No. 1023111

IN THE SUPREME COURT OF WASHINGTON

STATE OF WASHINGTON,
Petitioner,

v.

DARREN STANLEY HARRIS,
Respondent.

BRIEF OF AMICUS CURIAE HUMAN RIGHTS FOR KIDS IN SUPPORT OF RESPONDENT

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Other Authorities

I. IDENTITY AND INTEREST OF AMICUS CURIAE

Human Rights for Kids (HRFK) is a non-profit organization dedicated to the promotion and protection of the human rights of children. We use an integrated, multi-faceted approach that incorporates research and public education, coalition building and grassroots mobilization, as well as policy advocacy and strategic litigation, to advance critical human rights on behalf of children in the United States. A central focus of our work is educating the public on the impact that early childhood trauma has on children who come into conflict with the law and advocating in state legislatures and courts for comprehensive justice reform for children consistent with the U.N. Convention on the Rights of the Child (CRC).

II. STATEMENT OF THE CASE

Amicus curiae adopt the Statement of the Case as set forth in the Brief of Respondent Harris.

III. ARGUMENT

A. *HOUSTON-SCONIERS* REQUIRES THE COURT TO CONSIDER THE MITIGATING FACTORS OF YOUTH WHEN A CHILD IS SENTENCED AS AN ADULT

"When a juvenile offender is sentenced in adult court, youth matters on a constitutional level." *State v. Ramos*, 187 Wn.2d 420, 428, 387 P.3d 650 (2017). In order to impose a constitutional sentence, courts must consider the mitigating qualities of youth *and* have discretion to impose a proportional punishment based on those qualities. *State v. Houston-Sconiers*, 188 Wn.2d 1, 19, 391 P.3d 409 (2017). This Court reiterated that constitutional principle in *Ali* before holding that it applied retroactively to cases on both direct and collateral review. *In re Ali*, 196 Wn.2d 220, 232, 474 P.3d 507 (2020). The *Ali* Court concluded that *Houston-Sconiers* was a substantive rule "because it placed certain adult sentences beyond courts' authority to impose on juveniles who possess such diminished culpability that the adult standard [Sentencing Reform Act] ranges and enhancements would be disproportionate

punishment." *Id.* at 239. In cases on direct appeal, like Mr. Harris', "the defendant needs only to establish the existence of the *Houston-Sconiers* error in order to be entitled to a new sentencing hearing." *In re Carrasco*, 1 Wn.3d 224, 525 P.3d 196 (2023). The jurisprudence that gave rise to these constitutional requirements emerged from "the understanding that it was cruel and unusual punishment to mandate the same sentences for juveniles as adults . . . " *State v. Lyle*, 854 N.W.2d 378, 393 (Iowa 2014), quoting *Thompson v. Oklahoma,* 487 U.S. 815 (1988) and *Roper v. Simmons*, 543 U.S. 551 (2005).

Three years before this Court announced *Houston-Sconiers,* the Iowa Supreme Court ruled in a similar case that sentencing courts must also consider a defendant's youthfulness whenever a child faces a mandatory minimum sentence. *Lyle*, 854 N.W.2d at 404. At issue in *Lyle* was the imposition of a mandatory seven-year prison sentence on a juvenile stemming from a conviction for second degree robbery for taking a small amount of marijuana from a fellow student. *Id.* at 381. In holding

the sentence unconstitutional, the *Lyle* court reasoned that the diminished culpability of juveniles discussed in the context of death and life without parole "also applies, perhaps more so, in the context of lesser penalties as well." *Id.* at 398, (quoting *State v. Pearson*, 836 N.W.2d 88, 98 (Iowa 2013)).

However, it is not just numerical proportionality that is required by the Eighth Amendment in juvenile sentencings, but also "the exercise of discretion." *In re Ali* at 232. "The Eighth Amendment requires *both* consideration of youthfulness *and* absolute discretion in order to avoid imposing unconstitutionally disproportionate sentences on juveniles." *Id.* at 242. This constitutional mandate is especially important in cases like Mr. Harris' which predate *Houston-Sconiers*. "When an apparently legal sentence is later held unconstitutional . . . the remedy is to 'remand to the superior court, with instructions to *resentence* appellants in accordance with law.'" *State v. Delbosque*, 195 Wn.2d 106, 127, 456 P.3d 806 (2020), (quoting *State* v. *Lindsey,* 194 Wn.2d 129, 130, 77 P.2d 596 (1938)) (emphasis added). This

Court made clear in *Delbosque* that sentencing courts must meaningfully consider on the record how the hallmark features of youth may mitigate the culpability of a juvenile offender. *Id.* at 121. Those features include (1) mitigating circumstances of youth, including the juvenile's "immaturity, impetuosity, and failure to appreciate risks and consequences"; (2) the juvenile's environment and family circumstances, the juvenile's participation in the crime, or the effect of familial and peer pressure; and (3) how youth impacts any legal defense, as well as any factors suggesting that the child might be rehabilitated. *Houston-Sconiers,* 188 Wn.2d at 23, 391 P.3d 409.

Mr. Harris' sentence is unconstitutional because the sentencing court did not explicitly consider the factors articulated in *Houston-Sconiers* to determine whether or not his sentence was proportional in light of Mr. Harris' diminished culpability. To be clear, the fact that a sentence imposes a mandatory minimum or, in the case of Mr. Harris, a sentence of 20 years within the standard range, does not make the sentence illegal per

se. If the court finds a particular sentence is warranted under a statute, sentencing guidelines, or a plea agreement, it may impose the sentence so long as it complies with the substantive and procedural requirements of *Houston-Sconiers*.[1]

B. A RECOMMENDED SENTENCE FROM A NEGOTIATED PLEA AGREEMENT IS SUBJECT TO THE CONSTITUTIONAL REQUIREMENTS OF *HOUSTON-SCONIERS*

Mr. Harris' youth and the mitigating qualities thereof were not presented at sentencing. RP 38-41. The court did not even acknowledge that Mr. Harris was a child at the time of the crime

[1] In an unpublished opinion in *State v. Slipko*, the Washington Court of Appeals upheld the defendant's sentence where "the sentencing court agreed that an exceptional sentence downward was appropriate. . . [but] rejected the joint recommendation of the parties," in imposing an 18-year sentence. *State v. Slipko*, No. 56529-3-II, at *15 (Wash. Ct. App. Oct. 10, 2023). "A sentencing court is not required to impose an exceptional sentence below the standard range if it considers the qualities of youth at sentencing and determines that a standard range is appropriate." *Id.* at *13. The Court concluded that "sentencing courts have absolute discretion to impose whatever sentence they deem appropriate so long as they meaningfully consider youth at sentencing." *Id.*

before sentencing him. RP 38-39. The fact that the sentence imposed resulted from a plea agreement, no matter how favorably constructed, does not relieve courts of their constitutional responsibility to ensure that disproportionate punishment is not imposed on child defendants in violation of the Eighth Amendment. *State v. Houston-Sconiers*, 188 Wn.2d 1, 391 P.3d 409. Furthermore, courts cannot uphold contractual plea agreements that violate the constitutional prohibition against cruel and unusual punishment. *Casiano v. Comm'r of Corr.*, 317 Conn. 52, 74, 115 A.3d 1031 (Conn. 2015).

To determine the constitutionality of Mr. Harris' sentence, the sentencing court must conduct an individualized sentencing hearing where it considers his sentence in light of the factors articulated in *Houston-Sconiers*. 188 Wn.2d at 23. If, after consideration of those factors, the court nevertheless concludes that Mr. Harris' 20-year sentence is proportional, then the terms of the plea agreement should remain in place. However, if the court determines that in light of his age and diminished

culpability at the time of the offense Mr. Harris' sentence is disproportionate, the court should be able to depart from the recommended sentence in the plea agreement.

The mitigating circumstances of a defendant's youth are constitutionally required to be considered at sentencing, notwithstanding the terms of a plea agreement, to ensure that a child does not receive a disproportionate sentence. *Houston-Sconiers,* 188 Wn.2d at 23, 391 P.3d 409. The constitution requires the court, not the parties, to consider these factors prior to sentencing. *Id.* After the United States Supreme Court decided *Miller v. Alabama*, for example, the South Carolina Supreme Court remanded several cases where defendants had received discretionary life without parole, including those involving plea agreements, for resentencing. *Aiken v. Byars*, 765 S.E.2d 572, 410 S.C. 534 (S.C. 2014), see *Miller v. Alabama*, 567 U.S. 460 (2012). In one of those cases, the state had previously notified the juvenile defendant of its intention to seek the death penalty. *Aiken*, 765 S.E.2d at 580 (CJ. Toal dissenting). In exchange for

his guilty plea, the state agreed to a life without the possibility of parole sentence. *Id. at n. 15* (CJ Toal dissenting*)*. The South Carolina Supreme Court nevertheless remanded his case for re-sentencing because his sentence, absent a *Miller* hearing, was unconstitutional. *Id.* at 578.

In the wake of *Lyle*, Iowa courts were confronted with cases similar to Mr. Harris' where juvenile defendants entered into plea agreements without the benefit of these substantive and procedural constitutional protections. In *State v. Wise*, for example, a juvenile defendant agreed to plead guilty to first-degree robbery in exchange for the State's reduction of another pending robbery charge to first-degree theft and a joint recommendation for concurrent sentences. *State v. Wise*, 882 N.W.2d 874 (Iowa Ct. App. 2016). At resentencing, the court affirmed the defendant's mandatory minimum sentence and reflected on the original plea agreement:

> I also consider the extent to which you bargained for the sentence that you got, and you did, because you had two robberies, and you only ended up with one. And not only

> that, but [the original sentencing court] I assume pursuant to the agreement, ran the two concurrently with each other, at the same time, and potentially you were looking at two robberies being stacked one on top of another in light of the circumstances of the offenses . . . I think you made a really good deal, because you were looking at a lot more time than you were ultimately sentenced to.

Id. The Iowa Court of Appeals remanded the case for a new sentencing hearing, holding that "the question before the sentencing court was not strictly whether the punishment fit the crime, but whether the mandatory minimum term of punishment was cruel and unusual when applied to a defendant who was sixteen years old when he committed the crime." *Id.*

A few months prior to *Wise*, the Iowa Court of Appeals remanded a similar case for resentencing. In *State v. Davis* the juvenile defendant entered an Alford plea that resulted in a ten-year sentence, including a seven-year mandatory minimum for second-degree robbery. *State v. Davis*, 880 N.W.2d 518 (Iowa Ct. App. 2016). During Davis' initial re-sentencing post-*Lyle*, the sentencing court re-imposed its original sentence explaining, "you bargained for the sentence, the opportunity to plead to a

lesser charge, the robbery second, and you bargained for the ten-year sentence being run at the same time as the willful injury. And one of the reasons that I did that was because of your age." *Id*. The Iowa Court of Appeals reversed, however, finding that "the district court failed to consider all of the mitigating factors enumerated in *Lyle*." *Id.* The court reasoned that the constitutional requirements of proportional sentencing could not be met by a "generalized discussion of the mitigating factors of the circumstances of the crime and the effects of immaturity on the defendant's actions." *Id.*

Similarly, this Court made clear in *Delbosque* that "a court 'must do far more than simply recite the differences between juveniles and adults and make conclusory statements that the offender has not shown an exceptional downward sentence is justified.'" *State v. Delbosque*, 195 Wn.2d 106, 121, 456 P.3d 806 (2020), (quoting *State v. Ramos*, 187 Wn.2d 420, 434-35, 387 P.3d 650 (2017)). "Instead, the court must 'receive and consider relevant mitigation evidence bearing on the

circumstances of the offense and the culpability of the offender, including both expert and lay testimony as appropriate.'" *Id.* In applying that requirement in the context of a plea agreement this Court remanded *Morales* for reconsideration. *State v. Morales*, 195 Wn.2d 1030, 468 P.3d 614 (2020). In that case, the parties agreed to recommend the low end of the standard range after a negotiated plea deal, which the sentencing court followed. *State v. Morales*, No. 51279-3-II, 2020 WL 7040658 (Wn. Ct. App. Div. 2 Dec. 1, 2020). Although the defendant did not request an exceptional downward sentence and the sentencing court stated on the record that it considered *Houston-Sconiers*, the Washington Court of Appeals, in an unpublished opinion, nevertheless reversed. *Id*. The Court reasoned that because the sentencing court "did not expressly discuss any of the features of youth on the record" it did not meet the constitutional threshold "when sentencing a juvenile in adult court." *Id*. The Court concluded that "to comply with the Eighth Amendment" during

sentencing "courts must fully and meaningfully inquire into the individual circumstances of the particular juvenile offender." *Id.*

This Court should adopt the reasoning of *Delbosque* as applied in *Morales* to require the consideration of the *Houston-Sconiers* factors in evaluating the constitutionality of Mr. Harris' sentence pursuant to the plea agreement. *Morales*, No. 51279-3-II, 2020 WL 7040658 (Wn. Ct. App. Div. 2 Dec. 1, 2020). *Miller* and its progeny, as adopted by this Court in *Houston-Sconiers*, requires consideration of the mitigating circumstances of youth in determining whether an exceptional downward departure of a standard sentence is necessary to avoid violating the cruel and unusual punishment prohibition of the Eighth Amendment. *Houston-Sconiers*, 188 Wn.2d at 23, 391 P.3d 409.

C. THE INCOMPETENCIES ASSOCIATED WITH YOUTH THAT HINDER A CHILD'S ABILITY TO ASSIST LEGAL COUNSEL OR DEAL WITH PROSECUTORS REQUIRES HEIGHTENED JUDICIAL SCRUTINY OF PLEA AGREEMENTS UNDER *HOUSTON-SCONIERS*

Notwithstanding the mandate of *Houston-Sconiers*, the State argues that public policy favors enforcing the terms of

voluntary plea agreements even when they result in constitutional violations, reasoning that their contractual nature obligates the parties to act in good faith to avoid circumventing their terms. PSB at 12. The State relies heavily on *State v. Sledge* where this Court found that the prosecution violated the terms of a plea agreement when it insisted on a hearing with witnesses whose testimony focused on aggravating factors. *State v. Sledge*, 133 Wn.2d 828, 842, 947 P.2d 1199 (1997). This case, however, is distinguishable from *Sledge* as the court has "an affirmative duty to ensure that proper consideration is given to the juvenile's 'chronological age and its hallmark features.'" *State v. Ramos*, 187 Wn.2d 420, 443, 387 P.3d 650 (2017) (quoting *Miller*, 567 U.S. 460, 477, (2012) (plurality opinion)). This requirement arose out of the recognition of the comparative immaturity and irresponsibility of juveniles which is reflected in other areas of the law. For example, "nearly every State prohibits those under 18 years of age from voting, serving on juries, or marrying without parental consent." *Roper v. Simmons*, 543 U.S.

551, 569 (2005). There are many legal disqualifications placed on children as a class including their ability to "enter a binding contract enforceable against them." *J.D.B. v. North Carolina*, 564 U.S. 261, 273-74 (2011). "Under the common law, '[t]he necessity of guardians results from the inability of infants to take care of themselves ... and this inability continues, in contemplation of law, until the infant has attained the age of [18].'" *Id.* at 274, (footnote 6) (2011).

A child's inability to engage with prosecutors or assist in their own defense as the Supreme Court acknowledged in *Miller*, has been a critical consideration in the remand of cases where the sentence was imposed pursuant to a plea agreement. *Miller*, 567 U.S. 460. The Connecticut Supreme Court, for example, rebuffed the argument that an unconstitutional sentence could be maintained pursuant to a plea agreement. *Casiano v. Comm'r of Corr.*, 317 Conn. 52, 115 A.3d 1031(Conn. 2015). In *Casiano*, the Court discussed at length why sentences imposed on

juveniles pursuant to plea agreements are still subject to judicial discretion:

> To the extent that the respondent is suggesting that *Miller* cannot apply to a sentence imposed pursuant to a plea agreement, this contention is undermined by the express reference in Miller to a juvenile offender's "inability to deal with ... prosecutors (including on a plea agreement)" as one of the concerns that the court sought to remedy. (Emphasis added.) *Miller v. Alabama*, *supra*, 567 U.S. 460. Even outside the context of a court indicated plea, courts have discretion in accepting the terms of a plea agreement reached between the state and a defendant. Presumably in recognition of this fact, many courts post-Miller have applied its requirements in cases wherein a juvenile offender accepted a plea deal[.]

Id. at 73 (footnote 14); See also *State v. Null*, 836 N.W.2d 41, 45, 76 (Iowa 2013); *Bear Cloud v. State*, 2014 WY 113, 334 P.3d 132, 135 (Wyo.2014); *Thomas v. Pennsylvania*, Docket No. CV–10–4537, 2012 WL 6678686, *1 and n. 2 (E.D. Pa. December 21, 2012). It is precisely because juveniles are immature and lack the same contracting abilities as adults, that the Supreme Court was concerned with how child status impacted their ability to meaningfully appreciate the terms of a plea agreement.

Relieving courts of their constitutional responsibility to consider mitigating factors of youth in cases involving plea agreements would result in manifest injustice. For example, many juvenile defendants serving life without parole as a result of plea agreements would have been denied the promise of "Miller's central intuition – that even children who commit the most serious crimes are capable of change." *Montgomery v. Louisiana*, 577 U.S. 190, 212 (2016). Similarly, youth who are serving standard range sentences as a result of plea agreements will be denied the dual mandate of *Houston-Sconiers* – "for courts to consider youthfulness at sentencing and for courts to have absolute discretion to impose any sentence below the SRA." *In re Ali* 196 Wn.2d 220, 246, 474 P.3d 507.

That the constitution requires this exacting scrutiny before a child can be sentenced under the Eighth Amendment is not a breach of the plea agreement, nor does it conflict with existing case law. *Sledge*, 133 Wn.2d 828, 947 P.2d 1199 (1997). To the contrary, it guards against disproportionate punishment that may

follow from a plea agreement where a child is not sophisticated enough to fully appreciate or understand its terms. Like the Court in *Morales*, this Court should remand for a re-sentencing hearing consistent with the requirements of *Houston-Sconiers* to ensure that the sentence Mr. Harris received pursuant to the plea agreement is constitutionally proportionate. *State v. Morales*, No. 51279-3-II, 2020 WL 7040658 (Wn. Ct. App. Div. 2 Dec. 1, 2020).

D. INTERNATIONAL HUMAN RIGHTS STANDARDS COUNSEL AGAINST IMPOSING ANY SENTENCE THAT IS DISPROPORTIONATE AND FAILS TO CONSIDER THE BEST INTEREST OF THE CHILD

The consideration of the best interest of the child is one of the four general principles enumerated in the Convention on the Rights of the Child, adopted in 1989 at the United Nations. Convention on the Rights of the Child art. 3, Nov. 20, 1989, 1577 U.N.T.S. 3. The Convention (the "CRC") states that "[i]n all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child

shall be a primary consideration." *Id.* The primacy of the best interest of the child is a consistent throughline in international human rights standards, which was recently emphasized by the Inter-American Commission on Human Rights:

> Giving primary consideration to the best interests of the child who is being held responsible for his or her criminal acts does not imply neglect for public safety. While children should be held accountable as appropriate for their criminal behavior, interventions that focus on their best interests, and that are therefore geared toward their rehabilitation, are also better for the society and public safety as a whole.

The Situation of Children in the Adult Criminal Justice System in the United States, Inter-American Commission on Human Rights, 59 (March 1, 2019). The Commission's report addresses what are undoubtedly two main concerns of the courts and the general public, namely public safety and accountability. These concerns are naturally heightened when children commit serious offenses, as in the instant case. However, as the Commission's report notes, the principles of accountability and public safety can be upheld while also centering the best interest of the child, as the values are not mutually exclusive. This is primarily due to

the unique characteristics of children, "who differ from adults in significant ways, such as not having a fully developed ability to understand the consequences of their actions, a critical element when determining their culpability." *Id* at 59. The Commission also discussed how the United States' "shift toward more punitive treatment of youth . . . is contrary to the nature and status of children . . ." *Id.*

International human rights standards relating to the proportionality of criminal sentences as applied to children could not be more explicit, and the value of proportionality is intrinsically linked with the mandatory consideration of a child's age and capacity for rehabilitation. Even before the adoption of the Convention of the Rights of the Child in 1989, international human rights authorities recognized children as different from adults, particularly in the criminal justice system. In a precursor to the CRC, the International Covenant on Civil and Political Rights, which the United States ratified in 1992, mandates " [i]n the case of juvenile persons, the procedure shall be such as will

take account of their age and the desirability of promoting their rehabilitation." International Covenant on Civil and Political Rights art. 14, Dec. 16, 1966, 999 U.N.T.S. 171.

Proportionality as it relates to sentencing children in criminal settings continues to be reiterated by subsequent international human rights bodies. In 2019, the United Nations' Committee on the Rights of the Child emphasized that,

> The reaction to an offence should always be proportionate not only to the circumstances and the gravity of the offence, but also to the personal circumstances (age, lesser culpability, circumstances and needs, including, if appropriate, the mental health needs of the child), as well as to the various and particularly long-term needs of the society.

Committee on the Rights of the Child, General Comment No. 24, Children's rights in juvenile justice, CRC/C/GC/24, 18 September 2019, para.76. The Committee chose to highlight that this principle must be upheld even when children are charged with serious crimes, stating "[w]here serious offences are committed by children, measures proportionate to the circumstances of the offender and to the gravity of the offence

may be considered, including considerations of the need for public safety and sanctions." *Id.*

In decisions prior to and following the above-referenced international human rights standards, the United States has adopted the standard of proportionality in criminal sentencing as a bedrock principle of the Eighth Amendment. The principle was enumerated as early as 1892, when the United States Supreme Court prohibited "all punishments which by their excessive length or severity are greatly disproportionate to the offenses charged." *O'Neil v. Vermont*, 144 U.S. 323, 339-40 (1892). The Court reiterated this position in *Weems v. United States*, stating that ". . . it is a precept of justice that punishment for crime should be graduated and proportioned to [the] offense." *Weems v. United States*, 217 U.S. 349, 367 (1910).

The standard of proportionality in sentencing juvenile defendants was the basis for the Court's decision in *Graham v. Florida* wherein Justice Kennedy, writing for the court, proclaimed "the concept of proportionality" to be "central to the

Eighth Amendment." *Graham v. Florida*, 560 U.S. 48, 59 (2010).

However, the United States' adoption of the concept of proportionality pertaining to the sentencing of children is far from sufficient according to the aforementioned 2018 report of the Inter-American Commission on Human Rights. The Commission reminded the United States in the report that "[i]nternational law mandates that any State response to children found responsible for violating criminal laws must respect the principle of proportionality. This means that the punishment imposed by the State must be in proportion to the seriousness of the offense." *The Situation of Children in the Adult Criminal Justice System in the United States,* Inter-American Commission on Human Rights, 61 (March 1, 2019). Moreover, proportionality is embedded in the analysis of the best interests of the child when weighing the severity of an offense. The United Nations' Committee on the Rights of the Child has made clear that "in the case of children, such considerations must always be

outweighed by the need to safeguard the well-being and the best interests of the child and to promote his/her reintegration." Committee on the Rights of the Child, General Comment No. 10, Children's rights in juvenile justice, CRC/C/GC/10, 25 April 2007, para.71.

This Court should continue to comply with international human rights standards, including the primacy of the best interest of the child, by ensuring that Mr. Harris' sentence is proportional under *Houston-Sconiers*.

IV. CONCLUSION

The imposition of a sentence pursuant to a plea agreement violates the prohibition on cruel and unusual punishment under the Eighth Amendment if the court has not fully considered the mitigating characteristics of youth. *State v. Houston-Sconiers*, 188 Wn.2d 1, 391 P.3d 409 (2017). Due to their immaturity and lack of sophistication when dealing with prosecutors, courts across the country have applied the protections of *Miller v. Alabama* in cases where a juvenile was sentenced based on a plea

agreement. *Casiano v. Comm'r of Corr.*, 317 Conn. 52, 73, 115 A.3d 1031 (Conn. 2015). This Court should do the same as these protections comport with international human rights standards that properly balance proportional sentencing and the best interests of the child.

WHEREFORE, for the foregoing reasons, this Court should remand Mr. Harris' case for resentencing to ensure his sentence complies with the substantive constitutional protections announced in *Houston-Sconiers*.

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Respectfully submitted May 13, 2024,

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I certify under the penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

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