No. 12-574

In the Supreme Court of the United States

ANTHONY WALDEN,

Petitioner,

v.

GINA FIORE AND KEITH GIPSON,

Respondents.

On writ of certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF OF ALABAMA, ARIZONA, DISTRICT OF COLUMBIA, GEORGIA, HAWAII, IDAHO, INDIANA, KENTUCKY, MAINE, MICHIGAN, MISSISSIPPI, MONTANA, NEBRASKA, NEW HAMPSHIRE, NORTH DAKOTA, PENNSYLVANIA, SOUTH CAROLINA, TENNESSEE, AND UTAH AS *AMICI CURIAE* IN SUPPORT OF PETITIONER

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QUESTION PRESENTED

The *amici* States take no position on the legality of petitioner's conduct or the venue question presented by this case. This brief addresses the following question presented, which the Court should answer in petitioner's favor:

Whether due process permits a court to exercise personal jurisdiction over a defendant whose sole "contact" with the forum State is his knowledge that the plaintiff has connections to that State.

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INTRODUCTION AND INTEREST OF AMICI CURIAE

The *amici curiae* are States that share a concern about the Ninth Circuit's expansion of personal jurisdiction to their residents. To be sure, the States have an interest in vindicating the injuries of their own residents, as plaintiffs, in their own courts. But it is the collective judgment of the *amici* that this interest is outweighed by their interest in protecting their residents from being haled, unfairly, into other States' courts as defendants. The mutual respect between States is harmed when a plaintiff from one State can sue another State's resident in a faraway court based on actions that occurred entirely within the defendant's State. The defendant's mere knowledge of the plaintiff's State of residence is not enough to give that State personal jurisdiction over the defendant.

The *amici* States are especially troubled by the Ninth Circuit's application of its expansive personal-jurisdiction rule to the facts of this case. This is not a case about libel or the Internet. This is a case about a face-to-face confrontation that began when the plaintiff physically came into the defendant's State and, except for some paperwork, ended when the plaintiff left. Potential plaintiffs do not carry their home State's personal jurisdiction with them whenever they travel through other States.

The Ninth Circuit's contrary rule would subject a State's law-enforcement officers to suit in the State of nearly every person with whom those officers interact during the course of their duties. These

officers have no reasonable expectation of being haled into courts across the country for carrying out their official duties in their home State. Police officers already have enough to worry about when they make a traffic stop; they should not also be concerned about being sued in a faraway court based on their knowledge of a car's out-of-state license plate.

It would be very easy for a State to maintain, in a particular case in which one of its residents has been harmed, that it wants its own courts to resolve these kinds of disputes. But it is the considered judgment of the *amici* States that, in the long run, their residents are better off if personal jurisdiction is not based solely on the defendant's knowledge of the plaintiff's home State. The Court should reverse the Ninth Circuit's ruling on personal jurisdiction.

SUMMARY OF ARGUMENT

The lower court's rule is erroneous, unfair, and unworkable.

The lower court struck the wrong balance between the state interests affected by the doctrine of personal jurisdiction. A plaintiff's home State always has an interest in providing a forum for its residents to seek redress. But that interest is not alone sufficient to give that State personal jurisdiction over the residents of other States. Instead, in cases like this one, the State with the strongest interest in providing a forum for the dispute is the State in which the tort occurred, not the State where the plaintiff happens to reside.

Because the lower court's rule would lead to unfairness and inefficiency, the States' shared interest in a workable interstate-litigation system weighs against finding personal jurisdiction on the facts of this case.

The lower court's rule is especially unfair and impractical when applied to litigation against state and local police officers. Police officers in high-traffic areas are uniquely vulnerable to being sued, and there are thousands of lawsuits filed against them every year. If this Court were to affirm the lower court, much of that litigation would be filed outside the officer's jurisdiction. This result would require state and local governments to identify and hire private counsel, lead to duplicative litigation about the same events in far-flung jurisdictions, and otherwise increase the cost of this kind of litigation.

The best result for the *amici* States is reversal.

ARGUMENT

The lower court fundamentally misunderstood the nature of state sovereignty implicated by the Due Process Clause. It is not the State's residents who exercise personal jurisdiction over defendants. It is the States themselves that do. Due process thus requires that a defendant have contacts not simply with one of the State's residents, but with the State itself. *See Calder v. Jones*, 465 U.S. 783 (1984). This rule strikes the right balance between the States' competing interests in providing redress for their residents' injuries, regulating conduct that occurs within their territory, and maintaining a fair

interstate-litigation system. This is also the right rule for the States' law-enforcement officers, who face special disadvantages when litigating in another State.

I. The lower court's rule strikes the wrong balance between state interests.

Our Federalism does not allow a court to exercise jurisdiction over a defendant whose only "contact" with the forum State is knowledge that the plaintiff lives there. The minimum-contacts requirement is "more than a guarantee of immunity from inconvenient or distant litigation." *Hanson v. Denckla*, 357 U.S. 235, 251 (1958). It is a consequence of the States' "status as coequal sovereigns in a federal system." *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 292 (1980); s*ee also* A. Benjamin Spencer, *Jurisdiction To Adjudicate: A Revised Analysis*, 73 U. CHI. L. REV. 617, 637-46 (2006). Accordingly, this Court's personal-jurisdiction precedents balance "the interests of the forum State," "the interstate judicial system's interest in obtaining the most efficient resolution of controversies," and "the shared interest of the several States in furthering fundamental substantive social policies." *Asahi Metal Indus. Co., Ltd. v. Superior Ct. of Cal., Solano Cnty.*, 480 U.S. 102, 113 (1987) (internal quotation marks omitted). When the defendant does not intentionally aim his conduct at the State, when the defendant's conduct does not occur within the State, and when the State's

laws do not apply, the balance of interests decidedly weigh against that State's exercise of jurisdiction. In that circumstance, the forum State's interest is pure happenstance. Because of the respect States have for each other, this interest must give way to the paramount interest of its sister States in regulating conduct that takes place within their own borders.

A. The plaintiff's State's interest in providing a remedy is insufficient to confer jurisdiction.

Make no mistake about it: States want their citizens to obtain redress no matter where or how they are injured. *See Alfred L. Snapp & Son, Inc. v. Puerto Rico*, 458 U.S. 592, 607 (1982) (noting the state "interest in the health and well-being—both physical and economic—of its residents in general"). But this interest is not alone sufficient to justify a State's exercise of jurisdiction over an out-of-state defendant. Instead, a defendant must "purposefully avail itself of the benefits and protections of [the forum State's] laws" or "attempt to obstruct [the forum State's] laws." *J. McIntyre Machinery, Ltd. v. Nicastro*, 131 S. Ct. 2780, 2787 (2011) (plurality) (internal quotation marks omitted). In other words, a defendant must have some contact with *the State*, not merely one of the State's residents.

State courts know the difference between conduct aimed at their States and conduct that merely affects one of their residents. The Supreme Court of Alabama, for example, has consistently held that "mere awareness that one's intentional acts will

cause harm in the forum state" is not sufficient. *Ex parte Gregory*, 947 So. 2d 385, 394 (Ala. 2006). "[T]he mere fact that an Alabama resident, injured in another state by a completed tort committed there by someone who is not a resident of Alabama, might be expected to suffer further or ongoing damage upon return to Alabama" does not constitute "sufficient contacts to warrant the exercise of in personam jurisdiction over the nonresident defendants." *Id.* at 395. Instead, personal jurisdiction "require[s] something more" than "knowledge" of the plaintiff's residence. *Id.* at 396. Many other state courts have reached the same conclusion.[1]

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[1] *See, e.g.*, *M.R. v. SereniCare Funeral Home, L.L.C.*, 296 P.3d 492, 496 (N.M. App. 2013) (defendant's "knowledge that the body was being prepared for a funeral service in New Mexico" does not "constitute minimum contacts sufficient to satisfy due process"); *Midwest Mfg., Inc. v. Ausland*, 273 P.3d 804, 811 (Kan. App. 2012) (a plaintiff cannot "hale any defendant into court in the plaintiff's home state" just because "the defendant has committed an intentional tort against the plaintiff"); *Michiana Easy Livin' Country, Inc. v. Holten*, 168 S.W.3d 777, 788-89 (Tex. 2005) (rejecting the argument that "'[i]f a tortfeasor knows that the brunt of the injury will be felt by a particular resident in the forum state, he must reasonably anticipate being haled into court there to answer for his actions'"); *Griffis v. Luban*, 646 N.W.2d 527, 534-35 (Minn. 2002) ("[I]t follows that something more than defendant's knowledge that the plaintiff is a resident of the forum and will feel the effects of the tortious conduct there must be necessary to satisfy the effects test."); *Am. Bus. Fin. Servs., Inc. v. First Union Nat'l Bank*, No. 4955, 2002 WL 433735, at *8 (Pa. Commw. Ct. Mar. 5, 2002) ("While the defendant's knowledge that the plaintiff is located in the forum is essential under *Calder*, such knowledge alone is insufficient to show that the defendant specifically targeted its conduct toward the forum.");

This near unanimity makes sense because a defendant's mere knowledge of the plaintiff's residence is usually not a meaningful contact from the State's perspective. A hypothetical proves the point. What if the defendant in this case had *believed* that the plaintiffs were from Idaho even though they were actually from Nevada? The defendant's mistaken belief would not have given Idaho an interest in providing a forum for the plaintiffs. Nor would it have diminished Nevada's. The defendant's knowledge may be relevant in some cases, but it is more likely to be an irrelevant "random, isolated, or fortuitous" circumstance. *Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770, 774 (1984). It is not the only touchstone of personal jurisdiction.

B. The State where the conduct occurred has the most substantial interest in providing a forum for the dispute.

The States share an interest in seeing that, when a tort occurs entirely within one State, that State is the one to adjudicate the dispute according to its own values, policies, and priorities. It is understandable that the professional gamblers who are the plaintiffs in this case chose to file suit in Las Vegas instead of Atlanta. But a Nevada judge and jury have no business adjudicating the propriety of a Georgia police officer's decision to seize property in a Georgia

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Zap v. Daimlerchrysler AG, No. B193331, 2008 WL 451034 (Cal. Ct. App. Feb. 21, 2008) (unpublished) ("[K]nowledge, by itself, that tortious activities *may* harm California residents is not sufficient to the exercise of personal jurisdiction.").

airport, merely because the plaintiffs are Nevada residents.

There has always been a territorial bent to this Court's personal-jurisdiction doctrine, and rightfully so. *E.g. Burnham v. Superior Ct. of Cal., Cnty. of Marin*, 495 U.S. 604 (1990). States have a paramount interest in "the exercise of sovereign power over individuals and entities within the[ir] relevant jurisdiction." *Snapp*, 458 U.S. at 601. Indeed, "'the power to create and enforce a legal code, both civil and criminal' is one of the quintessential functions of a State." *Associated Builders & Contractors v. Perry*, 16 F.3d 688, 692 (6th Cir. 1994) (quoting *Snapp*, 458 U.S. at 601); *see also Tex. Office of Pub. Util. Counsel v. FCC*, 183 F.3d 393, 449 (5th Cir. 1999). States thus have a "direct stake" in enforcing their own laws, which includes "defending the standards [they] embod[y]" and the officers who apply them. *Associated Builders & Contractors*, 16 F.3d at 692.

The Court has recognized that a State has an interest in exercising power over someone who purposefully attempts to frustrate or defeat its laws or has otherwise purposefully "followed a course of conduct directed at the society or economy existing within the jurisdiction of a given sovereign." *J. McIntyre*, 131 S. Ct. at 2789 (plurality). But the Ninth Circuit's rule turns this notion of "purposeful availment" on its head. The defendant here did not seek the benefits and protections of Nevada law. Nor did he seek to obstruct or undermine Nevada law by targeting Nevada through the Internet, phone, or mail. Instead, the plaintiff availed himself of the

legal protections of *defendant's* jurisdiction (and was accused of obstructing the laws of defendant's jurisdiction), not the other way around. In cases like this one, the State with the sovereign interest in enforcing the law is the State where the conduct occurred, not the State where the plaintiff happens to live.

C. The lower court's rule will lead to an inefficient and unfair interstate-litigation system.

The interstate-litigation system is harmed when a State's citizens can be haled into courts far from the site of their conduct, based solely on their knowledge of the plaintiff's state of residence. The Ninth Circuit's rule leads to inefficiency and unfairness in at least three ways.

1. First, the Ninth Circuit's rule disproportionately affects people who work in a field where they, while operating within their own States, are exposed to people from outside their State. These people include not only law-enforcement officers but also hotel receptionists, rental-car agents, employees at tourist attractions, and administrators and staff of national universities. These employees (and their employers) often have legitimate, important reasons to know the primary residence of people with whom they come into contact. The Ninth Circuit's rule incentivizes these workers to remain willfully ignorant of the home States of the people with whom they interact, even if that information may otherwise help them carry out their responsibilities.

2. Second, the Ninth Circuit's rule treats similarly situated plaintiffs differently based solely on the defendant's knowledge. Imagine that a defendant commits the same intentional tort (*e.g.* assault or intentional inflection of emotional distress), at the same time, in the same place, by the same act, against two different people. And assume that the defendant happens to know the home State of the first person, but not second person. Under the lower court's rule, the first person could hale the defendant into his home State's court, but the second person could not. This will be so even if the defendant's conduct is *exactly the same* towards each person. This result, as the dissent below explained, "flouts common sense." Pet. App. 64a. It is unfair to the plaintiffs and makes it difficult for a defendant to predict where his conduct will subject him to suit.

3. Third, the Ninth Circuit's rule would lead to duplicative multi-forum litigation because it would *always* allow a defendant in a lawsuit to countersue the plaintiff in the defendant's own jurisdiction. The case of *Midwest Mfg., Inc. v. Ausland*, 273 P.3d 804 (Kan. App. 2012), is instructive. There, a resident of California sued a resident of Kansas in California over the Kansan's activities in California. *Id*. at 808. The Kansan then countersued for wrongful prosecution in Kansas, arguing that Kansas had personal jurisdiction because the Californian knew about the Kansan's ties to Kansas when the original suit was filed. *Id*. The Kansas court properly rejected this argument. If mere knowledge of residence allowed jurisdiction, then "every plaintiff and every plaintiff's counsel bringing an action of any type

against a nonresident defendant in the plaintiff's home forum is subject to being haled into court in a malicious prosecution action in the nonresident's home forum if the nonresident defendant ultimately prevails in the original action." *Id.* at 811. If the Ninth Circuit's rule were the law, then plaintiffs' attorneys and others who litigate against out-of-state corporations would be subject to countersuit in those corporations' headquarters, as would prosecutors who prosecute residents of other States.

II. The lower court's rule would have especially bad effects on state and local law-enforcement officers.

Given that the vast majority of law-enforcement officers are state and local, it comes as no surprise that the defendant in this case is not a full-time federal DEA agent. He is, instead, a police officer for the City of Covington, Georgia, who was deputized as a federal narcotics investigator and assigned to a drug-enforcement task force at the Atlanta airport. JA 39-40. There are roughly 750,000 state and local police officers in the United States, and many of them work in towns and suburbs like Covington. Brian A. Reaves, *Census of State and Local Law Enforcement Agencies, 2008*, U.S. DEP'T OF JUSTICE, BUREAU OF JUSTICE STATISTICS (2011), *available at* http://www.bjs.gov/content/pub/pdf/csllea08.pdf.

The *amici* recognize that civil-rights lawsuits against police officers provide an important check against official misconduct. But it has been the near-universal conclusion of the lower courts that this

kind of litigation should take place in the officer's own jurisdiction, not in a foreign forum where the officer has never been.[2] *See, e.g.*, *Olmeda v. Babbits*, No. 07-CV-2140, 2008 WL 282122 (S.D.N.Y. Jan. 28, 2008) (no personal jurisdiction over out-of-state defendants who seized a plaintiff and his luggage in a bus terminal); *Stonehill v. Hawley*, No. 07-CV-1815, 2008 WL 163698 (D.N.J. Jan. 14, 2008) (no personal jurisdiction over out-of-state defendants for "advanced security screening at the Denver International Airport"). Under the lower court's rule, almost all of this litigation will now take place in the *plaintiff's* home State. The sheer volume of litigation that will be moved to out-of-state jurisdictions, and the difficulties of litigating it, will impose substantial costs on state and local governments.

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[2] Courts have also declined to exercise personal jurisdiction over out-of-state police officers who have lodged arrest warrants in national databases. *See, e.g.*, *Hicks v. Assistant Att'y Gen.*, No. 08-CV-362, 2010 WL 5067611, at *5 (W.D. Mo. Dec. 6, 2010); *Snyder v. Snyder*, No. 06-CV-3072, 2007 WL 894415, at *4 (D. Minn. Mar. 21, 2007); *Cook v. Holzberger*, 788 F. Supp. 347, 351 (S.D. Ohio 1992). This is so even when out-of-state law-enforcement officials respond to inquiries from forum State officials executing the warrant, exchange telephone calls with forum state officials, or submit forms from the forum State. *See, e.g.*, *Tisdale v. Nadramia,* No. 11-CV-647, 2012 WL 693563, at *4 (D.S.C. Feb. 7, 2012), *report and recommendation adopted by* 2012 WL 693525; *Ray v. Simon,* No. 07-CV-1143, 2008 WL 5412067, at *16 (D.S.C. Dec. 24, 2008); *Williams v. Cook Cnty. Sheriff's Dep't*, No. 93-CV-212, 1995 WL 75386, at *2 (N.D. Ill. Feb. 22, 1995).

A. State and local police officers are sued all the time.

Police officers play a "special role" that makes them "particularly vulnerable" to lawsuits. LARRY K. GAINES & VICTOR E. KAPPELER, POLICING IN AMERICA 406 (7th ed. 2011). Police interact with approximately 43.6 million people annually and most of those interactions are involuntary and inconvenient. Kenneth J. Novak, Brad W. Smith & James Frank, *Strange Bedfellows: Civil Liability and Aggressive Policing*, 26 POLICING: INT'L J. POLICE STRATEGIES & MGMT. 352, 355 (2003). Members of the public are taking their frustrations to the courtroom with increasing frequency. *Id.* at 354. Plaintiffs file more than 30,000 civil actions against officers every year. *See id.* at 355; Mark Stevens, Civil Liability for Government Wrongdoing (North Carolina Wesleyan College, 2004), *at* http://faculty.ncwc.edu/mstevens/205/ 205lect12.htm.

If the Ninth Circuit's rule stands, any person who interacts with the police in the most basic of ways can hale them into court in his or her home State. Members of the public can pursue many causes of action against the police. *See generally* 42 U.S.C. §§ 1981, 1983, 1985; *Bivens v. Six Unknown Named Agents*, 403 U.S. 388 (1971) (permitting § 1983-like claims against federal officers); ROLANDO V. DEL CARMEN, CRIMINAL PROCEDURE: LAW & PRACTICE 456-62 (2008) (discussing a range of common law torts). And run-of-the-mill encounters with police can give rise to these causes of action. For example,

every time an officer stops and searches a car, he can be sued for an alleged Fourth Amendment violation.

This kind of litigation can disrupt law enforcement and "nearly bankrupt[]" municipalities. GAINES & KAPPELER, *supra*, at 383. These suits often affect a large portion of a local police force, distracting them from their official duties. In Cincinnati, for example, nearly 20% of municipal police officers have been sued. Novak et al., *supra*, at 358. Twenty-seven percent of the police officers in one Southern county reported that they had been sued during the course of their careers. *See* Daniel E. Hall, Lois A. Ventura, Yung H. Lee & Eric Lambert, *Suing Cops and Corrections Officers: Officer Attitudes and Experiences About Civil Liability*, 26 POLICING: INT'L J. OF POLICE STRATEGIES & MGMT. 529, 535 (2003). The potential for litigation is particularly high in heavily trafficked areas that regularly attract out-of-state visitors. Plaintiffs filed 8,882 administrative tort claims against the New York City Police Department alone in the one-year period from July 1, 2010 to June 30, 2011. CITY OF NEW YORK OFFICE OF THE COMPTROLLER CLAIMS REPORT FISCAL YEAR 2011, at 45 (Dec. 27, 2012), *available at* http://www.comptroller.nyc.gov/bureaus/bla/pdf/2012_Claims_Report.pdf. That amounts to approximately one claim per year for every 4 police officers. *See FAQ / Police Administration*, CITY OF NEW YORK POLICE DEPARTMENT, http://www.nyc.gov/html/nypd/html/faq/faq_police.shtml (last visited May 27, 2013). These claims and resulting lawsuits cost New York City $185.6 million dollars in fiscal

year 2011 alone. *See* COMPTROLLER CLAIMS REPORT, *supra* at 45.

B. It is costly and unfair to litigate these cases outside the law-enforcement officer's home state.

Under the Ninth Circuit's rule, officers in heavily trafficked areas will be amenable to suit in virtually any jurisdiction. The facts of this case are a good example. The seizure at issue occurred at the Atlanta airport, which averages more than 250,000 passengers a day. *ATL Fact Sheet: Other Facts*, HARTSFIELD-JACKSON ATLANTA AIRPORT, http://www.atlanta-airport.com/Airport/ATL/ATL_FactSheet.aspx (last visited May 15, 2013). These passengers arrive and depart from more than 150 domestic locations, and 75 international ones. *Id.* A Transportation Security Administration officer will interact with many of these passengers in basic ways—such as checking a driver's license before the traveler enters a secure area. Those officers can be sued virtually anywhere under the lower court's rule. *Cf. Int'l Shoe Co. v. State of Wash., Office of Unemployment Comp. & Placement*, 326 U.S. 310, 317 (1945) ("relevant" to consider "an 'estimate of the inconveniences'" that would result "from a trial away from [the defendant's] 'home'").

The rule adopted by the lower court works significant inconvenience and unfairness on States and municipalities in at least three ways.

1. State and local police departments do not have the resources to defend their officers in far-flung

jurisdictions. The Ninth Circuit was wrong to discount these concerns on the grounds that the officer in this case initially received free representation by the U.S. Department of Justice, "the world's largest law firm with offices in all fifty states." Pet. App. 33a (internal quotation marks omitted). It goes without saying that state attorneys general and local police departments do not have offices in other States. Few of their attorneys are members of the bar in other States. Suits brought against an officer in another State will almost certainly require the officer, an insurer, or the state or local government to find and pay private counsel from another State.

2. Out-of-state litigation against police officers also interferes with related criminal proceedings. Most of the contacts between officers and members of the public involve persons suspected of criminal activity. Novak et al., *supra*, at 355. Many of these contacts will result in criminal trials in the officer's jurisdiction. If the lower court's rule were the law, there could be two different trials—one civil and one criminal—hundreds of miles away from each other to resolve a dispute about a single incident. These trials will require the same evidence and witnesses, including the police officers involved.

3. Travel and administrative costs associated with out-of-state trials can place heavy burdens on state and local governments. The defendant police officers will have to travel out of their jurisdiction, possibly for an extended period of time and may have to pay out-of-pocket for those expenses. During that time these officers will not be performing their

duties. Whether they are out of the workforce on "state time" or vacation time, neither situation is desirable. These "unique burdens" should carry "significant weight" in assessing whether the extension of personal jurisdiction in this case was "reasonable." *Asahi*, 480 U.S. at 114 (O'Connor, J.).

* * *

Some may argue that any limitation on the jurisdiction of state courts is an unjustified intrusion on state sovereignty. But the *amici* States see it differently. Their interests in providing redress for their residents' injuries, regulating conduct that occurs within their territory, and maintaining an efficient and fair interstate-litigation system are best served by a rule that requires more for personal jurisdiction than the contacts in this case. A defendant's knowledge of a plaintiff's place of residence may be relevant to personal jurisdiction under certain circumstances, but it is not alone sufficient. The Due Process Clause "protects the defendant against the burdens of litigating in a distant or inconvenient forum," *World-Wide Volkswagen*, 444 U.S. at 292, and the state and local police officers who keep our communities safe are especially deserving of that protection. It is both unfair and inefficient to subject defendants to personal jurisdiction in the home States of effectively every person with whom they interact. The best result for the *amici* States would be for this Court to reverse the Ninth Circuit's ruling on personal jurisdiction.

CONCLUSION

The Court should reverse the Ninth Circuit.

Respectfully submitted,

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