

No. 18-2626

IN THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Zhang Jingrong, Zhou Yanhua, Zhang Peng, Zhang Cuiping, Wei Min, Lo Kitsuen,
Cao Linjun, Hu Yang, Guo Xiaofang, Gao Jinying, Cui Lina, Xu Ting, Bian
Hexiang,

Plaintiffs-Counter-Defendants-Appellees,

v.

Chinese Anti-Cult World Alliance, Inc., Michael Chu, Li Hauhong, Wan
Hongjuan, Zhu Zirou,

Defendants-Counter-Claimants-Appellants,

Does 1-5, inclusive,

Defendants.

On Appeal from the United States District Court
for the Eastern District of New York

BRIEF OF MUSLIM ADVOCATES AS *AMICUS CURIAE* IN SUPPORT OF PLAINTIFFS-COUNTER-DEFENDANTS-APPELLEES AND AFFIRMANCE

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Rules 26.1 and 29(a)(4)(a) of the Federal Rules of Appellate Procedure, the undersigned counsel of record certifies that the *amicus curiae* Muslim Advocates is a nongovernmental entity without any parent corporation or publicly held corporation that owns 10% or more of its stock. This representation is made in order that the judges of this Court may evaluate possible disqualification or recusal.

Dated: March 25, 2019

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INTEREST OF *AMICUS CURIAE*¹

Muslim Advocates is a national legal advocacy and educational organization working on the frontlines of civil rights to guarantee freedom and justice for Americans of all faith. For over a decade, Muslim Advocates has advanced these objectives through litigation and other legal advocacy, policy engagement, and civil education. Muslim Advocates also serves as a legal resource for the American Muslim community, promoting the full and meaningful participation of Muslims in American public life. The issues at stake in this case directly relate to Muslim Advocates’ fight to ensure that all religious groups—especially those that are most vulnerable—are able to worship freely and safely.

SUMMARY OF THE ARGUMENT

This case concerns one of the most fundamental rights every person in this country should enjoy: the ability to worship freely and without threat of physical harm. Section 248(a)(2) of the Freedom of Access to Clinic Entrances Act, 18 U.S.C. § 248 (the “FACE Act”), provides a critical tool for enforcing that right. The provision creates a private right of action for religious groups that are threatened or attacked at their place of worship by private individuals or groups.

¹ Pursuant to Rule 29(a)(4)(E) of the Federal Rules of Appellate Procedure, counsel for *amicus curiae* state that no counsel for a party authored this brief in whole or in part, and that no person other than the *amicus curiae*, its members, or its counsel made a monetary contribution to the preparation or submission of this brief.

Amicus curiae write to highlight for this Court the critical importance a civil remedy of this nature has for religious minorities. Section 248(a)(2) provides a unique path for religious groups—including Muslims, who currently face unprecedented attacks and threats to their places of worship—to pursue civil actions against their attackers. This unique enforcement option, which is unavailable through other federal statutes, has become extremely relevant today in light of the increased targeting of Muslim places of worship.²

As the district court found when reviewing Appellees' challenge, Congress was acting well within its Commerce Clause powers when it passed this provision: religious activity, which § 248(a)(2) regulates, demonstrably and substantially affects interstate commerce, as did the particular religious activity at issue in this case. This Court should therefore uphold the district court's decision.

ARGUMENT

I. The unique protections the FACE Act provides are particularly important for religious minorities, who need civil remedies to effectively protect and enforce their basic rights.

This Court's decision will impact not just the parties before it, but the rights of every religious group that seeks legal protection from threats or attacks against their places of worship. More than ever, Section 248(a)(2) is a critical tool for

² The increased targeting of places of worship—particularly those of religious minorities—along with heightened awareness about the availability of § 248(a)(2)'s unique protections, may well give rise to more frequent uses of the statute's protections in the future.

religious groups, particularly religious minorities, who are most likely to seek the remedy the statute provides given increasing threats and attacks against their places of worship.

A. Religious minorities are increasingly frequent targets of hate violence and attacks.

In the past two years, hate-driven individuals and groups have increasingly targeted religious minorities, particularly Muslims. Between 2015 and 2017 alone, the Southern Poverty Law Center reported a 197 percent increase in total hate groups dedicated specifically to anti-Muslim activities.³ Acts of hate have spiked as well. A recent study demonstrated a 45 percent increase in hate crimes against Muslim, South Asian, Middle Eastern, and Arab communities from just Election Day 2016 to Election Day 2017, 82 percent of which were explicitly motivated by anti-Muslim sentiment.⁴

These attacks extend to religious minorities' places of worship. Just between 2015 and 2017, Muslim Advocates documented 196 anti-Muslim incidents directed against Muslim places of worship throughout the country.⁵ And

³ See Mark Potok, Southern Poverty Law Center, *The Year In Hate and Extremism* (2017), <https://www.splcenter.org/fighting-hate/intelligence-report/2017/year-hate-and-extremism>.

⁴ South Asian Americans Leading Together, *Communities on Fire: Confronting Hate Violence and Xenophobic Political Rhetoric*, at 3 (2018), <http://saalt.org/wp-content/uploads/2018/01/Communities-on-Fire.pdf>.

⁵ Compilation of attacks against places of worship between 2015-2017, on file with the authors of this brief.

many Muslim communities have been repeatedly targeted, oftentimes by perpetrators from other states who have attacked them using weapons purchased in other locations.

The residents of the Muslim settlement in Islamberg, New York, for example, have faced attacks from anti-Muslim actors organizing throughout the country.⁶ Muslim families established Islamberg decades ago, seeking to create a safe and serene environment in which they could live, pray, and work.⁷ But their enclave has been targeted repeatedly because of its Muslim identity.⁸ In one incident from 2015, an individual named Robert Doggart was arrested in Tennessee after he was caught compiling weapons and conspiring with other individuals to attack Islamberg's Muslim community.⁹ In his extensive online posts, Doggart had stated that Islamberg was "vulnerable from many approaches and must be utterly destroyed in order to get the attention of the American People," that the residents "[have] to be killed. Their buildings need to be burnt down," and that he and his conspirators would "be Warriors who will inflict horrible number of

⁶ "Once Again in Shock": Police Uncover 2nd Terror Plot Against Muslim Community in New York, NPR (Jan. 27, 2019), <https://www.npr.org/2019/01/27/689121180/once-again-in-shock-police-uncover-2nd-terror-plot-against-muslim-community-in-n>.

⁷ Rick Rogas, *They Created a Muslim Enclave in Upstate N.Y. Then Came the Online Conspiracies*, N.Y. Times (Jan. 28, 2019), <https://www.nytimes.com/2019/01/28/nyregion/islamberg-ny-attack-plot.html>.

⁸ *Id.*

⁹ *Id.*

casualties upon the enemies of our Nation and World Peace.”¹⁰ Islamberg was targeted again earlier this year after police uncovered a “serious plot” to attack the Muslim community living there; the perpetrators had stockpiled multiple explosive devices and 23 firearms before being arrested.¹¹

In another instance, the Dar Al-Farooq Islamic Center, a Somali-American mosque in Bloomington, Minnesota, was firebombed during prayer the morning of August 5, 2017.¹² The perpetrators, who had driven over 500 miles from Illinois to carry out the attacks, smashed the mosque’s windows with a sledgehammer and threw a bomb inside.¹³ About a dozen congregants praying inside ran out as the fire spread.¹⁴ As the perpetrators later explained, they had put out a call to other “militia members” for support and had carried out the attacks to “scare [Muslims] out of the country” and “show them hey, you’re not welcome here, get the [expletive] out.”¹⁵

¹⁰ Crim. Compl. Par 3, *United States v. Doggart*, No. 15-cr-39 (E.D. Tenn. Apr. 13, 2015), ECF No. 1; Plea Agreement, *United States v. Doggart*, No. 15-cr-39, at *2-3 (E.D. Tenn. Apr. 29, 2015), ECF No. 14.

¹¹ “*Once Again in Shock*”, *supra* note 6.

¹² Matt Sepic, *2 alleged Bloomington mosque bombers waive initial court hearing*, MPR News (Mar. 21, 2018), <https://www.mprnews.org/story/2018/03/20/accused-mn-mosque-bombers-to-appear-federal-court>.

¹³ *Id.*

¹⁴ Stephen Montemayor, *Three men arrested in Illinois case are charged with Bloomington mosque bombing*, Star Tribune (Mar. 14, 2018), <http://www.startribune.com/federal-authorities-to-announce-developments-in-bloomington-mosque-bombing-case/476716263/>

¹⁵ Stephen Montemayor, *How alleged Minnesota mosque bomber tried to build militia in rural Ill.*, Star Tribune (Mar. 18, 2018), <http://www.startribune.com/fbi-says-alleged-minnesota-mosque-bomber-tried-to-build-a-militia-in-rural-illinois/477182203/>.

These tragic incidents are only a sliver of the attacks against Muslim communities in recent years.¹⁶ And as the plots against Islamberg highlight, these threats and attacks target not only mosques and buildings but other Muslim places of worship as well.¹⁷

¹⁶ Similar incidents abound. See, e.g., John MacCormack, *Trial begins in Victoria mosque arson case*, Houston Chronicle (July 9, 2018), <https://www.houstonchronicle.com/news/houston-texas/houston/article/Trial-begins-in-Victoria-mosque-arson-case-13061412.php>; Christina Caron, *Texas Man Found Guilty of Hate Crime in Mosque Fire*, N.Y. Times (July 17, 2018), <https://www.nytimes.com/2018/07/17/us/mosque-arson-guilty-verdict.html> (Victoria Islamic Center in Texas was completely destroyed in an arson attack; the perpetrator believed that Muslims were planning a takeover of the town and was seen “jumping up and down like a little kid” as the mosque burned); Hannah Winston, *Man faces hate crime charges in North Palm Islamic Center burglary*, Palm Beach Post (Dec. 15, 2015), <https://www.palmbeachpost.com/news/crime--law/man-faces-hate-crime-charges-north-palm-islamic-center-burglary/dNZNhaTvcv5hhfcsUhNarL/> (the Islamic Center of Palm Beach, Florida was vandalized by a man who smashed the windows with a tire iron before entering the building to further damage the property; his social media posts show him holding an assault rifle with a caption reading, “That AR-15 will put down any radical Islamic!! I wish they would!!”); David Zahniser, *Arson at Central Valley mosque investigated as possible hate crime*, Los Angeles Times (Dec. 27, 2015), <http://www.latimes.com/local/lanow/la-me-ln-tracy-mosque-arson-20151227-story.html> (Molotov cocktail thrown at Tracy Islamic Center in California, exploding and causing fire damage to the building); *Armed masked man detained while protesting in front of Bozeman Islamic Center*, Bozeman Daily Chronicle (Jan 9, 2017), https://www.bozemandailychronicle.com/news/crime/armed-masked-man-detained-while-protesting-in-front-of-bozeman/article_f598a364-906e-540c-aa23-30e08e16d9cf.html (masked man carried a shotgun in front of Bozeman Islamic Center in Bozeman, Montana, causing high school across the street to go into shutdown; the man later explained that he was “one of the many Americans who are awakening [sic] up. I’ve already figured it out. I’m just helping everyone else figure it out.”).

¹⁷ See, e.g., Joanna Walters, *Community mourns Somali Muslim teen’s death in Kansas City hate crime*, The Guardian (Dec. 6, 2014), <https://www.theguardian.com/us-news/2014/dec/06/community-mourns-somali-muslim-death-in-kansas-city-hate> (teenage boy outside mosque run down and killed by man with a history of anti-Muslim activity); *Woman accused of attacking Muslims praying in East Bay park charged*, ABC 7 News (Dec. 17, 2015), <https://abc7news.com/news/woman-accused-of-attacking-muslims-praying-in-east-bay-park-charged/1126754/> (two Muslim men performing prayers in the park were assaulted and berated by a woman yelling anti-Muslim slurs); Katie Mettler, *Man arrested, charged with hate crime in stabbing of worshiper near Calif. Mosque*, The Washington Post (Dec. 12, 2016), <https://www.washingtonpost.com/news/morning-mix/wp/2016/12/12/man-arrested-charged->

Muslims are not alone in being targeted at their places of worship. Native Americans, for example, have seen their sacred sites desecrated by attacks.¹⁸ And other religious minorities have faced deadly threats and attacks also, often from white supremacists. Such tragic incidents include a mass shooting at a Sikh gurdwara in Oak Creek, Wisconsin, which left six worshipers dead and many more injured;¹⁹ a mass shooting at Emanuel African Methodist Episcopal Church, a historically Black church in Charleston, South Carolina, which left nine worshippers dead;²⁰ and a mass shooting at the Tree of Life Synagogue in Pittsburgh, Pennsylvania, in which 11 worshippers were killed.²¹

after-stabbing-of-worshiper-near-calif-mosque-police-say/?utm_term=.5e1546bcd51c (congregants of Masjid Al-Rasool in Simi Valley, California were confronted next to their mosque by a man who yelled racial slurs at them, then threw a bottle that hit one worshipper in the face before stabbing another worshipper in the abdomen).

¹⁸ See, e.g., Jake Kincaid, *Apache leaders call vandalism of Pinal 'prayer site' a hate crime*, Pinal Central (Mar. 20, 2018), https://www.pinalcentral.com/florence_reminder_blade_tribune/news/apache-leaders-call-vandalism-of-pinal-prayer-site-a-hate/article_8ba7f33f-b3c2-5f5c-a88a-85614fa7e688.html (vandals axed down property on a sacred Apache site in Arizona, land described by the tribal leader as “no different from any church[;] it is where people come to get healed, where people bring their children to get introduced into the religion and what it all mean[s].”).

¹⁹ Steven Yaccino et al., *Gunman Kills 6 at Sikh Temple Near Milwaukee*, N.Y. Times (Aug. 5, 2012), <https://www.nytimes.com/2012/08/06/us/shooting-reported-at-temple-in-wisconsin.html>

²⁰ Kevin Sack and Alan Blinder, *Jurors Hear Dylann Roof Explain Shooting in Video: 'I Had to Do It'*, N.Y. Times (Dec. 9, 2016), <https://www.nytimes.com/2012/08/06/us/shooting-reported-at-temple-in-wisconsin.html> (explaining that the gunman, Dylan Roof, carried out the killings because “somebody had to do something because, you know, black people are killing white people every day on the streets, and they rape white women, 100 white women a day. The fact of the matter is what I did is so minuscule to what they’re doing to white people every day, all the time.”).

²¹ Kellie B. Gormly et al., *Suspect in Pittsburgh synagogue shooting charged with 29 counts in deaths of 11 people*, The Washington Post (Oct. 27, 2018), <https://www.washingtonpost.com/nation/2018/10/27/pittsburgh-police-responding-active->

While criminal prosecutions provide targeted religious groups with some relief, it is critical that these groups also have strong civil remedies to protect their places of worship and to disincentivize targeted hate incidents. As discussed more fully below, § 248(a)(2) provides a civil private right of action, which allows impacted communities to seek remedies even where criminal prosecution is not pursued or not sufficient to enable the community to rebuild after an attack. It therefore serves as a unique and critical tool for communities, especially as hate incidents are on the rise.

As the district court found, Congress was acting well within its Commerce Clause powers when it passed § 248(a)(2) because violence and intimidation at places of worship demonstrably and substantially affects interstate commerce.²² Perpetrators often plot their attacks or purchase weapons beyond state lines, thereby expressly implicating interstate commerce. And as the district court noted, religious activity has a substantial impact on the United States' economy: religious activity at places of worship accounts for nearly \$74.5 billion in annual revenue,

shooting-squirrel-hill-area/?utm_term=.e943fa807ec1 (describing the alleged shooter, who burst into the synagogue's morning service with an AR-15-style assault rifle and three handguns, as posting angry messages online about a local Jewish nonprofit that helped refugees settle in the United States).

²² *Zhang Jingrong v. Chinese Anti-Cult World All., Inc.*, 314 F. Supp. 3d 420, 440 (E.D.N.Y. 2018) (“Places of religious worship—even interpreted broadly to avoid an issue under the First Amendment—are economic.”).

while the broader economic impact of religious activity is estimated between \$1.2 trillion to \$4.8 trillion.²³

Congress therefore had a rational basis to conclude that violence and intimidation at places of worship, such as the acts highlighted above, can deter people from engaging in religious-based commercial activity that substantially affects interstate commerce.²⁴ This deterrence is not speculative: Muslim Advocates has heard from impacted communities about their substantial loss in worshippers and donations following threats and attacks against their place of worship.

B. Religious minorities are the most frequent users of civil remedies to enforce their rights.

Where constitutional and statutory protections exist for religious groups, religious minorities, especially Muslims, disproportionately depend on them to enforce their basic rights, in everything from the land use context to prisons to employment.

For example, the Religious Land Use and Institutionalized Persons Act, 42 U.S.C. § 2000cc, *et seq.* (“RLUIPA”), was enacted in 2000 to protect all religious groups against discrimination in the land use process. A recent report from the Department of Justice underscores how Muslims in particular have had to

²³ *Id.* at 429; *id.* at 440.

²⁴ *Id.* at 440.

frequently rely on RLUIPA's protections, in large part due to the increased opposition they face when trying to establish a place of worship. *See U.S. Dep't of Justice, Update on the Justice Department's Enforcement of the Religious Land Use and Institutionalized Persons Act: 2010-2016*, at 4 (2016), <https://www.justice.gov/crt/file/877931/download> ("The Department's experience in its investigations since 2010 has reinforced the conclusion that minority groups have faced a disproportionate level of discrimination in zoning matters, reflected in the disproportionate number of suits and investigations involving minority groups undertaken by the Department. In particular, the percentage of Department RLUIPA investigations involving mosques or Islamic schools has risen dramatically in the time since the Tenth Anniversary Report was issued—from 15% in the 2000 to August 2010 period to 38% during the period from September 2010 to the present.").

RLUIPA also prohibits the government from unnecessarily burdening prisoners' free exercise rights. In this context also, Muslims are significantly overrepresented in claims against federal prisons, underscoring how frequently they face violations of their civil rights. *See Enforcing Religious Freedom in Prison*, U.S. Comm'n on Civil Rights Table 3.8, at 70; Table 4.1 at 82 (Sept. 2008) (noting that Muslims file 42% of administrative remedy requests for accommodation from January 1997 – June 2008 and litigated 30% of RLUIPA

cases from 2001-2006 alone). Similarly in the employment context: Muslims constitute just over one percent of the United States population, yet over 23 percent of the Equal Employment Opportunity Commission's religion-based charges in 2017 (the last year in which data is available) involved discrimination against them. See EEOC, *Charges Filed on the Basis of Religion – Muslim*, https://www.eeoc.gov/eeoc/events/9-11-11_religion_charges.cfm; Besheer Mohamed, Pew Research Ctr., *New estimates show U.S. Muslim population continues to grow* (Jan. 3, 2018), <http://www.pewresearch.org/fact-tank/2018/01/03/new-estimates-show-u-s-muslim-population-continues-to-grow/>. Against the backdrop of growing hate attacks against Muslim places of worship, *amicus curiae* fully expect the FACE Act to become a more frequently-used remedy.

C. The unique remedy the FACE Act provides is crucial for ensuring that religious minorities can fully vindicate their right to be free from violent attacks.

Section 248(a)(2) of the FACE Act provides a uniquely robust civil legal remedy for disincentivizing attacks against places of worship.

First, unlike other federal statutes that protect places of worship against threats and attacks, § 248(a)(2) provides religious groups with a private right of action, thereby empowering them to vindicate their own rights. *Contrast with, e.g.,* the Church Arson Prevention Act of 1996, 18 U.S.C. § 247 (providing only

criminal liability for damage to religious property or obstruction to any person's free exercise of religious beliefs); Matthew Shepard and James Byrd, Jr., Hate Crimes Prevention Act of 2009, 18 U.S.C. § 249 (providing only criminal liability for, *inter alia*, willfully causing bodily injury, or attempting to do so with fire, firearm, or other dangerous weapon, when driven by a person's actual or perceived religion).

Second, unlike other statutes that protect free exercise rights but limit liability to those who are acting under color of state law, *see, e.g.*, 42 U.S.C. § 1983, § 248(a)(2) allows religious groups to enforce their rights against the private individuals and groups most likely to target and attack their places of worship. As illustrated previously, such groups have mounted unprecedented attacks against Muslim and other minority religious communities in recent years, rendering the ability to hold them accountable more critical.

Third, the lower standard for civil liability under § 248(a)(2) increases the ability of targeted communities to seek legal recourse in a broader range of circumstances. Criminal liability requires proof beyond a reasonable doubt, whereas civil liability may be established by a preponderance of evidence, *see* § 248(a)(2), making it an important alternative even where criminal prosecution is not possible. And while the fines the government may obtain upon criminal convictions under the FACE Act are limited, a successful civil claim under

§ 248(a)(2) allows for much broader relief, *see* § 248(c)(B), including compensatory and punitive damages, which are often critical for a religious group to secure or rebuild its place of worship after a violent attack.

In sum, § 248(a)(2) allows a religious group to take ownership and control over enforcing its rights and those of its community when faced with violent attacks. Instead of remaining entirely dependent on prosecutorial discretion—including whether a charge will be brought as a hate crime²⁵ or brought at all—religious groups are able to regain some control and stand up for their own rights, which can be empowering and can help deter future bad actors.²⁶

²⁵ Hate crime charges are rarely brought, as prosecuting them criminally is often “complicated and arduous.” Laura Santhanam & Kenya Downs, *Why hate crimes are so difficult to convict*, PBS News Hour (Jan. 6, 2017), <https://www.pbs.org/newshour/nation/hate-crimes-difficult-convict> (explaining the difficulties throughout the country in successfully bringing hate crimes charges).

²⁶ While the government may choose to bring criminal charges after a place of worship is threatened or attacked, religious groups have no control over that decision-making process or how it plays out. This imbalance can lead to fear and frustration in the religious communities that have to bear the consequences. The Islamic Center of Davis in Davis, California, for example, had its windows smashed, property vandalized, and pork strewn on its premises by a woman who had expressed extensive anger towards Muslims in the past and had glorified the white supremacists who had murdered African American and Muslim worshippers. Lauren Keene, *Davis mosque vandal gets 5 years’ probation*, Davis Enterprise (June 18, 2017), <https://www.davisenterprise.com/local-news/davis-mosque-vandal-sentenced-to-five-years-probation/>. In the end, however, she only received probation and 120 hours of community service. *Id.* Representatives for the Islamic Center of Davis were stunned and feared that her quick release would inspire similar crimes because, as one of them noted, “in the end they walk out. That’s the message. It just gives them the green light to do something like that.” *Id.* Five months later the mosque was attacked again, this time during the holy month of Ramadan, when an individual threw torn pages of the Quran at the mosque and slashed worshippers’ tires. Eliana Sisneros, *Second hate crime hits Davis Islamic Center*, The California Aggie (July 9, 2017), <https://theaggie.org/2017/07/09/second-hate-crime-hits-davis-islamic-center/> (quoting a local resident who lamented that “Not only was the center robbed of justice in the beyond-light

This Court should therefore affirm the district court's holding to ensure that the critical civil remedies § 248(a)(2) intended to provide remain available to the religious groups that need it the most.

CONCLUSION

For the foregoing reasons, this Court should deny Appellants' appeal and affirm the district court's decision.

Respectfully submitted,

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sentencing of the woman who smashed their windows and left bacon on the [door], they now got hit with another hate crime. I fear for their physical safety.”).

CERTIFICATE OF COMPLIANCE

1. Muslim Advocates certifies that this brief contains 3,578 words, excluding the parts of the brief exempted by Rule 32(f) of the Federal Rules of Appellate Procedure. Muslim Advocates has contemporaneously filed a motion for leave to file a brief not exceeding that length.

2. This brief complies with the typeface requirements of Rule 32(a)(5) and the type style requirements of Rule 32(a)(6) of the Federal Rules of Appellate Procedure because it has been prepared in a proportionally spaced typeface using Microsoft Word 2010 in 14-point Times New Roman type style.

3. This brief has been scanned for viruses and found to be virus-free.

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CERTIFICATE OF SERVICE FOR ELECTRONIC FILINGS

I hereby certify that on March 25, 2019, I electronically filed the foregoing brief with the United States Court of Appeals for the Second Circuit by using the appellate CM/ECF system. I certify that all participants in this case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

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