the corrections. The

presentation of his inaccurate birth certificate led not only to distress, embarrassment and humiliation, but also resulted in J.G.'s voter identification card not accurately reflecting his sex. As a result, his voter identification card inaccurately states that he is female, resulting in disclosure of J.G.'s transgender status. J.G. did not vote in the 2016 elections in order to prevent the disclosure and expose himself to invasions of privacy, prejudice, discrimination, distress, embarrassment, and humiliation. J.G.'s Decl. ¶¶ 26, 27.

77. The forced disclosure of a person's transgender status through inaccurate identification documents, such as a birth certificate, violates a transgender person's privacy—the right to maintain stewardship of personal and medical information—and their ability to control, whether, when, how, and to whom disclose one's transgender status. Ettner Decl. ¶ 44.

78. Being denied birth certificates that accurately reflect their sex, as determined by their gender identity, is psychologically and emotionally harmful to transgender persons born in Puerto Rico, including Plaintiffs. Ettner Decl. ¶¶ 41-43; Daniela's Decl. ¶ 29; Victoria's Decl. ¶ 25; J.G.'s Decl. ¶ 32; Serrano Decl. ¶ 13.

79. Finally, that their government, through the Birth Certificate Policy, does not recognize their gender identity—despite their social and medical transitions, and in defiance of their legal name changes and corrections to their other Puerto Rico and Federal identity documents—interferes with Plaintiffs' ability to communicate to others who they are. Daniela's Decl. ¶¶ 24, 26, 28, 29; Victoria's Decl. ¶¶ 16, 20, 24; J.G.'s Decl. ¶¶ 21, 22, 31, 32.

80. As a result of the Birth Certificate Policy, Plaintiffs are faced with a consistent reminder that the Commonwealth of Puerto Rico does not respect them for who they are and does not recognize their personhood. Ettner Decl. ¶¶ 40, 45; Daniela's Decl. ¶ 29; Victoria's Decl. ¶¶ 20, 25; J.G.'s Decl. ¶ 32; Serrano Decl. ¶ 13.

81. The Birth Certificate Policy stigmatizes transgender persons born in Puerto Rico, such as Plaintiffs, as illegitimate or unworthy of recognition. Ettner Decl. ¶¶ 40, 42; Daniela's Decl. ¶ 29; Victoria's Decl. ¶ 25; J.G.'s Decl. ¶ 32; Serrano Decl. ¶ 13.

82. The Commonwealth's Birth Certificate Policy inhibits the ability of transgender persons born in Puerto Rico, including Plaintiffs, to fully participate in our society. *See, e.g.*, J.G.'s Decl. ¶ 23; Serrano Decl. ¶ 14.

Dated on this 26th day of June, 2017.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I filed the foregoing with the Clerk of the United States District Court for the District of Puerto Rico via the CM/ECF system this 26th day of June, 2017. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

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