UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

IN THE MATTER OF FR. EMMANUEL LEMELSON Respondent.	)	ADMINISTRATIVE PROCEEDING FILE NO. 3-20828

RESPONDENT'S EMERGENCY PETITION FOR
COMMISSION INTERLOCUTORY REVIEW

Pursuant to Rule 400 of the Commission's Rules of Practice, Respondent Lemelson respectfully files this emergency petition seeking the Commission's interlocutory review of the Administrative Law Judge's ("ALJ") Order on Subpoena Request, dated January 30, 2025, along with related Orders, including the ALJ's refusal to stay this proceeding pending a lawsuit filed by Lemelson in the United States District Court for the District of Columbia, which seeks a declaratory judgment that this proceeding is unconstitutional along with a preliminary and permanent injunction to stop the proceeding from continuing. In that lawsuit, Lemelson's motion for a preliminary injunction is now fully briefed and awaiting the Court's decision, yet Lemelson currently faces a March 5, 2025 deadline to comply with a burdensome and intrusive subpoena recently issued by the ALJ that seeks four years' worth of documents relating to Lemelson's private communications and business affairs having no temporal or subject-matter relevance to the decade-old events that ultimately led to this proceeding.

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The grounds for this Petition are set forth in the attached relevant pleadings filed with the ALJ, including the Division of Enforcement's responsive pleadings. Lemelson would welcome the opportunity for further briefing should the Commission so desire.

For the reasons set forth in the attached pleadings, the Commission should grant expedited interlocutory review, vacate the ALJ's Subpoena Order, and stay this proceeding pending a decision by the United Stated District Court of the District of Columbia as to its constitutionality.

Respectfully submitted,

Fr. Emmanuel Lemelson

By his attorneys,

/s/ Douglas S. Brooks
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Dated: February 26, 2025

CERTIFICATE OF SERVICE

I, Douglas S. Brooks, do hereby certify that I served the foregoing document on counsel for the Commission, Marc Jones, Esq. and Alfred Day, Esq., by email on February 26, 2025.

/s/ Douglas S. Brooks
Douglas S. Brooks

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

IN THE MATTER OF	)	
FR. EMMANUEL LEMELSON	)	ADMINISTRATIVE PROCEEDING
	)	FILE NO. 3-20828
Respondent.	)	

RESPONDENT'S APPLICATION TO CERTIFY
SUBPOENA ORDER FOR INTERLOCUTORY REVIEW

Pursuant to Rule 400 of the SEC's Rules of Practice, Respondent Rev. Fr. Emmanuel Lemelson hereby requests that the Administrative Law Judge ("ALJ") certify for interlocutory review his January 30, 2025 "Order on Subpoena Request" (the "Order"). The Commission's prompt interlocutory review is appropriate because the Order involves and presents several controlling questions of law as to which there is substantial difference of opinion. In addition, immediate review may materially advance the completion of this proceeding (perhaps ending it entirely) and will ensure that the Commissioners are fully informed about, and accountable for, the likely unlawful (and potentially unprecedented) administrative search being unleashed on their watch by subordinate Commission personnel.

The controlling questions of law at issue include the following:

- Whether this proceeding constitutes a knowing and ongoing violation of the constitutional separation of powers and related limits on executive agency power, due process of law, and Respondent's jury-trial rights and other individual constitutional civil liberties. These violations have been explained in prior pleadings in this proceeding and are the subject of cross-motions now pending before the federal district court in Washington, D.C., including a motion to preliminarily enjoin this proceeding. The Order and its ensuing subpoena now threaten to exacerbate those ongoing

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violations by adding *new* violations of Respondent's constitutional civil liberties, inasmuch as the Order and subpoena now purport to authorize an administrative search of Respondent's private papers without any judicial pre-approval in violation of Respondent's Fourth and Fifth Amendment rights, and to further infringe upon Respondent's First Amendment rights by monitoring and chilling his private communications and associations that have no conceivable relevance to the predicate injunction that ostensibly undergirds this proceeding.[1]

- Whether continuation of this proceeding contravenes an Executive Order issued by President Trump on January 20, 2025, which explicitly "revoked" Executive Order 13992 (issued January 20, 2021) and thereby reinstated Executive Orders 13891, 13892, and 13924, which collectively direct agencies to ensure that their enforcement investigations and adjudications are conducted in strict fairness and with maximum respect for individual liberties, due process, and the rule of law.
- Whether the Order and its ensuing subpoena contravene a separate Executive Order issued by President Trump on January 20, 2025 (Restoring Freedom of Speech and Ending Federal Censorship), which extolled the enduring virtues of free speech and directed agencies to forbid their officers, employees, and agents from engaging in or facilitating any conduct that would unconstitutionally abridge the free speech of any American citizen.
- Whether the Order and its ensuing subpoena also contravene a separate Executive Order issued by President Trump on January 20, 2025 (Ending the Weaponization of the Federal Government), which seeks to identify and take appropriate action to correct past misconduct by the federal government—and specifically referencing the SEC—related to weaponization of law enforcement and the intelligence community.
- Whether the ALJ, in a follow-on administrative proceeding that is predicated solely on an injunction that was issued three years ago, which in turn was based entirely on events that ended more than a decade ago—and in the absence of any extant Commission formal order of investigation—may lawfully issue or authorize a subpoena requiring the production of private papers having neither temporal nor subject-matter relevance to the underlying enforcement action that led to the injunction or the formal order that led to that underlying enforcement action.
- What legal or procedural consequences, if any, may lawfully befall a respondent who fails to comply with a subpoena issued by an administrative law judge before the Commission authorizes and successfully litigates a subpoena enforcement proceeding in federal court.

In light of these profoundly important yet unsettled legal questions, the recent Executive Orders alluded to above, recent changes in Commission leadership, and Respondent's now-

[1] Recall that the injunction that forms the sole legal predicate for this proceeding is a classic prior restraint threatening Respondent with contempt if he should utter a false word of criticism about any publicly traded corporation.

pending motion for a preliminary injunction in a nearby federal court, it is essential to allow the Commissioners an opportunity for timely interlocutory review of the Order, thereby allowing them to assess not only the correctness of the Order but also the risks and benefits of rushing forward with this aged proceeding even as a federal court is poised to rule on whether the proceeding is even lawful or constitutional.

Moreover, interlocutory review unquestionably could hasten the completion of this proceeding. Particularly in light of President Trump's recent executive orders and the Commission's new leadership, the Commissioners might belatedly realize the unlawfulness of this proceeding and/or exercise discretion to dismiss it for other reasons, as they have done in recent months with numerous other pending administrative proceedings.[2] Or they might determine that the subpoena issued by the ALJ is unlawful or unjustified, thus eliminating any need for subsequent court proceedings seeking judicial enforcement of the subpoena.

Moreover, there is no legitimate concern about potential delay. This proceeding has been pending for nearly three years already, and it arose from events that occurred more than a decade ago. It cannot plausibly be argued that, after all these years, there is suddenly an urgent need to rush this matter to conclusion. In any event, even if the Commission declines interlocutory review

[2] *See, e.g.*, *Robert Lewis Carver*, Exchange Act Rel. No. 102252 (Jan. 22, 2025) (unexplained dismissal of follow-on proceeding against a respondent who was convicted of criminal identity-theft and fraud and subject to at least two separate injunctions in civil cases brought by the Commission); *Alpine Sec. Corp.*, Exchange Act Rel. No. 102148 (Jan. 10, 2025) (unexplained dismissal of follow-on proceeding against recidivist penny-stock firm predicated on court injunction based on 2,720 violations of Commission's ant-money-laundering record-keeping rules); *Halpern & Assocs.*, Exchange Act Rel. No. 101504 (Nov. 1, 2024) (unexplained dismissal of Rule 102(e) proceeding against recidivist audit firm and principal accused for the second time with improper professional conduct); *Joshua Abrahams*, Exchange Act Rel. No. 34-101505 (Nov. 1, 2024) (unexplained dismissal of Rule 102(e) proceeding); *Edward F. Hackett*, Securities Act Rel. No. 11310 (Sept. 27, 2024) (similar); *Paul L. Chancey*, Exchange Act Rel. No. 101208 (Sept. 27, 2024) (similar); *Alan J. Markowitz*, Exchange Act Rel. No. 101205 (Sept. 27, 2024) (similar); *Ira S. Viener*, Exchange Act Rel. No. 101203 (Sept. 27, 2024) (similar); *Jia Roger Qian Wang*, Exchange Act Rel. No. 101214 (Sept. 24, 2024); *Jason Jianxun Tang*, Exchange Act Rel. No. 101204 (Sept. 24, 2024) (similar); *see also Pending Administrative Proceedings*, Securities Act. Rel. No. 11198 (June 2, 2023) (dismissing 42 pending proceedings en masse with no decision on the merits).

of the Order, it would still need to assess the appropriateness of the ALJ's subpoena before deciding whether to commence a federal court proceeding seeking to enforce it, at which time it will need to confront the same issues raised by this application. Thus, there is no good reason to postpone the Commissioners' attention to those issues.

For the foregoing reasons, the Order should be certified for interlocutory review.

Respectfully submitted,

Fr. Emmanuel Lemelson

By his attorneys,

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Dated: February 5, 2025

CERTIFICATE OF SERVICE

I, Douglas S. Brooks, do hereby certify that I served the foregoing document on counsel for the Commission, Marc Jones, Esq. and Alfred Day, Esq., by email on February 5, 2025.

/s/ Douglas S. Brooks
Douglas S. Brooks

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-20828

In the Matter of

GREGORY LEMELSON,

Respondent.

DIVISION OF ENFORCEMENT'S OPPOSITION TO RESPONDENT'S APPLICATION TO CERTIFY SUBPOENA ORDER FOR INTERLOCUTORY REVIEW

The Division opposes Respondent's Application to Certify Subpoena Order for Interlocutory Review.

I. Failure to Identify Extraordinary Circumstances

"Petitions by parties for interlocutory review are disfavored, and the Commission ordinarily will grant a petition to review a hearing officer ruling prior to its consideration of an initial decision only in extraordinary circumstances." SEC Rule of Practice 400 [17 C.F.R. §201.400 ("Rule 400")]. Respondent nevertheless seeks interlocutory review of a routine discovery order limiting the Division's document subpoena from eighteen to four categories of documents—far from what can be considered an extraordinary circumstance.

Respondent does not make the required showings or meet the standards for interlocutory review. In fact, Respondent does not truly seek review of the Subpoena Order. Instead, he misuses Rule 400 to try to get the Commission to reconsider this entire action, which he demonstrates by the dearth of references to the Order's decision or text. Respondent's

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Application is, in reality, a pretext for Commission reconsideration of this action, and should be denied on that basis.

II. Failure to Identify a Controlling Question of Law

Rule 400(c) states that a hearing officer "shall not certify a ruling unless" the hearing officer finds that "(i) The ruling involves a controlling question of law as to which there is substantial ground for difference of opinion; and (ii) An immediate review of the order may materially advance the completion of the proceeding." 17 C.F.R. §201.400(c). Respondent establishes none of these prerequisites to certification.

A controlling question of law exists where resolution of a question could result in dismissal, significantly alter the conduct of the action, or where the issue has precedential value for a large number of cases. *See SEC v. Rio Tinto PLC*, 2021 WL 1893165, *2 (S.D.N.Y. 2021). None of those conditions exist here, where the issue is merely the scope of a document subpoena.

Respondent first tries to find a controlling question of law by obliquely referring to principles of separation of powers, "related limits on executive agency powers, due process of law, and Respondent's jury trial rights and other individual constitutional civil liberties." (App., p. 1.) He also invokes the First, Fourth, and Fifth Amendments to the Constitution. Rather than explain how these principles relate to the Subpoena Order or present controlling questions of law, Respondent relies on "prior pleadings in this proceeding and … cross-motions now pending before the federal court…." (App., p. 1.) While Respondent invokes several legal principles here, he identifies no "controlling question of law" as required by Rule 400(c)(2)(i).

Next, Respondent suggests that inherent to the Order on the Motion to Quash, there is a potential contravention of Executive Orders 13891, 13892, and 13924. Again, Respondent fails to identify a controlling question of law, a difference of opinion on that question, or even explain how the Order supposedly violates those Executive Orders. Executive Order 13891 (84 FR

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55235) concerns agency guidance documents and makes a policy that "agencies may impose legally binding requirements on the public only through regulations and on a case-by-case basis through adjudications …." Respondent fails to show the relevance of this Executive Order. Nor does he show how it conflicts with the Subpoena Order.

Respondent's appeal to Executive Order 13892 (84 FR 55239) meets the same fate. E.O. 13892 has 11 sections, but Respondent leaves the Division and this tribunal to guess which ones he thinks apply here. Of the two that deal specifically with administrative proceedings, neither appears to apply: Section 4 calls for applying standards of conduct in administrative proceedings that have been publicly stated and avoiding unfair surprise. Section 6 requires an opportunity to contest an agency decision. Neither of these have been violated here.

Executive Order 13924 calls for "fairness in administrative enforcement and adjudication" in light of "the economic consequences of COVID-19." (85 FR 31353, §1). Its Section 6 calls for fairness and due process in administrative proceedings. Once again, Respondent does not explain the controlling question of law here, and it is impossible to discern.

Respondent's Application then cites two more Executive Orders, "Restoring Freedom of Speech and Ending Federal Censorship" (E.O. 14149, 90 FR 14149) and "Ending Weaponization of the Federal Government" (E.O. 14147, 90 FR 8235). The former states that Federal agencies may not act to unconstitutionally abridge a citizen's right of free speech. Nothing about the Subpoena Order limiting the Division's document subpoena topics appears to touch on Respondent's free speech rights.[1] The "Weaponization" Executive Order requires the Attorney

[1] Respondent does claim that the District Court's follow-the-law injunction improperly restrains him from "utter[ing] a false word of criticism about any publicly traded corporation." App., p. 2 n.1. But (i) Respondent is merely enjoined from violating Section 10(b) of the Exchange Act, and (ii) to "utter a false word" against a corporation is not, in fact, protected speech where it is material and done with the intent to defraud (as the jury here found and as the statute prohibits).

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General and the Director of National Intelligence to take certain specified actions in certain circumstances not present here. But it is unrelated to an administrative order on a subpoena.

In addition, each of the Executive Orders cited by Respondent explicitly state that they do not create any new legal claims by individuals against the government: "This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, entities, its officers, employees, or agents, or any other person." (E.O. 14147, §4(c); *see also* E.O. 13891, §7(c); E.O. 13892, § 11(c); E.O. 13924, §9(d); E.O. 14149, §4(c)). Simply put, the Executive Orders, by their own terms, do not create any substantive or procedural rights. In a similar vein, the Executive Orders explicitly permit adjudications like this proceeding, removing any conflict between the Order and the Executive Order. Indeed, the Executive Orders explicitly state that they do not "impair or otherwise affect … the authority granted by law to an executive department or agency." (E.O. 13891 §7(a)). Commission administrative proceedings are statutorily authorized, and the rules that govern them are regulations. So no controlling question of law is created by these Executive Orders.

Respondent next suggests that the hearing officer has no authority to issue the Division's subpoena as limited by the Order. But the subpoena is expressly authorized by SEC Rule of Practice 232, which has the force of law as 17 C.F.R. § 201.232. Nor does the scope of that subpoena involve any controlling question of law.

Finally, Respondent suggests that the controlling issue of law is what consequences would be imposed if he were to ignore this tribunal's subpoena. That self-created potential future circumstance (*i.e.*, Respondent's contempt of the Subpoena Order) does not qualify as a controlling question of law.

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Respondent has identified no issue that constitutes a controlling issue of law. His Application must therefore be rejected.

III. Failure to Identify Any Substantial Ground for Difference of Opinion

Even if Respondent had identified a controlling question of law, he makes no effort to establish any substantial ground for difference of opinion. In fact, apart from citing the standard, the Application does not mention the "difference of opinion" requirement. It does not discuss conflicting precedent or authority. Nor is there any suggestion that "fair-minded jurists might reach contradictory conclusions" about a novel issue. *Cf. In re Trump*, 874 F.3d 948, 953 (6th Cir. 2017). Respondent's failure to address this requirement for certification also compels the denial of his Application.

IV. Failure to Identify Any Acceleration of the Completion of this Proceeding

Interlocutory review of the Subpoena Order would in no way accelerate the completion of this proceeding. The most that Respondent could gain from review of the Subpoena Order is the complete quashing of the Division's subpoena. No time would be gained in the completion of this administrative proceeding. Respondent's argument that "the Commissioners might belatedly realize the unlawfulness of this proceeding and/or exercise discretion to dismiss it for other reasons" reveals that this Application has little to no relation to the Subpoena Order. Instead, it is just a pretext, a request that the Commission review its previous authorization to institute an administrative proceeding upon the imposition of a district court injunction, based on Respondent having perpetrated securities fraud.

Respondent also urges this tribunal to ignore any concerns about the delay caused by his Application and any resulting interlocutory appeal because this proceeding has already taken a long time. But he ignores the plain language of Rule 400(c)(2)(ii), requiring for certification that "an immediate review of the order may materially advance the completion of the proceeding." If

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anything, the application will *delay* resolution of this matter. And Respondent states that he will likely refuse to comply with the subpoena if interlocutory review is granted, and he does not prevail. (App. pp. 3-4.) Yet more delay, this time deliberately caused by the Respondent. Thus, Respondent has not met the "material advancement" requirement of Rule 400(c).

For these reasons, Respondent's Application should be denied.

Dated: February 12, 2025

Respectfully submitted,

/s/ Marc J. Jones
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CERTIFICATE OF SERVICE

I, Marc J. Jones, hereby certify that on February 12, 2025, the above was served via electronic mail pursuant to Rule 150(c) on the following counsel of record for Respondent:

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/s/ Marc J. Jones
Marc J. Jones

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

IN THE MATTER OF FR. EMMANUEL LEMELSON Respondent.	)	ADMINISTRATIVE PROCEEDING FILE NO. 3-20828

RESPONDENT'S REPLY MEMORANDUM IN SUPPORT OF HIS APPLICATION TO CERTIFY SUBPOENA ORDER FOR INTERLOCUTORY REVIEW

The Division's opposition trivializes what is at stake here as just a "routine discovery order," Opp. at 1, but it is anything but routine. The Division cites no precedent in which an administrative law judge has issued a sweeping document subpoena that purports to require the Respondent in a follow-on proceeding to search for and produce entirely new categories of personal information having no temporal or subject-matter connection to the investigation and litigation upon which the follow-on proceeding was predicated. The Division likewise cites no precedent for doing so nearly *three years* after the follow-on proceeding was instituted—and long after the Division spent nearly a decade thoroughly investigating the same Respondent, taking him to trial, and submitting its case for follow-on relief in a fully briefed motion for summary disposition.[1]

[1] The Division also continues to insist that Respondent "perpetrated securities fraud," Opp. at 5, despite the jury having unequivocally answered "**no**" when asked whether Lemelson "intentionally or recklessly engaged in a scheme to defraud, or any act, practice or course of business which operates or would operate as a fraud or deceit." The Jury also responded "**no**" when asked whether Respondent defrauded his own investors under Rule 206, even under the lower negligence standard.

Using the pretext of a stalled, three-year-old follow-on proceeding to commence an entirely new fishing expedition into the Respondent's recent private affairs and constitutionally protected communications—supported by no articulated suspicion of a securities law violation and no formal order of investigation—is not just unprecedented. It is abusive and illegal—exactly the kind of agency tactic targeted by the Executive Orders cited in Respondent's motion to certify. Yet the Division seeks to prevent the Commission's current leadership from having the opportunity to weigh in on this unprecedented tactic before (unknowingly) allowing that fishing expedition to proceed on their watch.

What the Division seeks here is *not* business as usual and, in any event, business as usual has little currency these days, especially in the SEC enforcement context. *See, e.g.*, *SEC v. Jarkesy*, 144 S. Ct. 2117 (2024); *Axon Enter., Inc. v. FTC* and *SEC v. Cochran*, 143 S. Ct. 890 (2023); *Liu v. SEC*, 591 U.S. 71 (2020); *Lucia v. SEC*, 138 S. Ct. 2044 (2018). The Commissioners should be informed of what the Division is trying to accomplish—especially in light of the ongoing parallel litigation in a nearby federal court that seeks to stop this proceeding entirely and have it declared unconstitutional. Interlocutory review should be certified. The Commissioners deserve that courtesy.

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Respectfully submitted,

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Dated: February 18, 2025

CERTIFICATE OF SERVICE

I, Douglas S. Brooks, do hereby certify that I served the foregoing document on counsel for the Commission, Marc Jones, Esq. and Alfred Day, Esq., by email on February 18, 2025.

/s/ Douglas S. Brooks
Douglas S. Brooks

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

IN THE MATTER OF	)	
FR. EMMANUEL LEMELSON	)	ADMINISTRATIVE PROCEEDING FILE NO. 3-20828
Respondent.	)	

NOTICE OF SUPPLEMENTAL AUTHORITY

Respondent Lemelson respectfully submits this notice to alert the administrative law judge to two relevant developments that occurred yesterday and came to our attention after we had already filed our reply brief in further support of certifying the Subpoena Order for interlocutory review.

First, in the federal court case in which Respondent Lemelson seeks to stop this administrative proceeding—in part on the ground that the administrative law judge is unconstitutionally shielded by multiple layers of protection from presidential removal in violation of Article II of Constitution—the U.S. Department of Justice (which is acting as legal counsel for the SEC) filed the attached Notice of Change in Position to advise the court that "the Acting Solicitor General has decided that the multiple layers of removal restrictions for administrative law judges in 5 U.S.C. § 7521 do not comport with the separation of powers and Article II of the United States Constitution and that the United States will no longer defend them in litigation." *See* Exhibit A.

Second, yesterday President Trump issued the attached Executive Order entitled Ensuring Accountability for All Agencies. The purpose of the Executive Order is "to ensure Presidential supervision and control of the entire executive branch," including the employees and staff of so-called independent agencies like the SEC. *See* Exhibit B. As the Executive Order explains, "[f]or the Federal Government to be truly accountable to the American people, officials who wield vast executive power must be supervised and controlled by the people's elected President." An accompanying Fact Sheet, under the sub-header "Reining in Independent Agencies," specifically and prominently referenced the SEC as being covered by the Executive Order. *See* Exhibit C.

Respondent Lemelson respectfully submits that these two developments, both individually and in tandem, lend additional support to his view that the administrative law judge should allow the presidentially appointed SEC commissioners—the only SEC personnel directly accountable to the President—ample opportunity to consider on interlocutory review the wisdom of, need for, and constitutional legitimacy of the Subpoena Order and the continuation of this proceeding.

Respectfully submitted,

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Dated: February 19, 2025

CERTIFICATE OF SERVICE

I, Douglas S. Brooks, do hereby certify that I served the foregoing document on counsel for the Commission, Marc Jones, Esq. and Alfred Day, Esq., by email on February 19, 2025.

/s/ Douglas S. Brooks
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