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## THE WHISTLEBLOGGER

### UBS TAX CHEATS GET BIG BREAK

by [Jesselyn Radack](#) on [September 30, 2009](#) ( [2009](#) )



*This post was written by GAP Homeland Security Director Jesselyn Radack for her [Daily Kos Blog](#).*

The U.S. settled a civil suit against UBS, the largest bank in Switzerland, on the condition that UBS turn over the names of 4,500 Americans using Swiss bank accounts to hide money from the IRS. The U.S. has turned this into a game of Tax Haven Roulette by giving Americans a chance to enter the IRS's "Voluntary Disclosure Program," *before* their names might be revealed, and get a lesser penalty for coming forward.

Now there's a Swiss fly in the ointment of what was already a weak plea "bargain" on behalf of the U.S. (it settled for 4,500 names out of 52,000 sought--less than 10% of those it had been seeking.) A Swiss judge has just ruled that [UBS must inform clients](#) if they are going to reveal their identities. So much for the U.S. wearing the giant hat of cleverness...

Swiss financial giant UBS systematically and deliberately violated U.S. law by helping tens of thousands of U.S. clients dodge U.S. taxes via offshore bank accounts. The U.S. filed suit demanding that UBS hand over the identities of the clients and their account details, presumably so the government can pursue tax evasion cases against them. In a lame plea deal, Switzerland agreed to turn over 4,500 of the 52,000 names sought.

The IRS established a clever "Voluntary Disclosure Program" for tax cheats who are worried that they might be on the list to come forward in exchange for lesser penalties and the avoidance of criminal charges (meanwhile, only the whistleblower who made this all possible, Brad Birkenfeld, is going to jail).

The U.S. thought it had quite the mind-game going until Judge Francesco Trezzini of Lugano, Switzerland ruled yesterday on behalf of two of UBS's American tax cheats, ordering the bank to immediately notify them if their identities have been forwarded to the IRS (or if they might be). In other words, the judge in Switzerland is now forcing UBS to tell these 2 clients and the rest of UBS's American clients with Swiss bank accounts if their names will be given to the IRS.

This is a major setback for the Department of Justice, which only handles up to a maximum of 1,000 tax cases a year. The Voluntary Disclosure Program--now unashamedly being referred to as the "Amnesty Program" by the government--is nothing but a system to allow the IRS and DOJ to do nothing and collect monies they never would have seen. So much for Doug Shulman (IRS Commissioner) promoting his "robust" whistleblowing program--it was Congress that established this, not this Bush-appointed flunky.

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The Voluntary Disclosure Program was extended to scare more people to come in, but it is obvious the IRS cannot even handle the flow of over 3,000 clients (hence the recent extension). This program ends on October 15 and might be extended a third time because the IRS is so incompetent. The most important fact is, **if clients are told before the Voluntary Disclosure deadline (as the Swiss judge has demanded), then the clients will know if their names are not on the list they and they can remain silent and slip away forever. Good job Justice Department - another bungled investigation thanks to Kevin Downing (the same guy who screwed up the KPMG prosecution).**

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Terms: [Corporate & Financial Accountability](#), [DoJ](#), [Government Accountability](#)

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## NEW YORK TIMES GETS IT RIGHT

by [Jesselyn Radack](#) on [September 29, 2009](#) ( [2009](#) )

*This post was written by GAP Homeland Security Director Jesselyn Radack for her [Daily Kos Blog](#).*

I blogged about Attorney General Holder's memo introducing new state secrets privilege guidelines [last week](#). I'm glad to see the New York Times has agreed. An [editorial](#) in today's *New York Times* expresses exactly the same sentiment I expressed last week: that while internal Executive Branch controls on state secrets are a welcome step, the Executive Branch cannot be trusted to police itself.

Keeping control of the state secrets privilege entirely within the Executive Branch, with no meaningful Congressional or court oversight, will allow the government to continue to abuse the privilege by claiming evidence contains state secrets in order to cover embarrassing or illegal behavior instead of to protect national security.

There's no better example of this kind of cover-up than the very first time the government asserted the state secrets privilege in *U.S. v. Reynolds*. In *Reynolds*, families of civilian victims of a military plane crash sued the government. The government refused to release the accident report, claiming it contained a "state secret" about military equipment. The Supreme Court upheld the government's claim of secrecy and formally established the state secrets privilege. In later years, the accident report was made public. Not only did the report lack any information on secret military equipment, but it contained irrefutable evidence of the government's negligence.

Our country's national security is too important to be used as an excuse to hide government incompetence, much less intentional wrongdoing

If the government wants to hide evidence, the government ought to be required to show a court how revealing the evidence would cause significant harm to the national defense or diplomatic relations. Anything less would allow state secrets to be used as it has too often been used since its inception: to stop accountability for government misbehavior.

Conspicuously missing from the Obama Administration's "state secrets reform" guidelines is court oversight or support for the legislation that would implement it, the State Secrets Protection Act (H.R. 984, S. 417).

The *New York Times* got it right today:

*In any event, while more stringent self-policing of executive branch secrecy claims is welcome, it is hardly a total fix. Senator Russ Feingold, a Wisconsin Democrat, noted that without a clear, permanent mandate for independent court review of the administration's judgment calls, Mr. Holder's policy "still amounts to an approach of 'just trust us.'*

I reiterate my point from last week: if the past nine years has taught us anything, it's not to trust the Executive Branch to protect our civil liberties.

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Terms: [Classification](#), [DoJ](#), [Eric Holder](#), [Secrecy & Transparency](#)

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## UNLAWFUL PRIVATIZATION IN SRI LANKA - SUPREME COURT REVERSES ITSELF



by **Bea Edwards** on **September 23, 2009** ( [2009](#) )

On June 4, 2009, the Supreme Court of Sri Lanka annulled the sale of the Sri Lanka Insurance Company (SLIC) to private interests, causing the ownership of SLIC to revert to the government. As a result of the court case, documents establishing the complicity of auditors from Price Waterhouse Coopers and Ernst and Young in the unethical and illicit transaction came to light. To date, however, neither company has been sanctioned and none of the individuals responsible has been held to account.

In a shocking decision handed down September 24th, however, the Supreme Court of Sri Lanka overturned its own previous ruling and will allow P.B.Jayasundara to return to public office despite his orchestration of the unlawful privatization of the former public enterprise Lanka Marine Services, Ltd. (LMSL) in August, 2002.

In the wake of the decision handed down by former Chief Justice Sarath N.Silva on July 21st, 2008, Jayasundara filed an affidavit with the Court in which he promised to refrain from taking any government position in the future. The court accepted this commitment after ruling that Jayasundara had been party to an alleged fraud that awarded 90 percent of the shares of LMSL to John Keell's Holdings, Ltd. (JKH), a private corporation in Colombo.

At the time of the sale, Jayasundara had been Chairman of the Public Enterprise Reform Commission (PERC) of Sri Lanka, and the Court ruled that his conduct had been systematically biased in favor of John Keell's Holdings. In its 2008 decision, the Court reversed the privatization of LMSL and declared that Jayasundara had colluded with S. Ratnayake of JKH, to provide the corporation with financial advantages that were contrary to the public interest. Evidence clearly shows that the value of LMSL was artificially lowered to the advantage of the buyer (JKH) and the disadvantage of the seller (the government).

A year after committing himself to refrain from serving again in government, however, Jayasundara filed a motion with the Supreme Court requesting that he be allowed to return to a high-level position in the public service. He had been requested by the President to accept the post of Secretary to the Treasury and Secretary to the Ministry of Finance.

On July 27, 2009, Nihal Sri Ameresekere filed an affidavit with the Court showing that at no time had Jayasundara contested the allegations that he had operated as Treasury Secretary and Chairman of the PERC in a manner contrary to the public interest. Ameresekere pointed out that Jayasundara's own affidavit contained only vague assertions of his integrity and

ethics and that Jayasundara's commitment to ethical conduct was factually contradicted by transactions to which he had been a party in the privatization of LMSL.

In its September 24th ruling on Jayasundara's motion, the Supreme Court did not contest the facts in Ameresekere's affidavit, which still stand. Nor has the fine paid by Jayasundara for misconduct been refunded. On September 25, Ameresekere filed a motion requesting that the Court prevent Jayasundara from returning to public office until the criminal investigation of the privatization of LMSL is concluded

If and when Jayasundara assumes his new public position, it will mean that no government official responsible for the unlawful sale of a revenue-producing public asset at an artificially low price to a private corporation has been meaningfully penalized for his conduct. Only the minimal fine paid by Jayasundara remains as a symbolic sanction. This Supreme Court decision also undermines the fundamental authority of the judiciary in Sri Lanka by allowing a new bench of judges to overturn the decision of a former Chief Justice without presentation of new evidence.. When interviewed, former Chief Justice Silva observed, "This is an unprecedented act and has never before happened in Sri Lanka , or for that matter, in any part of the world." Silva explained by saying, "Under the Constitution, the Supreme Court judgment is final, and the decisions of the superior courts of any country are final and conclusive."

Jayasundara argued that his services are required by government to help to implement new development projects in the north of the country. Such an assignment returns him to a position where it is difficult to monitor the use of public funds and the potential for abuse of the public trust is high.

[Click here to read a GAP report about unlawful privatization in Sri Lanka](#)

[Click here to read correspondence of Ameresekere](#)

[Click here to read the previous Supreme Court decision](#)

[Click here to read SLIC Supreme Court submission from Ameresekere](#)

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Terms: [International Reform](#), [Sri Lanka](#), [World Bank](#)

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## STILL NO COURT OVERSIGHT ON STATE SECRETS

by **Jesselyn Radack** on **September 23, 2009** ( [2009](#) )

*This post was written by GAP Homeland Security Director Jesselyn Radack for her [Daily Kos Blog](#).*

The Department of Justice is going to impose new limits on the government assertion of the "state secrets privilege" used to block lawsuits (particularly the ones involving warrantless wiretapping and torture) for national security reasons. The good news is that the new policy would require approval by the Attorney General if military or espionage agencies (read: the NSA or CIA) wanted to assert the privilege to withhold classified evidence sought in court, or to ask a judge to dismiss a lawsuit outright. The bad news is that there is still *no court oversight*.

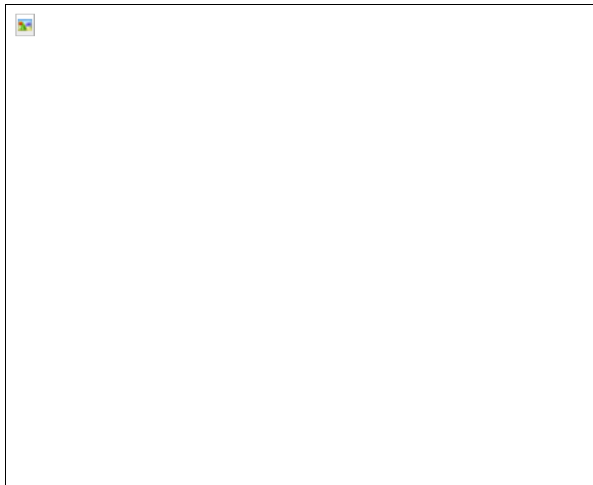
This is the same kind of split-the-baby approach the Administration is taking with regard to the Patriot Act. Instead of taking the lead on protecting privacy and civil liberties, the Administration is taking a "don't tick anyone off" middle-ground approach. They're not fighting the battle; they're observing it.

The Department of Justice policing itself didn't work in the last Administration. Our national security is too important to let one branch of government handle it entirely. While I have more faith in Obama to protect the Constitution (and even Obama has given us reason for concern--like continuing to assert the privilege to get lawsuits that are valid on the merits dismissed), we might not be so lucky with the next president.

Holder says:

*The department is adopting these policies and procedures to strengthen public confidence that the U.S. government will invoke the privilege in court **only when genuine and significant harm to national defense or foreign relations is at stake***

<http://www.nytimes.com/...>



But from what we've seen so far, that is not being followed. In the case of Binyam Mohamed, and Ethiopian native, and four others, who filed suit against a subsidiary of Boeing for arranging their "extraordinary rendition" to a country where they were tortured, a lawyer for the Obama administration startled a panel of the Ninth Circuit federal appeals court judges by pressing ahead with an argument for preserving state secrets originally developed under Bush.

In the *Al-Haramain* case--the only viable suit against a telecom (AT&T) for warrantless wiretapping, the Obama Administration has asserted the state secrets privilege to have the suit shut down.

Candidate Obama ran on a platform that would reform the abuse of state secrets, and while they may claim this policy reforms it, real reform comes with some kind of change, and, with no court oversight, Obama is still saying, "Trust us. We're the government." If the past nine years has taught us anything, it's not to trust the Executive Branch to protect our civil liberties. The measure of a leader is not his ability to hoard power, but to know when he should loosen his grip as part of the checks and balances upon which our government works.

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Terms: [Classification](#), [DoJ](#), [Secrecy & Transparency](#)

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## OBAMA'S CALL FOR RENEWAL OF PATRIOT ACT PROVISIONS



by Jesselyn Radack on September 16, 2009 ( [2009](#) )

*The following blog entry was written by GAP Homeland Security Director Jesselyn Radack for her [Daily Kos diary](#).*

I forgave Obama's campaign capitulation on the FISA Amendments Act that granted telecom immunity for warrantless wiretapping. But he promised, if elected, to take a close look at the law and bring his constitutional expertise to bear.



Now, however, the Obama administration has told key members of the Senate Judiciary Committee this week that government secret surveillance methods scheduled to expire in December **should be renewed**. Assistant Attorney General Ronald Weich told Democrats that they were **"willing to consider" additional privacy safeguards**, the FISA capitulation was a wholesale give-away of those rights. And the fact that the Obama administration is only "willing to consider," as opposed to "restore," privacy safeguards is disappointing.

The Chairmen of the House and Senate Judiciary Committees scheduled hearings on the reauthorization of expiring provisions of the (un)Patriot(ic) Act. There are 3 provisions of the Patriot Act set to expire in December, which allow investigators to: Monitor through roving wiretaps suspects who may be trying to escape detection by switching cellphone numbers,

1. Monitor through roving wiretaps suspects who may be trying to escape detection by switching cellphone numbers,
2. Obtain business records of national security targets, and
3. Track "lone wolves" who may be acting by themselves and with no known link to foreign governments or terrorist groups (the government has never actually used this provision, so far as we know).

These provisions may sound uncontroversial at first blush. But the provision on business records gives the government access to citizens' library records.

There needs to be safeguards on a host of issues, for example, the collecting of international communications, and a specific bar on surveillance of protected First Amendment activities like peaceful protests or religious assembly.

Senators Russell Feingold (D-Wis) and Richard Durbin (D-Ill.) are going to introduce a bill that would enhance privacy safeguards, especially with regard to the bastardization of

national security letters, which require disclosure of sensitive information by banks, credit card companies, and telephone and Internet service providers. No Judge signs off on these letters. And recipients (loud clearing of my throat occurring on this end) are barred from talking about them. Please support the upcoming Durbin-Feingold bill.

The Durbin-Feingold measure would reform the Patriot Act, the FISA Amendments Act and other surveillance authorities to protect the constitutional rights of Americans while ensuring that the government has the powers it needs to fight terrorism and collect intelligence. It would, among other things: \* first and foremost in my opinion, repeal the telecom amnesty provision in the FISA Amendments Act, leaving it to the courts to determine whether AT&T and other telcoms that complied with the illegal warrantless wiretapping program acted properly under the laws in effect at that time; \* stem the abuse of National Security Letters by requiring the government to have "reason to believe" the records sought relate to someone with a connection to terrorism rather than just "relevance," which even the Inspector General said could be used to justify obtaining the records of individuals three or four times removed from a suspect, most of whom would be completely innocent; \* reign in "sneak and peek" searches by eliminating the overbroad catch-all provision that allows such searches in any circumstances seriously jeopardizing an investigation--a standard that could be met in virtually any criminal case; and \* eliminate the possibility of roving wiretaps that identify neither the person nor the phone to be wiretapped.

In May, President Obama said legal institutions must be updated to deal with the threat of terrorism, but in a way that preserves the rule of law and accountability. The current Patriot Act does not.

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Terms: [Homeland Security & Human Rights](#), [Surveillance](#)

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## **VOICE OF AMERICA SUBCONTRACTOR FIRED FOR IRAQ WAR PROTEST VIDEO: SELF-INFLICTED DAMAGE POST-9/11**



by [Jesselyn Radack](#) on [September 11, 2009](#) ( [2009](#) )

*The following blog entry was written by GAP Homeland Security Director [Jesselyn Radack](#) for her [Daily Kos diary](#).*

*This diary is dedicated to the memory of Linda C. Lee.*

9/11 was a catastrophic tragedy. The wholesale erosion of our civil rights and liberties is the self-inflicted collateral damage.

In a blatant violation of the First Amendment, the Broadcasting Board of Governors--a federal agency that oversees U.S. government and international broadcasting services, including Voice of America--fired contractor Melodi Navab-Safavi for working on an Internet music video protesting the Iraq war.



Melodi Navab-Safavi (a U.S. citizen born in Iran, who is fluent in English, Farsi, Norwegian and Swedish) worked as a contractor for the Broadcasting Board of Governors (BBG), providing translation to Voice of America's (VOA) Persian Service.

As a private citizen, Melodi is a member of a band named *Abjeez*, which makes songs regarding, among other things, women's rights and other social problems in Iran. Her husband, Saman Arbabi, helps produce the videos. He also is a BBG employee working in Voice of America's Persian Office. (Not surprisingly, this music group is banned in Iran.)

In July 2007, Abjeez made a video entitled "DemoKracY," which protested U.S. involvement in the Iraq war and contains footage of wounded U.S. soldiers, injured and dead Iraqi civilians, and coffins draped in U.S. flags. The song does not mention VOA or identify the professional affiliation of any of the band members or video producers.

Once the video went up on YouTube, U.S. Senator Tom Coburn (R-OK) learned of it and pressured BBG to fire Melodi and her husband because, even though no VOA resources were used to produce the video, management did not want "a scandal on its hands" since it might affect Congressional funding of the agency. In something reminiscent of the House Un-American Activities Committee of the last century, the Board, which included Condi Rice, met and determined that the DemoKracY video was "anti-American."

The Courts luckily sided with Melodi. The case is in the preliminary stages, but Judge Ellen Segal Huvelle denied the defendants' motion to dismiss because

*[T]he law is settled that as a general matter, the First Amendment prohibits government officials from subjecting an individual to retaliatory actions . . . for speaking out. In particular, it has long been established that public employees do not surrender all their First Amendment rights by reason of their employment . . . [A] citizen who works for the government is nonetheless a citizen.*

*Navab-Safavi v. Broadcasting Bd. of Gov's, Civil Action No. 08-1225 (ESH) (U.S.D.C. D.D.C. 2008), Memorandum Opinion at 15.*

9/11 was a catastrophic tragedy. Our civil liberties are the collateral damage. Thanks to Judge Huvelle for reviving one of them.

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Terms: [Homeland Security & Human Rights](#)



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## NEW ORLEANS PUMPS UNSAFE . . . ON KATRINA ANNIVERSARY



by Jesselyn Radack on August 28, 2009 ( [2009](#) )

*This post was written by GAP Homeland Security Director Jesselyn Radack for her [Daily Kos Blog](#).*

The mainstream media, including the New York Times and the New Orleans Times-Picayune, have not covered an independent evaluation released in June by the U.S. Office of Special Counsel (OSC) that there are serious safety and reliability issues with hydraulic pumps that were installed in New Orleans after Hurricane Katrina. [http://www.osc.gov/...](http://www.osc.gov/) (the OSC report is the fifth from the bottom.) As the OSC told President Obama:

*There appears to be little logical justification for: (1) restricting the emergency pumping capability . . . to only the untested hydraulic pump systems, (2) not requiring the installation of a reliable pumping system which would adequately protect New Orleans, (3) spending hundreds of millions of dollars to install forty MWI hydraulic pumps which are scheduled to be replaced at a cost of greater than \$430 million within 3-5 years. . .*

Letter from OSC to President Obama at [http://www.osc.gov/...](http://www.osc.gov/)



It's the peak of hurricane season and August 29 marks four years since deadly Hurricane Katrina. The U.S. Army Corps of Engineers is marking the anniversary by pushing an astronomically expensive fix on Congress and the public, which the Corps conjured up to fund its supposed grand master "Hurricane and Storm Damage Risk Reduction System." In reality, it's a grotesque and wasteful maneuver to cover-up its own mistakes since Katrina.

Three official Project Information Reports that the Corps submitted to Congress to obtain authorization and funding for New Orleans' hurricane protection repeatedly presented the economic lifespan analysis of water pumps using a 50-year period. Col. Jeff Bedey, commander of the Corps' Hurricane Protection Office in New Orleans, told the public a year and a half ago that the current pumps "have something around a 50-year lifespan. These were designed to be there for 50 years."

Moreover, as Karen Durham-Aguilera, director of the Corps' Task Force Hope in Louisiana, explained, the interim closure structures with installed pumps were supposed to be incorporated into the permanent hurricane protection solution, not scrapped.

But now, Brigadier General Michael J. Walsh, commander of the Mississippi Valley Division of the Corps, is claiming that today's pumps were only meant to be "temporary." The Corps new assertion that pump replacement is required was never part of the original protection plan. Walsh's assertion that the pumps were built to last just **five to seven years**, is repeated by Corps officials as if it were gospel, when in reality, a 50-year lifespan is what the Corps had always contemplated and what Congress approved. Think about it. **Would Congress really have spent over a half billion dollars on something with only a five year lifespan?** This would have a benefit-cost ratio in the negative double digits.

The proposed abandonment of the existing gated closure structures with installed pumps was never part of the original plan submitted to Congress. This newest plan by the Corps involves rebuilding the same gated structure with installed pumps a few hundred yards further downstream, except this time with "direct drive" pumps instead of the defective hydraulic pumps that will likely fail in the event of a hurricane. Instead of paying the estimated \$275 million to correct the problems with the hydraulic pumps and roughly 200 million to increase the needed pumping capacity, **the Army Corps is proposing to abandon the project they have already spent half a billion dollars on, destroy and haul away the "temporary" gated closure structure with installed pumps, and then spend almost \$700 million to rebuild everything from scratch.**

At the same time, and contradicted by its urgent push for replacement pumps, **the Corps is making deceptive and dangerous public pronouncements that the present pumps have been battle-tested by two hurricanes, Gustav and Ike.** The U.S. Office of Special Counsel hired an independent expert to evaluate the pumping system, and the expert criticized this very assertion because it fails to mention that the pumps were run at low operating speeds and pressures, intermittently, and for short periods during the hurricanes. The Special Counsel's report and the "black box" information (known technically as "SCADA data") prove the hydraulic pumps were not utilized when canal water levels were highest at the beginning of each storm, not allowed to run at full operating speeds and pressures, and not allowed to run for extended periods of time. Instead, they were relegated to an "also pumped" status that was then turned into a straw man for hydraulic pump performance that was offered up to the highest levels of the Army Corps. The recorded storm SCADA data shows clearly that the hydraulic pump runs were not examples of pumping performance that replicate what is seen in a real-life hurricane event, but rather examples of what can charitably be called "demonstration" runs.

This information lies buried many clicks deep on the Office of Special Counsel website, linked in the Intro. I think the roughly 311,800 people currently living in New Orleans deserve to know where things stand as we mark the fifth anniversary of Hurricane Katrina, rather than being led down the garden path that has already been washed away once.

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Terms: [Disaster Accountability](#), [Maria Garzino](#), [Military](#)

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