

number” that “establishes his or her lawful presence” in the United States. If the Building Inspector cannot verify the “lawful presence” of an individual after issuing that person an occupancy license, the Building Inspector must follow procedures to revoke the license and the individual will no longer be able to occupy his or her residence in the City of Farmers Branch.

4. Ordinance 2952 is the City’s third attempt to regulate rental housing on the basis of immigration status. Ordinance 2892, enacted by the City on November 13, 2006 and repealed on January 22, 2007, required landlords and property managers of apartment complexes in Farmers Branch to verify the “eligible immigration status” of tenants prior to allowing the tenants to occupy an apartment. On January 22, 2007, the City passed Ordinance 2903, another attempt to require verification of immigration status prior to allowing individuals to rent an apartment in the City. Ordinance 2903 was permanently enjoined by the U.S. District Court for the Northern District of Texas in May, 2008. *See Villas at Parkside Partners, et.al. v. The City of Farmers Branch*, No. 3:06-CV-2371-L (N.D. Tex. May 28, 2008).

5. All three Ordinances are linked by a common purpose: to prevent certain immigrants from renting and living in the City of Farmers Branch. Through these Ordinances, the City attempts to determine who should or should not reside in the United States, and the conditions under which they may remain. In this way, the City excludes individuals from its borders based on the City’s own immigration scheme.

6. The present Ordinance in Farmers Branch is similar to other local ordinances around the country that have sought to unlawfully regulate immigration. Courts in other jurisdictions, faced with similar local laws regulating immigrants in the

context of housing have enjoined their implementation. *See Lozano v. Hazleton*, 496 F.Supp. 2d 477 (M.D.Pa. 2007) and *Garrett v. City of Escondido*, 465 F.Supp.2d 1043 (S.D. Cal. 2006).

7. The City of Farmers Branch also enacted Ordinance 2952 in order to limit or reduce the number of Latinos living in the City.

8. Ordinance 2952 imposes substantial civil and criminal penalties on property owners, lessors, property managers, and tenants like previous laws.

9. Plaintiffs have no plain, speedy, or adequate remedy at law other than the relief requested in this complaint. Unless enjoined by this Court, the Ordinance will impermissibly burden the constitutional and statutory rights of Plaintiffs.

JURISDICTION

10. This Court has original jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1343 over Plaintiffs' causes of action under the laws and Constitution of the United States. This Court also has jurisdiction over Plaintiffs' state law claims pursuant to 28 U.S.C. § 1367. This Court has original jurisdiction over Plaintiffs' request for declaratory and injunctive relief pursuant to 28 U.S.C. § 2201 and § 2202.

VENUE

11. Venue is proper in the Northern District of Texas under 28 U.S.C. § 1391(b) because all of the events giving rise to the claims made in this complaint occurred and will occur in this judicial district and because the defendant City of Farmers Branch is located in this district.

PARTIES

Plaintiffs

12. Plaintiff Valentin Reyes is a property owner and is the lessor of a single-family home in the City of Farmers Branch. Plaintiff Valentin Reyes is Latino.

13. Plaintiff Reyes's property has been owned by his family for over 30 years and has a net worth of over \$120,000.

14. Plaintiff Reyes currently receives monthly rental income in the amount of \$850.00 from the rental of his property. Plaintiff Reyes relies on this income to pay the mortgage on his property.

15. Plaintiff Reyes has entered a lease to rent his property to its current tenants. The lease can terminate at any time if the tenant does not comply with its terms. When the term of the lease is over, or if the lease is terminated before the end of its stated period, Plaintiff Reyes will be required to seek new occupants for his rental property. Plaintiff Reyes plans to continue to lease his property in the future.

16. Plaintiff Reyes did not require occupancy licenses from his tenants prior to entering into the current lease. Plaintiff Reyes's current lease does not include language stating that tenants must obtain an occupancy license in order to lease his property.

17. Plaintiff Reyes does not require his tenants to attest to their citizenship or immigration status prior to occupying his property and he does not know the immigration status of his present tenants. Plaintiff Reyes does not believe that a tenant's immigration status is relevant to the safety or security of his property and believes that inquiring into his tenants' immigration status is an invasion of their privacy.

18. Plaintiff Alicia Garcia is a United States citizen and a tenant in a rental apartment complex in Farmers Branch. Plaintiff Garcia has lived in different rental apartments in Farmers Branch over the last seventeen years. Plaintiff Garcia plans to continue to live in a rental apartment in Farmers Branch in the years to come. Plaintiff Garcia is Latina.

19. Plaintiff Garcia currently rents her apartment on a month-to-month lease.

20. Plaintiff Aide Garza is a United States citizen and a tenant in a rental apartment complex in Farmers Branch. Plaintiff Garza plans to continue to live in a rental apartment in Farmers Branch in the future. Plaintiff Garza is Latina.

21. Plaintiff Garza currently rents her apartment on a month-to-month lease.

22. Plaintiff Ginger Edwards is a United States citizen and a tenant in a rental apartment complex in Farmers Branch. Plaintiff Edwards is Latina.

23. Plaintiff Edwards has a current lease that will be subject to renewal in the future. Plaintiff Edwards plans to continue to live in a rental apartment in Farmers Branch in the years to come.

24. Plaintiff Alfredo Vasquez is Latino and a legal permanent resident of the United States. He lives in the City of Farmers Branch. Mr. Vasquez and his family are tenants in a rental apartment complex. Plaintiff Alfredo Vasquez currently rents his apartment on a month-to-month lease.

25. Plaintiff Maria de la Luz Vasquez is Latina and a legal permanent resident of the United States. She lives in the City of Farmers Branch. Mrs. Vasquez lives with her husband, Plaintiff Alfredo Vasquez, and their children in a rental apartment complex.

26. Plaintiff Jose Guadalupe Arias is Latino and has an application for legal permanent resident status pending with the United States Citizenship and Immigration Services. He lives in the City of Farmers Branch and he is a tenant in a rental apartment complex. Plaintiff Arias has a current lease that will be subject to renewal in the future. He plans to continue to live in a rental apartment in Farmers Branch in the future.

27. Because Plaintiff Reyes does not inquire into or verify the immigration status of his tenants, Plaintiff Reyes fears that he may rent to a tenant whose occupancy license is subsequently revoked, thus forcing Plaintiff Reyes to spend the time and money either challenging the license revocation in District Court or evicting that tenant and incurring the additional costs of finding a new tenant. Plaintiff Reyes further fears that he cannot comply with provisions of the Texas Property Code governing the landlord tenant relationship and the provisions of the Ordinance requiring him to evict tenants whose occupancy licenses are revoked by the City.

28. In addition, Plaintiff Reyes believes he will be subject to criminal conviction and civil sanctions if he fails to correctly interpret and comply with the Ordinance.

29. Plaintiff Reyes is concerned that his obligations under the Ordinance with respect to temporary guests of tenants are unclear, that he is unable to determine based on the Ordinance when occupancy permits are required for tenants' guests, and that he may arbitrarily be held criminally liable based on unclear standards for guests.

30. Plaintiff Reyes fears that the Ordinance is unclear with respect to his obligations to institute and pursue eviction and related proceedings when an occupancy permit is revoked, particularly in the context of the requirements of the Texas Property

Code. Plaintiff Reyes further fears that he may arbitrarily be held criminally liable based on a vague and ambiguous standard of “diligen[ce].”

31. Plaintiff Reyes has a well-founded fear that the Ordinance will be enforced against him and that he will suffer substantial adverse consequences as a result if the Ordinance is not declared invalid and enjoined. Unless the Ordinance is permanently enjoined and declared invalid, the Plaintiff Reyes will be subject to irreparable harm by, *inter alia*, being subject to significant monetary fines for violating the Ordinance, facing criminal liability, being unable to collect rent on his rental property or conceivably losing his property.

32. Plaintiffs Garcia, Garza and Vasquez, who rent their apartments on a month-to-month basis, fear they and each of their adult family members will be forced to secure occupancy licenses on a monthly basis, thus requiring that they expend significant amounts of time and money to continue living in Farmers Branch.

33. Plaintiff Arias fears that although he has a pending application with USCIS for legal permanent resident status, he will be unable to secure an occupancy license when his current lease expires because the City of Farmers Branch Building Inspector and the state courts which would review the Inspector’s decision will not consider him “lawfully present” as required by the Ordinance.

34. Plaintiff Arias fears that he may be subject to criminal prosecution for failing to comply with the Ordinance if the Building Inspector determines that he lacks “lawful presence” and revokes an occupancy license issued to Plaintiff Arias.

35. Plaintiffs Garcia, Garza, Edwards, Arias, and the Vasquez family are concerned that they face potential liability under the Ordinance because it is unclear

when their guests must obtain occupancy licenses, and what constitutes a temporary guest. Because the Ordinance prohibits landlords from renting a residence when one occupant lacks an occupancy license, the inability of Plaintiffs Garcia, Garza, Edwards, Arias, and the Vasquez family to determine when their guests must obtain occupancy licenses renders them liable to losing their home. They are also concerned that they and their guests may arbitrarily held criminally liable based on unclear standards for guests.

36. Plaintiffs Garcia, Garza, Edwards, and the Vasquez family fear that if the Ordinance is allowed to go into effect they will suffer substantial adverse consequences if the Ordinance is not declared invalid and enjoined. Unless the Ordinance is permanently enjoined and declared invalid, Plaintiffs are subject to irreparable harm by, *inter alia*, by losing their ability to move to other apartments in Farmers Branch, and/or facing criminal liability and significant monetary fines.

Defendant

37. Defendant City of Farmers Branch is a municipal corporation created pursuant to the Texas Constitution Art. XI, § 5 and located within the State of Texas. During the relevant time period alleged herein, the City and its agents, including its governing body, the Farmers Branch City Council, acted under color of law.

STATEMENT OF FACTS

The City of Farmers Branch

38. Farmers Branch is a suburb of the Dallas-Fort Worth Metroplex. In recent years, Farmers Branch has experienced significant demographic change. The 2000 Census showed that foreign born persons of all nationalities grew to 25% of the City's total population over the course of the previous decade. The Latino population in

Farmers Branch almost doubled—increasing from 20% to 37% of the City’s total population during the 1990s.

39. Similar to the national average, close to one-third of occupied housing in the City is renter-occupied. Compared to the United States as a whole, in 2000 Farmers Branch City had a higher than average number of residents in the workforce; the rates of individuals (6.3%) and families (4%) living in poverty in Farmers Branch were less than half that of the United States.

40. According to the 2000 Census, Latinos living in Farmers Branch reside disproportionately in rental housing. According to the 2000 Census, 49% of Latino-headed households in Farmers Branch live in rental housing. By contrast, only 24% of White Non-Hispanic-headed households in Farmers Branch live in rental housing.

Events Leading up to Enactment of the Ordinance 2952 and The City’s Multiple Attempts to Regulate in the Area of Immigration

41. In August, 2006, the Farmers Branch City Council began discussing the possible adoption of ordinances directed against “illegal aliens” living in the City.

42. Immediately following the introduction of an August 2006 proposal to sanction undocumented immigrants, and landlords and employers of undocumented immigrants, the City of Farmers Branch was swept up in a racially-charged debate over the wisdom of adopting such a law. On August 26, 2006, for example, over 300 protestors rallied outside of City Hall decrying such proposals. An estimated two dozen counter-protestors also demonstrated near City Hall.

43. The sponsor of the August proposal as well as the Ordinance, Councilman Tim O’Hare, publicly described his motives for introducing the law, claiming, “I saw our property values declining . . . what I would call less desirable people move into the

neighborhoods, people who don't value education, people who don't value taking care of their properties." He also claimed that his immigration and language-related proposals would "turn this city around" and that illegal immigrants were largely responsible for the decline of local schools and local retail operations, "leaving no place for people with a good income to shop."

44. According to the Dallas Observer newspaper, during a protest held in August, one proponent of the August proposal said: "They're taking our jobs, our homes. There's unemployment partly because of the Hispanics. The lady who took my job is Hispanic, and she's bilingual." Another proponent, quoted by the Dallas Morning News at a subsequent City Hall protest, explained: "The education system is tanking, health care has gone through the roof, everybody is bilingual." The Dallas Observer reported that at a protest held outside of City Hall on the evening the Ordinance was passed, proponents explained: "The schools are being overrun by non-English speaking kids. . . ." and "I'm tired of paying for 'anchor babies.'"

45. Bob Phelps, the Mayor of Farmers Branch at the time, vehemently denied the assertions of O'Hare and other Ordinance proponents: "Our crime rate is down, our schools have moved up to 'Recognized,' property values are up." Mayor Phelps publicly expressed a lack of support for the November 2006 Ordinance before it was enacted. On November 4, 2006, vandals defaced the home of Mayor Phelps, spray painting the grammatically-incorrect statement "Viva Mexicos [sic]" on the side of his house.

46. On November 13, 2006, the City of Farmers Branch enacted Ordinance 2892.

47. After Ordinance 2892 was passed, apartment complexes suffered from an exodus of renters who relocated out of Farmers Branch.

48. Farmers Branch voters submitted hundreds of petition signatures asking the City Council to repeal or submit Ordinance 2892 to a referendum election. The City called for a referendum election on May 12, 2007 but did not alter the effective date of January 12, 2007 for Ordinance 2892.

49. On January 9, 2007, a state court issued an order temporarily restraining implementation of Ordinance 2892 in *Ramos v. City of Farmers Branch*, No. 06-12227 (116th District County Dallas County).

50. On January 22, 2007, the City of Farmers Branch City Council repealed Ordinance 2892 and adopted a similar one, Ordinance 2903.

51. Ordinance 2903 required apartment owners and/or managers of apartment complexes in Farmers Branch to obtain and review documentation from tenants occupying their apartments and verify that each tenant is either a United States citizen or has “eligible immigration status.”

52. Ordinance 2903 had an effective date of May 22, 2007. The City scheduled a referendum election on Ordinance 2903 for May 12, 2007 and provided that the Ordinance would become effective if not repealed in that election.

53. In the days leading up to the May 12th election, racial tensions rose in the City. The U.S. Department of Justice sent federal election observers to monitor the City’s polls on Election Day.

54. Then-Mayor Phelps and former mayors of Farmers Branch issued a public letter asking voters to reject the Ordinance. The letter by the mayors, which was sent to

Farmers Branch voters, characterized the Ordinance as “ineffective,” “dividing our community” and “the worst ordinance ever considered by a Farmers Branch City Council.” The mayors reported that some candidates for City Council were threatening to pass “even more sweeping anti-illegal immigrant measures” and that under a proposal by a current councilman, “foreign language books and music would be banned from the library.” The mayors concluded that approving the Ordinance “will create a financial and social crisis in our community that will take years to recover from.” Following the release of the letter, the home of former Mayor Phelps was vandalized for a second time, and the Federal Bureau of Investigation recommended that the Mayor and his wife spend election night away from their home.

55. On May 12, 2007, Farmers Branch voters declined to repeal Ordinance 2903.

56. On June 19, 2007, the U.S. District Court for the Northern District of Texas preliminarily enjoined the Ordinance. *See Villas at Parkside, et al v. City of Farmers Branch*, 496 F. Supp. 2d 757 (N.D. Tex. 2007).

57. On May 28, 2008, after considering Ordinance 2903 on its merits the U.S. District Court for the Northern District of Texas ruled that Ordinance 2903 was a regulation of immigration and preempted by the United State Constitution. The court also found that Ordinance 2903 violated the Due Process Clause of the Fourteenth Amendment because it was void for vagueness. The court permanently enjoined the City from enforcing Ordinance 2903. *See Villas at Parkside Partners, et.al. v. City of Farmers Branch*, No. 3:06-CV-2371-L (N.D. Tex. May 28, 2008).

58. Meanwhile, on January 22, 2008 the City passed a third ordinance, Ordinance 2952, which requires adults who rent apartments or single-family residential homes to obtain occupancy licenses prior to occupying their residence.

59. The City's adoption of Ordinance 2952 is a continued attempt to regulate immigration in the City as well as to limit or reduce the Latino population in Farmers Branch.

Ordinance 2952

60. The Ordinance amends Chapter 26, Article III of the City's Code of Ordinances regulating Single-family rental housing and Chapter 26, Article IV regulating apartment complex rentals.

61. The Ordinance defines a "landlord" as an owner of an apartment.

62. The Ordinance defines a "lessor" as a person who leases or rents an apartment or a single family residence as or on behalf of a landlord.

63. The Ordinance defines an "occupant" as a person, age 18 or older, who resides at an apartment or a single family residence.

64. The Ordinance requires that each occupant who is 18 years or older who resides in a leased or rented single-family residence obtain a residential occupancy license.

65. Each occupant must submit an occupancy license application to the city Building Inspector and pay a \$5 fee to the City in order to obtain a residential occupancy license.

66. The application form for the license requires: full legal name; date of birth; address of residence; business address of the lessor; date of commencement of lease; and the occupant's country of citizenship.

67. If the applicant is a citizen or national of the U.S., he or she will have to submit a signed declaration stating he or she is a citizen and the application form shall reference penalties under Title 18 USC 1015(e).

68. If the applicant is not a United States citizen or national, the occupant will be required to submit an "identification number assigned by the federal government" that the occupant believes establishes his or her "lawful presence" in the United States or to declare that he or she does not know of any such number.

69. The Ordinance refers to "lawful presence in the United States," but does not provide a definition of that phrase, or otherwise relate in any way to any individual's right to continue residing in the United States.

70. The Ordinance requires that the Building Inspector issue an occupancy license to all individuals who complete the license application and pay the \$5 fee. The Ordinance further requires the Building Inspector to verify with the federal government whether a non-U.S. citizen occupant is an alien "lawfully present" in the United States using the information contained on the application for the residential occupancy license. The Ordinance also requires the Inspector to submit any other information requested by the federal government.

71. The Ordinance provides that if the federal government reports the status of the occupant as someone who is not "lawfully present" in the United States, the Building Inspector shall send the occupant a deficiency notice. The deficiency notice shall state

that the occupant has 60 days to correct the federal government's records or provide additional information establishing that the occupant is lawfully present in the United States.

72. The Ordinance requires that if after the 60th day after a deficiency notice has been sent to an occupant, the federal government reports that the occupant is not lawfully present in the United States, the Building Inspector shall send a revocation notice to both the occupant and the lessor. The revocation notice shall revoke the occupant's residential occupancy license effective 15 days after the date of the revocation notice.

73. The Ordinance imposes criminal liability on landlords and lessors who rent to occupants who lack an occupancy license. The Ordinance also imposes criminal liability on landlords and lessors who rent to occupants without obtaining or retaining a copy of the residential occupancy license of all known occupants and making such copy available for inspection.

74. The Ordinance also imposes criminal liability on person who is an occupant of a leased or rented single-family residence without first obtaining a residential occupancy license.

75. The Ordinance makes it an offense for a lessor to lease a single family residence without including in the terms of the lease a provision stating that occupancy of the premises by a person, age 18 or older, who does not hold a valid residential occupancy license constitutes an event of default under the lease.

76. In addition, if a landlord or the landlord's agent commits an offense under the Ordinance, the Building Inspector shall suspend the landlord's rental license. During

the period of suspension, the landlord cannot collect any rent, payment, fee, or any other form of compensation from any occupant or tenant.

77. The Ordinance allows a landlord or occupant who has received a deficiency notice or a revocation notice may seek judicial review of the notice by filing suit against the Building Inspector in a court of competent jurisdiction in Dallas County, Texas.

78. The landlord or occupant may seek judicial review in state courts of several issues, including “the question of whether the occupant is lawfully present in the United States.” Unless there is a “conclusive determination of immigration status by the federal government,” the state courts must determine the immigrant status of the occupant.

79. Ordinance 2952 references 8 USC 1621 in support of its statement that “certain aliens not lawfully present in the United States are not eligible for certain State or local public benefits, including licenses.” However, 8 USC 1621 does not define the term “lawful presence.” Furthermore, the only licenses that 8 USC 1621 defines as public benefits are “professional license[s] or commercial license[s]” and not rental occupancy licenses. With respect to housing-related benefits, 8 USC 1621 applies only to “public and assisted housing” – not private, non-subsidized housing.

80. Upon information and belief, the City plans to verify the “lawful presence” of renters by using the federal Systematic Alien Verification for Entitlements (SAVE) program. Upon information and belief, the City has not entered into a formal agreement with USCIS to use SAVE or any other federal program to verify immigration status.

81. The Systematic Alien Verification for Entitlements Program (SAVE) was created by the Immigration and Naturalization Service in response to the federal Immigration Reform and Control Act and Personal Responsibility and Work Opportunity Act - specifically the requirement that the Immigration and Naturalization Service (now Department of Homeland Security) establish a system for verifying immigration status of noncitizen applicants for and recipients of certain types of federally-funded public benefits. The SAVE internet-based program only allows queries that use an individual's Alien Registration Number or I-94 number.

CAUSES OF ACTION

FIRST CAUSE OF ACTION

SUPREMACY CLAUSE OF THE U.S. CONSTITUTION

82. Plaintiffs incorporate all of the allegations contained in the previous paragraphs of this complaint as though fully set forth herein.

83. The Ordinance violates the Supremacy Clause, Article VI Clause 2 of the U.S. Constitution, because it attempts to regulate matters that are exclusively reserved to the federal government, because it operates in a field over which Congress has exercised exclusive authority, and because it conflicts and interferes with federal laws and regulations.

SECOND CAUSE OF ACTION

DUE PROCESS CLAUSE OF THE 14TH AMENDMENT TO THE U.S. CONSTITUTION

84. Plaintiffs incorporate all of the allegations contained in the previous paragraphs of this complaint as though fully set forth herein.

85. The Ordinance deprives all Plaintiffs of liberty and property interests without due process of law and is void for vagueness.

THIRD CAUSE OF ACTION

EQUAL PROTECTION CLAUSE OF THE
THE 14TH AMENDMENT TO THE U.S. CONSTITUTION

86. Plaintiffs incorporate all of the allegations contained in the previous paragraphs of this complaint as though fully set forth herein.

87. The Ordinance irrationally and impermissibly discriminates against a class of individuals who live in Farmers Branch based on the fact that they rent their home as opposed to own their home.

88. The Ordinance irrationally and impermissibly discriminates among similarly-situated classes of non-citizens permitted to remain in the United States.

89. The Ordinance was enacted with the purpose and intent to discriminate against Latinos on the basis of race and national origin.

FOURTH CAUSE OF ACTION

PRIVILEGES AND IMMUNITIES CLAUSE OF THE U.S. CONSTITUTION
ARTICLE IV, SEC. 2, CLAUSE 1

90. Plaintiffs incorporate all of the allegations contained in the previous paragraphs of this complaint as though fully set forth herein.

91. The Ordinance impermissibly infringes on one's right to travel to, from and within the City of Farmers Branch.

FIFTH CAUSE OF ACTION

CONTRACTS CLAUSE
OF THE U.S. CONSTITUTION

92. Plaintiffs incorporate all of the allegations contained in the previous paragraphs of this complaint as though fully set forth herein.

93. The Ordinance substantially impairs the contractual relationship between property owners and lessors and their tenants in violation of the Contracts Clause, Article I, Section 10, Clause 1 of the U.S. Constitution.

SIXTH CAUSE OF ACTION

FAIR HOUSING ACT
42 U.S.C. 3601, *et seq.*

94. Plaintiffs incorporate all of the allegations contained in the previous paragraphs of this complaint as though fully set forth herein.

95. By enacting the Ordinance, Defendant has imposed terms and conditions on the rental of housing in the City that discriminates against Latinos in violation of the federal Fair Housing Act.

SEVENTH CAUSE OF ACTION

TITLE 4 AND TITLE 8 OF THE TEXAS PROPERTY CODE

96. Plaintiffs incorporate all of the allegations contained in the previous paragraphs of this complaint as though fully set forth herein.

97. The Ordinance conflicts and interferes with provisions of the Texas Property Code and is thus preempted.

ATTORNEYS' FEES AND COSTS

Plaintiffs are entitled to an award of reasonable attorneys' fees and costs pursuant to 42 U.S.C. § 1988.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs respectfully request the following relief:

- i. A declaratory judgment pursuant to 28 U.S.C. §§ 2201 and 2202 declaring the Ordinance void because it violates numerous provisions of the United States Constitution and various other federal laws as set forth herein;
- ii. A temporary restraining order and a preliminary and/or permanent injunction pursuant to Fed. R. Civ. P. 65 prohibiting Defendant and its officials, employees and agents from implementing or enforcing the Ordinance;
- iii. An order awarding plaintiffs costs and attorneys' fees, pursuant to the statutes cited herein, 42 U.S.C. § 1988, and any other applicable law;
- iv. Such other and further relief as this Court deems just and proper.

DATED: September 12, 2008

Respectfully submitted,

/s/ Nina Perales

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