ORDER SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD

Writ Petition No. 4489/2016

Alamgir Khan

versus

Federation of Pakistan, etc.

S. No. of order/ proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	12.04.2017	Mr. Babar Sattar, Advocate, for the petitioner. Mr. Rashid Hafeez, Additional Advocate General, Punjab, Ch. Abdul Khaliq Thind, Assistant Advocate General, Sarfraz Ali Khan, State Counsel and Afnan Karim Kundi, DAG. Mr. Shahid Ali Rana, Advocate for respondent No.3. Haroon Rashid Khan SP/CTD Rawalpindi Hassan Ullah Section Officer, Ministry of Interior, Islamabad.

Through this writ petition, the petitioner has made following prayer:

(i) Restrain respondents No.4,5,7 and 8 from arresting or abducting the petitioner or falsely implicating him in terrorism related inquiry and restrain the said respondents from harassing the petitioner and coercing him and other members/directors of the Foundation from resigning from such positions;

(ii) Direct respondents No.1 to provide protection to the petitioner and ensure his right to life, liberty and freedom from arbitrary arrest and detention;

(iii) Restrain respondents No.4,5,7 and 8 from interfering into the affairs of the Foundation located in Islamabad and from abusing public

authority vested in them to execute a hostile takeover of the Foundation or otherwise transgress their authority and jurisdiction and declare that respondent No.4 has no authority or jurisdiction to interfere with the management and affairs of the Foundation;

(iv) *Declare that letter dated 25.08.2016 issued by respondent No.3 is void for being in breach of the law to the extent that it announces removal of Ali Semerci, Kamil Ture, Muran Eravan and Ramzan Arsalan from the membership of the Foundation, especially as even their coerced resignation letters were limited to resignation from the Board only;*

(v) *Declare that the initiation and continuation of inquiries and investigations by respondents No.4&7 against the petitioner is without jurisdiction, unlawful, illegal and without lawful authority;*

(vi) *Direct respondents No.4 and 7 not to arrest the petitioner without specific permission of this court during pendency of this writ petition.*

Above referred prayers are with respect to issue relating to Pak Turk Educational Foundation (Guarantee) Limited which is incorporated under the Companies Ordinance 1984 on 05.05.2011 whereby Ministry of Interior granted license and issued no objection certificate. Pak Turk Foundation is providing education to 11000 students in 26 schools and educational institutions across Pakistan and instant writ petition has been filed by the petitioner through Chairman

of Pak Turk Educational Foundation (Guarantee) Limited a Pakistani citizen living in Islamabad as he is threatened by the proposed actions of Counter Terrorism Department, Punjab (Respondents No.7&8) at the behest of respondents No.4&5, Government of Punjab and Ministry of Law, Parliamentary Affairs and Public Prosecution as he was called by the SP CTD Punjab in order to join inquiry committee at Choong office of CTD Lahore. The petitioner joined inquiry, however, feeling threatened and aggrieved with proposed actions especially when he is being interviewed and interrogated in order to resign from membership of foundation as well as from Chairmanship of Board of Directors.

2. Instant writ petition has been contested by the respondents on the grounds that this Court has no territorial jurisdiction to entertain and adjudicate upon the matter. Learned Additional Advocate General Punjab has recorded his statement before this Court and undertook that CTD/Government of Punjab will act in accordance with law while dealing with the petitioner with reference to Pak Turk Educational Foundation (Guarantee) Limited as CTD is inquiring the matter on behalf of Government of Punjab.

3. At this stage when case has been fixed for arguments regarding maintainability of the petition, petitioner has filed

two C.Ms, one for impleadment of Federation of Pakistan through Prime Minister of Pakistan and Ministry of Foreign Affairs through Foreign Secretary and second for suspension of paragraph 8 (i) of the order issued by the Prime Minister dated 06.02.2017 pursuant to which respondents No.4 to 8 are harassing the petitioner and further requested that petitioner/applicant may kindly be allowed to amend his petition by including the prayer for seeking declaration that summary of the Foreign Office dated 03.02.2017 may also be made subject matter of this writ petition.

4. Learned Additional Advocate General Punjab Rashid Hafeez alongwith Afnan Karim Kundi, Additional Attorney General insisted for passing order regarding maintainability of instant writ petition. Both have argued that this Court has no territorial jurisdiction as CTD, Punjab is inquiring the matter at Lahore, even otherwise, the petitioner has referred in its petition that petitioner was called by CTD, Lahore at Choong office and they have relied upon ***2016 PCr.LJ 1056 (Islamabad) Jamshoro Joint Venture Ltd and another...vs.... Federation of Pakistan and others***.

5. In view of objection raised by the Additional Advocate General, Punjab, I only confine myself to the

extent of maintainability of instant writ petition in the peculiar circumstances of the case. I have gone through the record as well as arguments advanced by learned counsel for the petitioner. From the perusal of documents appended with this petition, it transpires that instant writ petition is based upon the prayer referred above in which petitioner being Chairman of Board of Directors of Pak Turk Educational Foundation (Guarantee) Limited having its head office at Plot No.87-88, H-8/1, Islamabad initiated request for protection from the proposed actions of Government of Punjab as well as CTD (Counter Terrorism Department, Punjab) where petitioner has been called time and again for joining inquiry on the questions and petitioner has been allegedly forced to resign from Directorship and Chairmanship of Pak Turk Educational Foundation (Guarantee) Limited as Pak Turk Educational Foundation (Guarantee) Limited having relationship with Mr.Fathullah Gulen whereas he has been declared terrorist by the Government of Turkey being head of *Gullen–FETO* in pursuance of relation of OIC. I have also gone through the order issued by Muhammad Iqbal PSP, Senior Superintendent of Police, regional Officer, CTD, Lahore region, Lahore, whereby he required the attendance of petitioner to answer the questions which are as under:-

1. *Number of all Schools/Colleges in self constructed, rented and government buildings.*

2. *Provide detail of total numbers of the students in each school/college (boys and girls separately).*

3. *Provide complete address and geographical locations of each school/college.*

4. *Provide detail of total numbers of teachers in each institution (boys and girls separately).*

5. *How many Turkish nationals (male & female) are employed in each institution/location at current and provide data regarding the Turkish staff who worked with PTISC/PTEF since its inception?*

6. *Provide detail of total number of Turkish nationals, their designations and dates of appointment/dates of joining at Head Office.*

7. *How many Turkish nationals had left the country and their destinations with all details?*

8. *What was the criteria of recruitment for the new teachers? Who allowed/approved their recruitment? How recruitment into head office and schools/colleges are made?*

9. *How many hostels for girls and boys are being run by the PTEF/PTISC?*

10. *Who appoints the managers/wardens of these hostels, specify the appointing authority? How many Turkish nationals are managing these hostels? Who had replaced the previous ones and which authority had appointed the replacement?*

11. *What is the fee structure of PTISC? How many students are paying full fees and how many are awarded scholarships, if any, then how much scholarship is awarded?*

12. *What are the sources of funding? Specify local and foreign funding sources.*

13. *Since inception of PTISC/PTEF, provide year wise exact amount of foreign and local funding.*

14. *How many bank accounts (in foreign and local currency) are being maintained by PTEF/PTISC?*

15. *Who operates these accounts? Who are the signatories of these bank accounts?*

16. *Please provide verified bank statements showing the current balances in these accounts?*

17. *Have ever been any amount transferred to or received from any foreign entities? If so, please provide details of amount sent or received with complete names & addresses of the recipients and senders. Please also specify the purpose of these transactions?*

18. *What is the contribution of the current directors to the funds? If any, please provide details.*

19. *Are the directors are getting any financial benefits from PTISC/PTEF? If so, please provide the name and addresses of those who are the beneficiaries?*

20. *Who takes major decisions of the operations of PTISC/PTEF?*

21. *When was the last financial audit done?*

22. *When the last General Body Meeting was held? Provide the minutes of the General Body Meeting vide which the audited accounts were approved/validated?*

23. *Who paid the fee of the lawyers defending different cases filed by PTISC/PTEF?*

All above referred questions raised in order of attendance given prima facie views that CTD Punjab is inquiring the details of schools, colleges, its working, administration, details of teachers, recruitment, structure, scholarships, funds received from foreign entities, foreign aid, as well as details of general body meeting, etc. All these details have been given by the petitioner, however, the petitioner was directed to join inquiry as and when required by CTD during pendency of instant writ petition. The petitioner has

complied with order however, in response to all these issues raised in instant writ petition, basic question which requires consideration is that whether proposed actions of CTD at Lahore can be agitated within territorial jurisdiction of Islamabad in terms of Article 199 of the Constitution of Pakistan 1973. However, it is well settled that jurisdiction of High Court can be invoked if High Court is satisfied that no other adequate remedy is provided by law on the application of aggrieved party to make any order directing a person performing within territorial jurisdiction of the Court, functions in connection with affairs of Federation, Province as referred in Article 199(1)(a)(I), however, the proposed act of inquiry raised in this writ petition has been called in question which has been initiated by CTD Punjab at Lahore. No doubt, inquiry of CTD was initiated at Lahore which falls within territorial jurisdiction of province of Punjab and Article 199(1)(a)(I), only empowers the High Court to pass any order to any such authority within its territorial jurisdiction but at the same time, Article 199(1)(c) reads as under:

> *"(c) on the application of any aggrieved person, make an order giving such directions to any person or authority, including any Government exercising any power or performing any function in, or in relation to, any territory within the jurisdiction of that Court as may be appropriate for the enforcement of any of the Fundamental Rights conferred by Chapter 1 of Part II."*

In view of above referred provision of Constitution of Pakistan, this Court is custodian of the rights of citizen available under Chapter 1 of Part II which refers fundamental rights wherein prior to this date, there was no such document which could give another view to upheld the jurisdiction of this Court but today, while hearing this case on question of maintainability, learned counsel for the petitioner has submitted two separate C.Ms in which he has raised serious questions on the basis of some documents referred on record. Although, those documents fall within category of "secret document" as referred but learned counsel for the applicant has stated in his C.M. that documents have been brought on record in CP No.D-6606/2016 before Hon'ble Sindh High Court, Karachi Bench whereby the question relating to rejection of visa extension application has been raised and all those documents have been presented by Attorney General on court's instructions and same were shared with petitioner's counsel and subsequently, shared the same with the applicant, therefore, while hearing this case, I have gone through the documents titled "***Ministry of Foreign Affairs,*** *Summary for the Prime Minister, Subject: Issue relating to Pak-Turk Schools. Dated 03.02.2017."*

Overall view of entire issue and entire proposed actions have been initiated due to visit of Turkish President to

Pakistan in November 2016 whereby it was also referred in said document as Maarif Foundation was registered to take over the Pak Turk Educational Foundation (Guarantee) Limited. It was further referred in para-7 that:

> *"7. The Turkish Government has expressed concern over this situation. The Turkish Ambassador in Islamabad has pointed to the slow progress of expulsion of the remaining FETO Gulenists related elements from Pakistan and transfer of schools to Maarif Foundation. There is a need to expedite these measures, as President Erdogan is likely to raise the issue with the Prime Minister during his visit to Islamabad on 1st March 2017 for the ECO Summit."*

6. Similarly, other documents dated 06.02.2017 relating to issue of Pak-Turk schools referred on record in which Prime Minister has desired that Attorney General for Pakistan should supervise and conduct proceedings pending before various judicial forms and has also referred the summary issued by Ministry of Foreign Affairs dated 14.03.2017 wherein proposed actions against all individuals of Pak-Turk Foundation have been requested by the President Erdogan's Government and Government of Pakistan has been asked to take strict and stringent actions against all Turkish nationals and employees of Pak-Turk Foundation. These documents prima facie demonstrate that Federal Government has taken several measures on the direction of Foreign State and Government of Punjab is

implementing the strategy of the Federal Government, although the matter has not been referred to Government of Punjab nor even any direction has been given to the CTD, Punjab to initiate any such inquiry.

7. Similarly, it has been observed from news article ***"Turkey in Turmoil and Chaos Since Purge Aimed at Dissenters***" published in the daily newspaper "The New York Times" dated 12.04.2017 written by Patrick Kingsley that:

> *"ISTANBUL — When Aynur Barkin became one of roughly 40,000 teachers purged from Turkey's education system after last year's attempted coup against President Recep Tayyip Erdogan, she was not immediately replaced. As a result, her second-grade students were forced to join the third grade, tripling their original class size.*
>
> *"I could pay attention to each of them one by one," said Ms. Barkin, 37, who was fired in February from a school west of Istanbul. "But their new teacher can't do that."*
>
> *That is one example of the administrative upheaval and chaos caused by the government's vast purge of Turkish institutions since the failed coup in July — the backdrop for a referendum on Sunday to expand the president's powers.*
>
> *Mr. Erdogan's government has sought to root out any remaining dissent by targeting nearly every segment of society. It has also used the purge as cover for a crackdown on dissidents of all stripes, including leftists like Ms. Barkin.*
>
> *The numbers are extraordinary. The government has fired or suspended about 130,000 people suspected of being dissidents from the public and private sectors. Most are accused of affiliations with the Gulen movement, the Islamic followers of Fethullah Gulen, the cleric accused of orchestrating the putsch.*

> *More than 8,000 army officers, 8,000 police officers, 5,000 academics and 4,000 judges and prosecutors have been forced out, according to estimates.*
>
> *The social cost has been significant. Watchdogs say that around 1,200 schools, 50 hospitals and 15 universities have been closed. Affected schoolchildren have usually been able to find places in local state schools — but their purged parents have mostly been frozen out of the job market.*
>
> *Turkey has become "like an open-air prison," said Sezgin Yurdakul, 40, who was fired from the Istanbul ferry system because his daughter attended a Gulen-run school on a scholarship. Mr. Yurdakul's name is blacklisted on a national database, so no employer has yet dared to give him a new job. He, like thousands of other purged employees of the state, is now living off his savings."*

In view of above said background, it is clear from all angles that respondent CTD is taking actions on the scheme initialed by foreign government as they have been taking action against their own people in Turkey referred in the article of The New York Times.

8. Learned Additional Advocate General, Punjab has relied upon ***2016 PCr.LJ 1056 (Islamabad) Jamshoro Joint Venture Ltd and another...vs....Federation of Pakistan and others*** whereby this Court has laid down certain principles and factors to determine cause of action in criminal matters with concept of jurisdiction especially when there is concurrent jurisdiction of two high courts involved. The portion relied upon by Additional Advocate General, Punjab is reproduced as under:-

"All High Courts have concurrent jurisdiction but in order to regulate the procedural aspect of the inquiries, complaints, investigations, references and trials at least certain principles are required to govern the situation where:-

i) Concurrent jurisdiction of two High Courts are involved or;

ii) Subject matter of inquiry or complaint relates to one province and the Authorization has been ordered from Head office of NAB at Islamabad or;

iii) Accused or persons under inquiry are residents of one province or different provinces, loss caused to other provincial exchequer, project under inquiry is situated in other province.

The aggrieved persons usually seeks relief in Writ Petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 from the High Courts of their choice keeping in view their convenience on the analogy of section 20, C.P.C. where part of cause of action has been accrued but in order to understand the legal principle one has to keep in mind that Civil Procedure Code, 1908 is only applicable as General Law in writ jurisdiction in terms of section 117, C.P.C. but where Special Law is available like National Accountability Ordinance, 1999 or Criminal Procedure Code, 1898 and subject matter relates to a criminal act and where civil rights are not in issue, the applicability of procedural aspect to regulate such Constitutional. Petitions are different from ordinary Rules.

Therefore, in order to understand the concept of jurisdiction one has to keep in mind the following factors to comprehend term "Cause of Action" in Criminal matters:-

a) Place of occurrence of Crime;

b) Place from where major portion of evidence is collected to link the chain of events;

c) Loss caused to Public exchequer of Province;

d) Investigation Officer inquired the matter to confirm the prima facie involvement of any person in any Crime with a view to proceed for future course of action.

e) NAB Head Office has given any Instruction/order for inquiry at particular place or territory keeping in view the chain of events;

f) Matter in question relates to provincial authority or Federal Authority from where major evidence is to be collected to connect the accused with the offence;

g) Whether any court has already exercised its jurisdiction qua the subject matter during pendency of any inquiry, investigation and NAB authorities have not raised any objection regarding territorial jurisdiction of the Court;

h) NAB authorities have submitted/filed Reference against the accused persons in any Court or transferred the Trial to any other Court under the Provisions of NAO, 1999."

I have gone through the judgment of this Court referred above and meticulously considered each and every aspect of the case only with reference to "territorial jurisdiction for exercising Powers under Article 199 of the Constitution of Pakistan 1973". It appears that subject matter of this petition is based upon proposed action of CTD which has been raised when petitioner feel threatened by the terrorism related inquiry, second portion is relating to the protection of rights of the petitioner who is the Chairman of Board and Director of Pak-Turk Foundation situated and registered at Islamabad, although other schools have also been established under the said title in other areas of Pakistan but fact remains same that head office of Pak-Turk

Foundation is in Islamabad and petitioner is also residing in Islamabad. Pak-Turk Educational Foundation (Guarantee) Limited is registered under section 42 of the Companies Ordinance 1984 at SECP, Islamabad which is respondent No.3 in this petition, third question raised in prayer is relating to letter dated 28.05.2016 issued by SECP for removal of Turk Directors from the Pak-Turk Educational Foundation (Guarantee) Limited. By comparing all these facts with the principle laid down in ***2016 PCr.LJ 1056 (Islamabad) Jamshoro Joint Venture Ltd and another...vs....Federation of Pakistan and others***, the facts and circumstances of instant case are not similar to the said judgment of this Court as from the perusal of documents submitted with C.M.No.784 and 785 alongwith 1618 and 1619 as well as C.M.No.260/2017 it appears that Government of Pakistan, Prime Minister Secretariat and Ministry of Foreign Affairs have already decided certain areas relating to issue which falls within the exclusive jurisdiction of Federation of Pakistan referred in 4th Schedule of Federal Legislative lists Part-1:

> *"External affairs: the implementing of treaties and agreements, including educational and cultural pacts and agreements, with other countries; extradition, including the surrender of criminals and accused persons to Governments outside Pakistan."*

Question of jurisdiction under Article 199 of the Constitution of Pakistan 1973 could be seen with reference ***2009 CLD 1498 (Lahore) titled LPG Association of Pakistan through Chairman...vs.....Federation of Pakistan, through Secretary, Ministry of Petroleum and Natural Resources, Islamabad and 8 others*** wherein it has been held that:

> *"Similarly under Article 199(1)(a)(ii) a declaration could be made in respect of any act or proceedings taken only, if the act was done or the proceedings taken within the territorial jurisdiction of the Court. In other words for granting a writ in the nature of Mandamus or prohibition, the person whose acts of commission or omission are challenged must have performed or omitted to perform the acts, complained of within the territorial jurisdiction of the High Court. Likewise a writ in the nature of certiorari could be issued only in respect of orders passed or proceedings taken within the territorial jurisdiction of the High Court and not otherwise.*
>
> *The Central Government has set up a Copyright Board for the whole of Pakistan and it performs functions in relation to the affairs of the Federation in all the Provinces. Hence, any order passed by it or proceedings taken by it in relation to any person in any of the four Provinces of Pakistan would give the High Court of the Province, in whose territory the order would affect such a person, jurisdiction to hear the case. (for emphasis underline is mine)*

And ***2012 PTD 1869 (Lahore High Court) Messrs Sethi and Sethi Sons through Humayun Khan...vs... Federation of Pakistan through Secretary, Ministry of Finance, Islamabad and others***:

> *"23. In case, where a person, enjoying limited territorial jurisdiction, does an act or passes an order or initiates proceedings by locating himself outside his legally earmarked territorial jurisdiction, the High Court with whose territorial jurisdiction such an act is done or order passed or proceedings initiated will assume jurisdiction under Article 199 of the Constitution."*

Similar concept has also been discussed in following cases:

> ***PLD 1997 SC 334 Sandalbar Enterprises (Pvt.) Limited....vs.... Central Board of Revenue and others, 1985 SCMR 758 M/s Al-Iblagh Limited Lahore...vs...Copy Right Board, Karachi, PLD 1986 Karachi 525 Abdul Ghaffar Lakhani...vs ... Federal Government of Pakistan, PLD 1968 SC 387 Asghar Hussain...vs...Election Commission of Pakistan, 1997 SCMR 1874 Flying Kraft Papers Mills (Pvt.) Limited Charsadda....vs..... Central Board of Revenue, Islamabad.***

9. In view of above referred position, matter referred in the summary for Prime Minister of Pakistan as well as Foreign Affairs regarding issues relating to Pak-Turk schools prima facie persuaded this court to hold that matter falls within exclusive domain of Federal Government and

Province has no jurisdiction to initiate any process on such subject especially when it appears from those documents that Turkish Government has expressed "concern over this situation" and Turkish Ambassador in Islamabad has pointed the slow progress of expulsion of the remaining FETO Gulenists related elements from Pakistan and transfer of schools to Maarif Foundation, this speaks about proposed actions of respondents. In view of these documents and reference it appears that in this case, question of protection of fundamental rights of citizen of Pakistan is involved and this Court is under legal obligation to protect the fundamental rights of individuals residing in Islamabad and at present petitioner has brought violations in the notice of this Court although initially, matter is only confined to the proposed action of CTD, Lahore but now after filing of CMs, main question alongwith documents has been brought on record which requires probe to settle the issue, therefore, prima facie this Court is of the view that when violation of fundamental rights is in question, this Court can assume the jurisdiction to protect the individual from such kind of inactions of department as every individual has been given assurance of protection of his rights referred in Articles 9 & 10-A of Constitution of Pakistan, 1973. Even the question of inquiry at Lahore can be seen in terms of "malafide action"

which does not curtail the jurisdiction of this Court and issue relates to entry No.3 of 4th schedule in terms of external affairs under Article 70 (4) of Constitution of Pakistan, 1973 which does not confer any power to the Province especially Government of Punjab to exercise jurisdiction in this regard and prima facie this Court is of the view that at this stage, instant writ petition is maintainable keeping in view the peculiar circumstances of the case as the issue is relating to the protection of fundamental rights of individual, I am fortified from judgments referred as:

> ***2012 CLD 1608 (Syed Phool Badsha....vs... ADBD through Manager, Peshawar Branch), 2014 SCMR 630 (Muhammad Farooq....vs.... Abdul Waheed Saddiqui) and PLD 1997 SC 11 (Mehr Zulfiqar Ali Babo and others...vs... Government of Punjab and others)***,

wherein it has been held that courts are not bound by prayer and they can consider all those aspects which have been placed on record subsequent to the filing of writ petition or suit, even otherwise, the petitioner has filed two separate C.Ms whereby he has requested the court for impleadment of Federation of Pakistan through Prime Minister Secretariat as well as Foreign Office and has also made prayer for amendment of writ petition. In view of above instant writ petition is maintainable for the time

being as the question raised before this Court shall be decided after hearing Attorney General for Pakistan who himself has brought the documents on record as referred in C.M.No.1618/ 2017 before this Court as those documents have been filed by Attorney General in CP No.D-6606/2016 before Hon'ble Sindh High Court, Karachi Bench.

10. It is pertinent to mention here that the petitioner through the instant writ petition has raised voice against the action of CTD Punjab but at the same time he has prima facie established that the action taken by the CTD is not based upon any act of the petitioner which was committed in Punjab rather the petitioner through the documents annexed with the CMs has established that the action taken by the CTD Punjab is based upon the directions and decision issued by the Federal Government, hence, the action taken by the CTD cannot be considered in isolation rather the same is based upon the directions of Federal Government indirectly against the petitioner and in any manner it cannot be considered that Counter Terrorism Department, Punjab is allegedly harassing the petitioner on the basis of any act committed by him within territorial limits of Province of Punjab rather the petitioner has demonstrated from record that proposed actions are on the basis of decision of Federal Government, he is allegedly

being harassed through a tool of the State i.e CTD which as per stance of petitioner amounts to violation of fundamental rights of the petitioner allegedly committed by the Federal Government and as such, petitioner is well justified in invoking constitutional jurisdiction of this Court under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, hence, instant writ petition is maintainable.

11. Adjourned to 15.05.2017.

C.M.No.1618-2017

Notice to the respondents. Office is also directed to issue notice to learned Attorney General for Pakistan under Order XXVII-A of the Civil Procedure Code, 1908 with the direction to address this Court on the alleged documents which have been placed on record through instant C.M.

C.M.No.1619-E/2017.

Exemption sought for is allowed subject to all just and legal exceptions.

C.M.No.1620-2017.

Notice to respondents.

(MOHSIN AKHTAR KAYANI)
JUDGE

Imran

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