

CIVIL DIVISION LANGUAGE ACCESS PLAN

I. POLICY DIRECTIVE

A. INTRODUCTION

The Department of Justice maintains a policy of providing persons with limited English proficiency (LEP) meaningful access to programs and activities conducted by the Department and by entities receiving funding from the Department. This policy is required by Executive Order 13166 issued on August 11, 2000.¹

Activities performed by the Civil Division generally fall within the scope of federally conducted programs and activities covered by this policy. The policy specifically impacts three categories of programs and activities conducted by the Division: 1) those involving contact with a witness or unrepresented party in the context of litigation; 2) those administered by the Division for program beneficiaries; and 3) those involving general public contact as part of agency operations.

Appropriate steps should be taken to ensure meaningful access by LEP individuals to these Division programs and activities. The identification of reasonable steps to provide oral and written services in languages other than English is to be determined by directors of the components in the Civil Division,² or their designee(s), through a balancing of various factors. These factors include: the category of program or activity, the number or proportion of LEP persons impacted by the program or activity, the frequency of contact with LEP individuals in a given program or activity, the importance of the information needed for the program or activity, and the resources available to the Division and the component affected. Consideration of these factors is intended to create a balance that ensures meaningful access by LEP persons to Division programs or activities while not imposing undue burdens on the Division. The flexibility that components within the Civil Division have in addressing the needs of the LEP populations they may encounter does not diminish, and should not be used to minimize, the obligation that those needs be addressed.

¹ Executive Order 13166, "Improving Access To Services For Persons With Limited English Proficiency," 65 Fed. Reg. 50121 (August 11, 2000).

² The Civil Division is composed of the following components (each referenced in this plan as "component"): the Appellate Staff, Commercial Litigation Branch, Consumer Protection Branch, Federal Programs Branch, Office of Immigration Litigation, Office of Management Programs, and the Torts Branch. The Division also includes the September 11th Victim Compensation Fund, which is led by a Special Master appointed by the Attorney General. For purposes of this plan only, the director of the September 11th Victim Compensation Fund is the Special Master or her designee.

This document (the “LEP Access Plan”) serves as general guidance to all components in the Civil Division to ensure that LEP individuals have meaningful access to programs and activities conducted by the Division.

B. POLICY STATEMENT

The Civil Division seeks to provide limited English proficient (LEP) persons with meaningful access to programs and activities conducted by the Division. All Division staff accordingly shall take reasonable steps to ensure that LEP individuals are provided appropriate language assistance services and to inform the public of the availability of language accessible programs and activities.

The following actions will be taken to implement this policy within the Civil Division:

1. The Civil Division shall designate a Language Access Coordinator for the Division and form a Language Access Committee to ensure that the Division provides meaningful access to LEP individuals by adhering to Departmental policy and the LEP Access Plan;
2. The Civil Division will post on its website this policy statement, provide a contact for questions and comments regarding language access issues related to programs and activities conducted by the Division, and ensure that appropriate outreach efforts are made; and
3. Each component of the Civil Division shall:
 - a. Designate a point(s) of contact for language access matters;
 - b. Perform at regular intervals every two years a capacity and needs assessment for language assistance services for submission to, and review by, the Civil Division’s Language Access Coordinator and Committee; and
 - c. Arrange for quality language assistance services in appropriate languages other than English as warranted.

C. PURPOSE AND AUTHORITY

The purpose of this policy and the LEP Access Plan is to establish effective guidelines, in accordance with Executive Order 13166 and consistent with the standards set forth in the Department of Justice guidance document regarding enforcement of Title VI of the Civil Rights Act of 1964, for Civil Division personnel to follow when providing services to, or interacting with, LEP individuals.³ Following these guidelines enables the Civil Division to serve credibly and fairly in representing the United States, its departments and agencies, Members of Congress, Cabinet Officers, and other federal employees, and in executing its responsibilities. It is additionally essential to achieving the Department's mission to enforce the law and defend the interests of the United States according to the law, and to ensure fair and impartial administration of justice for all individuals within the United States. This policy and the LEP Access Plan are not intended to create new services or obligations, but to eliminate or reduce limited English proficiency as a barrier or impediment to accessing the core programs and activities of the Civil Division.⁴

³ See Attorney General Holder Memorandum to All Federal Agencies Regarding the Federal Government's Renewed Commitment to Language Access Obligations Under Executive Order 13166 (February 17, 2011).

⁴ Section 5 of Executive Order 13166 expressly provides that the order "does not create any right or benefit, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies, its officers or employees, or any person."

D. DEFINITIONS

Civil Division components should assess the general nature, purpose, and consequence of their interactions with the impacted LEP population or general public using the following definitions:

1. **Compensation program** – The Civil Division administers three compensation programs:
 - a. **Vaccine Injury Compensation Program (VICP)** – This program was created by the National Childhood Vaccine Injury Act of 1986. It is designed to encourage childhood vaccination by providing a streamlined compensation system for the rare instances in which an injury results from vaccination. Individuals who believe they have been injured by a covered vaccine can file a claim against the Department of Health and Human Services (HHS) in the U.S. Court of Federal Claims seeking compensation from the Vaccine Trust Fund. The Department of Justice, which represents HHS, consistently works through the VICP Office of the Constitutional and Specialized Torts Litigation Section (CSTL) of the Torts Branch to ensure that fair compensation is awarded in every case meeting the eligibility criteria.
 - b. **Radiation Exposure Compensation Program (RECA)** – This program was created in 1990 by the Radiation Exposure Compensation Act. It allows for partial restitution to individuals who developed serious illnesses after exposure to radiation released during the atmospheric nuclear tests or after employment in the uranium industry from 1945 to 1962. The RECA office of CSTL oversees the program.
 - c. **September 11th Victim Compensation Fund** – This program was created by the James Zadroga 9/11 Health and Compensation Act of 2010, which reactivated the September 11th Victim Compensation Fund of 2001 that operated from 2001 to 2003. It provides compensation for any individual (or a personal representative of a deceased individual) who suffered physical harm or was killed as a result of the terrorist-related aircraft crashes of September 11, 2001, or the debris removal efforts that took place in the immediate aftermath of those crashes. The program is administered by a Special Master appointed by the Attorney General.
2. **Language assistance services and providers** – Language assistance services and the persons or entities that offer such services generally fall into one or more of three groups. Barring exigent circumstances, the Division shall not use children, family, friends, or bystanders of the LEP person to provide official language assistance services. Using family, friends, or bystanders to interpret or translate could result in a breach of confidentiality, a conflict of interest, or an inadequate interpretation. The Division shall not use machine or automatic translations for official language assistance services. As used in the LEP Access Plan, “quality language assistance services” refers to language assistance services that facilitate meaningful access to programs and activities conducted by the Division.

- a. An **interpretation** refers to the oral conversion of communication from one language to another language while retaining the same meaning. An **interpreter** listens to a communication in one language and makes the interpretation. A **qualified interpreter** is generally required to have undergone specialized training. This individual is an in-house or contracted person who has demonstrated his or her competence to interpret through court certification or passage of an approved language skills assessment and is authorized to do so by, or by contract with, the Department, the Division, or the component director.
 - b. A **translation** involves replacing written text from one language into an equivalent written text in another language. A **translator** provides this service. A **qualified translator** is generally required to have undergone specialized training. This individual is an in-house or contracted person who has demonstrated his or her competence to translate through court certification or passage of an approved language skills assessment and is authorized to do so by, or by contract with, the Department, the Division, or the component director.
 - c. A **bilingual person** has the ability to use two languages and a **multilingual person** has the ability to use more than two languages. A bilingual or multilingual person can learn to become a translator or interpreter, but is not automatically qualified by virtue of his or her language abilities. Absent formal assessment and approval, a bilingual or multilingual employee who self-identifies as proficient in a non-English language cannot officially communicate with the LEP individual on behalf of the Division.
3. **Limited English proficient (LEP)** – Individuals who do not speak English as their primary language and have a limited ability to read, write, speak, or understand English may benefit from language assistance with respect to a particular type of program or activity. Examples of populations likely to include LEP persons who are encountered or served by the Civil Division and should be considered when planning language services include but are not limited to:
- a. Persons unrepresented by counsel who are a party to a case;
 - b. Persons who may be witnesses to a case;
 - c. Persons unrepresented by counsel who are seeking compensation under a compensation program administered by the Division; or
 - d. Persons making a public inquiry, including in-person, electronic, telephonic, or written interactions, with the Civil Division.

The Civil Division's language assistance obligations under the LEP Access Plan are limited to LEP persons who are located within the United States and its territories and does not apply extraterritorially.

4. **Meaningful access** – Language assistance that results in accurate, timely, and effective communication generally at no cost⁵ to the LEP individual. For LEP individuals, meaningful access denotes access that is not unduly restricted, delayed, or inferior as compared to programs or activities provided to English proficient individuals.
5. **Program or activity** – These terms refer to all operations of the Division.
6. **Vital document** – Written or electronic material that is required by law or contains information significant to the outcome of a case or program conducted by the Civil Division shall be translated in the appropriate language(s) as warranted. Circumstances in which such translation may be warranted and the identification of the appropriate language(s) will be determined by component directors. For instance, translation may not be warranted in cases where the LEP individual waives translation, a translated excerpt is acceptable to both parties, a qualified interpreter or translator communicates the contents of the document, or the provision of language assistance services unduly burdens the fundamental mission of the Division and translation is not mandated by law. A document will be considered vital if it contains information that is critical for accessing the agency's program or activities, or is required by law. Vital documents may include, but are not limited to:
 - a. Documents that must be provided by law;
 - b. Complaint, consent, release or waiver forms;
 - c. Claim or application forms;
 - d. Conditions of settlement or resolution agreements;
 - e. Letters or notices pertaining to the reduction, denial, or termination of services or programs or that require a response from the LEP person;
 - f. Time-sensitive notice, including notice of hearing, upcoming deposition appearance, or other investigation or litigation-related deadlines;
 - g. Form or written material related to individual rights;
 - h. Notice of rights, requirements, or responsibilities; and
 - i. Notices regarding the availability of free language assistance services for LEP individuals.

⁵ When federal rules or statutes allow for recovery of fees against a losing party to a court proceeding, it is the policy of the Division not to seek recovery of costs for language assistance services if it results in discrimination against LEP individuals.

II. PLAN & PROCEDURES

A. CIVIL DIVISION LANGUAGE ACCESS COORDINATOR AND COMMITTEE

The Civil Division shall appoint a Language Access Coordinator (the “Coordinator”) for the Division and form a Language Access Committee (the “Committee”) to assist in administering the LEP Access Plan.⁶ The Coordinator is responsible for managing language assistance services matters in the Division. The Coordinator may delegate duties but will retain responsibility for oversight, performance, and implementation of the LEP Access Plan. The Coordinator will also serve as the chair and steer the Committee. The Committee will assist the Coordinator in supporting the Division’s efforts to provide meaningful access to LEP persons. As determined by the Assistant Attorney General for the Civil Division, this Committee will be composed of a small group of individuals from those components identified as key stakeholders of the LEP Access Plan, including a representative from the Office of Management Programs. The Coordinator with the support of the Committee will:

1. Monitor and evaluate the Division’s performance in adhering to the LEP Access Plan;
2. Provide to the Assistant Attorney General for the Civil Division a report every two years assessing the Division’s needs and capacity for language assistance services based on guidance from the Department of Justice Language Access Working Group and information provided by the components. This report will include or address:
 - a. Whether the Division’s LEP Access Plan provides meaningful access for LEP persons;
 - b. Whether employees are aware of the LEP Access Plan;
 - c. Whether any changes have occurred in the Division’s work or in the LEP populations served by the Division that require the Division to adjust the LEP Access Plan;
 - d. An annual estimate of the cost of translation and interpretation services within the Division;
 - e. Whether additional resources are needed to improve access to LEP persons, and, if so, how those resources will be obtained; and

⁶ In his Memorandum for Heads of Department Components regarding Language Access Obligations Under Executive Order 13166, dated June 28, 2010, the Attorney General directed Department components, including the Civil Division, to designate a language access coordinator. Additional guidance from the Department suggests that the size of an agency might warrant having a language access coordinator designated in each Department component or field office. See Language Access Assessment and Planning Tool for Federally Conducted and Federally Assisted Programs (May 2011).

- f. Recommendations for ensuring that the Division provides LEP persons with meaningful access to programs and activities conducted by the Division; and
3. Offer guidance and information to personnel to facilitate the Division's compliance with the LEP Access Plan.

B. PUBLIC INFORMATION AND OUTREACH

The Civil Division will post its language access policy statement and provide contact information for questions or complaints related to the policy statement on the Internet. The Division shall ensure that appropriate outreach efforts are made, especially as the policy applies to the Division's compensation programs.

The compensation programs within the Civil Division have a particular interest in creating meaningful access to LEP individuals through outreach and publication of materials in priority languages other than English. These programs and those components that disseminate vital documents should take reasonable steps to assess whether LEP individuals may be a part of an audience and to accommodate and facilitate access and communication for these communities consistent with the LEP Access Plan.

Vital documents intended for public outreach and education campaigns shall be translated into languages other than English, as appropriate, as determined by the component directors. Where such vital documents affect an identifiable population(s) of LEP individuals, components should accommodate translation of these documents into the language(s) used by such LEP individuals to the extent feasible. Where the vital documents affect an unidentifiable population(s) of LEP persons, component directors should designate appropriate translations based on consideration of the top six non-English languages spoken in American homes by LEP persons age five years or over. These top six languages shall be determined based on multi-year data reported in the American Community Survey (ACS). At the present time, the top six non-English languages spoken in American homes by LEP persons age five years or over are: Spanish, Chinese, Vietnamese, Korean, Tagalog, and Russian.⁷ Each component director should consider whether additional languages are appropriate for outreach and education purposes.

⁷ The Department's implementation plan, which can be found at <http://www.justice.gov/crt/about/cor/lep/dojimp.php#11>, originally prioritized the translation of complaint forms into Spanish, Chinese, Korean, Vietnamese, and Russian. These languages were the five most common languages spoken in the United States wherever 25% or more of the language group speaks English less than "well" based on the 1990 Census. We do not have comparable information from the 2010 Census since the ACS is now the primary source of language data. The most recent data that we have available is ACS multi-year data for 2006-2009. Using the ACS 2006-2009 language data, we looked at the top languages spoken at home by LEP persons age five years and up. We did not apply the requirement that 25% or more of the language group be LEP (although all the languages chosen fulfill that criteria). The Division shall periodically update the list of top languages spoken by LEP persons to reflect current demographic patterns based on multi-year ACS data. Components can obtain state-by-state data

Component directors should also consider whether non-vital documents intended for outreach and education campaigns should be translated and determine the appropriate language(s) for any translation based on the identifiable population(s) of LEP individuals, or the multi-year ACS data. Under most circumstances, materials primarily directed to attorneys, advocates, architects, police, or other professionals will not be considered “vital” for outreach purposes. The Coordinator will work with the component directors or their representatives to determine whether non-vital documents posted on the Internet merit translation into non-English languages and identify the languages for translation.

C. COMPONENT DUTIES

1. Each Component Will Designate a Point of Contact for Language Access Matters

Each component within the Civil Division will assume responsibility for appointing a staff member who will serve as the point of contact (“POC”) for that component concerning language assistance information and issues. Generally one POC will represent each component, but it may be appropriate within a component to designate multiple POCs, such as one for each office or section within a component. The POC will advise the component director on matters pertaining to the implementation of the LEP Access Plan. This designated individual will act as the component liaison to the Coordinator and Committee. The POC will be responsible for collecting, managing, reporting, and distributing language assistance information for the POC’s component. Such information will include language assistance resources available within the Division and the Department, and data on the number of LEP individuals encountered or served by the component, the primary language spoken by any LEP person encountered, and the type of language assistance service provided during each encounter, if any.

2. Each Component Will Perform at Regular Biennial Intervals a Capacity and Needs Assessment for Language Assistance Services

a. Identification of LEP Individuals

Among other tasks, Division staff should be able to identify LEP contact situations and determine the primary language of an LEP individual in order to utilize available and appropriate options to facilitate communication between the Division and the LEP individual. Each component shall develop and implement a method for identifying LEP persons. In designating the method, the component should bear in mind the following contact situations and methods:

Contact situations – Division employees generally may have contact with an LEP person in-person, over the phone, and through electronic and traditional written correspondence.

on the languages spoken at home for LEP persons at
<http://www.census.gov/hhes/socdemo/language/data/other/detailed-lang-tables.xls>.

Primary language of LEP person – An individual may be identified as LEP and then have his or her primary language identified by employing one or more of the following methods: inquiry as to the primary language of the individual; verification by bilingual or multilingual staff or by a qualified interpreter or translator, such as through access to Department or Division-contracted telephone interpretation services; self-identification by the LEP individual or identification by a companion; or use of an “I Speak” language identification card (an example of such a card from the U.S. Census Bureau is available at <http://www.justice.gov/crt/lep/resources/ISpeakCards2004.pdf>).

Although relatives, friends, acquaintances, neighbors, and bystanders of the LEP individual may be used for the limited purpose of identifying someone as an LEP person and the LEP person’s primary language, family members, friends, acquaintances, neighbors, and bystanders of the LEP individual shall not be used to provide official language assistance services absent exigent circumstances. The Division should also refrain from using individuals who are parties to a dispute as language assistance providers.

b. Tracking Requirements

To help evaluate the Division’s performance in adhering to the LEP Access Plan and identify any organizational needs for language assistance services, components shall develop and maintain an internal data collection system for tracking the component’s needs and capacity for language assistance services. The component will record the following information:

- 1) The number of contacts with LEP individuals;
- 2) The primary language of each LEP individual encountered;
- 3) The type (oral or written) and form (referral, informal interpretation or translation through Division employee or a family member or friend of the LEP individual, or interpretation or translation by a qualified language service provider) of any language assistance service provided;
- 4) The cost of any language assistance service provided; and
- 5) Other data identified by the Coordinator or the component director to ascertain compliance with the Civil Division’s LEP Access Plan.

c. Identification of Language Resources

Each component should maintain a database identifying language assistance resources used and available to the component, the Civil Division, or the Department. These resources may be formal or informal, and internal or external. The database may include the name, contact information, information regarding languages served, and any applicable source (identifying the name, organization and contact information of any

referring person or entity) for contacting language assistance providers and language assistance providers utilized by other sections and client agencies. The database may contain a directory listed by language of bilingual or multilingual employees of the component. Such a directory should be consistent with privacy standards and be based on voluntarily provided information. The POC should administer the database and supplement the database with information provided by the Coordinator.

d. Reporting Requirements

Each component will submit to the Coordinator at regular intervals every two years, as specified by the Coordinator, a report concerning the component's capacity and needs for language assistance services. The component, in consultation with the Coordinator, will determine the content and form of the report.

At a minimum, the report will state the number of contacts with LEP individuals, the primary language(s) of the LEP individual(s) encountered, and the type and form of any language assistance service provided, and include any additional data requested by the Coordinator. The report will also include an assessment of the component's capacity and needs for language assistance services or a statement certifying that the component's operation and activities have not used and do not require language assistance resources. Where language assistance services have been or will be provided, the component should indicate expenses associated with providing those services.

Because the frequency of LEP contacts and language assistance services rendered will vary for each component, each component director must determine the appropriate procedures to satisfy the reporting requirements of the LEP Access Plan. Additional procedures that may be performed and presented to the Coordinator and Committee are:

- 1) Delineate and assess effectiveness of methods for identifying and recording relevant information concerning LEP individuals;
- 2) Review and assess the knowledge of staff regarding the component's language assistance policies and procedures;
- 3) Identify language assistance resources employed and available and assess the quality of any language assistance services provided, including services rendered by contractors, and bilingual and multilingual staff;
- 4) Establish an outreach plan and assess the effectiveness of outreach efforts;
- 5) Review and assess whether any language assistance services provided to LEP individuals address the actual needs of the LEP individuals; or
- 6) Identify any request(s), recommendation(s), or concern(s) related to the provision of language assistance services.

3. Personnel Will Provide Quality Language Assistance Services as Warranted

a. Compliance and Review of LEP Access Plan

All Division employees must comply with the policies set forth in the LEP Access Plan. To facilitate successful implementation of the LEP Access Plan, Division staff will review the LEP Access Plan and learn how to identify LEP persons and their primary language and how to access language access services.

The Division will facilitate distribution of the LEP Access Plan and related Departmental guidance, notices, and updates. A copy of the LEP Access Plan will be included in all orientation materials for new employees. The LEP Access Plan will also be available on the Civil Division's intranet, accessible only by Division staff. New and existing employees should be aware of the language access needs and any additional policies of their component. Component POCs will periodically distribute to the employees of their respective component the LEP Access Plan, any updates, any related component policies and guidance, and information on the language access services available to the Department, Division, and component. The components should also post this information on their respective component intranet pages, for access only by component staff. The Coordinator and Committee will provide POCs with LEP-related assistance.

b. Provision of Quality Language Assistance Services

Each component must take reasonable steps to provide quality language assistance services to LEP persons. Component directors shall identify and determine the circumstances and prioritization for providing language assistance services. This responsibility includes establishing steps in the approval and prioritization for funding language assistance services, assessing the need for employees proficient in non-English language skills, and identifying and prioritizing vital and non-vital documents for translation and the language(s) for translation.

Only persons designated as qualified interpreters or translators may provide official language assistance services on behalf of the Division. A Division employee is designated as qualified and thereby authorized to provide official language assistance services on behalf of the Division upon completion of a language skills assessment and approval by his or her component director. Competency requires more than self-identification as bilingual or multilingual, and includes (a) demonstrating proficiency in and an ability to communicate information accurately in both English and in the other language, and identifying and employing the appropriate mode of interpretation or translation; (b) possessing knowledge in both languages of any specialized terms or concepts peculiar to the program or activity and of any particularized vocabulary used by the LEP person; (c) understanding and following confidentiality, professional responsibility, and impartiality rules to which Division staff are bound; and (d) understanding and adhering to their role as interpreters or translators. Authorized bilingual and multilingual staff may perform a range of functions including direct "in language" communication, translation, or interpretation.

A component director will work with the Coordinator and component POC to coordinate formal assessments of current or potential component employees who will be providing official language assistance services, prior to any official communication with LEP persons. Such assessments may be coordinated through the Language Testing and Assessment Unit of the Federal Bureau of Investigation. Depending on the results of the formal assessment, the component director will articulate to the bilingual or multilingual employee the parameters of his or her ability to provide language assistance services on behalf of the component. The Coordinator and the component POC should maintain a list of employees who have been formally assessed. The list should identify the date and source of the assessment and the language(s) and skill level for the language(s) assessed. Where component directors determine that non-English language proficiency is needed for particular positions to fulfill the component or Division's mission, consideration should be made as to the requisite language skills and competence thresholds in job vacancy announcements, position descriptions, retention policies, performance appraisals, and promotion plans or criteria. If a list is maintained of employees formally assessed for non-English language skills, the Coordinator and the component POC should also identify any employees hired specifically for their language skills.

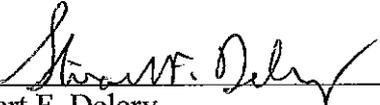
Language assistance services may also be outsourced to General Services Administration-approved or other vendors. Such services must be performed by qualified interpreters or translators approved by the Department, the Division, or the component director. Contracted language assistance service providers must have an ability to meet the Division or component's demand for interpreters; an ability to meet the Division or component's demand for translation; reasonable cancellation fees; on-time service delivery; an acceptable emergency response time; rational scheduling of qualified interpreters; rapid rates of connection to interpreters via the telephone, electronically, or by video; and effective complaint resolution when translation or interpretation errors occur. Potential bidders for Civil Division language assistance services contracts shall be required to commit to an adequate quality control process for all deliverables. For example, contracted interpreters must demonstrate proficiency in and ability to communicate information accurately in both English and in the target language.

Where appropriate, components should consider community resources available in providing language assistance services to LEP persons. Components may opt to collaborate with community organizations or other stakeholders for assistance, recommendations, and referrals for language assistance services. Such organizations and stakeholders can assist in identifying LEP populations for whom outreach is needed and who would benefit from the Division's programs and activities where language assistance services is provided. They may also be useful in recommending which outreach materials the component should translate and in reviewing the translations. These community organizations or stakeholders may offer valuable feedback to the component to help the component determine whether its language assistance services are effective in overcoming language barriers for LEP individuals. Components may consider whether it would be appropriate to refer LEP persons to these community organizations or stakeholders for language assistance services. Referrals to community organizations or

stakeholders should be contingent upon the organization's commitment to an adequate quality control process for providing language assistance services.

The Division will collaborate with other agencies to share resources, improve efficiency, standardize federal terminology, and streamline processes for obtaining community feedback on the accuracy and quality of translations and interpretations intended for mass distribution.

Approved:



Stuart F. Delery
Acting Assistant Attorney General

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