



# THE CONTRACT BETWEEN THE KHALIFAH AND THE ZIMMIS

It is important to clarify that Muslims must and should follow a school of thought. There are four such schools and they are the Malikis, Shaafis, Hanbalis and Hanafis.

The Malikis are very tough concerning the relationship between the Muslims and the Zimmis and they see Zimmis as second class citizens, according to Malikis they must work in different places to where the Muslims work and travel on a different part of the road where the animals walk. According to Malikis they should also feel like animals or worse because Allah (swt) describes them in the Qur'an as comparable to animals (in terms of their misguidance). Ibn Hazim took this Ayah literally. Imam Malik mentioned Al Masalih Al Mursalah in order to support his opinion.

The Contract of Zimmah (Aqd Al Zimmah) between the Khalifah (or his representatives) and the Zimmis

The contract of zimmah has three pillars which are:

1. Al Aqidaan or the Two parties - whose conditions are
  - (i) The presence of the parties or their representatives and
  - (ii) The absence of divine preventions
2. Seighat al Aqd or The wording of contract i.e. The offer and Acceptance - whose conditions are
  - (i) Clear wording related to the subject matter
  - (ii) The Presence during conduct of the two parties or their representatives
  - (iii) Matching the offer with the acceptance
  - (iv) The absence of any prevention
3. Al ma'quod Alayh or The subject matter of the contract - whose conditions are
  - (i) The presence of the Goods
  - (ii) The specification of the goods or services
  - (iii) The absence of an defect
  - (iv) The nomination of the price or value

## 1. The Two parties

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The first party is the Khalifah or one of his deputies and the other party is the non-Muslim Zimmi. The non-Muslim can not have representatives since they must represent themselves individually, so a tribal leader cannot represent his tribe. Allah (swt) says in the Qur'an: "whosoever comes to you to ask for protection give him protection" this ayah is Aam i.e.

general and therefore any Muslim can give protection to anyone. The Chapter of At-Taubah is the best reference on the topic of Jizya. Here Allah (swt) says, "Kill the Arab Mushriks wherever you meet them" [EMQ 9 : 5] and "if any one from the Mushrik who comes to you and asks for refuge (security), give it to them." [EMQ 9 : 6]. In a hadith it is narrated that "the wife of Abu Sufyan gave a person security and Rasoul Allah agreed to it" therefore any person from overseas can get a visa from any Muslim within the Islamic State. In another hadith a Kafir women said I gave protection to my in law and he (saw) accepted it, but the fuqaha differ as to whether a Zimmi can give protection to another non-Muslim, for Imam Shafi they can do so except if the person is Kafir Harbi i.e. from those at war with the Islamic State. In [EMQ 9 : 6] Allah (swt) says "if anyone from the Musrik asks for your protection (security and defence) give them security in order to let them hear Islam (and see it implemented)" therefore the purpose of this endeavour is to invite them to Islam.

As far as Muslims or non Muslims not living with us, they do not have citizenship. And everyone needs a permit to leave the state but not to enter. The evidence for this is that no one could leave Mecca without the permission of the Messenger Muhammad (saw) and whosoever does so would violate his/her sanctity. The Messenger Muhammad (saw) was the head of state at that time. Hence a Zimmi must live permanently in Dar al Islam and either he will be a resident when conquered or he can emigrate to Dar al Islam.

The Muslim on the other hand is automatically a citizen. A bedouin came a long way just to get security and the Messenger Muhammad (saw) encouraged this and said "call those Muslims to come from Dar Al Muhajiroun to Dar Al Ansar". Imam Shaafi said that "Whosoever came from outside saying that he is a Muslim he must have witnesses from Dar Al Islam but the hadith said that if someone comes to the mosque he is Muslim so we could see if he attends or not." We ask for witnesses because the Messenger Muhammad said "IF, you accept his Islam". However the Messenger Muhammad (saw) also said "Whosoever asks for refuge give it to him" The other party is therefore the Khalifah or his deputy and the baya' given to him will be a baya' ata'ah i.e. a baya' of obedience such as "I make oath to give the Khalifah my allegiance to listen and obey and will not rise against him" This happened at the time of Rasoul Allah (saw) and Ibn Hazim and Imam Zuhri said "most of those who gave bayah at ta'ah were those who were the Muhajiroun from Mecca" In addition the two parties or their representatives must be Mature and sane as well as capable and be present at the same place. The Khalifah will of course have thousands of representatives who will ensure that the other party is not Kafir Harbi or unsuitable in any other way for citizenship e.g. if he does not want to obey the law of the land. Note that for Malikis the two parties must also sit as they used to Madina (because they follow Ijma Ahl Al Madina) however this is not a condition but a habit like shaking hands when a deal is done.

### **The conditions of the two Parties**

Allah (swt) says in the Qur'an to kill the Arab Mushrik wherever we meet them and Muhammad (saw) said "Allah ordered me to fight people until they say La Ilaha Illala" ( The ayah la ikraha fid-Deen i.e. that there is no compulsion in religion is unrestricted but the above ayah puts a restriction on it as far as the arab mushrik are concerned. Ibn Abbas (ra) said that the above hadith only applies to the Arab Mushrik). In the Musnad of Imam Ahmad it is narrated that the Messenger Muhammad (saw) said to the Sahabah when he sent them to Mecca "you are going to go to people who are very tough against Islam you will call them and they will either accept Islam or you will kill them" Here the Messenger Muhammad (saw) was talking about the Arab Mushriks. Hence the condition for us to accept anyone as a Zimmi is that they must not be:

1. Arab Mushriks - Shaafis Hanbalis and Sheikh Taqi agree that Arab Mushriks cannot be Zimmis because they are restricted by the text.
2. Murtad - The Murtad has no sanctity, he is a Muslim apostate. According to the Hadith collected in Bukhari, Nisai, Tirmidhi and Imam Ahmad the Messenger Muhammad (saw) said: "Whosoever changes his Deen kill him" Al -Mustadil is the one who replaces his Deen (and Mustadil Murtad is a Muslim who becomes Kafir). This is agreed upon by all schools of thought.

3. Saa'il or Current Rulers - many of our leaders such as King Fahd are Murtad and all are involved in killing and oppressing the Muslims. The Shari'ah makes it clear that these people will be killed as soon as we have an Islamic state and this will be the case even if they repent because they violated Allah's commands concerning dealing with the lives of the people. The
4. present rulers, prime ministers, ambassadors, kings and executive bodies are known Islamically as Saa'il because they violate peoples lives and property. However the current Muftis and Judges do not fall into this category because they do not have the same authority. Note: Those who are Murtad by birth such as the Qadianis will be treated as Kufar because the Messenger Muhammad (saw) said "when you meet the enemy first call them to Islam and if they do not accept then ask them to pay Jizyah".

## **2. The offer and acceptance**

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The offer and acceptance has the following conditions:

1. That the wording must be in the past Tense.
2. That the wording contains protection in return for the acceptance of Zimmah.
3. That there must be no Shari'ah preventions.

The wording will include obeying the law of the land in return for protection and security

## **3. The Subject Matter**

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The contract or security is permanent or until the day of Judgment i.e. it is Aqd ul Muabad or a contract without a time limit whether we have an Islamic State or not since it is up to the Muslims and not the duty of the Kuffar living with us to implement the Shari'ah. The Messenger Muhammad (saw) said "do not dishonour me with Aqd Zhimmi, they have Zimmah until the day of judgement". Therefore all the fuqaha agree that the contract of Zimmah has no time limit. The problem is that after 1924 there has been no Khalifah to fulfil their rights. The Jihaadis say that they are Kafar harbi i.e. at war with us! But they can't so without the presence of the State to define them as such. The contract therefore applies even to the progeny of the Zhimmi.

The Fuqaha have listed many Rights and Obligations concerning the Zimmi, amongst those who have discussed this issue are Imam Mawardi and Imam Ibn Qudama Maqdisi who counted many of them. According to Imam Ibnu Qayum "The people of zimmah agree that they will obey the Islamic rules in any matter even in a matter to do with their own Deen and that they will pay Jizyah and in return we will give them citizenship". Imam Ibnu Qayum explains that they obey the law of the land and pay Jizya and in return they get citizenship. In fact the Zimmis have similar rights to those of the Muslims. However there is some disagreement on the Rights and Duties of the Zimmis according to the different scholars but the five agreed rights and duties are listed below.

In chapter Al Tawba Allah (swt) says "fight them until they pay Jizyah". The Hanafis say that this is a form of humiliation for them however Shaafis say that this is merely submission to the law of the land. Imam Shaafi's opinion seems the stronger one since Omar (ra) did not accept the collector to sit and collect Jizya rather he said "Go and collect it" and in the court Ali (ra) did not accept a Zimmi Jew to be treated differently concerning a dispute over his shield. What is clear however is that this is a very serious and sensitive topic since it deals with the life and wealth of the people.

## **Undisputed Rights and Obligations Of Zimmis**

### ***Commitment to the contract***

This has two areas, the law and Jizyah. They must obey Islamic law, there is however recognition of some aspects of their Deen which do not manifest themselves in public life. They must all pay Jizya except for women, children, the elderly, priests and the disabled.

### ***Payment of Jizya***

Imam Zuhayli (a contemporary scholar) said that it is obligatory for Jizya to be paid by every man who is mature, sane and free from any disability, not priest nor old (only Imam Shaafi disagrees with this from the classic schools of thought who said that man can only become exempt when he becomes weak or incapable of defending himself but not someone with only a permanent sickness.) Note: Orientalist writers have written extensively on how Christians had to pay Jizya and Kharaj during the Islamic State. However if we can't protect the Zhimmi we can't take Jizyah from them, hence if we are under attack we will delay collecting Jizyah because security is their right in return for the payment of Jizyah. The Khalifah Omar Bin Abdul Aziz sent an army to return the wealth of the Zimmis and he didn't take any Jizyah until their security and protection was established.

### ***To refrain from what harms the Muslims***

The Zhimmi must refrain from anything that harms the Muslims whether in their life or health. The Zimmis must not beat the Muslims or steal from them. In return we cannot harm the Zimmis or steal from them. Neither can beat or swear at or exploit the other.

### ***The avoidance of anything that humiliates Islam or the Muslims***

The Zimmis cannot humiliate Islam or the Muslims or anything that is related to these. They cannot say 'Allah is stingy' for example. The state may define a punishment for them and they will be required to apologise publicly because they violated the treaty. And the Zimmis cannot spy or deceive Muslims or they will lose their Zimmah since this a matter of national security. The Zimmis must not swear against any Prophet or Islamic rules or Muslims. Ubaiy Ibn Ashraf was killed because he was swearing at the Messenger Muhammad (saw). If a Kafir does this he can escape being killing only if he becomes a Muslim whereas a Muslim will be killed either way, even if he repents such as Salman Rushdie because the Messenger Muhammad (saw) said "Whoever swears at me kill him". Hence the one who swears against Allah will be punished Ta'zir whereas the one that swears at Muhammad (saw) will be killed. In The time of Muhammad (saw) a jew said that Allah is stingy and doesn't give a lot but takes a lot. Abu Bakr (ra) punched him in the face and he said that he didn't think he was stingy anymore to which the Messenger Muhammad (saw) agreed. Muslims on the other hand can swear at the idols but if it is likely to lead others to curse Allah or his Messengers it becomes haram since whatever leads to haram is itself haram. Note: In addition in Islam you are not allowed to swear against the cockerel or a tree or even a rock.

### ***Obligation to refrain from munkar in public areas***

The Zimmis will be obliged to refrain from munkar in public areas. The Zimmis will be obliged to refrain from Munkar in the public places, they will not be able to do anything against the Shari'ah publicly e.g. to drink alcohol or to eat pork etc...

Although the Zimmis will not be obliged to stop the Munkar with their hands they must call the police if they see it. In addition they will not be allowed to show their crosses or ring their Bells publicly since it is symbolic of their kufr sovereignty and against the sovereignty of Islam.

### ***Distinction of the Zimmi***

The Zimmi must be distinguished by certain signs to know that they are citizens but not Muslims. It is narrated in a Hadith that the Messenger Muhammad (saw) said "Allah (swt) distinguished you from non Muslims, do not look like them or let them look like you". The distinction is a matter of flexibility for the Khalifah, in the Awami era it was a special belt, in the Abassid era it was an arm band and in the Othmani era it was a blue turban (with a red turban for the Muslims). Nowadays the way they are distinguished from us could be by ID cards or through finger prints or we could issue scarves and a khimar to Kufaar that are a certain colour. Note: In Islam we do not have many different uniforms such as that of nuns, doctors, priests, We only distinguish between Muslims and Kufaar. The Khalifah will need to adopt something. The distinction between Muslims and the Kufaar is in the area of citizenship i.e. in rights or huquq and not one of appearance but in addition we are required to be able to distinguish ourselves from them. The evidence for this distinction in the Islamic state is the above hadith and the hadith Maoquf narrated from Omar (ra) that "Allah ordered us to treat the Zimmi with justice and to distinguish ourselves from them and this is what the Messenger Muhammad told us". Hence Muslims distinguish between themselves and the Kufaar in their Aqeedah all the time and in their appearance when there is Dar al Islam.

### **The Disputed Obligations and Duties of Zimmis**

#### ***To receive Muslims as guests***

According to some fuqaha the Zhimmis are obliged to receive Muslims as guests for three days when they are travellers (one day being the minimum). The Muslims should accept Zhimis as guests as well according to Hanafis and Malikis but Shaafis and Hanbalis disagree. The Hanafis and Malikis say that they can accept Zimmis because Muslims usually build guest houses as part of their houses. Imam Shaafi said that the trustworthy Muslim will not ask the Kufar to be a guest at his house because it would be oppression on them. The stronger opinion therefore is that the right of the Guest is only between the Muslims, Muslims are obliged to give Muslims the right to stay as guests and this is not for the Khalifah to decide but a matter of divine right (however the guest must be a traveller). There is no obligation on the Kufar but if the Khalifah does adopt this opinion the Zimmis must obey him as part of their treaty.

#### ***10 % Export Tax***

In the Abbasid era the Zimmis paid 10 % of what they traded outside the state (i.e. an import /export tax). The stronger opinion however is that the Zhimmis are not obliged to do so because they have the same rights as any other citizen. In a Hadith collected by Bayhaqi it is reported that the Messenger Muhammad (saw) said "The one who takes one tenth from the people is not one of us" because the Kufar used to charge outside traders 10% and this hadith forbade this practice. However Shaafis and some Hanafis follow this opinion. The Messenger Mohammed (saw) however did charge traders 10% in response to the situation in their own countries and He (saw) did it only after they did it to the Muslims, therefore if they do not initiate it we cannot do it and this emanates from the principle of trading with people equally. Hence Imam Malik and Imam Ahmed Ibn Hanbal are correct here in not charging Zimmis 10% of their trade automatically.

In any case the Abbasids made a mistake and charged the citizens 100th as opposed to 10th. In his time Omar (ra) said "Do not take 100th of the trade and oppress the Zimmi" Some even took as much as  $\frac{1}{4}$  in order to make them become Muslim by Al Masalih al Mursalah. But the Messenger Muhammad (saw) said "Allah did not send me as a tax collector but as a man who carries dawa and guides the people" and when the Kufaar came to him Allah (swt) revealed "Judge and rule by whatever Allah has revealed" therefore we must judge by Islam even upon the non Muslims i.e. treat them equally as far as tax is concerned unless there is evidence to suggest otherwise as in the case of Jizya.

### ***The building and repair of Churches***

According to some scholars Zimmis are not allowed to build or to repair churches or places of worship. Some say they are not to repair churches or to build them where many Muslims populate. The stronger opinion however is that the Zimmis are allowed to build churches. The argument against the construction and repair of churches relies on the Al Masalih Al Mursala i.e. unmentioned public interest. But Omar (ra) allowed the Kafur to repair their churches. However they will not be able to have signs of Kufr (i.e. to do with their belief) in public because there is hadith to prohibit this. The third Khalifah Othman (ra) even let them build churches in the Islamic State in Cyprus and Greece. Imam Shaafi says that there is no evidence to prevent them against which the Hanafis use Istihsan i.e. juristic preference. But where is the evidence to prevent them! Rather there is evidence that they were allowed to build them and repair them from the era of the Khulafah Ar Rashidah. Mohammed Al Fateh let them build churches even at the time of Ibn Hazim Andalusi and he did not speak up against it. Those that say it is not allowed have a rational argument for the Deen to be dominant and not to let them spread too much but in answer to this we there is nothing to restrict the construction of churches to a certain number by the Khalifah. It is narrated in Baihaqi that the Messenger Muhammad (saw) said: "Do not participate in building their churches" hence people take this to say we can limit the number of churches they can build and they can maintain the old ones. The strongest opinion is that they can maintain old churches but not build new ones. We can allow them to construct or repair churches but the Muslims will not sell them stones to do so. What they do on their own land however will generally be allowed. Imam Malik wanted them to finish slowly without harming them (by restricting the growth of Churches) so that they become Muslims or die out. Sheikh Taqi believed that the Khalifah has the right to let them build or repair churches and according to Imam Sibqi (another Shaafi scholar) and Imam Uzai they can build churches.

### ***Riding expensive horses or mules***

According to Ibn Hazim the Zimmis must not ride horses or expensive mules or unique donkeys in order to distinguish them from us. This is unacceptable however the opinion was also mentioned by Imam Malik because they say it will give them dignity and pride and for their interest they should feel humiliated without humiliating them directly. However the Messenger Muhammad (saw) said "whatever harms a Zimmi harms Rasool Allah" and this constitutes a general rule which would prevent this. Moreover 'Saghar' in the Arabic language doesn't just mean humiliation but also submission which we can enforce without harming them?

### ***The use of highways***

According to some fuqaha the Zimmis must be prevented from using highways and should only use the smaller side streets. However again this is unacceptable which has been made clear in the letter of Abu Yussuf in his address to the Amir Al Mu'mineen. Abu Yusuf said "Oh Amir Al Mu'mineen remember that Messenger Muhammad (saw) said "If anyone oppresses a Zimmi or requests him anything above his limit then I will be the plaintiff against him on the day of judgement".

### ***Sleeping in their churches***

Some fuqaha say that the Zimmis shouldn't prevent Muslims from sleeping in their churches in the day or at night or whenever there is a need. However this is not acceptable although Malikis, Hanbalis and Hanafis agree on this. Imam Shaafi disagrees and this is the strongest opinion because it would cause hardship or harm to the Zimmis which is unacceptable. Churches and synagogues are places of worship and this will cause fitnah in their deen. We should take the example of Omar al Farouq (ra) who said that it is allowed to pray in the church but he didn't do so because he did not want it to become Sunnah and seen as more rewardable. Malikis on the other believe churches should be open 24hrs for the Muslims. Islam however recognises the sanctity of the church and we are not allowed to destroy them.

### ***They should not have Muslims serving them.***

Respect for Muslims is by not beating them or swearing at them or exploiting them but not by not serving them since Muslims can work for the Kuffaar and vice versa. The Messenger Muhammad (saw) permitted the sahabah working for the Kuffaar. Imam Ali (ra) worked in the garden of a Jew and even Abu Bakr (ra) worked for a Jew. However all fuqaha agree that a Zimmi cannot have a Muslim as a slave. What if a Slave becomes Muslim, can he be bought by a Zimmi or kept as a slave? The fuqaha differ, but this area is understandable unlike employment which is different.

### ***The Rights of The people of Zimmah***

The Zimmis have many Haquq similar to the Muslims and sometimes they have extra Haquq that are different from ours e.g. if the enemy hurts them we pay them compensation because we didn't protect them. The Zimmi have similar rights to us and can for example use certain land for their own benefit if it remains un-used for 3 years. They will not however need to do national service. In addition since the Messenger Muhammad (saw) said "whoever deceives a Zimmi deceives me" if you kill Zimmi you will be killed and if you steal from one your hand will be cut by higher analogy (Qiyas A'la) because life is worth more. For Imam Shaafi blood money is payable if a Zimmi is killed and the Muslim's life is not taken but we do cut his hand if valid wealth (i.e. Mal Mutaqawwam and not alcohol or pork etc...) is stolen.

In the time of Khulafa Rashidah the Zimmi lived separately from the Muslims and even traded separately. In the time of Omar (ra) he passed by a man who was begging and Omar (ra) asked him "from which type of people are you?", "Im jewish" he replied and added "I beg in order to pay the Jizyah, to survive and because I can't work since I'm so old." Omar took him to his house, fed him and he called the finance minister and said "look at him, Allah will curse us because we did not do justice to him. We ate from him as a young man and left him now that he's old. The sadaqah is for the poor and misqeen. The poor are Muslims and the Miqeen are people of the book. Do not charge Jizya to anyone old or incapable and spend for them from the Bait al Maal." The sahabah agreed with him hence it became Ijma. Old age is usually about 60 but according to Imam Shaafi it may not be old even if he is 100 as long as he is still strong! However the Zimmi will lose his Citizenship if any of the following occur:

1. He becomes Muslim
2. He Leaves Dar al Islam or
3. He refuses to pay jizya.

In addition if the Zimmi joins the Muslim army we do not take Jizya from them and Hanafis, most Shaafis, Malikis, Imam Shaybani and Abu Yusuf agree on this. Omar (ra) ordered his governors on this basis. However Ahmad Bin Hanbal says we take Jizya even if they fight. Unlike the Zimmi the Mustamin is not a citizen of the state but after one year he can become citizen and if he leaves he will lose citizenship.

In the Ahkam Al Sultaniyyah of Imam Mawardi it is reported upon the authority of Nafi Ibn Omar that Abdullah Ibn Omar (ra) said "The last thing that the prophet (saw) said before he died was "Honour me with the people of covenant", and the Messenger Muhammad (saw) did not restrict the Zimmis only to Dar Al Islam although we can not ensure all their rights and duties are fulfilled without the Islamic State. Imam Mawardi said that the people of covenant have two fundamental rights:

1. Al Kaffu Anham - that they have secure from any attack whether physical or verbal.
2. Al Himaya tu lahum - that they be protected from attack We should however note that the conditions of the treaty between the Zimmis and the Khalifah are a matter of decision for the Khalifah and in certain areas we can have Shart ju'li (i.e. man made conditions) but other conditions are unchangeable.

Therefore the Khalifah could adopt that the Kuffar cannot build churches depending on the opinion he adopts. Many decisions of previous Khulafah were based on Istihsaan and Al Masalih Al Mursalah.

In Kitab Al Kharaj Abu Yusuf, a student of Imam Abu Hanafah, wrote in his letter to Haroun Al Rashid, the then Khalifah: "Remember to treat kindly the people of the covenant of the Messenger Mohammed (saw) and that means not to oppress them or to allow anyone to oppress them and not hurt them and not to allow anyone to hurt them and not to request from them anything over their limit"

### ***Mulhakat Al Aqd or The Supplimentary Conditions***

The supplements of the contract will not invalidate the contract and these are the following

1. The time limit
2. The witnesses
3. Guardianship
4. Promises
5. Other supplimentary conditions

Unlike the time limit of the conditions of the pillar this time limit of the suppliments applies until the day of judgment even if one passes away and there is no Dar al Islam.

As far as leaving Dar al Islam or to coming into Dar al Islam is concerned people only need exit permission and not permission for entrance. The one entering will get exit permission from whichever country he is coming from and can be a visitor in the state for less than a year ( after 1 year he will be given citizenship). In Surah Al Tauba Allah (swt) says "Let them enter and witness Islam (i.e. invite them to it)" and elsewhere Allah (swt) says "if you kill Muslims living amongst kafir by mistake there is no blood money" hence the problem is not people coming into the state but people leaving it. Hence if someone asks us for refuge from the Kuffaar a visa will be granted and he will be called mustamin i.e. a kafir who enters Muslim land with a special permission for protection.

Every individual who leaves the state to go to an area which the Khalifah has an agreement must be treated well (as if he is Amir Al-Mu'mineen i.e. as if the contract was made with him). The state will give permission to the best daies to leave Dar al Islam

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If the state is established anywhere in the world the leader will give other Muslim leaders an ultimatum (as abu Bakr Sidique (ra) did i.e. either accept or we will fight you as Baghi. But some people must be killed anyway like when the Messenger Muhammad (saw) entered Mecca he said "kill 4 people when you enter Mecca even if they are holding onto the Kabah" In the Hadith of Buraida it is narrated that the Messenger Muhammad (saw) said "If they came from Dar ul harb (al-Muhajireen) to Dar ul Islam they will be protected otherwise they will be treated like everyone else.

THE CULTURAL COMMITTEE OF AL-MUHAJIROUN

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