

## **FREEDOM OF INFORMATION ACT REQUEST** **EXPEDITED PROCESSING REQUESTED**

VIA ONLINE PORTAL

April 7, 2022

Roger Andoh  
Freedom of Information Officer  
Centers for Disease Control and Prevention  
1600 Clifton Road, N.E., Building 57, Room MS D-54  
Atlanta, Georgia 30333

Re: *Data Regarding the efficacy of COVID-19 “booster” shots (IR#0739)*

Dear Sir or Madam:

This firm represents the Informed Consent Action Network (“ICAN”). On behalf of ICAN, we submit this FOIA request to the Center for Disease Control and Prevention (“CDC”):

### **I. The Request**

Please provide the following records to [foia@sirillp.com](mailto:foia@sirillp.com) in electronic form:

**All data concerning or reflecting the efficacy of COVID-19 “booster” shots for people 12-49 years of age.**

**Information helpful to fulfilling this request:**

- a. <https://www.nytimes.com/2022/02/20/health/covid-cdc-data.html>
- b. <https://nypost.com/2022/02/22/cdc-withholding-covid-data-over-fears-of-misinterpretation/>

### **II. Expedited Processing Requested**

ICAN’s requests qualifies for expedited processing because ICAN is “primarily engaged in disseminating information to the general public” and there is an “urgency to inform the public concerning actual or alleged Federal Government activity.” 5 U.S.C. § 552(a)(6)(E)(v)(II). FOIA provides for “expedited processing of request for records” upon a showing of “compelling need.” 5 U.S.C. § 552(a)(6)(E)(i)(II). A “compelling need” can be established when the requester demonstrates (1) the requester is “primarily engaged in disseminating information,” and (2) the

request involves an “urgency to inform the public concerning actual or alleged Federal Government activity.” 5 U.S.C. § 552(a)(6)(E)(v)(II).

## **1. ICAN is primarily engaged in disseminating information to the general public**

ICAN’s mission is to disseminate scientific health information to the public. In pursuit of its mission, ICAN relies primarily on its own investigative reporting. ICAN is both instrumental in orchestrating cutting edge investigations into the safety of various medical products, as well as widely disseminating its findings through various media channels. Most notably, ICAN’s popular website hosts the organization’s largest education program, The HighWire with Del Bigtree. Utilizing its media teams’ 40+ years of experience in TV production and investigative journalism, The HighWire provides hours of new video content to the public each week for free.

The HighWire website has approximately 3.4 million weekly visitors. On Twitter, The HighWire has approximately 140,000 followers and 1 to 2.5 million impressions in a 28-day period. Between Rumble and Bitchute, The HighWire has approximately 60,000 followers and growing. Additionally, ICAN has 29,000 text subscribers and 194,245 email subscribers.

The size of ICAN’s audience and subscribers continues to grow and is illustrative of the wide public interest in the subject of health and medical safety. Moreover, critical to ICAN’s mission is its proven ability to find and review critical scientific and governmental records and meaningfully report about their social impacts.

## **2. ICAN’s request involves an urgency to inform the public concerning actual or alleged federal government activity**

In determining whether there is an “urgency to inform,” and hence a “compelling need,” courts must consider at least three factors: (i) whether the request concerns a matter of current exigency to the American public; (ii) whether the consequences of delaying a response would compromise a significant recognized interest; and (iii) whether the request concerns federal government activity. *Al-Fayed v. CIA*, 254 F.3d 300, 310 (D.C. Cir. 2001). All three factors are present here and weigh in favor of granting expedited processing of ICAN’s FOIA request.

### **(i) ICAN’s request concerns a matter of current exigency to the American public**

ICAN’s request concerns a matter of current exigency to the American public because the requested records would significantly contribute to the ongoing public debate and policy decisions derived from the government’s claims Covid-19 vaccines are “safe” and “effective” for all eligible recipients. The CDC is the federal agency leading the United States’ emergency response to the Covid-19 pandemic, and it’s an influential proponent to the claim that Covid-19 vaccines are safe and effective. Under the CDC’s direction, 81.7% of people ages five and up in the United States have received at least one Covid-19 vaccination.<sup>1</sup>

Through the CDC’s statements and recommendations, it actively encourages all Americans to receive the Covid-19 vaccination and booster shot. Such broad recommendations include, “CDC

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<sup>1</sup> <https://covid.cdc.gov/covid-data-tracker/#vaccinations> (last visited 3/29/22).

recommends everyone ages 5 years and older get a Covid-19 vaccine to help protect against COVID-19”<sup>2</sup> and “[e]veryone 12 years and older” should get a booster shot if they received the Pfizer-BioNtech COVID-19 vaccine and “adults 18 year and older” if they received the Moderna COVID-19 vaccine.<sup>3</sup> The CDC website also advocates for the implementation of Covid-19 Workplace Vaccination Programs and policies for private employers, and outlines the benefits of having employees vaccinated for Covid-19.<sup>4</sup>

Sweeping vaccination policies have been implemented by public and private entities as a response to CDC’s recommendations. ICAN’s FOIA request for data concerning the efficacy of Covid-19 “booster” shots for people 12-49 years of age would urgently provide the necessary information to assist policies makers in revising their Covid-19 vaccination policies to best reflect the medical needs of all demographics. This is especially important because many of these policies were mandated to individuals across the country by the federal government,<sup>5</sup> local governments,<sup>6</sup> public and private employers,<sup>7</sup> universities,<sup>8</sup> schools,<sup>9</sup> and various other institutions.<sup>10</sup> At the

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<sup>2</sup> <https://www.cdc.gov/vaccines/covid-19/planning/children/equity.html> (last visited 3/29/22).

<sup>3</sup> <https://www.cdc.gov/coronavirus/2019-ncov/vaccines/booster-shot.html> (last visited 3/29/22).

<sup>4</sup> <https://www.cdc.gov/coronavirus/2019-ncov/vaccines/recommendations/essentialworker/workplace-vaccination-program.html> (last visited 3/29/22).

<sup>5</sup> See, e.g., <https://www.natlawreview.com/article/covid-19-vaccine-added-to-requirements-green-card-processing-effective-oct-1> (last visited 3/29/22); <https://apnews.com/article/business-health-coronavirus-pandemic-coronavirus-vaccine-4cf7451267919302de4a7b591508e80c> (last visited 3/29/22); <https://media.defense.gov/2021/Aug/25/2002838826/-1/-1/0/MEMORANDUM-FOR-MANDATORY-CORONAVIRUS-DISEASE-2019-VACCINATION-OF-DEPARTMENT-OF-DEFENSE-SERVICE-MEMBERS.PDF> (last visited 3/29/22); <https://www.whitehouse.gov/briefing-room/statements-releases/2021/07/29/fact-sheet-president-biden-to-announce-new-actions-to-get-more-americans-vaccinated-and-slow-the-spread-of-the-delta-variant/> (last visited 3/29/22).

<sup>6</sup> See, e.g., <https://www.cnn.com/2021/08/12/us/san-francisco-vaccine-requirement/index.html> (last visited 3/29/22); <https://www1.nyc.gov/site/doh/covid/covid-19-vaccines-keytonyc.page> (last visited 3/29/22); <https://news.yahoo.com/orleans-now-requires-proof-vaccination-230433492.html> (last visited 3/29/22).

<sup>7</sup> See, e.g., <https://www.cnbc.com/2021/08/06/united-airlines-vaccine-mandate-employees.html> (last visited 3/29/22); <https://sanfrancisco.cbslocal.com/2021/08/02/covid-kaiser-permanente-makes-vaccination-mandatory-for-all-employees/> (last visited 3/29/22); <https://abcnews.go.com/Health/wireStory/walmart-mandates-vaccines-workers-headquarters-79177220> (last visited 3/29/22); <https://www.kpbs.org/news/2021/aug/17/encinitas-covid-19-vaccine-negative-test-employees/> (last visited 3/29/22); <https://www.cnbc.com/2021/08/09/covid-vaccine-mandates-sweep-across-corporate-america-as-delta-surges.html> (last visited 3/29/22); <https://www.reuters.com/business/energy/chevron-begins-covid-19-vaccination-mandates-wsj-2021-08-23/> (last visited 3/29/22); <https://thehill.com/policy/healthcare/569051-Pfizers-full-approval-triggers-new-vaccine-mandates> (last visited 3/29/22); <https://cvshealth.com/news-and-insights/statements/cvs-health-will-require-covid-19-vaccinations-for-clinical-and-corporate-employees> (last visited 3/29/22).

<sup>8</sup> See e.g., <https://www.nbcnews.com/health/health-news/colleges-universities-covid-vaccination-mandates-facing-pushback-n1273916> (last visited 3/29/22); <https://www.colorado.edu/covid-19/updates/covid-19-vaccination> (last visited 3/29/22); <https://uhs.berkeley.edu/requirements/covid19> (last visited 3/29/22); <https://huhs.harvard.edu/covid-19-vaccine-requirement-faqs> (last visited 3/29/22); <https://www2.gmu.edu/safe-return-campus/vaccination-requirements> (last visited 3/29/22).

<sup>9</sup> See, e.g., <https://www.npr.org/sections/back-to-school-live-updates/2021/08/20/1029837338/a-california-school-district-mandates-vaccines-for-eligible-students> (last visited 2/19/22); <https://patch.com/massachusetts/salem/salem-school-committee-approves-vaccine-mandate-sports-band> (last visited 2/19/22); <https://www.nbcnewyork.com/news/coronavirus/nyc-will-require-vaccination-for-high-risk-school-sports/3232745/> (last visited 3/29/22); <https://www.nj.com/hudson/2021/08/hoboken-believed-to-be-first-in-state-to-issue-mandate-for-students-12-and-up-get-vaccine-or-face-weekly-testing.html> (last visited 3/29/22); <https://www.mercurynews.com/2021/08/19/la-county-school-district-mandates-covid-vaccines-for-k12-kids-others-soon-may-follow/> (last visited 3/29/22).

<sup>10</sup> See, e.g., <https://www.reuters.com/world/us/new-york-city-mandates-covid-19-vaccine-public-school-teachers-staff-mayor-2021-08-23/> (last visited 3/29/22); <https://www.cbsnews.com/news/california-covid-vaccine-teachers>

federal level, legislation was introduced that would require Covid-19 vaccines for air travel into or out of the United States,<sup>11</sup> and the Pentagon has mandated the Covid-19 vaccines for all military personnel.<sup>12</sup> At the state level, legislation has been introduced to require Covid-19 vaccines for all post-secondary students,<sup>13</sup> all state employees,<sup>14</sup> and even for all citizens of various states.<sup>15</sup>

The CDC's recommendations, and the private and public policies surrounding Covid-19 vaccinations have been challenged by numerous public health officials, media outlets, journalists, scientists, politicians, public figures, and others with large social or media platforms who question the universal safety and effectiveness of the Covid-19 vaccines for all demographics. Proponents on this side of the debate have publicly raised questions regarding the sufficiency of the data and information the CDC and other agencies have used to determine the vaccines' safety and effectiveness for all eligible recipients. For example, most recently, Florida's Surgeon General, Joseph Ladapo, announced on March 7, 2022, "the Florida Department of Health is going to be the first state to officially recommend against the COVID-19 for healthy children."<sup>16</sup> This decision was "based on currently available data, the risk of administering COVID-19 vaccination among healthy children may outweigh the benefits."<sup>17</sup>

In July 2021, a group of 27 clinicians, scientists, and patient advocates, including Peter Doshi, Ph.D., Senior Editor for The BMJ and Associate Professor of Pharmaceutical Health Services Research at the University of Maryland School of Pharmacy,<sup>18</sup> and Peter A. McCullough, M.D. filed an amended Citizen Petition<sup>19</sup> with the FDA, claiming that the available evidence for

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[mandate/](#) (last visited 3/29/2022); <https://www.nytimes.com/2021/08/18/us/washington-state-teacher-vaccine-mandate.html> (last visited 3/29/2022); <https://www.governor.ny.gov/news/governor-cuomo-announces-covid-19-vaccination-mandate-healthcare-workers> (last visited 3/29/2022); <https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/FAQ-Health-Care-Worker-Vaccine-Requirement.aspx> (last visited 3/29/2022); <https://www.nytimes.com/2021/08/09/us/washington-state-workers-vaccine-mandate.html> (last visited 3/29/2022); <https://www.denvergov.org/Government/COVID-19-Information/Public-Health-Orders-Response/News-Updates/2021/Mayor-Hancock-Announces-COVID-19-Vaccine-Requirement-for-Employees> (last visited 3/29/2022); See <https://www.bostonherald.com/2021/08/19/baker-issues-vaccine-mandate-for-42000-state-employees/> (last visited 3/29/2022).

<sup>11</sup> <https://www.congress.gov/bill/117th-congress/house-bill/4980?q=%7B%22search%22:%5b%224980%252> (last visited 3/29/2022).

<sup>12</sup> <https://thehill.com/policy/defense/568996-pentagon-to-mandate-covid-19-vaccine-for-military> (last visited 3/29/2022).

<sup>13</sup> See New York bill S6495, available at <https://www.nysenate.gov/legislation/bills/2021/S6495> (last visited 3/29/2022).

<sup>14</sup> See, e.g., <https://www.nj.com/coronavirus/2021/08/murphy-orders-vaccination-requirement-for-all-nj-state-workers-including-at-public-colleges.html> (last visited 3/29/2022).

<sup>15</sup> See New York bill A11179, available at <https://www.nysenate.gov/legislation/bills/2019/A11179>. See generally <https://eastcountytoday.net/buffy-wicks-transportation-bill-could-become-california-vaccine-passport-bill/> (last visited 3/29/2022).

<sup>16</sup> <https://www.floridahealth.gov/newsroom/2022/03/20220308-FDOH-covid19-vaccination-recommendations-children.pr.html>

<sup>17</sup> *Id.*

<sup>18</sup> <https://www.bmj.com/about-bmj/editorial-staff/peter-doshi> (last visited 3/29/2022).

<sup>19</sup> <https://www.regulations.gov/document/FDA-2021-P-0521-0001> (last visited 3/29/2022).

licensure of the Moderna Vaccine “is simply not mature enough at this point to adequately judge whether clinical benefits outweigh the *risks in all populations*”<sup>20</sup> (emphasis added).

As Covid-19 case numbers rise and fall, new variants emerge, and new data is collected for this novel virus, it’s critical that everyone involved in the creation, enforcement, and implementation of the Covid-19 vaccine policies have access to the new information to reassess their safety and effectiveness for all eligible recipients. Unfortunately, the CDC has withheld this new aggregated information from the public.

According to a recent New York Times article published on February 20, 2022, “[f]or more than a year, the [CDC] has collected data on hospitalizations for Covid-19 in the United States and broken it down by age, race and vaccination status. But it has not made most of the information public.”<sup>21</sup> The article accurately concludes that “[d]etailed, timely data on hospitalizations by age and race would help health officials identify and help the populations at highest risk.” Furthermore, “[i]nformation on hospitalizations and death by age and vaccination status would have helped inform whether healthy adults needed booster shots.” The article also determined that “the performance of vaccines and boosters, particularly in younger adults, is amongst the most glaring omissions in data the CDC has made public.” Jessica Malaty Rivera, an epidemiologist and part of the team that runs the Covid Tracking Project,<sup>22</sup> was quoted in the article stating, they “have been begging for that sort of granularity of data for two years.”

Therefore, ICAN’s FOIA request for data concerning the efficacy of Covid-19 “booster” shots for people 12-49 years of age concerns matters of current exigency to the American public for at least two reasons. First, given the ongoing public debate regarding the safety and effectiveness of the Covid-19 vaccines for all demographics, the public, including its medical and scientific communities, have an immediate need to review all available data underlying the CDC’s recommendations regarding the novel virus. Second, due to the enactment of sweeping one-size-fits-all vaccination policies based off the CDC’s initial recommendations to a novel virus, the public urgently requires the most up-to-date data in order to tailor those policies to best protect the diverse medical needs of the public and to account for the effects of new variants.

For all of these reasons, ICAN has demonstrated its request significantly concerns matters of current exigency to the American public. Therefore, the first factor in FOIA’s “compelling need” analysis weighs heavily in favor of granting expedited processing.

## **(ii) Consequences in delaying a response would compromise significant recognized interests**

Delaying a response to ICAN’s request for data concerning the efficacy of Covid-19 “booster” shots for people 12-49 years of age would compromise significant recognized interests. The CDC has pledged to the American people that it will “[b]ase all public health decisions on the highest quality scientific data that is derived openly and objectively.”<sup>23</sup> Furthermore it states, that in order

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<sup>20</sup> See <https://blogs.bmj.com/bmj/2021/06/08/why-we-petitioned-the-fda-to-refrain-from-fully-approving-any-covid-19-vaccine-this-year/> (last visited 3/29/2022).

<sup>21</sup> <https://www.nytimes.com/2022/02/20/health/covid-cdc-data.html> (last visited 3/29/2022).

<sup>22</sup> <https://covidtracking.com/> (last visited 3/29/2022).

<sup>23</sup> <https://www.cdc.gov/about/organization/mission.htm> (last visited 3/29/2022).

to accomplish its mission it “maintains active surveillance of diseases through . . . data collection, analysis and distribution.” Delaying a response to ICAN’s request for data concerning the efficacy of Covid-19 “booster” shots for people 12-49 years of age would compromise Americans interest in the CDC’s pledge to openly provide the scientific data that derives its public health decisions, as well in the data collection and distribution necessary for the CDC to accomplish its stated mission.

Delaying a response to ICAN’s request would also compromise Americans significant recognized interest in providing informed consent to government recommended medical procedures. The CDC’s Covid-19 recommendations were, and still are immensely influential in the vaccination policies established across the country. They have been cited in the justifications for numerous health regulations and executive orders.<sup>24</sup> However, the data surrounding the effects of this novel virus and its variants on different demographics is constantly changing. The CDC’s initial one-size-fits-all approach for large segments of the population may now be dangerously outdated.

The aggregate data that ICAN has requested would provide the American public the information it urgently needs to be fully informed about the current risks and benefits regarding the Covid-19 vaccine and their particular demographics. The denial or delay of this information the CDC currently possess, compromises Americans significant recognized interest of “informed consent” regarding medical procedures. Notions of informed consent have been codified in jurisdictions all across the United States. For example, in Texas, a “recovery may be obtained [when there is] negligence in failing to disclose the risks or hazards that could have influenced a reasonable person in making a decision to give or withhold consent.”<sup>25</sup> In New York “informed consent shall include as a minimum, the specific procedure or treatment or both, their reasons for it, the reasonably foreseeable risks and benefits involved, and the alternatives for care or treatment, if any . . . .”<sup>26</sup>

Every day, Americans from all demographics decide whether the Covid-19 vaccine (or its booster) is the right medical procedure for them. In many cases, this decision is provoked by private or public policies that mandate Covid-19 vaccination based upon the CDC’s recommendations. Whether a person chooses a medical procedure through self-realization or provoke by the threat of losing their job, occupational benefits, access to medical procedures<sup>27</sup> or educational opportunities,<sup>28</sup> understanding the risks and benefits is a significant recognized interest. The denial or delay of ICAN’s request for data concerning the efficacy of Covid-19

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<sup>24</sup> See <https://secure.sos.state.or.us/oard/viewSingleRule.action?ruleVrsnRsn=286316> ; <https://www1.nyc.gov/office-of-the-mayor/news/225-001/emergency-executive-order-225> (last visited 3/29/2022).; [https://www.state.nj.us/health/cd/documents/topics/NCOV/RecommendationsForLocalHealthDepts\\_K12Schools.pdf](https://www.state.nj.us/health/cd/documents/topics/NCOV/RecommendationsForLocalHealthDepts_K12Schools.pdf) (last visited 3/29/2022).

<sup>25</sup> Tex. Civ. Prac. & Rem. Code § 74.101.

<sup>26</sup> 10 NYCRR § 405.7 (b)(9).

<sup>27</sup> <https://www.bbc.com/news/world-us-canada-60132765> (last visited 3/29/2022); <https://www.wsoctv.com/news/local/i-will-die-free- unvaccinated-burke-county-man-denied-kidney-transplant-by-hospital/OJGAFURR4FGERJB7VT24P5RED4/> (last visited 3/29/2022); <https://www.nbc11news.com/2021/10/08/colorado-hospital-denies-unvaccinated-patient-transplant/> (last visited 03/16/22); <https://www.foxnews.com/us/uva-hospital-refused-unvaccinated-transplant> (last visited 3/29/2022); <https://www.businessinsider.com/ohio-woman-liver-disease-denied-transplant-vaccine-cleveland-clinic-2021-10>.

<sup>28</sup> See New York bill S6495, available at <https://www.nysenate.gov/legislation/bills/2021/S6495> (last visited 3/29/2022).

“booster” shots for people 12-49 years of age would prevent Americans from knowing the most up-to-date aggregate data reflecting the risks and benefits of the Covid-19 vaccine for their particular demographic. Thus, such a delay would compromise a significant recognized interest.

For the reasons set forth above, ICAN has demonstrated that a delay of its FOIA request would compromise significant recognized interests. Thus, the second factor in FOIA’s “compelling need” analysis weighs heavily in favor of granting expedited processing.

### **(iii) ICAN’s request concerns federal government activity**

ICAN’s request concerns federal government activity because the information requested has been collected by the CDC and would shed light on the CDC’s recommendations that have provided the bases for private and public vaccination policies. As discussed above, the CDC is the federal agency leading the United States’ emergency response to the Covid-19 pandemic, and thus its recommendations have been largely influential in the creation and implementation of private and public policies regarding Covid-19 vaccines.

The CDC currently possesses aggregate data that would help illustrate the risk and benefits of the Covid-19 vaccines and its boosters for the different demographics of eligible recipients.<sup>29</sup> The CDC has refused to release this data, and thus, ICAN must submit a FOIA request to obtain same.<sup>30</sup> Therefore, the third factor in FOIA’s “compelling need” analysis weighs heavily in favor of granting expedited processing.

ICAN has demonstrated (i) the request concerns a matter of current exigency to the American public, (ii) the consequences of delaying a response would compromise a significant recognized interest, and (iii) the request concerns federal government activity. Therefore, ICAN has reasonably established under FOIA a “compelling need” for the expedited processing of its request. 5 U.S.C. § 552(a)(6)(E)(v)(II)

### **III. Fee Waiver Requested**

We ask that you waive any and all fees or charges pursuant to 5 U.S.C. § 552 (a)(4)(A)(iii). ICAN is a not-for-profit 501(c)(3) organization whose mission is to raise public awareness about vaccine safety and to provide the public with information to give informed consent. As part of its mission, ICAN actively investigates and disseminates information regarding vaccine safety issues, including through its website, and through press events and releases. ICAN is seeking the information in this FOIA request to allow it to contribute to the public understanding of the government’s vaccine safety programs, including the government’s efforts to promote vaccine safety. The information ICAN is requesting will not contribute to any commercial activities.

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<sup>29</sup> <https://www.nytimes.com/2022/02/20/health/covid-cdc-data.html> (last visited 3/29/2022).

<sup>30</sup> *Id.*

#### **IV. Estimated Date of Completion Requested**

Pursuant 5 U.S.C. § 552 (a)(7)(B)(ii), ICAN formally requests the CDC provide an estimated date on which the agency will complete action on this request. The estimated completion date can be emailed foia@sirillp.com when it has been determined.

#### **V. Conclusion**

A determination regarding expedited processing should be made within ten (10) days. Access to the requested records should be granted within twenty (20) business days from the date of your receipt of this letter. Failure to respond in a timely manner shall be viewed as a denial of this request and ICAN may immediately file an administrative appeal or an action.

Please note that the FOIA provides that if only portions of a requested file are exempted from release, the remainder must still be released. We, therefore, request that we be provided with all non-exempt portions which are reasonably segregable. We further request that you describe any deleted or withheld material in detail and specify the statutory basis for the denial as well as your reasons for believing that the alleged statutory justification applies. Please also separately state your reasons for not invoking your discretionary powers to release the requested documents in the public interest. Such statements may help to avoid unnecessary appeal and litigation. ICAN of course reserves all rights to appeal the withholding or deletion of any information.

Thank you for your time and attention to this matter. If you require any additional information, please contact us at (212) 532-1091 or through email at foia@sirillp.com.

Very truly yours,

/s/ Aaron Siri

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