IN THE
UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 11-2131

SOLOMON STRATTON

Plaintiff

V.

MECKLENBURG COUNTY DEPARTMENT OF SOCIAL Services, ET AL

Defendant

On Appeal From the United States District Court
for the Western District of North Carolina
Charlotte Division
David C. Norton, District Judge
Order dated 9/16/11

QUESTIONS PRESENTED

1. Did the district court err as a matter of law in using Rooker-Feldman docrine to dismiss for "lack jurisdiction"?

2. Did the district court err as a matter of law in taking judicial notice of state court orders were procured through extrinsic fraud that is the very subject of the complaint?

3. Did the court abuse its discretion by not following Rule 56 of the Federal Rules of Civil Procedure by:

   (a) Not requiring appellees to answer Summary Judgment
   (b) Allowing a Magistrate Judge, McDonald to rule on a Summary Judgment Motion
   (c) Chief Judge Norton not ruling on Plaintiff Objections and Motion De Novo Review of Summary Judgment denial

4. Did the court abuse its discretion by not holding hearing pursuant to Federal Rules of Evidence, Rule 201(e), since:

   (a) Mecklenburg County Department of Social Services (MCDSS) first requested said hearing,
   (b) Plaintiff timely filed request for 201(e) hearing
   (c) Hearing would have allowed examination of fraudulent, facially flawed counterfeit ,non-AOC documents that is prima facial evidence

5. Did the district court violate Plaintiffs 14th amendment due process rights?

STATEMENT OF THE CASE

Originally this action was filed with two Plaintiffs, Jack Stratton and son Solomon Stratton. Just days prior to the deadline for Brief submission, Jack Stratton passed away.

This is not an appeal of any state court judgment. This is not an appeal of the Juvenile Court Proceedings, Appellate Court Decisions or the Termination of Parental Rights, (TPR) Order. This is an appeal of the Process used by the MCDSS et al before there were ANY proceedings, orders or decisions n the state courts. This is an appeal based on the extrinsic fraud by which I was seized and held in MCDSS custody. This child trafficking scheme is the issue of this Complaint. The same extrinsic fraud scheme by which I was seized and held in "state" custody with No Due Process Whatsoever.

Before Plaintiff was seized on January 30, 2001, Mecklenburg County Department of Social Services ("MCDSS") Attorney Tyrone Wade and then Mecklenburg County District Court Judge David Cayer conspired and concocted an extrinsic fraud scheme to make it appear Mecklenburg County had obtained "jurisdiction" over me through the December 21, 2000 Petition to Prohibit Interference with or Obstruction of Child Protective Services". ["Dkt"74,exh.3]
This Petition was filed in Mecklenburg County December 21, 2000
2000 against sole party, my grandmother (Joan Stratton).

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1. Appendix B filed with Plaintiff's [Dkt.74] pinpoints exhibits with brief explanation

Even though, Joan Stratton was the only named party to this "Petition to Prohibit Interference with or Obstruction of Child Protective Services Investigation", MCDSS attorney, Tyrone Wade and Cayer fraudulently attached 10 case file numbers [1267-1276] to this sole party (Joan Stratton) file. This maneuver made it appear that this petition established jurisdiction over me, and my other 9 siblings. defendant, MCDSS Attorney Robert Adden personally used this December 21, 2000 "Petition to Prohibit Interference with or Obstruction of Child Protective Services Investigation" document to prove jurisdiction in the TPR hearings and again in the Federal District Court. [Dkt.]

Defendant Judge David Cayer next generated and signed a fraudulent "order" from this sole party, Joan Stratton, interference hearing. In this order David Cayer removed Joan Stratton's name as the sole respondent and replaced it with the names of my 9 siblings and me. [Dkt., 74, exh. 6] (Amended Complaint, at 34 -36) Further, Cayer switched Joan Stratton from being the sole party to being a "witness" in this order. Plaintiff was never named as a party in this Petition to Prohibit Interference with or Obstruction of Child Protective Services Investigation, therefore could not be held to any "order from this Interference hearing filed against sole respondent Joan Stratton.

Continuing the extrinsic fraud scheme of defendants' David Cayer and Tyrone Wade, Defendant Judge Yvvone Mimms Evans attached the same "ten case file numbers" [1267-1276] <u>from</u> the fraudulent December 21, 2000 Petition to Prohibit Interference with or Obstruction of Child Protective Services Investigation document <u>to</u> the Non-secure Custody "Order".[Dkt.74,exh.8] Armed with this fraudulent Non-secure Order, MCDSS crossed over county lines out of MCDSS jurisdiction and out of

Judge Evans jurisdiction on January 30, 2001 to seize me. Plaintiff was residing with my 9 siblings and parents at 506 Horseshoe Drive, Mt. Holly, NC in Gaston County, Judicial District 27A. My residence was outside of Mecklenburg County, outside the jurisdiction of the Mecklenburg County DSS and the Mecklenburg County Courts. On January 30, 2001 MCDSS seized me using a court order signed by Judge Evans from Mecklenburg County, Judicial District 26. This Non-secure Custody Order is fraudulent on multiple counts. (Amended Complaint, at 37). Judge Evans has and never had authority in Gaston County, Judicial district 27(A). Pursuant to Chapter 7A of the North Carolina General Statutes, Evans has no jurisdiction in Gaston County, A fact she publicly admitted in a written submission made in 2001 to National Council of Juvenile and Family Court Judges. (Dkt.74,exh.27) Judge Evans cannot authorize the seizure of children from Gaston County. Seizure was without warrant, without a legal court order and without any legal authority. Evans was acting as a Judicial Trespasser. Additionally, North Carolina Social Worker Manual confirms this same jurisdictional limitation for social workers*. (Amended Complaint at 38).

North Carolina Social Worker Manual changed this jurisdictional limitation in 2008.

This Plaintiff is not named as party to this "case" and according to long standing NC Supreme Court Decision:

> Card v. Finch, 142 NC 140 - 1906: "It is axiomatic, at least in American jurisprudence, that a judgment rendered by a court against a citizen affecting his vested rights in an action or proceedings to which he is not a party is absolutely void and may be treated as a nullity whenever it is brought to the attention of the Court".

Even so, for over seven (7) years I was:

(a) held in MCDSS custody and falsely imprisoned multiple times, ie. Upon seizure taken to Carolinas Medical Center and forcibly subjected to full body physical exams, although MCDSS intake reports did not allege abuse and there were no signs or indications of abuse.

(b) deprived First Amendment right of association with natural biological parents,

(c) forced to go to government schools, whereas previously I had been homeschooled

January 30, 2011 Mecklenburg County DSS were outside their jurisdiction in Gaston County. They could not bring the Charlotte-Mecklenburg police or sheriff's deputies to seize me. Instead they contacted the Gaston County Sheriff to send deputies to accompany them on my seizure. One of the deputies that appeared at the scene was Gaston County Patrol Officer, Jeanette Seagle. After entering our home and observing my 9 siblings and me, Officer Seagle attempted to stop the MCDSS agents from taking us into MCDSS custody. Since our home was in the Gaston County, Judicial District 27A, and on Officer Seagle patrol route, she offered the MCDSS agents to check in with our family from time to time to make sure we had everything we needed. The MCDSS agents, lead by Defendant MCDSS, Supervisor Donna Faygo refused. Officer Seagle, a 29 yr. veteran of Gaston County Sherriff Department, detective and guardian ad lietm submitted a sworn affidavit

denouncing the MCDSS seizure. [Dkt.74,Exh.1]. Officer Seagle sworn testimony at [Dkt.74.,Exh. 2].

After my January 30, 2001 seizure, a Guardian ad lietm attorney was assigned to look out for my interest. However the Guardian ad lietm attorney belonged to the same corrupt system as MCDSS, that seized me against my will using an unlawful order and fraudulent documents that created jurisdiction where there was none. Additionally the "court" that assigned guardian ad lietm was the same court using manufactured fraudulent summons and fraudulent non-secure order used to seize me. So any assertions that I ever had a full and fair opportunity to any redress in the state courts are laughable. I was assisted by counsel at these Juvenile proceedings, Appellate Decisions or TPR in the same way your friendly carjacker would assist you with a ride after stealing your car. The Guardian ad lietm attorneys assigned, including Defendant, Dick Lucy used the same counterfeit Non AOC documents (addressed below) as MCDSS, et al. There was no meaningful opportunity to be heard at any time or at any phase of these "Juvenile Proceeding", Appellate decisions or TPR. There was No Opportunity Period. Release from "Foster Care"* was not until 2008. Knowledge of the extrinsic fraud was not discovered until a few months before the initial filing of the original Complaint in March, 2010.

Foster Care is a legal term. Plaintiff was never a party to this "case" and never legitimately in the "Foster Care System"

Extrinsic Fraud Schemes Eviscerates Rooker-Feldman Application

The instant Order from which appeal is taken cites numerous references to case law that bars the appeal of state court proceedings to the federal courts. [Dkt. 86, pg. 5,6,7]. Among quoted:

> Anderson v. Colorado, 793 F.2d 262,263 (10th Cir. 1986). "Where a constitutional issue could have been reviewed on direct appeal by the state appellate courts, a litigant may not seek to reverse or modify the state court judgment by bringing a constitutional claim under 42 U.S.C. Section 1983."
>
> Further, Feldman, 460 U.S. at 486-87. When the constitutional claims for which a plaintiff seeks judicial review are "inextricably intertwined with the {State Courts'} Decisions, in judicial proceedings," they cannot be reviewed.

The Order goes on to cite dismissals of custody disputes between spouses, disputes regarding violations of due process violations via state court judgments regarding visitation, etc. Additionally a citation from a 4th circuit case Berry v. South Carolina Department of Social Services, No. 95-2678, 1997 WL 499950 (4th Cir. Aug.25, 1997), the Fourth Circuit Court of Appeals, in an unpublished opinion, affirmed the dismissal of the plaintiff father's complaint challenging actions taken the State of South Carolina against him for abuse of his children. The action was dismissed for lack of subject matter jurisdiction pursuant to Rule 12(b)(1) based upon the Rooker-Feldman Doctrine. Id. at *2.

Basically this Magistrate Report is a copy and paste from MCDSS attorney Robert Adden's Motion to Dismiss. All citations from Magistrate Judge Report and affirmed in 9/16/11 Order fails to compare to the issue in Plaintiffs Complaint on multiple counts. Not one of the cases cited claims **no jurisdiction** or **extrinsic fraud**.

The state courts did not have jurisdiction over Plaintiffs. The Rooker jurisdiction examination applied to the instant complaint shows the alleged "juvenile court judgments" were rendered in a cause wherein the (state) court did not have jurisdiction.

> "Rooker-Feldman may not be invoked" against a non party. Lance v Dennis 546 U.S. at 464-65.
>
> Further Rooker Feldman does not apply to alleged "state court judgments" procured by fraud [Dkt. 74 at 12--15].
>
> Rooker Feldman does not apply when an alleged "state court judgment" is procured through conspiracy and extrinsic fraud.
>
> Windsor v McVeigh, 93 U.S. 274, 282 (1876). Catz v. Chalker, 142 F.3d 279 (6th Cir.1998), Resolute Insurance Co. v. State of North Carolina, 397 F.2n 586,589 (4th Cir. 1968); Nesses v. Shepard, 68 F.3d 1003, 1005 (7thCir. 1995); Vol.11,Wright & Miller, Federal Practice and Procedure @198,200(1973 ed.).

Plaintiffs challenge does not require the district court to review any particular findings of fact and conclusions of law. The Extrinsic Fraud scheme is the subject of examination. Extrinsic fraud by definition is occurring outside of the court process, proceedings and was not known at the time of the court process, proceeding and therefore could not be appealed in the state courts. Plaintiff challenge goes to the fraud outside of the court before there ever was an Order, hearing, or proceeding in the courtroom.

Further, the Magistrate Judge Report affirmed in instant Order cites the Stratton parental appeal of the adjudication, [Dkt.86,pg. 3]. "Plaintiff Solomon Stratton was represented by counsel." In Re: Stratton, 583 S.E.2d 323 (N.C.App. 2003).

The district court attempt to assert plaintiff somehow had his day in court via

the parents adjudication appeal is quite a stretch. If by some wild chance plaintiff could have retained independent counsel at age thirteen (13) while still under the "custody" and control of the defendant, MCDSS, the extrinsic fraud issue still **could not** have been raised.

The Rooker-Feldman doctrine was misapplied by the district court. Rooker-Feldman bars federal courts from reviewing claims that were raised, could have been raised in state court or when the party asserting the federal court challenge had "a full and fair opportunity" to assert the pending claims in the original state court action. None of the Rooker-Feldman bars apply in instant Claim. Plaintiff did not raise and could not have raised claims in the state court. Plaintiff was the victim of the extrinsic fraud scheme executed by McDSS, et al.

MCDSS Paper Fraud Scheme

MCDSS has concocted a paper fraud scheme replacing the statutorily mandated Administrative Office of the Courts ("AOC") forms with their home rigged, counterfeits. These counterfeit forms have been used by MCDSS, et al to facilitate seizing children and deny them the due process protections provided in AOC forms and the US Constitution. These fraudulent forms and the official AOC forms are in [Dkt. 74, Exh.4,5,6,7,8,9,10,11] and can be compared side by side. These fraudulent forms were used to seize and hold me in MCDSS custody for over 7 years.

The North Carolina Administrative Office of the Courts ("AOC") issues official forms to be used by every DSS and Juvenile Court in the state. Each AOC form has numbers and letters identifying the form. MCDSS has replaced the official

state mandated AOC juvenile forms with paper frauds, including a fake "non-secure custody order" [Dkt.74,Exh.8] and a fraudulent "summons." [Dkt. 74,Exh.10]

> "No juvenile shall be held under a nonsecure custody order for more than seven calendar days without a hearing on the merits or a hearing to determine the need for continued custody. ...At a hearing to determine the need for continued custody, the court shall receive testimony and shall allow the guardian ad litem, or juvenile, and the juvenile's parent, guardian, custodian, or caretaker an opportunity to introduce evidence, to be heard in the person's own behalf, and to examine witnesses. The State shall bear the burden at every stage of the proceedings to provide clear and convincing evidence that the juvenile's placement in custody is necessary."

The first step MCDSS takes to eliminate this mandated post deprivation due process hearing is to issue a **Non** AOC fraudulent "Juvenile Summons". This fraudulent "Juvenile Summons" is not printed on the state form AOC -J-142 entitled "Juvenile Summons and Notice of Hearing." MCDSS instead concocts its own form called "Juvenile Summons" and take out the words "and Notice of Hearing" from the title and falsely states that the hearing is for the hearing is for the following purpose: **"YOU ARE HEREBY SUMMONED TO** APPEAR in Juvenile Court in the Criminal Courts building, 700 East Fourth, Charlotte, North Carolina at_____o'clock____M, service, for a hearing to consider the appointment of counsel for the parents (s) (in abuse, petition served with this summons." (Emphasis in original)

As shown, MCDSS fraudulent "Juvenile Summons" removes all notice of the statutorily mandated § 7B-506 post-deprivation due process hearing and instead falsely tells parents that the upcoming hearing is only "to appoint counsel" and to "set a date for (a) hearing."

Using this extrinsic fraud scheme, MCDSS was able to hold me in their custody without my parents or me knowing we had been deprived of the statutorily mandated

7B-506 hearing on the merits and I had been illegally held in violation of § 7B-506... MCDSS removal of the words "Notice of hearing" shows the premeditated scheme to deny the due process rights of their family victims.

Generated from the fraudulent summons and hearing where there is no Conduct of a NCGS 7B-506 hearing, an "order" is generated. To cover the fraud that took place at this hearing, the "order" has a box checked off that indicates the parents consented. However, there is and has never been a signed consent judgment. The original court tape of this 7-day hearing where MCDSS et al perpetrated this fraud proves there was no consent. Additionally the tape proves there was non NCGS 7B-506 hearing conducted. The Total Extrinsic Fraud Scheme is set out in complete step by step detail in plaintiff (Amended Complaint, at 19 - 26).

The Extrinsic Fraud Scheme is known or should have been known by the NC Court of Appeals and NC Supreme Court. They are the experts in the Juvenile Code and regularly view the mandated AOC forms sent up on appeals by the other 99 North Carolina counties compared to the **Non**-AOC forms sent up by MCDSS. Further this plaintiff could not have possibly appealed to the state courts as I was in the care and custody of the very persons that are the subject of this Complaint. The Guardian ad lietms attorneys assigned were a part of implementing the extrinsic fraud scheme as set forth in the (Amended Complaint, at 23).

<u>Abuse of Discretion and Procedural Err to Deny Motion for Judicial Notice and Hearing pursuant to Rule of Evidence 201(e)</u>

Magistrate Judge McDonald and Chief Judge Norton seem to decipher the

unraveling of MCDSS, et al argument that jurisdiction was acquired over the Stratton Family on December 21, 2000. That may explain why the magistrate's report and the affirmation by Judge Norton shift to the Juvenile Proceeding, Appellate Decisions and TP Order by which to invoke the Rooker-Feldman doctrine as a means to dismiss this complaint. MCDSS attorney Robert Adden clearly asserts MCDSS originally attained jurisdiction in the TPR Order on December 21, 2000.

Nevertheless, whether the December 21, 2000 Petition, the January 30, 2001 Non-secure Custody "Order", Juvenile "Court" Proceedings, Appellate "Decisions", or TPR "Order"--All sprang from Extrinsic Fraud Scheme originating with the December 21, 2000 Petition to Prohibit Interference with or Obstruct an Investigation.

The Scheme is set forth above and set forth more explicitly in the (Amended Complaint at 34-37). The facially fraudulent documents containing the extrinsic fraud are ill refutable and prima facial evidence of the extrinsic fraud.

If the Federal District Court had complied with Federal Civil Rule 201, the record would be clear and no need for further explanation. A Rule 201(e) hearing would have conclusively proved the legal impossibility for any state court jurisdiction over Plaintiff

> Bostic v Rodrigues, 667 F. Supp. 2d 591, 604 (E.D.N.C. 2009) states: "To be a fact that may be judicially noticed, it must be indisputable and generally known."

It is a indisputable fact and generally known that the North Carolina Juvenile Code at NCGS § 7B-406 "Issuance of summons" mandates the following:

> (a) "Immediately after a petition has been filed alleging that a juvenile is abused neglected, or dependent, the clerk shall issue a summons to the parent, guardian, custodian, or caretaker

> requiring them to appear for a hearing at the time and place stated in the summons. A copy of the petition shall be attached to each summons. A summons shall be on a printed form supplied by the Administrative Office of the Court and shall include:

NCGS § 7B-406 goes on to describe numerous other criteria for the Summons.

The printed form supplied by the Administrative Office of the Courts mandated by NCGS § 7B-406 is state form AOC-J-142 entitled "Juvenile Summons and Notice of Hearing.". That is an indisputable fact.

MCDSS "Juvenile Summons" form is not an AOC -J-142 form. The exhibited MCDSS form proves it is fraudulent facially flawed form entitled "Juvenile Summons." omitting the words in the Official AOC-J-142 form "Notice of Hearing".

MCDSS fraudulent forms are in the Federal Record, [Dkt.74,exh.4,,6,,8,10]

> Rule 201(e) states: Opportunity to Be Heard. On timely request, a party is entitled to be heard on the propriety of taking judicial notice and the nature of fact to be noticed. If the court takes judicial notice before notifying a Party, on request is still entitled to be heard.

plaintiff timely requested Rule 201(e) hearing.

Failure to comply with Rule 201(e) was abuse of discretion and procedural err as a matter of law by District Court.

Abuse of Discretion in Violation of Rule 56

June 24, 2011 Plaintiff Solomon Stratton moved for Partial Summary Judgment and filed a Memorandum of Law in support thereof. [Dkt. 74,75]. MCDSS attorney Robert Adden filed a motion purportedly for an extension of time.[Dkt. 76] However instead of just requesting a mere extension of time, Adden presented summary judgment arguments in this motion. Adden did not want to be bound by the mandates

of Rule 56 in response to Plaintiff's motion for partial summary judgment. The next day, Magistrate Judge Kevin F. McDonald issued a document "staying" all pleadings. MCDSS, et al did not have to respond to Plaintiff motion for summary judgment based on Magistrate Judge "staying" any response. [Dkt.77].

Pursuant to 28 U.S.C. § 636(B)(1)(A) McDonald has no federal statutory jurisdiction and no authority to rule on motions for summary judgment. Further, McDonald couched this circumventing of the mandates of Rule 56 as "conserve judicial resources." However, it is substance that counts, not form. As stated in

> Neely v. McGarry, Dist. Court, D. Colorado 2006: "The standard of review this court applies in considering a magistrate judge's determinations in a case depends upon the nature of the underlying motion at issue. 'Federal magistrate [judges] are creatures of statute, and so is their jurisdiction. NLRB v A-Plus Roofing, Inc.,39F.3d 1410, 1415 (9th Cir. 1994).'"

Both McDonald and Adden are attempting to deny Plaintiff's right to have summary judgment motion heard, deny the right to access courts and to cover up the criminal enterprise that is the subject of this complaint.

> In support of his "pleading/motion resting" In [Dkt. 76,p4,para.4] Adden states:
>
> "As the Fourth Circuit Court of Appeals
> stated in Evans v. Technologies Applications & Service Co.,
> 80F.3d 954(4th Cir. 1996): As a general rule, summary judgment is appropriate only after "adequate time for discovery."

Adden also claims his previously filed "motions to dismiss" trump Plaintiff's motion for summary judgment. Adden's own case, the Evans case, clearly prohibits what Robert Adden and Magistrate McDonald did. While Adden quoted what he wanted from Evans, the entire passage is quoted in Plaintiffs' [Objection For The Record And Motion For De Novo Review document, Pg.5]

An examination of Evans confirms compliance with Rule 56(f) requires filing of affidavit if more time is needed for discovery. And one cannot rest on their pleadings.

Adden wants his case decided on his motions alone without his ever having to respond to Plaintiffs motion for summary judgment, and quotes Celotex Corp. v. Catrett, 477 U.S. 317 (1986).

> "The non-moving party must then go beyond the pleadings and designate 'specific facts showing that there is a genuine issue for trial'" Celotex at 324.

Adden's own case law again supports Plaintiff and directly contradicts Adden

The counterfeit documents used by MCDSS is on its face fraudulent. It is prima facial evidence of the extrinsic fraud that is the subject of this Complaint. Adden cannot show that there is a genuine issue for trial.

Plaintiffs filed "Objection for the Record and Motion for De Novo Review." Chief Judge Norton did not review. Magistrate Judge McDonald ruling [Dkt.77] staying any responses constructively allowed non-compliance with Rule 56 for Summary judgment.

Defendants are acting in continuing agreement, combination and conspiracy to violate Plaintiff's clearly established rights as guaranteed and protected by the U.S. Constitution.

The violations of Plaintiff's due process rights in the Mecklenburg County trial court has been carried over in the Federal District Court namely:

Fourteenth Amendment Rights:

(a) Plaintiff's right to substantive due process.
(b) Plaintiff's right to procedural process.
(c) Plaintiff's right to equal protection.

CONCLUSION

The Court abused it's discretion and committed procedural err as a matter of law by:

1.)Violating Federal Rules of Procedure, (Rule 56 Summary Judgment requirements)
2.) Violating Plaintiff's due process rights and access to the courts.
3.) Using Rooker-Feldman doctrine to dismiss Complaint where extrinsic fraud, no jurisdiction by the state courts were the issues to be examined.
3.) Violating Federal Rules of Evidence, Rule 201(e) to obstruct examination.

The Court was presented with evidence of an extrinsic fraud scheme along with the documents--clear on its face. Instead of an examination, the court tossed the evidence into the Rooker-Feldman plié. Plaintiff understands the federal courts are not a court of appeals from state judgments. However, instant claim is not an appeal from any state judgment. The state court should understand the Rooker-Feldman, Domestic Relations doctrines are not shields to block victims of extrinsic fraud schemes from ever having their full and fair opportunity to be heard.

Relief Sought

1. This 4th Circuit Court of Appeals remand case back to District court for defendants to respond as mandated by 28 U.S.C. § 636 (b)(1)(A), by Rule 56 of the F.R.C.P., and by Rule 201(e) of the Federal Rules of Evidence

2. That Plaintiff's Motion for Partial Summary Judgment immediately move forward Pursuant to Rule 56 and well established statutory and 4th Circuit case law. (Evans).

3. Any other relief the Court deems appropriate.

CERTIFICATE OF SERVICE

Plaintiff certifies that copies of the foregoing document was served via United States Postal Service First Class Mail or via hand delivery on the parties named below:

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This the 14th day of January, 2012

Solomon Stratton
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