



SPECIAL IMMIGRANT JUVENILE STATUS (SIJS) & THE GROUNDS OF INADMISSIBILITY

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Young people pursuing adjustment of status (a green card) as special immigrant juveniles (SIJs) must be admissible or eligible for a waiver.¹ However, certain grounds of inadmissibility automatically do not apply to SIJ-based adjustment of status, others are waivable under a special waiver standard, and a few cannot be waived or are subject to higher waiver standards. This resource provides helpful charts of the grounds of inadmissibility as applied to special immigrant juveniles. It also describes the waiver standard and process for SIJs.

I. Special Immigrant Juveniles & the Grounds of Inadmissibility

A. Grounds of Inadmissibility Inapplicable to Special Immigrant Juveniles

The following grounds of inadmissibility *automatically* do not apply to SIJS-based adjustment of status applicants² and no application for a waiver need be submitted:

Inadmissibility Ground Automatically Does NOT Apply to Special Immigrant Juveniles	Legal Definition	Example
INA § 212(a)(4)	Public charge	Persons whom the government believes are likely to receive certain public benefits for more than an aggregate of 12 months over any 36-month period of time
INA § 212(a)(5)(A)	Labor certification	Individuals who enter the United States to perform work without a labor certification
INA § 212(a)(6)(A)	Present without admission or parole	Persons who entered the United States without inspection
INA § 212(a)(6)(C)	Fraud or misrepresentation, including false claim to U.S. citizenship	Use of a forged U.S. passport or green card or someone else's U.S. birth certificate

Inadmissibility Ground Automatically Does NOT Apply to Special Immigrant Juveniles	Legal Definition	Example
INA § 212(a)(6)(D)	Stowaways	Persons who board a vessel without consent of the owner or person in command of the vessel
INA § 212(a)(7)(A)	Immigrants not in possession of a valid unexpired immigrant visa, reentry permit, border crossing identification card, or other valid entry document	Persons who arrive at the border without any documents, or who possess an invalid visa
INA § 212(a)(9)(B)	Unlawful presence: three- and ten-year bars	<p>A person who accrues more than 180 days but less than a year of unlawful presence in the United States, then voluntarily departs the country before immigration proceedings commence, is inadmissible for three years from the date of departure</p> <p>A person who accrues one year or more of unlawful presence, then leaves the United States voluntarily or by a deportation/removal order, is inadmissible for ten years from the date of departure</p>

Example: Beth and her guardian receive means-tested cash assistance that they qualify for under state law. Beth is applying for SIJS-based adjustment of status and is therefore automatically not subject to the public charge ground of inadmissibility. The new public charge rule did not and cannot change this—the exemption is statutory and can only be changed by Congress.

Example: Dalia was apprehended crossing the U.S.-Mexico border as a minor, charged as inadmissible under INA § 212(a)(7)(A) for not having a valid visa, and placed in removal proceedings. She applied for special immigrant juvenile status and her petition was approved. As a special immigrant juvenile, she need not seek a waiver of INA § 212(a)(7)(A) when she applies for adjustment of status, because this ground automatically does not apply to her.

Again, these grounds of inadmissibility automatically do not apply to special immigrant juveniles.³ For a further discussion of some of these grounds, please see the Immigrant Legal Resource Center’s manual, *Inadmissibility & Deportability* (ILRC 2019).

B. Grounds of Inadmissibility Applicable to Special Immigrant Juveniles, but Waivable as a Matter of Discretion

Many of the remaining inadmissibility grounds that do apply to SIJs may be “waived”⁴ under a special waiver provision for special immigrant juveniles. The waiver standard is relatively generous and is “for humanitarian purposes, family unity, or when it is otherwise in the public interest.”⁵ The young person must submit a waiver application (Form I-601) asking that the ground(s) of inadmissibility be “forgiven.” These waivers are considered as a matter of discretion. See **Section II** below for further information regarding the waiver standard and process. Some of the common⁶ waivable inadmissibility grounds include:

Inadmissibility Ground Applies to Special Immigrant Juveniles, But May Be Waived under INA § 245(h)(2)(B)	Legal Definition	Example
INA § 212(a)(1)	Health-related grounds: Communicable diseases, vaccinations, mental or physical disorder that poses a threat to self or others, drug abuser or drug addict	Tuberculosis, lack of certain required vaccines, certain mental or physical disorders (such as those related to suicide and alcoholism) and non-medical drug use in the prior year
INA § 212(a)(2)(A), but ONLY as related to a single offense of simple possession of 30 grams or less of marijuana	Adult conviction/s, or admission of conduct while an adult, arising from a single incident involving simple possession of 30 grams or less of marijuana ⁷	19-year-old is convicted as an adult of possessing 28 grams of marijuana
INA § 212(a)(2)(D)	Prostitution and commercialized vice	People who have been prostitutes or procurers (“pimps” or “Johns”) ⁸
INA § 212(a)(6)(B)	Failure to attend removal proceedings	A noncitizen who fails to show up at their removal hearing in immigration court
INA § 212(a)(6)(E)	Smugglers	A noncitizen who has assisted others in entering the United States unlawfully, including paying for a coyote to bring their family member to the United States
INA § 212(a)(9)(A)	Certain individuals previously removed	A noncitizen removed from the United States for being inadmissible or deportable, or who leaves on their own after being ordered removed

Inadmissibility Ground Applies to Special Immigrant Juveniles, But May Be Waived under INA § 245(h)(2)(B)	Legal Definition	Example
INA § 212(a)(9)(C)	<p>Individuals unlawfully present after previous immigration violations: the “permanent” bar</p> <p>Note: minors are NOT exempt from accumulating unlawful presence for the permanent bar (as they are for the three- and ten-year bar)</p>	<p>A person who was ordered removed, left the United States, and then re-enters or attempts to re-enter the United States without being admitted</p> <p>A person who accrued more than a year of unlawful presence, left the United States, and then re-enters or attempts to re-enter without being admitted</p>
INA § 212(a)(10)	Miscellaneous grounds (polygamists, unlawful voters, etc.)	A person who is coming to the United States to practice polygamy or who unlawfully votes, etc.

Example: Raj experienced severe abuse and neglect from his parents in his home country, leading him to suffer from depression. He has a history of suicide attempts that are documented in his medical records, including a recent suicide attempt. Raj is now living with his grandmother in the United States, and with medication and therapeutic services, he is doing well. As a special immigrant juvenile, if needed, he can seek a waiver of the “mental or physical disorder posing a threat to self or others” ground by arguing that he should be granted adjustment of status for humanitarian purposes and for family unity so that he can remain in his safe placement with his grandmother in the United States.

Example: Carla saved up money and paid for her younger brother to be smuggled into the United States. As a special immigrant juvenile, she can apply for an SIJS-based waiver and argue that it is in the public interest and for purposes of family unity that she be granted a waiver.⁹

Example: Victor came to the United States as an unaccompanied child at the age of fifteen and was placed in INA § 240 proceedings. After being detained in the custody of the Office of Refugee Resettlement (ORR) for more than six months, Victor decided he could no longer remain detained and requested an order of removal. After returning home to Guatemala, he again faced physical and emotional abuse from his father and fled to the United States the next year, entering without inspection. He sought and obtained special immigrant juvenile status and is now applying for adjustment of status based on SIJS. Victor can apply for an SIJS-based waiver and argue that it is for humanitarian purposes that he be granted a waiver of INA § 212(a)(9)(A), which applies to him because he was previously removed from the United States, and INA § 212(a)(9)(C), the “permanent” bar, which applies to him because he illegally reentered after having been previously removed.¹⁰

C. Grounds of Inadmissibility that Cannot be Waived or are Subject to Higher Waiver Standards: Criminal Issues and National Security

Other grounds of inadmissibility are either not waivable or subject to much higher waiver standards than the SIJS standard. These grounds can be found at INA §§ 212(a)(2)(A)–(C).¹¹ A young person who comes within one of these grounds should not submit an affirmative application to USCIS unless there is a waiver they may qualify for and they have seriously considered the risks. These grounds of inadmissibility include:

Inadmissibility Grounds Which Cannot Be Waived for Special Immigrant Juveniles or Are Subject to Higher Waiver Standard	Legal Definition	Example	Waivers
INA § 212(a)(2)(A)	<p>One or more convictions or admissions of crimes that qualify as an inadmissible (a) crime involving moral turpitude (CIMT) or (b) offense relating to a federally-defined controlled substance (other than a single incident involving possession of 30 grams or less of marijuana)</p> <p>This refers to adult convictions or admission of adult conduct only, not to delinquency findings or to admissions of conduct committed while a minor¹²</p>	<p>Examples of CIMTs are offenses that have as an element fraud, theft with intent to substantially or permanently deprive, intent to inflict great bodily harm, or in some cases lewd intent or severe recklessness</p>	<p>CIMTs may fall into an outright exception for inadmissibility,¹³ or if not, may be waivable under INA § 212(h); see Part II</p> <p>Other than a single offense of simple possession of 30 grams or less of marijuana, which can be waived under INA 245(h)(2)(B), SIJS applicants cannot waive a controlled substance conviction or admission</p>
INA § 212(a)(2)(B)	<p>Multiple criminal convictions for which the aggregate sentences to confinement¹⁴ were five years or more (adult convictions only)</p>	<p>Any type of criminal convictions whose sentences in jail/prison together add up to five years or more</p>	<p>INA § 212(h)</p>

Inadmissibility Grounds Which Cannot Be Waived for Special Immigrant Juveniles or Are Subject to Higher Waiver Standard	Legal Definition	Example	Waivers
INA § 212(a)(2)(C)	Controlled substance traffickers (as an adult, and conservatively assume, also as a minor) ¹⁵	<p>Anyone who the Attorney General has “reason to believe” is a trafficker or has engaged in drug trafficking</p> <p>“Reason to believe” does not require a “conviction” in adult court or a juvenile delinquency disposition</p>	No waiver (only U & T nonimmigrant status visas potentially allow for waiver of this ground of inadmissibility)
INA § 212(a)(3)(A), (B), (C) & (E)	<p>Persons considered harmful to the security of the U.S. including:</p> <p>People entering the U.S. to engage solely, principally, or incidentally in unlawful activity</p> <p>Terrorists or people engaging in terrorist activities</p> <p>Those who pose adverse foreign policy consequences for the U.S.</p> <p>Participants in Nazi persecution, genocide, or the commission of any act of torture or extrajudicial killing</p>	<p>People who have engaged in terrorist activity and people who have provided material support to terrorists; entry into the U.S. to conduct unlawful activity; membership in a Communist or totalitarian party; persons who participated in genocide or Nazi persecution</p>	No waiver, but INA § 212(d)(3)(B)(i) authorizes the Secretary of State or Homeland Security to exempt certain people or groups from the terrorism-related grounds of inadmissibility

If an SIJS-eligible young person might come within any of these categories, *do not file anything until you have consulted with an expert in this area.*

Note that juvenile delinquency adjudications are distinct from criminal convictions in that they do not trigger conviction-based grounds of inadmissibility.¹⁶ However, some juvenile adjudications may trigger inadmissibility under the conduct-based grounds of inadmissibility.¹⁷ Advocates should be particularly careful with applicants who have drug offenses, especially drug sales, as there is no waiver for SIJS for the

inadmissibility ground based on the government having reason to believe the person ever participated in drug trafficking.¹⁸ Juvenile delinquency findings of prostitution, or of behavior that indicates a “mental or physical disorder,” or of drug abuse or addiction also can support a finding of inadmissibility. But unlike drug trafficking, these grounds of inadmissibility can be waived.

Finally, although most juvenile offenses do not trigger inadmissibility grounds, all adjudications and especially serious juvenile adjudications and findings relating to gang activity or affiliation, sex offenses, and violent offenses can and often will serve as negative evidence in the discretionary component of adjustment of status, leading to denial unless mitigated by significant positive equities.¹⁹

II. Waivers of Inadmissibility: INA § 245(h)(2)(B) and INA § 212(h)

A. Special Waiver for SIJS-Based Adjustment of Status Applicants Under INA § 245(h)(2)(B)

Congress provided a special waiver of many of the grounds of inadmissibility for Special Immigrant Juveniles.²⁰ Unlike traditional inadmissibility waivers, the SIJS waiver does not require that the child have a qualifying relative with lawful status. USCIS and the immigration court are authorized to waive the designated grounds for “humanitarian purposes, family unity, or when it is otherwise in the public interest.”²¹ This is a broad standard for which any and all evidence should be submitted in support of the application.

In order to apply for such a waiver, the youth needs to submit Form I-601. The Form I-601 Application for Waiver of Grounds of Inadmissibility is used to excuse, or “waive,” the grounds of inadmissibility that would otherwise bar the youth’s adjustment of status. If there is doubt about whether the young person falls into a waivable ground of inadmissibility, some practitioners wait until the child attends the adjustment of status interview or hearing, or receives a request for evidence (“RFE”), and file the I-601 only if it is needed. If you take this approach, be sure to begin to gather supporting evidence for the waiver in advance, as you may have a limited window of time to respond with the I-601. Other practitioners choose to file the I-601 with the application for adjustment of status (Form I-485) because it can be easier to get a fee waiver for the I-601 when it is filed along with the other forms. Submitting the I-601 with the I-485 may be especially prudent in light of USCIS’s recent policy change allowing adjudicators to deny applications without issuing an RFE.²²

Note that the judgment whether the child falls into a ground of inadmissibility is not yours alone. For example, a USCIS-approved doctor, not you, must decide whether the youth falls into a health-related ground of inadmissibility. If the doctor finds that the youth triggers a health-related ground of inadmissibility, you must file the I-601 for the youth. Similarly, if the adjudicating USCIS officer determines that an I-601 is required on another ground of inadmissibility, you should file one.

Be aware that an approved I-601 waives only the grounds of inadmissibility identified on the form itself. If the youth falls into a ground of inadmissibility that is not formally waived before the I-485 is approved, the government might later find that the child was not eligible to adjust their status, take away their green card, and place them into removal proceedings. For protection, you can list a number of grounds of inadmissibility in the I-601, but you need to submit evidence for all of the grounds.

The current fee for this form is \$930.00. This fee is waivable for children seeking SIJS-based adjustment of status because they are not subject to the public charge ground of inadmissibility.²³

Remember that to qualify for an inadmissibility waiver, the child must establish that it is “for humanitarian purposes, family unity, or ... otherwise in the public interest” and that the child merits a favorable exercise of discretion.²⁴ The instructions for the I-601 specifically address the waiver standard for SIJs and set forth the types of evidence that USCIS typically considers in assessing waiver applications; you should consider submitting the types of materials described there, particularly those tied to the health-related grounds of inadmissibility if applicable.

B. Waiver for Moral Turpitude Offenses Under INA § 212(h)

Some older special immigrant juveniles may be convicted of, or admit committing while adults, one or more crimes involving moral turpitude (CIMT). If this makes them inadmissible under the moral turpitude ground, that ground cannot be waived using INA § 245(h)(2)(B). Therefore, the youth may need to apply for a waiver under INA § 212(h), or even explore whether they are eligible for other relief, such as VAWA.

Under INA § 212(h), a qualifying non-citizen can apply for a discretionary waiver of one or more CIMTs (as well as some other inadmissibility grounds less relevant to special immigrant juveniles²⁵). If the person has a CIMT, first make sure that they are actually inadmissible. Was there a conviction of a CIMT in adult court? Or, did the person make a qualifying admission that they committed a CIMT while an adult?²⁶ If they did not, they are not inadmissible. If there is a conviction or admission, check to see if the incident might come within the automatic “petty offense exception” to the CIMT ground. The person must have committed just one CIMT (as an adult), the potential sentence must be a year or less, and the sentence actually imposed (if there was a conviction) must have been six months or less.²⁷ If they come within that exception, then they automatically are not inadmissible and they do not need a waiver.

If you determine that the person is inadmissible, they can consider the § 212(h) waiver. There are two basic ways to get this waiver.

1. The person must be the spouse, parent, or child of a U.S. citizen or lawful permanent resident, and establish that denial of the person’s admission would result in extreme hardship to that relative; *or*
2. The person must have committed the crime at least 15 years ago (or at any time, if the person is only inadmissible for prostitution), must be able to show that granting their admission would not hurt the national welfare or safety; and must be able to show that they are rehabilitated.

In many cases, an SIJS applicant will not be eligible for the § 212(h) waiver because they cannot meet either requirement. The applicant is unlikely to have a qualifying relative, unless they have, for example, a U.S. citizen child to whom they can demonstrate extreme hardship. Due to SIJs’ young ages, they will inevitably never meet the second requirement prong that the crime be committed 15 years before the time of application.

PRACTICE TIP: If the youth is inadmissible based on one or more CIMTs, but applying for a waiver under § 212(h) is not feasible, consider whether they may qualify for relief under the Violence Against Women Act (VAWA), based on abuse inflicted by certain U.S. citizen or lawful permanent resident relatives. For example, a VAWA case might be supported by an LPR or USC stepfather's abuse committed against the applicant, or against the applicant's mother. An applicant for VAWA may obtain a §212(h) waiver without showing extreme hardship to any relative, or making other factual showings. The person must show they are of good moral character, but this may be possible to do despite the conviction. Consider which application is best based on the facts, and see further information on VAWA requirements and procedure at <https://www.ilrc.org/u-visa-t-visa-vaawa>.

End Notes

¹ Admissibility is not an eligibility requirement for special immigrant juvenile status; instead, admissibility must be demonstrated at the adjustment of status stage.

² INA § 245(h)(2)(A).

³ Adjustment of status applications filed after December 23, 2008 but decided before March 23, 2009 are subject to the prior statutory exemptions. As such, only the following exemptions to grounds of inadmissibility for Special Immigrant Juveniles applied to them: INA § 212(a)(4) (public charge); § 212(a)(5)(A) (labor certification); and § 212(a)(7)(A) (immigrants not in possession of a valid unexpired immigrant visa, reentry permit, border crossing identification, or other valid entry document). If the child's application for adjustment of status was denied during that period based on one of these now-inapplicable grounds, you may choose to re-file the child's adjustment of status application.

⁴ See INA § 245(h)(2)(B), as amended by the Miscellaneous and Technical Corrections Act of 1991 § 301(d)(2); USCIS Memorandum, *Trafficking Victims Protection Reauthorization Act of 2008: Special Immigrant Juvenile Status Provisions*, HQOPS 70, 8.5, 4-5 (Mar. 24, 2009); 7-USCIS-PM F.7(C)(4).

⁵ See INA § 245(h)(2)(B).

⁶ Note that this list is not exhaustive. All grounds of inadmissibility apply to SIJs, except for the seven listed in the prior section that automatically do not apply. The remaining grounds of inadmissibility are waivable with the SIJS waiver except for the grounds discussed in the following section.

⁷ INA § 245(h)(2)(B) specifically provides that this marijuana offense can be waived. For more information about immigration and marijuana generally, see ILRC, *Warning for Immigrants About Medical and Legalized Marijuana* (Jan. 2018), <https://www.ilrc.org/warning-immigrants-about-medical-and-legalized-marijuana>.

⁸ Practitioners are also encouraged to argue that minors cannot engage in prostitution. See, e.g., California Senate Bill, 1322 which precludes minors from being charged with crimes for prostitution and loitering with intent.

⁹ Outside of the SIJS context, a person would typically only be able to request a waiver of this ground if they had "smuggled" their own spouse, parent, son, or daughter. See INA § 212(d)(11).

¹⁰ An important difference between the permanent bar and the three/ten-year bars (a ground of inadmissibility from which applicants for SIJS-based adjustment of status are automatically exempt) is that the person must enter or attempt to re-enter illegally to come within the permanent bar. Note in this example that you could also argue that Victor's status as a special immigrant juvenile rendered his recent entry a parole and thus he should not trigger the permanent bar. See, e.g., *Matter of Antonio Francis-Lugo*, File No. [withheld], 2003 WL 25779477, Los Angeles, CA (AAO Nov. 13, 2003) (finding that because a special immigrant juvenile is deemed paroled under INA § 245(h)(1), they do not trigger reinstatement).

¹¹ The security and related grounds of inadmissibility set forth in INA §§ 212(a)(3)(A)-(C), (E) are also not waivable, but are much less common in SIJS cases as they deal with espionage, sabotage, terrorism, foreign policy, Nazi persecution, etc. However, concerns are emerging that the terrorism ground could be used to bar persons who were previously affiliated with gangs, or who were forced by gangs to engage in certain acts, such as acting as look-outs, transporting drugs or guns, or paying "renta" to the gangs.

¹² Adjudications in juvenile court proceedings are not considered "convictions" for immigration purposes. See *Matter of Devison-Charles*, 22 I & N Dec. 1362, 1365-66 (BIA 2000); *Matter of Ramirez-Rivero*, 18 I & N Dec. 135 (BIA 1981). Admission of conduct committed while a juvenile is not admission of a "crime," but of civil delinquency, and therefore it does not cause inadmissibility under this ground. See, e.g., *Matter of M-U-*, 2 I & N Dec. 92 (BIA 1944).

¹³ There is an automatic exception to inadmissibility for a crime involving moral turpitude if it comes within: 1) the Petty Offense Exception (only CIMT ever committed, has a maximum possible sentence of one year or less, and the sentence imposed was six months or less); or 2) the Youthful Offender Exception (convicted as an adult of only one CIMT, committed while under the age of 18, and the conviction or resulting imprisonment occurred at least five years ago). See INA § 212(a)(2)(A)(ii). See materials on CIMTs at: www.ilrc.org/crimes.

¹⁴ "Sentences" imposed include suspended sentences. See INA § 101(a)(48)(B).

¹⁵ The "reason to believe" means that DHS should have reasonable, substantial, and probative evidence that the person engaged in trafficking. *Matter of Rico*, 16 I & N Dec. 181, 185-86 (BIA 1977).

¹⁶ See *Matter of Devison-Charles*, 22 I & N Dec. 1362, 1365-66 (BIA 2000); *Matter of Ramirez-Rivero*, 18 I & N Dec. 135 (BIA 1981).

¹⁷ See ILRC, *Reference Sheet on the Immigration Consequences of Delinquency* (Jan. 2018), <https://www.ilrc.org/reference-sheet-immigration-consequences-delinquency>.

¹⁸ For more information about this ground of inadmissibility, and arguments that it should not apply to minors, see Angie Junck, *The Impact of Drug Trafficking on Unaccompanied Minor Immigration Cases* (May 2015), <https://www.ilrc.org/impact-drug-trafficking-unaccompanied-minor-immigration-cases>.

¹⁹ For recent updates to USCIS’s Policy Manual regarding the exercise of discretion, see 1-USCIS-PM E.8. If your case is denied, contact a resource center with expertise in SIJS to discuss possible arguments and next steps. You may contact the Immigrant Legal Resource Center by emailing Rachel Prandini at rprandini@ilrc.org.

²⁰ See inadmissibility waiver at INA § 245(h)(2)(B), as amended by the Miscellaneous and Technical Immigration and Naturalization Amendments of 1991, § 302(d)(2) and INA § 245(h)(1), (2)(A), added by the Miscellaneous and Technical Immigration and Naturalization Act of 1991 § 302(d)(2), creating eligibility for adjustment of status by deeming special immigrant juveniles to have been paroled into the United States and exempting them from the public charge ground of inadmissibility, among others.

²¹ INA § 245(h)(2)(B).

²² See USCIS, *Issuance of Certain RFEs and NOIDs; Revisions to Adjudicator’s Field Manual (AFM) Chapter 10.5(a), Chapter 10.5(b)* (July 13, 2018), https://www.uscis.gov/sites/default/files/archive/PM/AFM_10_Standards_for_RFEs_and_NOIDs_FINAL2.pdf. Note that the I-601, “if applicable,” is included on the checklist of required initial evidence for the I-485: <https://www.uscis.gov/i-485Checklist>.

²³ You can request a fee waiver using Form I-912 or a letter that includes all of the necessary information.

²⁴ INA § 245(h)(2)(B).

²⁵ Section 212(h) also waives inadmissibility based on two or more adult convictions with a combined sentence of five years (but special immigrant juveniles generally are too young to have amassed that), or an adult conviction or admission of simple possession of 30 grams of marijuana, or an adult who engaged in prostitution (but special immigrant juveniles can use the less restrictive § 245(h)(2)(B) waiver for those grounds).

²⁶ For a discussion of what constitutes a “qualifying” admission, see, e.g., ILRC, *All Those Rules About Crimes Involving Moral Turpitude*, Part 3 (June 2020), www.ilrc.org/crimes.

²⁷ See INA § 212(a)(2)(A)(ii). That section also includes the “youthful offender exception” for youth convicted as adults, but this generally does not serve special immigrants juveniles because the adult conviction must have occurred at least five years before the current application.



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About the Immigrant Legal Resource Center

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