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15 UNITED STATES DISTRICT COURT

16 DISTRICT OF ARIZONA

17 Friendly House, et al.,  
18 Plaintiffs,

19 vs.

20 Michael B. Whiting, et al.,  
21 Defendants.  
22

No. CV 10-1061-PHX-JWS

23 }  
24 } **MOTION FOR LEAVE TO FILE**  
25 } **BRIEF OF *AMICUS CURIAE***  
26 } **ANTI-DEFAMATION LEAGUE IN**  
27 } **SUPPORT OF PLAINTIFFS'**  
28 } **MOTION FOR PRELIMINARY**  
**INJUNCTION**

24 Pursuant to Fed. R. Civ. P. 7 and LRCiv 7.2, the Anti-Defamation League  
25 ("ADL") respectfully moves for leave to file the concurrently-lodged brief as *amicus*  
26 *curiae* in support of Plaintiffs' Motion for Preliminary Injunction (dkt. 70). ADL seeks  
27 to lend its expertise and perspective to this Court concerning the issues of irreparable  
28 harm and the public interest. Specifically, ADL wishes to draw to the Court's attention

1 to the substantial likelihood that enforcement of Arizona Senate Bill 1070, as amended  
 2 ("SB 1070"), will irreparably damage law enforcement's ability to protect all the people  
 3 of this State from the commission of hate crimes.

#### 4 STATEMENT OF INTEREST AND ARGUMENT

5 ADL is a non-profit organization that fights anti-Semitism and all forms of  
 6 bigotry, defends democratic ideals and protects civil rights for all. ADL has regional  
 7 offices across the country, including its Arizona Regional office, which has been based  
 8 in Phoenix for nearly thirty years. ADL is the leading nongovernmental organization in  
 9 the United States that trains law enforcement officers on issues of extremism and hate  
 10 crimes in this country. It provides training through a national network of regional  
 11 offices to thousands of law enforcement officers to ensure that they know how to  
 12 recognize and identify hate crimes and investigate them properly and sensitively.  
 13 Additionally, ADL has trained over 500 key law enforcement leaders at the League's  
 14 *Advanced Training School: Course on Extremist and Terrorist Threats* (ATS) in  
 15 Washington, D.C.<sup>1</sup> In partnership with the United States Holocaust Memorial Museum,  
 16 ADL has also trained more than 45,000 law enforcement professionals in *Law*  
 17 *Enforcement and Society: Lessons of the Holocaust*, a program that draws on the history  
 18 of the Holocaust to provide police professionals with an increased understanding of the  
 19 importance of their relationship to the people they serve and their role as protectors of  
 20 the Constitution.<sup>2</sup>

21 ADL also has unmatched expertise concerning the development of hate crimes  
 22 legislation at the federal and state levels. In 1981, ADL drafted a model state hate crime  
 23 law that provides for increased penalties for criminals who target their victims because

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24  
 25 <sup>1</sup> [http://www.adl.org/learn/learn\\_main\\_training/Advanced\\_Training\\_School.asp](http://www.adl.org/learn/learn_main_training/Advanced_Training_School.asp) (last  
 visited June 21, 2010).

26 <sup>2</sup> [http://www.adl.org/learn/adl\\_law\\_enforcement/LEAS+3-  
 09.htm?LEARN\\_Cat=Training&LEARN\\_SubCat=Training\\_News](http://www.adl.org/learn/adl_law_enforcement/LEAS+3-09.htm?LEARN_Cat=Training&LEARN_SubCat=Training_News) (last visited June 21,  
 27 2010); *see also* [http://www.adl.org/learn/adl\\_law\\_enforcement/default.htm](http://www.adl.org/learn/adl_law_enforcement/default.htm) (last visited  
 28 June 21, 2010) and [http://www.fbi.gov/page2/mar10/leas\\_033010.html](http://www.fbi.gov/page2/mar10/leas_033010.html) (last visited June  
 21, 2010).

1 of personal characteristics, such as race, religion, national origin, gender or sexual  
 2 orientation.<sup>3</sup> The District of Columbia and 45 states, including Arizona, have enacted  
 3 statutes based on or similar to ADL's model.<sup>4</sup> Furthermore, ADL has advocated for  
 4 laws mandating the collection of statistics about hate crimes. Most recently, ADL  
 5 played a leading role in advocating for passage of the Matthew Shepard and James  
 6 Byrd, Jr. Hate Crimes Prevention Act ("HCPA"), signed into law by President Obama  
 7 on October 28, 2009 (codified at 18 U.S.C. § 249). HCPA gives the United States  
 8 Department of Justice the power to investigate and prosecute violent crimes where the  
 9 perpetrator selects the victim because of the person's actual or perceived race, color,  
 10 religion, national origin, gender, sexual orientation, gender identity or disability.

11 Through its extensive work with law enforcement and its specialized expertise in  
 12 hate crimes, ADL is uniquely situated to assist the Court in evaluating the impact of SB  
 13 1070 on the reporting and prevention of hate crimes in Arizona. Its proposed *amicus*  
 14 brief provides additional context and information relating to the preliminary injunction  
 15 issues raised in this case, beyond that which the parties can offer, which further  
 16 demonstrates why the Court should enjoin enforcement of SB 1070.

17 For the foregoing reasons, the Motion for Leave to File Brief of *Amicus Curiae*  
 18 Anti-Defamation League should be granted.

19  
 20  
 21  
 22  
 23  
 24 <sup>3</sup> See <http://www.adl.org/99hatecrime/intro.asp> and  
[http://www.adl.org/99hatecrime/text\\_legis.asp](http://www.adl.org/99hatecrime/text_legis.asp) (last visited June 21, 2010).

25 <sup>4</sup> See A.R.S. § 13-701(D)(15) (aggravating factor in criminal sentencing includes  
 26 "[e]vidence that the defendant committed the crime out of malice toward a victim  
 27 because of the victim's identity in a group listed in § 41-1750, subsection A, paragraph  
 28 3, or because of the defendant's perception of the victim's identity in a group listed in §  
 41-1750, subsection A, paragraph 3"); A.R.S. § 41-1750(A)(3) (discussing "evidence of  
 prejudice based on race, color, religion, national origin, sexual orientation, gender or  
 disability"); A.R.S. § 13-1604 (aggravated criminal damage).

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**BRIEF OF *AMICUS CURIAE* THE  
ANTI-DEFAMATION LEAGUE IN  
SUPPORT OF PLAINTIFFS'  
MOTION FOR PRELIMINARY  
INJUNCTION**

23 Preliminary Statement

24 If well-ordered liberty means anything, it must mean that all persons should be  
25 afforded access to police protection if they become victims of hate crimes. Arizona  
26 Senate Bill 1070, as amended ("SB 1070"), impedes that access for *all* Latinos – United  
27 States citizens, lawful residents and undocumented immigrants alike. Indeed, as  
28 Plaintiffs' Motion for Preliminary Injunction demonstrates, SB 1070 poses a substantial

1 threat of deterring Latinos from reporting crimes or serving as witnesses in criminal  
 2 investigations. (Dkt. 70 at 33-34.) This *amicus* brief provides additional context and  
 3 information about a particular and devastating consequence of the rupture in police-  
 4 community trust that SB 1070 will inevitably cause – the creation of an underclass  
 5 uniquely vulnerable to increased hate crimes and violence.

6 As shown below, unless its enforcement is enjoined, SB 1070 is substantially  
 7 likely to cause irreparable harm to the enforcement of hate crimes legislation in Arizona  
 8 by driving a wedge between law enforcement and communities whom such laws were  
 9 specifically designed to protect. That breach in trust will render the State's Latino  
 10 community uniquely vulnerable to the commission of hate crimes – an outcome  
 11 fundamentally at odds with the strong public policies embodied in federal and state anti-  
 12 hate crimes legislation. Granting the preliminary injunctive relief that Plaintiffs seek will  
 13 avert irreparable harm that SB 1070 will otherwise inflict on the policing of hate crimes  
 14 in Arizona, and will advance the vital public interest in ensuring that federal and  
 15 Arizona anti-hate crimes statutes are enforced to the fullest extent of the law. *See*  
 16 *Winter v. Natural Res. Def. Council, Inc.*, 129 S. Ct. 365, 376 (2008).

### 17 Argument

#### 18 **I. Federal and State Law Expressly Prohibits the Commission of Hate Crimes** 19 **Against People of Color, Including Latinos.**

20 Arizona's criminal statutes include strong prohibitions against the commission of  
 21 hate crimes. A.R.S. § 13-701(D)(15) provides that an aggravating factor in criminal  
 22 sentencing includes "[e]vidence that the defendant committed the crime out of malice  
 23 toward a victim because of the victim's identity in a group listed in § 41-1750,  
 24 subsection A, paragraph 3, or because of the defendant's perception of the victim's  
 25 identity in a group listed in § 41-1750, subsection A, paragraph 3." A.R.S. § 41-  
 26 1750(A)(3) concerns "prejudice based on race, color, religion, national origin, sexual  
 27 orientation, gender or disability." These statutes provide that crimes committed out of  
 28 hatred towards a victim because of his or her actual or perceived membership in one of

1 the protected classes recognized in A.R.S. § 41-1750(A)(3) are especially offensive to  
 2 the public policies of this State and warrant the imposition of aggravated criminal  
 3 penalties. *See also* A.R.S. § 13-1604 (defining “aggravated criminal damage”). The  
 4 federal Hate Crimes Prevention Act of 2009, which gives the United States Department  
 5 of Justice the power to investigate and prosecute violent crimes where the perpetrator  
 6 selects the victim because, *inter alia*, of the person’s actual or perceived race, color or  
 7 national origin, evinces an equally strong federal policy against the commission of hate  
 8 crimes. 18 U.S.C. § 249.<sup>1</sup>

9 The issue of hate crimes in our nation and Arizona is far from theoretical.  
 10 According to statistics gathered by the Federal Bureau of Investigation documenting  
 11 hate crimes through 2008, hate crimes are at their highest level since 2001.<sup>2</sup> In 2008,  
 12 7,783 hate crimes were reported nation-wide.<sup>3</sup> Of those, 561 were motivated by the  
 13 actual or perceived Hispanic ethnicity of the victim.<sup>4</sup> In the past 10 years, between 400  
 14 and 600 hate crimes against Hispanics have been reported each year.<sup>5</sup> In Arizona,  
 15 according to the annual report of the Arizona Department of Public Safety, there were  
 16 226 hate crime offenses reported in 2009.<sup>6</sup> Forty-four of the offenses were based on  
 17 ethnicity, with 37 “Anti-Hispanic” crimes.<sup>7</sup> Just last Friday, on June 18, 2010, *The*  
 18

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19  
 20 <sup>1</sup> *See* Declaration of Peter S. Kozinets (“Kozinets Decl.”) Ex. A,  
<http://www.justice.gov/crt/crim/249fin.php> (last visited June 21, 2010) (discussing the  
 21 HCPA and other federal anti-hate crimes statutes).

22 <sup>2</sup> *See, e.g.*, Kozinets Decl. Ex. B, ADL table, “Ten Year Comparison of FBI Hate Crime  
 23 Statistics (2008-1999), available at  
[http://www.adl.org/combating\\_hate/HCSA\\_10year.asp](http://www.adl.org/combating_hate/HCSA_10year.asp) (last visited June 21, 2010).

24 <sup>3</sup> Kozinets Decl. Ex. C, Uniform Crime Report, Hate Crime Statistics, 2008. U.S.  
 Department of Justice Federal Bureau of Investigation, table 1, available at  
[http://www.fbi.gov/ucr/hc2008/data/table\\_01.html](http://www.fbi.gov/ucr/hc2008/data/table_01.html) (last visited June 21, 2010).

25 <sup>4</sup> *Id.*

26 <sup>5</sup> Kozinets Decl. Ex. B.

27 <sup>6</sup> Kozinets Decl. Ex. D, *2009 Crime in Arizona Report* at 125-132, available at  
[http://www.azdps.gov/About/Reports/docs/Crime\\_In\\_Arizona\\_Report\\_2009](http://www.azdps.gov/About/Reports/docs/Crime_In_Arizona_Report_2009) (last visited  
 28 June 21, 2010).

<sup>7</sup> *Id.* at 129.

1 *Arizona Republic* reported on the recent murder of Juan Varela in south Phoenix, which  
 2 authorities have charged as a hate crime.<sup>8</sup>

3 **II. SB 1070 Will Undermine the Latino Community's Trust in Law**  
 4 **Enforcement, Eviscerating the Police's Ability to Enforce Federal and State**  
 5 **Anti-Hate Crimes Laws.**

6 **A. Police Cannot Enforce the Law If Victims and Witnesses Are**  
 7 **Unwilling to Come Forward.**

8 The Police Foundation, the International Association of Chiefs of Police, the  
 9 Major Cities Chiefs Association and Arizona Association of Chiefs of Police have all  
 10 expressed grave concerns that deputizing local law enforcement officers to enforce  
 11 immigration law undermines the trust and cooperation of immigrant communities.<sup>9</sup> For  
 12 example, a 2009 report by the Police Foundation states that "[i]mmigration enforcement  
 13 by local police undermines their core public safety mission, diverts scarce resources,  
 14 increases their exposure to liability and litigation, and exacerbates fear in communities  
 15 already distrustful of police."<sup>10</sup> According to Police Foundation President Hubert  
 16 Williams:

17 Police executives have felt torn between a desire to be  
 18 helpful and cooperative with federal immigration authorities  
 19 and a concern that their participation in immigration  
 20 enforcement efforts will undo the gains they have achieved  
 21 through community-oriented policing practices directed at  
 22 gaining the trust and cooperation of immigrant communities.  
 23 As one police chief pointed out during the project, "How do  
 24 you police a community that will not talk to you?"<sup>11</sup>

25 The Major Cities Chiefs Association agrees. According to its 2006 Position Statement:

26 Local agencies have worked very hard to build trust and a  
 27 spirit of cooperation with immigrant groups through

28 <sup>8</sup> Kozinets Decl. Ex. E, Michael Kiefer and Michael Ferraresi, "Phoenix slaying now  
 termed a hate crime," *The Arizona Republic*, B6 (June 18, 2010).

<sup>9</sup> See, e.g., Kozinets Decl. Ex. F, Arizona Association of Chiefs of Police Statement on  
 Senate Bill 1070, available at  
[http://www.leei.us/main/media/AACOP\\_STATEMENT\\_ON\\_SENATE\\_BILL\\_1070.pdf](http://www.leei.us/main/media/AACOP_STATEMENT_ON_SENATE_BILL_1070.pdf)  
 f (last visited June 21, 2010).

<sup>10</sup> Kozinets Decl. Ex. G, <http://www.policefoundation.org/pdf/strikingRelease.pdf> (last  
 visited June 21, 2010).

<sup>11</sup> Id.

community based policing and outreach programs and specialized officers who work with immigrant groups. Local agencies have a clear need to foster trust and cooperation with everyone in these immigrant communities. Assistance and cooperation from immigrant communities is especially important when an immigrant, whether documented or undocumented, is the victim of or witness to a crime. These persons must be encouraged to file reports and come forward with information. Their cooperation is needed to prevent and solve crimes and maintain public order, safety, and security in the whole community. . . .

Immigration enforcement by local police would likely negatively effect and undermine the level of trust and cooperation between local police and immigrant communities. . . . Undoubtedly legal immigrants would avoid contact with the police for fear that they themselves or undocumented family members or friends may become subject to immigration enforcement. **Without assurances that contact with the police would not result in purely civil immigration enforcement action, the hard won trust, communication and cooperation from the immigrant community would disappear. Such a divide between the local police and immigrant groups would result in increased crime against immigrants and in the broader community, create a class of silent victims and eliminate the potential for assistance from immigrants in solving crimes or preventing future terroristic acts.**<sup>12</sup>

In response to the SB 1070, the president of the Major Cities Chiefs Association, San Jose Police Chief Robert Davis, confirmed that "immigration enforcement by local police would likely negatively effect and undermine the level of trust and cooperation between local police and immigrant communities."<sup>13</sup>

**B. SB 1070 Will Prevent Effective Enforcement of the Laws Prohibiting Hate Crimes.**

Unless its enforcement is enjoined, SB 1070 will create an underclass of people who have no meaningful access to police services out of fear that their perceived immigration status – whether relevant or not – will subject them to heightened law

<sup>12</sup> Kozinets Decl. Ex. H, Major Cities Chiefs Immigration Committee Recommendations, June 2006, available at [http://www.majorcitieschiefs.org/pdfpublic/MCC\\_Position\\_Statement\\_REVISED\\_CEF\\_2009.pdf](http://www.majorcitieschiefs.org/pdfpublic/MCC_Position_Statement_REVISED_CEF_2009.pdf) (emphasis added) (last visited June 21, 2010).

<sup>13</sup> Kozinets Decl. Ex. I, Kevin Johnson, *Arizona Immigration Law Creates Rift*, USA TODAY, April 26, 2010, available at [http://www.usatoday.com/news/nation/2010-04-25-arizona-immigration\\_N.htm](http://www.usatoday.com/news/nation/2010-04-25-arizona-immigration_N.htm) (lasted visited June 21, 2010).

1 enforcement scrutiny whenever they come into contact with police. In its aim to deal  
 2 with the issue of undocumented persons living in Arizona, SB 1070 requires local law  
 3 enforcement officers to determine based on “reasonable suspicion” who may be in the  
 4 country illegally and process them accordingly. According to a recent study of Latino  
 5 *registered voters* in Arizona commissioned by the National Council of La Raza, 85% of  
 6 Latinos who are legal immigrants or U.S. citizens fear that they will be racially profiled  
 7 under SB 1070. Because of the new law, 47% report that in the future they would be  
 8 less likely to report a crime or volunteer information to the police.<sup>14</sup> Simply put, SB  
 9 1070 is driving a wedge between local law enforcement agencies and the communities  
 10 they are entrusted to protect. Because these poll numbers do not reflect the attitudes of  
 11 *non-registered voters* (including people who are more likely to be undocumented), the  
 12 wedge is much deeper and the chasm between police and the Latino community much  
 13 wider than reflected by the study itself.

14 As a consequence, Latinos likely will be deterred from reporting or serving as  
 15 witnesses regarding a range of criminal activities in the community, including hate  
 16 crimes. ADL knows from long experience advocating for and training law enforcement  
 17 on the implementation of hate crime laws that close cooperation between local law  
 18 enforcement and minority communities is essential.<sup>15</sup> If crime and immigration  
 19 enforcement become intertwined, police may find out-of status persons and their family  
 20 members hesitant to seek protection, to report crimes committed against them or to serve  
 21 as witnesses in other crimes – compromising the police’s ability to keep the community  
 22 safe. *See* Part II.A, *supra*.

23 Moreover, when a bias-motivated crime is committed, the victim’s entire  
 24 community may be left feeling victimized, vulnerable, fearful, isolated and unprotected

25 <sup>14</sup> Kozinets Decl. Ex. J, NCLR commissioned study *available at*  
 26 [http://www.docstoc.com/docs/38665576/Survey-of-Arizona-Latino-Voters-Post-SB-](http://www.docstoc.com/docs/38665576/Survey-of-Arizona-Latino-Voters-Post-SB-1070)  
 1070 (last visited June 21, 2010).

27 <sup>15</sup> *See* Motion for Leave to File Brief of *Amicus Curiae* Anti-Defamation League in  
 28 Support of Plaintiffs’ Motion for Preliminary Injunction, at 1-3; Kozinets Decl. Exs. K-  
 M.

1 by the law. The impact of the crime spreads far beyond the already terrible  
 2 consequences for the individual victim. Yet hate crimes will go un-reported or under-  
 3 reported if SB 1070 is permitted take effect, because victims and witnesses will hesitate  
 4 to contact law enforcement if doing so will subject them heightened law enforcement  
 5 scrutiny and possible detention, arrest or deportation. Rather than making  
 6 neighborhoods safer, the "Support Our Law Enforcement and Safe Neighborhoods Act"  
 7 – as the bill's sponsors titled the statute – will have exactly the opposite effect.<sup>16</sup>

8 **III. Victims, Their Communities and the Public Will Be Irreparably Harmed by**  
 9 **the Under-Reporting of Hate Crimes that Will Inevitably Result from SB**  
 10 **1070, and the Public Interest Strongly Supports Enjoining the Statute's**  
 11 **Enforcement.**

12 ADL has monitored and exposed the increasingly hateful anti-immigrant, anti-  
 13 Latino and anti-Mexican rhetoric that has surrounded the national debate on  
 14 immigration reform.<sup>17</sup> SB 1070 was passed against this backdrop of anger and  
 15 frustration in Arizona.<sup>18</sup> The bill's principal sponsor, State Senator Russell Pearce, has  
 16 been quoted as supporting prior controversial efforts to roundup and deport  
 17 undocumented immigrants.<sup>19</sup> Other supporters of the bill, including Arizona Governor  
 18 Jan Brewer, have invoked fears of widespread violence and criminal activity by  
 19 undocumented immigrants as reasons for the law – even though those fears are  
 20

21 <sup>16</sup> <http://www.azleg.gov/legtext/49leg/2r/bills/sb1070s.pdf> (last visited June 18, 2010).

22 <sup>17</sup> Kozinets Decl. Ex. N, ADL Report: "Immigrants Targeted: Extremist Rhetoric Moves  
 23 into the Mainstream," available at [http://www.adl.org/civil\\_rights/anti\\_immigrant/](http://www.adl.org/civil_rights/anti_immigrant/) (last  
 visited June 21, 2010).

24 <sup>18</sup> See, e.g., Kozinets Decl. Ex. O, ADL Report: "Rally in Support of Arizona's New  
 25 Immigration Law Will Feature Extreme Elements of the Anti-Immigrant Movement,"  
 available at [http://www.adl.org/civil\\_rights/rally\\_anti\\_immigration.asp](http://www.adl.org/civil_rights/rally_anti_immigration.asp) (last visited June  
 21, 2010).

26 <sup>19</sup> Kozinets Decl. Ex. P, E.J. Montini, "Is SB 1070 the end or the beginning?," *The*  
 27 *Arizona Republic*, B1 (May 16, 2010), available at  
 28 <http://www.azcentral.com/arizonarepublic/local/articles/2010/05/16/20100516immigrati-on-law-montini.html#ixzz0rUI5AcUz> (last visited June 21, 2010).

1 contradicted by widely reported criminal statistics showing that border violence in  
2 Arizona is at historic lows.<sup>20</sup>

3 In this climate, it is critically important that law enforcement be fully able to  
4 police the laws against the commission of hate crimes directed at the Latino community.  
5 Yet, as discussed above, SB 1070 effectively requires local law enforcement to  
6 investigate the immigration status of persons with whom they come into contact if  
7 “reasonable suspicion” exists — setting up an inherent conflict that threatens to result in  
8 the loss of access to police protection for hundreds of thousands of persons in Arizona.  
9 Many legal residents have relatives or friends who are undocumented, or fear that they  
10 will be subject to “reasonable suspicion” merely because they “look” or “sound” like  
11 “illegal aliens.” By putting police and large segments of the community potentially at  
12 odds with one another, SB 1070 is likely to create a large population that lacks access to  
13 the type of basic police services that the rest of the community takes for granted. This  
14 lack of protection — combined with the atmosphere of hateful rhetoric that has marked  
15 much of the immigration debate — will create a law enforcement underclass that is  
16 vulnerable to the commission of bias-motivated violence and crime. Such a result risks  
17 institutionalizing precisely the kinds of harms that the anti-hate crimes laws were  
18 designed to prevent. It is contrary to the strong public policies against hate crime  
19 embodied in federal and Arizona law, and is inimical to the public’s interest in  
20 advancing public safety and security.

### 21 Conclusion

22 For the foregoing reasons, SB 1070 will inflict irreparable harm if its  
23 enforcement is not enjoined, and the public interest strongly supports entry of a  
24 preliminary injunction.

25  
26 <sup>20</sup> See, e.g., Kozinets Decl. Ex. Q, Randal C. Archibold, “In Border Violence, Perception  
27 Is Greater Than Crime Statistics,” *The New York Times*, A16 (June 20, 2010); Kozinets  
28 Decl. Ex. R, Dennis Wagner, “Violence is not up on Arizona border: Mexico crime  
flares, but here, only flickers,” *The Arizona Republic*, A1 (May 2, 2010), available at  
<http://www.azcentral.com/arizonarepublic/news/articles/2010/05/02/20100502arizona-border-violence-mexico.html#ixzz0rUoV3Vu6> (last visited June 21, 2010).

1 RESPECTFULLY SUBMITTED this 21st day of June 2010.

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