

## **MEMORANDUM OF UNDERSTANDING**

This Memorandum of Understanding (MOU) is entered into between the United States of America, through the Civil Rights Division of the U.S. Department of Justice, and the State of New York, through the New York State Board of Elections (BOE) and the New York State Department of Motor Vehicles (DMV).

### **I. Statement of the Parties**

The United States and the State of New York hereby recognize the following:

1. By letter dated January 6, 2017, the United States notified the State of New York that the Principal Deputy Assistant Attorney General for the Civil Rights Division of the U.S. Department of Justice had authorized litigation against the State of New York and appropriate State officials to enforce Section 5 of the National Voter Registration Act of 1993 (NVRA), 52 U.S.C. § 20504, which is also known as the Motor Voter provision of the NVRA.
2. The State of New York subsequently informed the United States that the State was initiating efforts to bring about Motor Voter compliance through modifications to its internet site and the forms, procedures, and electronic system used at its motor vehicle offices in the State.
3. The State of New York's current Motor Voter procedures do not comply fully with 52 U.S.C. § 20504.
4. The United State and the State of New York share the goals of ensuring that the requirements of the Motor Voter provisions of the NVRA are met and ensuring that New York's citizens enjoy the benefits envisioned by that provision.

5. The United States and the State of New York have negotiated in good faith and hereby agree to this MOU as an appropriate means to further their shared goals.
6. This MOU shall be carried out in conformity with Section 5-212 of the New York Election Law.

## **II. National Voter Registration Act of 1993**

7. The National Voter Registration Act of 1993 (NVRA), 52 U.S.C. §§ 20501-11, includes certain requirements with respect to voter registration procedures for elections for Federal office for States covered by the NVRA. The State of New York is covered by the NVRA and is obliged to ensure compliance with its requirements. 52 U.S.C. §§ 20502(4), 20503.
8. The NVRA requires that, “in addition to any other method of voter registration provided for under State law, each State shall establish procedures to register to vote in elections for Federal office . . . by application made simultaneously with an application for a motor vehicle driver’s license pursuant to section 20504” of Title 52 of the U.S. Code. 52 U.S.C. § 20503(a)(1).
9. The NVRA further requires that “[e]ach State motor vehicle driver's license application (including any renewal application) submitted to the appropriate State motor vehicle authority under State law shall serve as an application for voter registration with respect to elections for Federal office unless the applicant fails to sign the voter registration application.” 52 U.S.C. § 20504(a)(1). This provision also requires that “[a]n application for voter registration submitted under [the provision] shall be considered as updating any previous voter registration by the applicant.” 52 U.S.C. § 20504(a)(2).

10. The NVRA defines “motor vehicle driver’s license” to include any personal identification document issued by a state motor vehicle authority. 52 U.S.C. § 20502(3). In New York, the DMV is the state motor vehicle authority, and personal identification documents issued by the DMV include commercial and non-commercial driver licenses, learner permits, and non-driver identification cards (ID cards). N.Y. Veh. & Traf. Law §§ 200, 490, 501.
11. The NVRA requires that “[t]he voter registration application portion of an application for a State motor vehicle driver’s license . . . may not require information that duplicates information required in the driver’s license portion of the form (other than a second signature or other information necessary under [52 U.S.C. § 20504(c)(2)(C)]).” 52 U.S.C. § 20504(c)(2)(A).
12. The NVRA requires that “[t]he voter registration application portion of an application for a State motor vehicle driver’s license . . . shall include” a statement of the eligibility requirements for registration, an attestation that the applicant meets each such requirement, and a signature under penalty of perjury. 52 U.S.C. § 20504(c)(2)(C).
13. The NVRA requires that the voter registration application portion of an application for a State motor vehicle driver’s license may require only the minimum amount of information necessary to prevent duplicate voter registrations and to enable State election officials both to assess the eligibility of the applicant and to administer voter registration and other parts of the election process. 52 U.S.C. § 20504(c)(2)(B).
14. The NVRA requires that any change of address form submitted in accordance with State law for purposes of a State motor vehicle driver’s license must serve as notification of change of address for voter registration with respect to elections for Federal office for the

registrant involved, unless the registrant states on the form that the change of address is not for voter registration purposes. 52 U.S.C. § 20504(d).

15. The NVRA requires that a completed voter registration portion of an application for a State motor vehicle driver's license accepted at a State motor vehicle authority must be transmitted to the appropriate election official not later than 10 days after acceptance, and not later than five days after acceptance if accepted within five days before the last day of registration to vote in a Federal election. 52 U.S.C. § 20504(e).
16. The co-Executive Directors of the BOE are, jointly, the chief election officer of the State of New York. The co-Executive Directors are responsible for coordinating New York's responsibilities under the NVRA. 52 U.S.C. § 20509; N.Y. Elec. Law § 3-100.
17. The Commissioner of the DMV, or the Executive Deputy Commissioner during the vacancy of such office, administers, coordinates, and controls the operations of the DMV and is responsible for the overall supervision and direction of all DMV facilities. N.Y. Veh. & Traf. Law § 200, N.Y. Pub. Off. Law § 9. The DMV is responsible for integrating voter registration into any New York State motor vehicle driver license application, including any renewal application, and for ensuring that any change of address form related to a motor vehicle driver license serves as notification of change of address for voter registration with respect to elections for Federal office, unless the registrant states on the form that the change of address is not for voter registration purposes. N.Y. Elec. Law § 5-212.
18. New York State also designates, by statute, the clerks of 51 of the State's 62 counties to act as agents of the DMV for the purpose of performing license and other DMV transactions. N.Y. Veh. & Traf. Law § 205. As such, DMV offices operated by county

clerk agents are “State motor vehicle authorities” under the NVRA for the limited purpose of conducting transactions concerning State motor vehicle driver’s licenses. The DMV mandates that its county clerk agents perform driver license and ID card services using DMV-approved forms, procedures, and systems.

19. The BOE has the authority to require that all local boards of election comply with the NVRA and the DMV has the authority to require that all DMV offices, including those operated by county clerks by directing clerks how to perform DMV functions, comply with NVRA requirements. Accordingly, the BOE and the DMV Executive Deputy Commissioner are appropriate signatories to this Agreement for the State of New York and have the legal and statutory authority to ensure compliance with the terms and conditions of this Agreement.

### **III. Terms of Agreement**

NOW, THEREFORE, for full and adequate consideration given and received, the United States, through the Civil Rights Division of the U.S. Department of Justice, and the State of New York, through the BOE and the DMV, agree as follows:

#### **A. Compliance Plan**

20. Within 60 days of executing this agreement, the State shall provide to the U.S. Department of Justice a proposed compliance plan to implement the agreements described herein and to assure New York State’s full compliance with Section 5 of the NVRA.

21. The compliance plan shall apply to all applications performed in person at a DMV office, using a DMV kiosk, remotely by mail or telephone, or on the DMV’s internet site, for:

- a. a newly issued New York State driver license, learner permit, or ID card;

- b. renewal of a New York State driver license or ID card; and
  - c. a change of address regarding a New York State driver license, learner permit, or ID card.
22. Under the compliance plan, each application for a New York State driver license or ID card, including any renewal application, shall serve as an application for voter registration with respect to elections for Federal office unless the applicant declines to register to vote.
23. Under the compliance plan, the voter registration portion of each application for a New York State driver license, learner permit, or ID card, including any renewal application, shall conform to the requirements of Sections 5(a) and 5(c) of the NVRA, with particular attention to the elimination of queries that duplicate information sought on the driver license, learner permit, or ID card portion of the application.
24. Under the compliance plan, all completed voter registration portions of each application for a New York State driver license, learner permit, or ID card, including any renewal application, shall be accepted through all New York State DMV offices, including those operated by county clerks, providing licensing services, and transmitted by those offices to appropriate election officials not later than 10 days after acceptance, or, if accepted within five days of the close of registration for an election, no later than five days after they are accepted by the DMV office, as provided by Section 5(e) of the NVRA, 52 U.S.C. § 20504(e).
25. Under the compliance plan, any change of address submitted by a registered voter in accordance with state law for purposes of a New York State driver license, learner permit, or ID card shall serve as a change of address for voter registration with respect to

elections for Federal office for the registrant involved, unless the registrant states on the form that the change of address is not for voter registration purposes.

26. The compliance plan will include details regarding implementation of Paragraphs 27-48, below.

### **In-Person Initial and Renewal Applications**

27. Acknowledging that the United States has reported evidence that certain DMV staff may be circumventing the DMV's policy directives regarding the use of the DMV's electronic system for in-person driver license, learner permit, or ID card initial and renewal applications, which was designed in 2012 to offer a NVRA-compliant paperless Motor Voter form using a customer facing device (CFD), the CFD programming shall be changed to preclude any CFD "cancellations" by DMV staff.
28. Such a cancellation was previously allowed on an exceptions basis to assist customers who had selected "yes" to the NVRA enrollment question on the CFD, only to then report to the DMV employee he or she did so in error. The "cancel" button allowed the DMV employee to cause the DMV's system to register a "no" answer on behalf of the customer. This option shall be eliminated through a software change to be performed no later than July 1, 2017. After such date, customers reporting such errors will have their NVRA transaction re-started and will be invited to answer the enrollment question themselves accurately using the CFD. Accordingly, under the Compliance Plan, virtually all in-person applications will be performed on the CFD.
29. Motor voter applications may continue to be accepted using a paper form, rather than using the CFD, at times when the CFD has become temporarily inoperable or to facilitate an enrollment for customers having limited English proficiency or a visual or other

impairment that otherwise limits a customer's ability to read or respond to voter registration queries on the CFD.

30. Customers with visual disabilities for whom the paper form is insufficient and customers in need of language assistance not met by the paper translations in the required languages will be presented with the mandated NVRA question in all cases, and the answer will be logged, pursuant to a staff policy issued no later than July 1, 2017, and reiterated with periodic training and assessment, as follows:

- a. Customers answering "no" to the NVRA question will be denoted in the system by staff directing customers or those who accompany them to the office (as in the case of a customer with a visual impairment) to select the answer "no" on the CFD.
- b. Customers answering "yes" to the NVRA question will be denoted in the system by the DMV employee entering the customers' verbal NVRA answers, including as those answers are interpreted for customers having limited English proficiency through the use of the DMV language line, on the DMV's point-of-sale system, with the exception of the party affiliation question as well as the affirmation, which would be completed on the CFD by the customer, with the physical assistance of DMV staff if necessary.

31. By August 1, 2017, DMV form MV-44 (application for driver license and ID card) shall include the confidentiality disclosures mandated by Sections 5(c)(2)(D)(ii) and 5(c)(2)(D)(iii) of the NVRA, 52 U.S.C. §§ 20504(c)(2)(D)(ii)-(iii).

32. By October 1, 2017, CFDs shall be re-programmed to include the confidentiality disclosures mandated by Sections 5(c)(2)(D)(ii) and 5(c)(2)(D)(iii) of the NVRA, 52



U.S.C. §§ 20504(c)(2)(D)(ii)-(iii), replacing existing text that is unrelated to the NVRA, or, if such re-programming is not completed, physical signs bearing the disclosures shall be placed near the CFDs.

33. By December 15, 2017, DMV forms MV-44CR (application for restricted use/conditional driver license) and MV-44EDL (application for enhanced driver license) shall include the confidentiality disclosures mandated by Sections 5(c)(2)(D)(ii) and 5(c)(2)(D)(iii) of the NVRA, 52 U.S.C. §§ 20504(c)(2)(D)(ii)-(iii).

### **Online Renewal Applications**

34. Acknowledging that the United States has reported evidence that the DMV internet site is not offering a driver license or ID renewal transaction that is fully compliant with the NVRA, such transactions shall be modified no later than July 1, 2017 to display a voter registration query before the license or ID renewal may be continued or completed. As an interim remedy, the DMV internet site has been modified to include a NVRA reminder on the driver license or ID renewal transaction's conformation message.
35. Acknowledging that the United States considers the DMV internet site's identification queries for Motor Voter transactions to be a duplication of certain information required for the driver license or ID card renewal transaction, the DMV internet site shall be modified no later than July 1, 2017, to require only one, uniform credentialing process for both the DMV renewal transaction and the voting enrollment transaction.
36. By July 1, 2017, the DMV website for license and ID card renewals shall be re-programmed to include the confidentiality disclosures mandated by Sections 5(c)(2)(D)(ii) and 5(c)(2)(D)(iii) of the NVRA, 52 U.S.C. §§ 20504(c)(2)(D)(ii)-(iii).

### **Mail-Based Renewal Applications**

37. By October 1, 2017, all varieties of DMV form MV-2 shall incorporate a voter registration application that does not contain any queries—including the applicant’s address—that duplicate those on the driver’s license portion of the form.
38. By September 1, 2017, all varieties of DMV form MV-2 (renewal invitation) shall include the confidentiality disclosures mandated by Sections 5(c)(2)(D)(ii) and 5(c)(2)(D)(iii) of the NVRA, 52 U.S.C. §§ 20504(c)(2)(D)(ii)-(iii).

### **Kiosk-Based Renewal Applications**

39. DMV kiosks used for driver license and ID card renewals have been re-programmed to include the confidentiality disclosures mandated by Sections 5(c)(2)(D)(ii) and 5(c)(2)(D)(iii) of the NVRA, 52 U.S.C. §§ 20504(c)(2)(D)(ii)-(iii).

### **In-Person Change of Address**

40. Until October 1, 2017, in-person address changes in DMV offices not completed on a kiosk shall be performed using the paper address change form (DMV MV-232), which will be transmitted to the appropriate board of elections. No later than October 1, 2017, the DMV shall put in place programming and policies to perform each in-person address change not associated with a renewal application using change of address software, which will require employees to ask the NVRA opt-out question and to transmit the address change information electronically to the applicable board of elections.

### **Online Change of Address**

41. By no later than October 1, 2017, all online driver license, learner permit, and ID card change of address transactions shall serve as notification of a change of address for voter

registration purposes unless the applicant affirmatively indicates that that the change of address is not for voter registration purposes.

42. The DMV internet transaction for address changes associated with driver license, learner permit, and ID card records will be modified no later than October 1, 2017 to offer an NVRA-compliant address change procedure after requiring one, uniform credentialing process.

#### **Change of Address by Mail**

43. No later than October 1, 2017, the DMV shall not accept submission by mail of any notification of a change of address for driver license or ID card purposes that does not provide customers with notice that the address change will apply to voter registration records absent a declination and an opportunity for the driver to decline to update voter registration records. The DMV will advise such customers that their address change application was not accepted, will inform them that such applications must be submitted on an NVRA-compliant change of address form, and will provide them with an NVRA-compliant form.

#### **Change of Address by Kiosk**

44. The DMV shall ensure that as of October 1, 2017, through software changes, all address changes performed on a DMV kiosk will include the mandated NVRA opt-out question regarding the transmittal of the address change for voting registration purposes and that the address change information for all address change transactions that do not include such an opt-out indication will be sent to the appropriate board of elections.

### **Change of Address by Telephone**

45. The DMV shall ensure that as of October 1, 2017, through changes to software, policies, and procedures, as well as ongoing training and assessment, all telephonic driver license change of address transactions will serve as notification of a change of address for voter registration purposes unless the customer affirmatively indicates that the change of address is not for voter registration purposes and that updated address information will be sent to county boards of elections from any applicant who has not affirmatively indicated that a change of address is not for voter registration purposes.

### **Transmission Deadlines**

46. All completed voter registration portions of each application for a New York State driver license or ID card, including any renewal application must be accepted through all New York State DMV offices, including those operated by county clerks, and transmitted by those offices to appropriate election officials not later than 10 days after acceptance, or, if accepted within five days of the close of registration for an election, no later than five days after they are accepted by the DMV office, as provided by Section 5(e) of NVRA, 52 U.S.C. § 20504(e).

47. New York State's change of address forms, policies, and procedures shall ensure that change of addresses for a driver license or ID card shall result in the transmission of voter registration information to appropriate election officials for voter registration purposes under timelines established for initial and renewal applications by Section 5(e) of the NVRA.

48. As of October 1, 2017, address change information for transactions completed on the DMV internet site, by telephone, or on a kiosk (where there is no paper change of address

form) will be transmitted on paper on at least a weekly basis to the appropriate local election official. The DMV may, after appropriate technical changes, transmit, such change of address notifications electronically to the appropriate local election official.

## **B. Training and Monitoring**

49. The DMV shall develop, implement, and offer NVRA training program to facilitate compliance with the NVRA and this MOU. Training materials shall be completed by October 1, 2017, with statewide training sessions beginning October 16, 2017. It shall be mandatory for every DMV employee, county employee, or other licensing agent responsible for providing driver license services to take such training annually, either in person or by remote learning.
50. Within 30 days of execution of this MOU, the DMV shall designate a statewide “DMV NVRA Coordinator” and shall notify the United States as to the identity of that individual. The DMV NVRA Coordinator may be a current employee of the New York Department of Motor Vehicles. During the term of this MOU, the DMV shall notify the United States of any change in the identity of the DMV NVRA Coordinator within 30 days of a new designation.
51. Within 30 days of execution of this MOU, the DMV shall establish a policy or procedure requiring every DMV and county office that provides driver license services to designate an “NVRA Site Coordinator.” NVRA site coordinators may be current DMV or county employees. Such policy or procedure shall require:
  - (a) Designation of NVRA Site Coordinators within 30 days of the policy or procedure’s entry and
  - (b) Designation of a new NVRA Site Coordinators within 30 days of a vacancy.

52. Within 60 days of the execution of this MOU, the DMV shall notify the United States as to the identity of all NVRA Site Coordinators designated by the DMV or county officials.

53. The duties of the DMV NVRA Coordinator shall include, but need not be limited to:

- a. Coordinating and overseeing statewide compliance with the requirements of Section 5 of the NVRA and the provisions of this MOU;
- b. Developing training materials for DMV office employees and NVRA Site Coordinators, gathering data related to NVRA compliance and reviewing possible NVRA compliance issues suggested by such data;
- c. Tabulating and addressing any customer complaints to the DMV regarding NVRA compliance, including customer complaints that his or her experience at a DMV office was not accurately reflected by the DMV's existing printed, paper receipts given to each customer upon completion of an in-office license or ID card transaction (*i.e.*, "VR REQUESTED, WE ARE SENDING YOUR VOTER REGISTRATION APPLICATION TO YOUR COUNTY BOARD OF ELECTIONS," or "YOU HAVE DECLINED TO REGISTER TO REGISTER TO VOTE/ALREADY REGISTERED/OR DO NOT WANT TO NOTIFY THE BOARD OF ELECTIONS OF ANY CHANGE.>").
- d. Gathering monthly information, to be shared with the U.S. Department of Justice on a quarterly basis in a Microsoft Excel-compatible file format (.csv, xls, or .xlsx), indicative of statewide compliance with Section 5 of the NVRA and this MOU, including:
  - (i) The number of online renewal applications for driver's licenses received;

- (ii) The number of completed voter registration applications accepted and transmitted to county boards of elections as part of such online renewal applications, and whether such transmissions were timely;
- (iii) The number of renewal applications for driver's licenses received by mail;
- (iv) The number of completed voter registration applications accepted and transmitted to county boards of elections as part of such renewal applications received by mail, and whether such transmissions were timely;
- (v) The number of online change of address transactions for driver's licenses received;
- (vi) The number of changes of address transmitted to county boards of elections as a result of such online changes of address, where such data shall be available starting October 1, 2017;
- (vii) The number of change of address forms for driver's licenses received by mail;
- (viii) The number of changes of address transmitted to county boards of elections as a result of such change of address forms received by mail;
- (ix) The number of telephonic change of address submissions for driver's licenses received; and
- (x) The number of changes of address transmitted to county boards of elections as a result of such telephonic changes of address, where such data shall be available starting October 1, 2017.

- e. Gathering monthly information, to be shared with the U.S. Department of Justice on a quarterly basis in a Microsoft Excel-compatible file format (.csv, xls, or .xlsx), indicative of office-by-office compliance with Section 5 of the NVRA on a monthly basis, including, for each office:
- (i) The number of in-person (non-kiosk) driver's license applications received, including renewal applications;
  - (ii) The number of completed voter registration forms accepted and transmitted to county boards of elections as part of such in-person (non-kiosk) applications, and whether such transmissions were timely;
  - (iii) The number of kiosk-based driver's license applications received, including renewal applications;
  - (iv) The number of completed voter registration applications accepted and transmitted to county boards of elections as part of such kiosk-based applications, and whether such transmissions were timely;
  - (v) The number of in-person (non-kiosk) driver's license changes of address submitted when not completed as part of a renewal or other transaction;
  - (vi) The number of changes of address transmitted to county boards of elections in relation to such in-person (non-kiosk) changes of address;
  - (vii) The number of in-person kiosk-based driver's license changes of address submitted;
  - (viii) The number of changes of address transmitted to county boards of elections in relation to such in-person kiosk-based changes of address.



54. The duties of the DMV NVRA Site Coordinators shall include ensuring that each driver's license application, including renewal applications, incorporates an application for voter registration, identifying and resolving any NVRA implementation issues, and ensuring that office staff take the mandatory NVRA training.
55. Within 60 days of the execution of this MOU, the DMV shall submit all policies, procedures, handbooks, applications, and other forms that refer or relate to voter registration to BOE's co-Executive Directors, who shall jointly certify within 30 days of receipt that such documents are consistent with the requirements of Section 5 and this MOU. For the duration of this MOU, the DMV shall continue to submit such documents to BOE for such certification.
56. Within 90 days of the execution of this MOU, the DMV shall develop methods of tracking whether DMV and county offices that provide driver's license services are complying with Section 5 and this MOU. The DMV's tracking of compliance with Section 5 shall include, but need not be limited to:
- (a) Review of relevant enrollment data;
  - (b) Periodic auditing of offices' voter registration procedures, including audits of driver's license files to review the rate at which applicants ostensibly declined to register to vote;
  - (c) Unscheduled, announced site visits to review procedures, policies, forms, and training materials related to voter registration.

### **C. Status Report, Remedial Action, and Enforcement**

57. While this MOU is in effect, each year on the day and month of its execution date, the DMV shall submit to the United States a report for the prior twelve month period, which shall include the following components:

- (a) A summary of efforts to implement each of the provisions and requirements of this MOU, including the results of the DMV's own internal tracking and audits.
- (b) A description of any corrective action plans devised and implemented to correct any issues.
- (c) Updated copies of all new or revised NVRA procedures, rules, regulations, publications, advertisements, and training materials used in the preceding reporting period or to be used in the future reporting periods.

58. As a remedial action, the DMV will include a message regarding voting enrollment and address changes when sending DMV customers email reminders to renew licenses, ID cards, and vehicle registrations. The message will be included in such reminders for a twelve-month period commencing October 1, 2017, and will reference the DMV's online voter registration application and address change transaction.

59. The United States may object to any rule, regulation, practice, procedure, form, plan, report, or other document submitted by the DMV or the BOE pursuant to this MOU on the ground that it does not comply with or is not sufficient to ensure compliance with the NVRA or this MOU. The United States will do so by submitting to the DMV and the BOE a written notice describing any objections. The parties shall thereafter make a good-faith effort to resolve any differences and agree to make any changes sufficient to remedy non-compliance with Section 5 or this MOU.

60. If the parties are unable to agree on a resolution of the issue under the procedures set out above, the United States may take appropriate action without further notice to enforce the terms of this MOU.

**D. Deadlines**

61. With respect to any time deadline imposed on New York State, the DMV or the BOE by this MOU, if the State, the DMV, or the BOE are unable, despite good faith efforts, to comply with a time deadline, the State shall notify the United States of such inability prior to the expiration of such deadline and may request a reasonable extension of the deadline.

62. Any deadline in this MOU may be extended by the consent of the parties. The United States shall not unreasonably withhold consent following a showing of cause by the DMV or the BOE.

**E. Effective Date**

63. This MOU shall take effect immediately upon signing by all the signatories.

**F. Termination**

64. This MOU shall remain in effect for four years from its effective date and shall then terminate upon agreement that the DMV and the BOE have achieved substantial compliance with the MOU.

65. To demonstrate that it has achieved substantial compliance with the MOU for purposes of termination, the State shall provide a report, including appropriate documentation, to counsel for the United States that establishes that the State has substantially complied and that the State has the means and intent to continue compliance with Section 5 of the

NVRA. This report shall include the formal written policies and procedures and any final rules and regulations adopted pursuant to comply with this MOU.

66. After conferring with the DMV and the BOE, the United States in good faith will determine whether it concurs that the DMV and the BOE have achieved substantial compliance with the MOU. A conclusion of substantial compliance may not be unreasonably withheld. If the parties agree that substantial compliance has been achieved, they may terminate this MOU in writing.

The undersigned agree to execution of this MOU.

For the United States:

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June 20, 2017

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June 15, 2017

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