

No. 18-7

IN THE
Supreme Court of the United States

CHOCTAW COUNTY AND CLOYD HALFORD,

Petitioners,

v.

JESSICA JAUCH,

Respondent.

On Petition for a Writ of Certiorari to the
United States Court of Appeals for the Fifth Circuit

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

Following her indictment by a grand jury, respondent Jessica Jauch was arrested and put in jail for ninety-six days before she was brought before a judge or had counsel appointed or bail set. Shortly after being brought to court, Ms. Jauch was released and the prosecutor dismissed the case. The questions presented are:

1. Whether a pretrial detainee held for a prolonged period without access to the judicial system has been denied procedural due process in violation of the Fourteenth Amendment.
2. Whether the Fifth Circuit properly held a county and a local sheriff liable for denying procedural due process to a pretrial detainee where their failure to act was not mandated by state law or a court order.
3. Whether the Fifth Circuit properly denied qualified immunity on the ground that it is clearly established that holding a pretrial detainee for ninety-six days without access to the judicial system is unconstitutional.

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INTRODUCTION

Petitioners seek review of a decision of the Fifth Circuit holding that ninety-six days of pretrial detention without access to a judge, appointed counsel, or bail violates the Due Process Clause of the Fourteenth Amendment. The Court should decline to review this case because petitioners have failed to show any compelling reason to grant the writ. Indeed, the petition is based on a series of mistaken assumptions about the nature of this case.

First, the decision below does not conflict with the decisions of this Court or any court of appeals on the issue whether prolonged pretrial detention without access to the justice system violates a liberty interest arising from the Due Process Clause. Moreover, petitioners fail to address squarely the first question they ask the Court to consider, and instead focus on issues of probable cause, the Fourth Amendment, and state law procedures—none of which are the basis for Ms. Jauch’s claim.

Second, with respect to *Monell* liability, petitioners mistakenly assert that the policy at issue was a product of mandatory state law and a court-issued *capias*, rather than a County policy promulgated by the Sheriff. Thus, petitioners claim, the County’s policy was not the cause of Ms. Jauch’s unconstitutional detention. Contrary to petitioners’ framing, however, Choctaw County’s policy was to hold pretrial detainees for a prolonged period without access to a court or the benefit of basic constitutional protections, and no state law or court order required the County to implement such a policy. Properly understood, the County’s *Monell* liability is, as the Fifth Circuit stated, “obvious.” Pet. App. 20.

Finally, the Fifth Circuit's denial of qualified immunity was based on longstanding Fifth Circuit precedent establishing that prolonged detention without being brought before a judge violates a pre-trial detainee's Fourteenth Amendment due process rights. *See Jones v. City of Jackson*, 203 F.3d 875, 880–81 (5th Cir. 2000). Fifth Circuit case law leaves no question that the right at issue here was clearly established years before petitioners detained Ms. Jauch.

For each of these reasons, the petition should be denied.

STATEMENT

A. Factual Background

The Choctaw County Circuit Court holds two three-week terms each year in February and August. Pet. App. 48.

On January 24, 2012, a grand jury indicted Jessica Jauch on a drug charge based on the word of a confidential informant. The same day, the Choctaw County Circuit Clerk issued a *capias* directing the Sheriff to arrest Ms. Jauch and bring her before the Circuit Court on January 31, 2012, which was the docket call for the February term of court. *Id.* 2, 49. The Sheriff, however, failed to serve the *capias* or arrest Ms. Jauch before the February 2012 term ended.

On April 26, 2012, Ms. Jauch was stopped for traffic violations by the Starkville Police Department. During the stop, the officers discovered Ms. Jauch had an outstanding misdemeanor warrant in Choctaw County. The officers briefly detained Ms. Jauch until Choctaw County deputies arrived. The deputies took her into custody and transported her to

the Choctaw County jail. The next morning, Ms. Jauch was served with the misdemeanor warrant and the *capias*. Ms. Jauch cleared the misdemeanor warrant within a few days, but she remained in the Choctaw County jail pursuant to the *capias*. *Id.* 2.

Ms. Jauch repeatedly asserted her innocence and asked to be brought to court to arrange bail, but the Sheriff refused to bring her before a judge. According to the Sheriff, Ms. Jauch was required to stay in jail without access to a court or appointed counsel until the next term of court—in August 2012. *Id.* 2–3.

Ms. Jauch’s case was set for docket call on July 31, 2012, the eve of the August term. On July 31, after she had spent ninety-six days in jail, Ms. Jauch was taken to court, where counsel was appointed, bail set, and trial scheduled. On August 6, 2012, Ms. Jauch posted bond and was released from the Choctaw County jail. *Id.* 3.

Before the end of August, the prosecutor reviewed the evidence against Ms. Jauch, concluded that it was deficient, and moved to dismiss the case. The Circuit Court dismissed the charge. “It is undisputed that Jauch was innocent all along, as she had claimed from behind bars.” *Id.*

B. District Court Proceedings

Ms. Jauch filed suit under 42 U.S.C. § 1983 against petitioners Choctaw County and Sheriff Halford alleging that her prolonged pretrial detention without access to the justice system and without any ability to seek pretrial release violated her constitutional rights, including her right to procedural

due process under the Fourteenth Amendment.¹ Petitioners moved for summary judgment, and Ms. Jauch filed a cross motion for partial summary judgment on liability.

The district court acknowledged that a liberty interest protected by the Fourteenth Amendment may arise from either the Due Process Clause itself or from state law, Pet. App. 31 (citing *Hewitt v. Helms*, 459 U.S. 460, 466 (1983)), and that an individual's liberty interest in avoiding pretrial detention can be abridged lawfully only if the deprivation comports with the requirements of due process, *id.* (citing *Baker v. McCollan*, 443 U.S. 137, 144 (1979)). The district court did not, however, address Ms. Jauch's liberty interest arising from the Due Process Clause itself, but instead focused entirely on whether state law created a constitutionally protected liberty interest. The district court concluded that Mississippi law does not entitle a defendant indicted by a grand jury to an initial appearance or preliminary hearing to reexamine the grand jury's determination that there is probable cause for an arrest and pretrial detention. *Id.* 32. On this basis alone, the district court found that Ms. Jauch had "failed to allege a constitutional violation of her procedural due process rights." *Id.* 33.

¹ Ms. Jauch also brought claims under the Sixth and Eighth Amendments. The Fifth Circuit did not separately address those challenges, which relate to delays in the provision of counsel and bail, concluding that they are directly attributable to the prolonged detention that the court found unconstitutional under the Fourteenth Amendment. Pet. App. 18 n.9.

The district court further held that Ms. Jauch's Fourteenth Amendment claim had to be analyzed under the "more particularized" Fourth Amendment requirement that the states "provide a fair and reliable determination of probable cause as a condition for any significant pretrial restraint of liberty." *Id.* 34.

Ms. Jauch had not, however, alleged that she was detained without probable cause in violation of the Fourth Amendment. Rather, Ms. Jauch alleged that the duration of her pretrial detention without access to the judicial system violated her due process rights under the Fourteenth Amendment. Apart from discussing probable cause, the district court never addressed Ms. Jauch's due process claim.

Having found no constitutional violation, the district court held that "in the event that any of Plaintiff's claims survive" following appeal, Sheriff Halford would be entitled to qualified immunity. The district court opined that, for the same reason it found that there was no violation of a constitutional right, the Sheriff's conduct could not have been "objectively unreasonable under the law at the time of the incident." *Id.* 40. And for the same reason again, the court found that Ms. Jauch had not established a claim against Choctaw County under § 1983 and *Monell v. New York City Department of Social Services*, 436 U.S. 658, 690–91 (1978). Pet. App. 41–42.

C. Proceedings on Appeal

A unanimous panel of the Fifth Circuit reversed, holding that a "pre-trial detainee denied access to the judicial system for a prolonged period has been denied basic procedural due process" in violation of the Fourteenth Amendment. Pet. App. 1.

The court of appeals explained that the district court erred by treating Ms. Jauch's Fourteenth Amendment claims "as an attack on the original probable cause determination underlying her arrest" and by applying the Fourth Amendment when Ms. Jauch had "never alleged a Fourth Amendment violation nor sought to challenge the probable cause determination made by the grand jury." *Id.* 3–4. The court explained that the district court's decision, if affirmed, would mean that "the Constitution is not violated by prolonged pretrial detention so long as the arrest is supported by probable cause." *Id.* 5.

The court then analyzed Ms. Jauch's Fourteenth Amendment procedural due process claim and held that *Jones v. City of Jackson* controlled. Pet. App. 7–8. In *Jones*, the court held that an individual held on a bench warrant for an extended period without a court appearance had suffered a violation of his right to due process that "lies at the heart of the liberty interests protected by the Fourteenth Amendment due process clause." 203 F.3d at 880.

Having identified a protected liberty interest, the court of appeals found that regardless of which procedural due process test applies, *see* Pet. App. 9–11 (discussing the tests articulated in *Mathews v. Eldridge*, 424 U.S. 319 (1976), and *Medina v. California*, 505 U.S. 437, 443 (1992)), "the indefinite detention procedure" at issue "violated Jauch's right to procedural due process." Pet. App. 12. First, the court concluded that "indefinite pre-trial detention without an arraignment or other court appearance offends fundamental principles of justice deeply rooted in the traditions and conscience of our people." *Id.* Thus, "defendants' indefinite detention procedure ... fails *Medina's* historical test." *Id.* 17. Second, the court

held that prolonged pretrial detention “without access to the justice system is patently unfair in a society where guilt is not presumed.” *Id.* 18. Moreover, the court explained that “the challenged procedure denies criminal defendants their *enumerated* constitutional rights relating to criminal procedure by cutting them off from the judicial officers charged with implementing constitutional criminal procedure,” which is “unjust and unfair.” *Id.*

The Fifth Circuit then held Choctaw County liable under *Monell* because there is no dispute that prolonged pretrial detention without access to courts or basic constitutional rights is the policy in Choctaw County and that Sheriff Halford is the relevant policymaker, and because it is “obvious that the indefinite detention procedure caused the due process violation Jauch complains of—indefinite detention.” *Id.* 20. Finally, the court held that Sheriff Halford is not entitled to qualified immunity because “the indefinite detention procedure violated Jauch’s Fourteenth Amendment right to due process,” *id.* 21, and the right at issue had been clearly established at least since the Fifth Circuit’s 2000 decision in *Jones*. *Id.*

Petitioners sought rehearing en banc, which was denied. Judge Southwick wrote a dissent acknowledging that “*Jones* is the law of this circuit,” Pet. App. 57, and agreeing with the panel’s conclusion that “it was ‘clearly established’ that ‘the Constitution forbids confining criminal defendants for a prolonged period’ before bringing them before a judge.” *Id.* 60 (quoting panel decision, Pet. App. 21). Nevertheless, Judge Southwick suggested that, for purposes of qualified immunity, it was not clear “how prolonged detention must be to constitute a violation of rights.” *Id.*

REASONS FOR DENYING THE WRIT

I. The Fifth Circuit's determination that prolonged pretrial detention without access to a court violates the Fourteenth Amendment does not warrant review.

As to the first question presented, the Fifth Circuit, applying its decision in *Jones*, held that pretrial detention for 96 days without access to the judicial system violates the Due Process Clause of the Fourteenth Amendment, even where the detainee was arrested pursuant to a valid warrant. The other circuits that have addressed the issue agree. *See, e.g., Hayes v. Faulkner Cty., Ark.*, 388 F.3d 669, 672 (8th Cir. 2004) (finding that 38-day pre-appearance detention after arrest by valid warrant violated plaintiff's right to due process); *Armstrong v. Squadrito*, 152 F.3d 564, 576 (7th Cir. 1998) (holding that the Due Process Clause prohibits a 57-day detention without an appearance following arrest by valid warrant). Given the absence of a circuit split, this Court should deny review.

Petitioners' focus on probable cause, the Fourth Amendment, and state criminal procedure rules is misplaced: This case does not present those issues. Ms. Jauch did not allege that she was detained without probable cause in violation of the Fourth Amendment, and she did not claim that state law procedures alone created her constitutionally protected liberty interest. Rather, Ms. Jauch's claim arises directly from the Fourteenth Amendment's protection against deprivations of liberty without due process.

Petitioners claim that five decisions of this Court support granting review on their first question, Pet.

10–13, but only one—*Baker v. McCollan*—is even arguably relevant. The other four decisions they cite do not even mention the issue whether a pretrial detainee held for an excessive period of time without access to the judicial system has been denied due process in violation of the Fourteenth Amendment. See *Gerstein v. Pugh*, 420 U.S. 103, 114 (1975) (“The Fourth Amendment requires a judicial determination of probable cause as a prerequisite to extended restraint of liberty following arrest.”); *Bell v. Wolfish*, 441 U.S. 520 (1979) (holding that conditions of pretrial confinement did not amount to punishment in violation of the Due Process Clause of the Fifth Amendment, but not addressing duration of detention or access to court); *Kaley v. United States*, 571 U.S. 320, 322 (2014) (holding that when challenging the legality of a pretrial asset seizure, a criminal defendant who has been indicted is not constitutionally entitled to contest the grand jury’s probable cause determination); *Manuel v. City of Joliet*, 137 S. Ct. 911, 914 (2017) (holding that pretrial detention can violate the Fourth Amendment after the start of legal process where probable cause determination was based on false evidence), *cited in* Pet. 10–13.

In *Baker*, this Court held that a three-day detention over a holiday weekend pursuant to a warrant conforming to the requirements of the Fourth Amendment was not so excessive as to violate the Constitution. 443 U.S. at 144. The Court noted, however, that a pretrial detainee “could not be detained indefinitely in the face of repeated protests of innocence even though the warrant under which he was arrested and detained met the standards of the Fourth Amendment,” *id.*, and the Court suggested that such detention “will after the lapse of a certain

amount of time deprive the accused of ‘liberty ... without due process of law.’” *Id.* at 145 (quoting the Fourteenth Amendment). The decision below does not conflict with *Baker*. Rather, as foreshadowed in *Baker*, the Fifth Circuit found that 96 days of pretrial detention without access to the justice system is of such duration that it deprived Ms. Jauch of her liberty without due process. *Cf. Albright v. Oliver*, 510 U.S. 266, 278 (1994) (Ginsburg, J. concurring) (explaining that even a person released pending prosecution may find her “employment prospects ... diminished severely” and may suffer both “reputational harm” and “financial and emotional strain” related to preparing a defense and noting that to be “incarcerated until trial no doubt” imposes “greater burdens”); *Cty. of Riverside v. McLaughlin*, 500 U.S. 44, 52 (1991) (“[P]rolonged detention based on incorrect or unfounded suspicion may unjustly ‘imperil [a] suspect’s job, interrupt his source of income, and impair his family relationships.’”) (quoting *Gerstein*, 420 U.S. at 112).

Petitioners’ final argument for review of the first question presented rests on a fundamental misunderstanding of the decision below. The Fifth Circuit did not find that “state law created a protected procedural liberty interest in an arraignment or other pretrial court proceeding protected by the Fourteenth Amendment even after [Ms. Jauch] had been indicted by a grand jury,” Pet. 15, as repeatedly asserted by petitioners. To the contrary, the Fifth Circuit recognized that Mississippi lacks state-law procedures that would have afforded Ms. Jauch access to the judicial system between the time of her arrest and the next term of court, but found that the duration of her detention without such access violated a liberty in-

terest arising from the Due Process Clause itself. As such, petitioners' lengthy discussion of why Ms. Jauch could not avail herself of various state criminal procedure rules is inapposite. *See* Pet. 15–20.

For the same reason, petitioners' reliance on *Moya v. Garcia*, 895 F.3d 1229 (10th Cir. 2018), is misplaced.² *Moya* held that the plaintiffs, who had been detained in a county jail for 30 days or more prior to arraignment even though state law requires arraignment within fifteen days of arrest, *id.* at 1231, alleged a deprivation of due process based on the violation of their right to timely arraignment as provided by state law, rather than a violation of their right to freedom from prolonged pretrial detention based on the Due Process Clause itself, *id.* at 1237. The court did not decide whether the plaintiffs “would have stated a valid claim if they had alleged a broader right to freedom from pretrial detention” unrelated to the fifteen-day requirement of state law.³ *Id.* at 1238 n.11. Thus, *Moya* poses no conflict with the decision below.

² Petitioners cite *Moya v. Garcia*, 887 F.3d 1161 (10th Cir. 2018), an opinion superseded by a revised decision of the same panel. *See* 895 F.3d at 1231 (granting panel rehearing in part and filing amended decision).

³ The dissent in *Moya* noted that plaintiffs would have stated a valid claim if they had alleged a right to freedom from prolonged pretrial detention: “There is no serious question that Plaintiffs have a protected liberty interest arising from the Due Process Clause itself.” 895 F.3d at 1241 n.3 (McHugh, J., dissenting). The dissent explained, however, that “Plaintiffs assert that the protected liberty interest grounding their procedural due process claims arises not from the Due Process Clause itself, but rather from New Mexico law.” *Id.* at 1241.

II. The Fifth Circuit's determination that Choctaw County is liable under *Monell* does not warrant review.

The Fifth Circuit found that Choctaw County has a policy of holding defendants arrested pursuant to a *capias* without access to courts, appointed counsel, or a bail determination until the next term of court, no matter how long the resulting period of detention. That policy, the court held, caused the violation of Ms. Jauch's constitutional rights, and, thus, Choctaw County is liable under *Monell*. Pet. App. 19–21.

Petitioners make two arguments in support of their request for review of the Fifth Circuit's decision on *Monell* liability. First, they assert that the decision conflicts with decisions of other circuits holding that local governments cannot be liable under § 1983 for actions mandated by state law. Pet. 21–25. Second, they assert that the Sheriff was not the relevant policymaker because he merely followed the instructions in the court-issued *capias* to hold Ms. Jauch until the next term of court. *Id.* 27–32. Both arguments miss the mark because they assume that the County could not have adopted a policy that would protect the right of pretrial detainees to timely access to the justice system and simultaneously comply with state law requirements.

In fact, the County could have taken any number of actions to avoid depriving Ms. Jauch of her constitutional rights, none of which are prohibited by state law. For example, the Sheriff could have contacted the circuit court judge or the prosecutor and requested that Ms. Jauch be brought before the judge without excessive delay, or have bail set. Indeed, state law specifically provides that a circuit court judge

may hold a special term of court to handle such business. *See* Miss. Code Ann. § 9-7-3. Instead, the Sheriff instituted a policy of doing nothing between terms of court, even though he knew that Ms. Jauch was enduring a prolonged period of pretrial detention without access to the justice system. In any event, even if the Sheriff could not simultaneously comply with the Constitution and state-law requirements, the Supremacy Clause makes the correct choice clear. *See* U.S. Const. art. VI, cl. 2. Indeed, the state supreme court has long advised that “[i]t would be better that” a pretrial detainee “be released without bail, than that he should be detained in jail in violation of the Constitution.” *Sheffield v. Reece*, 28 So. 2d 745, 748 (Miss. 1947).

Petitioners claim that a circuit split exists on the issue whether municipalities can be liable for merely enforcing clear and mandatory state laws because some circuits have held that actions involving no choice are not a matter of municipal policy.⁴ Those

⁴ To illustrate the purported split, petitioners cite a series of cases, all dating back a decade or more. *Pet. 22–24* (comparing *Vives v. City of New York*, 524 F.3d 346 (2d Cir. 2008); *Whitesel v. Sengenberger*, 222 F.3d 861 (10th Cir. 2000); *Garner v Memphis Police Dep’t*, 8 F.3d 358 (6th Cir. 1993); *Bockes v. Fields*, 999 F.2d 788 (4th Cir. 1993); *Surplus Store & Exch., Inc. v. City of Delphi*, 928 F.2d 788 (7th Cir. 1991) with *Cooper v. Dillon*, 403 F.3d 1208 (11th Cir. 2005); *Evers v. Custer Cty.*, 745 F.2d 1196 (9th Cir. 1984); *Conroy v. City of Phila.*, 421 F. Supp. 2d 879 (E.D. Pa. 2006); *Davis v. Camden*, 657 F. Supp. 396, 402 (D.N.J. 1987)). But the question is more nuanced and the circuits less clearly divided than petitioners claim. *Compare Snyder v. King*, 745 F.3d 242, 249 (7th Cir. 2014) (explaining that when “state law unequivocally instructs a municipal entity to produce binary outcome X if condition Y occurs, we cannot say that the municipal entity’s ‘decision’ to follow that directive involves the exer-

(Footnote continued)

cases are inapposite, however, because, as explained above, no state law required that the Sheriff do nothing between terms of court to provide pretrial detainees with timely access to the justice system. Rather, the Sheriff, who is the chief executive of the County with respect to detention operations, chose to adopt a policy of doing nothing, and that choice caused a deprivation of constitutional rights. Because the Sheriff's policy is not the mere enforcement of a state law requirement, the issue on which petitioners assert a circuit split is not presented in this case.

Petitioners' request that this Court grant review to determine whether the Sheriff was the relevant policymaker suffers from the same infirmity. Petitioners argue that responsibility for Ms. Jauch's unconstitutional detention "rests with the state circuit court judge," Pet. 27, and not with the County through its policymaker the Sheriff, because the *capias* was issued by the court. The Fifth Circuit did not, however, take issue with the Sheriff's decision to execute the *capias* process. Rather, it found that he adopted a policy of doing nothing to bring a detainee before a judge until the next term of court even when

cise of any meaningful independent discretion, let alone final policymaking authority") *with Walker v. City of Calhoun, Ga.*, 901 F.3d 1245, 1256 (11th Cir. 2018) (reasoning that the city was not immune from § 1983 liability because "the statute's permissive grant of authority to courts to establish bail schedules" could not be read to "implicitly preempt[] all municipal regulation of bail"); *see also N.N. ex rel. S.S. v. Madison Metro. Sch. Dist.*, 670 F. Supp. 2d 927, 934–35 (W.D. Wisc. 2009) (discussing the same group of cases identified in the petition and describing their positions as "variations" on "the meaning of concepts such as 'policy,' 'deliberate choice,' 'direct causal link' and 'moving force,'" rather than a clear conflict among the courts of appeal).

it is months away. That policy is not mandated by state law or the *capias* itself. Thus, petitioners' assertion that the decision below conflicts with *Pembaur v. City of Cincinnati*, 475 U.S. 469, 483 (1986) (requiring that the decisionmaker have authority to establish policy "with respect to the subject matter in question"), is incorrect.

Similarly misplaced is petitioners' assertion of a conflict with the Tenth Circuit's decision in *Moya*. The plaintiffs in *Moya* challenged the denial of their right to a timely arraignment under New Mexico law. The Tenth Circuit reasoned that the court, and not the sheriff and wardens of the jail, caused the arraignment delays. 895 F.3d at 1233–34; *see id.* at 1237 ("We have focused on the plaintiffs' right to timely arraignment because that's what the plaintiffs have alleged."); *id.* at 1246 (McHugh, J., dissenting) ("By focusing on the arraignment rather than the detention, the majority naturally finds that the causal force lies with the state court's conduct, rather than with the jailers' conduct."). In contrast, Ms. Jauch challenged her prolonged pretrial detention without access to the justice system under the Due Process Clause itself.

III. The Fifth Circuit properly denied qualified immunity because the relevant law was clearly established.

Petitioners argue that this Court should review the denial of qualified immunity because the Fifth Circuit's decision in *Jones v. City of Jackson* is not sufficiently similar to this case to put Sheriff Halford on notice that his failure to act violated the Constitution. Pet. 36. In *Jones*, the Fifth Circuit found that it was clearly established in 1994–1995 that prolonged

detention without being brought before a judge violates a pretrial detainee's Fourteenth Amendment due process rights. 203 F.3d at 880–81. Petitioners assert that *Jones* is meaningfully distinguishable because there, the plaintiff was held on a bench warrant, whereas Ms. Jauch was held on a *capias*. They also note that the court in *Jones* did not specify whether the due process violation was substantive or procedural. These differences are immaterial to whether Fifth Circuit law was clearly established. The important fact is that controlling authority in the Fifth Circuit put Sheriff Halford on notice that it violates the Fourteenth Amendment to hold a person in jail for an extended period of time without access to a court. Indeed, the Fifth Circuit held in *Jones* that, as early as 1994 or 1995, no reasonable law enforcement officer would have believed otherwise. *Id.* Thus, the court below properly applied the longstanding qualified immunity standard, reinforced by this Court's recent decision in *District of Columbia v. Wesby*, 138 S. Ct. 577 (2018). There is no reason for this Court to take a second look.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

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