

**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA  
CIVIL DIVISION**

FRATERNAL ORDER OF POLICE,  
METROPOLITAN POLICE DEPARTMENT  
LABOR COMMITTEE, D.C. POLICE  
UNION,

1524 Pennsylvania Avenue, S.E.  
Washington, D.C. 20003,

OFFICER LARRY REED,

6001 Georgia Ave., N.W.  
Washington, D.C. 20011,

SERGEANT TODD KORSON,

5002 Hayes Street, N.E.  
Washington, D.C. 20019,

SERGEANT JEREMY KNISELEY,

5002 Hayes Street, N.E.  
Washington, D.C. 20019,

OFFICER DAVID WALLACE,

1805 Bladensburg Road, N.E.  
Washington, D.C. 20002

Plaintiffs,

v.

THE DISTRICT OF COLUMBIA,

John Wilson Building  
1350 Pennsylvania Avenue, N.W.  
Washington, D.C. 20004,

Case Number \_\_\_\_\_

Serve:

Mayor Muriel Bowser  
1350 Pennsylvania Avenue, N.W.  
Washington, DC 20004,

and

Karl A. Racine  
Attorney General  
for the District of Columbia  
441 4th Street, N.W.  
Washington, DC 20001,

MURIEL BOWSER, in her official capacity as  
Mayor of the District of Columbia,

Serve:

Mayor Muriel Bowser  
1350 Pennsylvania Avenue, N.W.  
Washington, D.C. 20004,

and

Karl A. Racine  
Attorney General  
for the District of Columbia  
441 4th Street, N.W.  
Washington, DC 20001,

Defendants.

## COMPLAINT

The Plaintiffs, Fraternal Order of Police, Metropolitan Police Department Labor Committee, D.C. Police Union (“D.C. Police Union”), Officer Larry Reed, Sergeant Todd Korson, Sergeant Jeremy Kniseley, and Officer David Wallace (collectively, the “Plaintiffs”) by their attorneys, hereby brings this lawsuit against the Defendants the District of Columbia (“District”) and Mayor Muriel Bowser (“the Mayor” or “Mayor Bowser”) (District and Mayor Bowser collectively, the “Defendants”) for relief from the Mayor’s Emergency Executive Order

that is *ultra vires* and violates the separation of powers principles of District of Columbia Home Rule Act, the Supremacy Clause, the Equal Protection requirements of the Fifth Amendment and Fourteenth Amendments to the United States Constitution as also applicable under the Home Rule Act, the Due Process Clause of the Fifth and Fourteenth Amendments to the United States Constitution as also applicable under the Home Rule Act. Separately and contemporaneously with this Complaint, the Plaintiffs bring a Motion for Temporary Restraining Order. In support of this Complaint, the Plaintiffs states the following:

**I.**  
**Parties**

1. The D.C. Police Union is a labor union with its principal place of business located at 1524 Pennsylvania Ave., S.E., Washington, DC 20003. The D.C. Police Union is the exclusive representative of all police officers, sergeants, investigators, detectives, and detective sergeants of the D.C. Metropolitan Police Department and is comprised of approximately 3,500 members. The D.C. Police Union brings this lawsuit on behalf of its members as well as on its own behalf.

2. Officer Larry Reed, Sergeant Todd Korson, Sergeant Jeremy Kniseley, and Officer David Wallace are members of the D.C. Police Union and District of Columbia employees who are sworn police officers employed by the Metropolitan Police Department to whom the Mayor's vaccine mandate applies.

3. The District is the government for the District of Columbia. The District is responsible for all of the official acts of the Council and the Mayor of the District of Columbia.

4. Muriel Bowser is the Mayor of the District of Columbia. The Mayor is "responsible for the proper execution of all laws relating to the District." D.C. Code § 1-204.22.

**II.**  
**Jurisdiction and Venue**

5. This Court may exercise jurisdiction and venue over the Defendants because all of the acts and omissions described herein occurred within the District of Columbia and are actions of the Mayor of the District of Columbia and the Government of the District of Columbia and its agents or agencies within its control.

**III.**  
**Factual Background**

6. On August 10, 2021, Mayor Muriel Bowser issued Mayor's Order 2021-099 concerning COVID-19 vaccination certification requirements for District government employees. Thereafter, the D.C. Police Union engaged in bargaining with the D.C. Office of Labor Relations and Collective Bargaining ("OLRCB") and the D.C. Metropolitan Police Department ("MPD") concerning the implementation of Mayor's Order 2021-099. On September 17, 2021, pursuant to that bargaining, the MPD published Executive Order 21-022, which allowed unvaccinated MPD members to undergo weekly COVID-19 testing in lieu of receiving the COVID-19 vaccine.

7. On November 23, 2021, the MPD issued Executive Order 21-026, which replaced Executive Order 21-022, but retained the bargained-for right of unvaccinated MPD members to undergo weekly COVID-19 testing.

8. On December 20, 2021, Mayor Bowser issued Mayor's Order 2021-147, directing the City Administrator to "formulate a plan for removing, at the earliest date possible, the weekly 'test out' option for [unvaccinated] District Government employees." **Exhibit 1** at Part VI(1). In conjunction with eliminating the test-out option, the Order further announced a mandatory COVID-19 vaccine requirement for all District employees, as follows: "District Government

employees, contractors, interns, and grantees **shall** obtain a booster shot against COVID-19 and shall submit documentation of their booster shot.” *Id.* at Part VI(2) (emphasis added). According to current Centers for Disease Control and Prevention (“CDC”) guidelines, persons are only eligible for a booster shot until a certain period after already having received a full course of any of the available COVID-19 vaccines. *See* <https://www.cdc.gov/coronavirus/2019-ncov/vaccines/booster-shot.html> (last accessed Jan. 26, 2022). Therefore, Mayor’s Order 2021-147 requires, not only a booster shot, but a full COVID-19 vaccination.

9. Mayor’s Order 2021-147 further states that employees who fail to abide by the mandatory vaccine requirement will face discipline: “District employees and interns are subject to adverse employment actions . . . for violations of this Order or directives and other actions taken pursuant to it.” **Exhibit 1** at Part VIII(5).

10. Pursuant to the MPD’s General Orders, “adverse action” is defined as “[a]ny fine, suspension, removal from service, or any reduction in rank or pay of any member who is not serving a probationary period.” MPD General Order 120.21 (Disciplinary Procedures and Processes), Part III(1), [https://go.mpdconline.com/GO/120\\_21re.pdf](https://go.mpdconline.com/GO/120_21re.pdf) (last accessed Feb. 4, 2022). Thus, D.C. Police Union members who fail to abide by Mayor’s vaccination mandate are subject to fines, suspension, termination, or reduction in rank or pay.

11. On January 4, 2022, Mayor’s Order 2021-147 expired. Specifically, Mayor’s Order 2021-147 was issued as an “emergency executive order” pursuant to D.C. Code § 7-2304. Under D.C. Code § 7-2306, an emergency executive order has limited duration, as follows:

(a) An emergency executive order, or a public health emergency executive order, issued by the Mayor **shall be effective for a period of no more than 15 calendar days from the day it is signed by the Mayor**, but may be rescinded in whole or in part by the Mayor within that period should the Mayor determine that the public emergency no longer exists, or no longer warrants the part rescinded.

(b) An emergency executive order, or a public health emergency executive order, may be extended for up to an additional 15-day period, only upon request by the Mayor for, and the adoption of, an emergency act by the Council of the District of Columbia.

D.C. Code § 7-2306(a), (b) (emphasis added). The D.C. Council did not extend the Mayor's Order 2021-147. Therefore, on January 4, 2022 – 15 days after Mayor Bowser signed Mayor's Order 2021-147 – Mayor's Order 2021-147 expired.

12. On January 24, 2022, after the expiration of Mayor's Order 2021-147, E. Lindsey Maxwell, who is the Director of the OLRCB and the Interim Director of the D.C. Department of Human Resources, issued a Memorandum to all District employees stating the following:

In accordance with Mayor's Order 2021-147 . . . all District government employees are required to receive a complete course of vaccination against COVID-19, including a booster shot if eligible under CDC guidance. All District government employees must provide proof of having received a full course of vaccination, including a booster when eligible, by uploading an image or other documentation into PeopleSoft by February 15, 2022. Employees who fail to comply with the policy by February 15, 2022 are subject to discipline.

*See* January 24, 2022 Memorandum, attached as **Exhibit 2**.

13. On January 26, 2022, the MPD issued a Department-wide communication known as a "teletype," identified as Teletype TT 01-099-22, which stated the following:

On January 24, 2022 DCHR released issuance 1-2022-03, COVID-19 Vaccination and Booster Requirement, requiring all District government employees to receive a complete course of vaccination against COVID-19, including a booster shot when eligible. . . . All proof of vaccination status shall be uploaded to Peoplesoft no later than February 15, 2022.

Teletype TT 01-099-22, attached as **Exhibit 3**. On January 26, 2022, the MPD issued an updated Teletype TT 01-101-22, repeating the vaccine mandate and the requirement that all MPD employees provide proof of vaccination status no later than February 15, 2022.

14. Not only is Mayor's Order 2021-147 expired by passage of time, but the statutory basis for the Mayor to issue the order has expired and is no longer a source of authority for the

Mayor to rely on. Mayor's Order 2021-147 was an "emergency executive order" issued pursuant to D.C. Code § 7-2304(b)(16). The D.C. Council amended D.C. Code § 7-2304 in response to the COVID-19 pandemic to add subsection (b)(16). *See* Coronavirus Support Emergency Amendment Act of 2020, Act No. A23-0326, 67 DCR 7045, Sec. 507(a)(4) (May 27, 2020). This new subsection that the Mayor relied on for the issuance of Mayor's Order 2021-147 stated that the Mayor could take certain personnel actions explicitly enumerated therein. This limited extension of Mayoral authority was as follows:

(16) Notwithstanding any provision of Chapter 6 of Title 1, or the rules issued pursuant to Chapter 6 of Title 1, the subchapter I-A of Chapter 5 of Title 1, or any other personnel law or rules, the Mayor may take the following personnel actions regarding executive branch subordinate agencies that the Mayor determines necessary and appropriate to address the emergency:

- (A) Redeploying employees within or between agencies;
- (B) Modifying employees' tours of duty;
- (C) Modifying employees' places of duty;
- (D) Mandating telework;
- (E) Extending shifts and assigning additional shifts;
- (F) Providing appropriate meals to employees required to work overtime or work without meal breaks;
- (G) Assigning additional duties to employees;
- (H) Extending existing terms of employees;
- (I) Hiring new employees into the Career, Education, and Management Supervisory Services without competition;
- (J) Eliminating any annuity offsets established by any law; or
- (K) Denying leave or rescinding approval of previously approved leave.

D.C. Code § 7-2304(b)(16) (emphasis added). None of the enumerated provisions contained in D.C. Code § 7-2304(b)(16) include the power to involuntarily impose medical treatment or a mandatory vaccine. Despite this, Defendants have taken the position that the alleged authority to impose and enforce the vaccine mandate at issue is predicated upon D.C. Code § 7-2304(b)(16). Significantly, D.C. Code § 7-2304(b)(16) was scheduled to expire on February 4, 2022.

15. On January 27, 2022, in recognition of the fact that D.C. Code § 7-2304(b)(16) was set to expire on February 4, 2022, the Mayor requested that the D.C. Council pass emergency legislation to extend D.C. Code § 7-2304(b)(16). The D.C. Council rejected the Mayor's request to extend D.C. Code § 7-2304(b)(16). *See Exhibit 4.*

16. On January 31, 2022, the Mayor again proposed legislation to the D.C. Council that would extend D.C. Code § 7-2304(b)(16). Alternatively, the Mayor proposed legislation to the D.C. Council that would amend D.C. Code § 7-2304(b)(16) to include a new subsection providing her with the authority to: “**Implement vaccine, testing, and masking requirements for District employees.**” **Exhibit 5** (emphasis added). The D.C. Council rejected the Mayor's request to extend D.C. Code § 7-2304(b)(16) and rejected her request to pass new legislation providing her with the authority to “Implement vaccine, testing, and masking requirements for District employees.” The Mayor's alternative proposal to the D.C. Council is an express admission that the Mayor does not have the authority to impose and enforce the subject vaccine mandate.

17. Despite clearly lacking the legal authority to issue a vaccine mandate for approximately 32,000 District government employees, Mayor Bowser has insisted on enforcing her unauthorized mandate through threats of discipline. The Mayor's actions come at a time when a state of emergency no longer exists and there is no legal or factual basis for these actions.

18. According to the District's published COVID-19 vaccination data, 92.8% of District residents are partially or fully vaccinated. *See* <https://coronavirus.dc.gov/> (last accessed February 3, 2022).

19. According to information provided by the MPD, 528 D.C. Police Union members have not received the COVID-19 vaccine. *See Exhibit 6.* According to information provided by



the MPD, 2,803 D.C. Police Union members are vaccinated. A significant number of the 2,803 vaccinated members of the D.C. Police Union have not yet received a COVID-19 booster shot and are either opposed to receiving the booster shot or do not intend on receiving the booster shot. *See* Affidavit of D.C. Police Union Chairman Gregory Pemberton, attached as **Exhibit 7**.

20. According to information provided by the MPD, 696 vaccinated D.C. Police Union members have tested positive for COVID-19 after receiving the COVID-19 vaccine. *See* **Exhibit 6**. These statistics reveal the ineffectiveness of the vaccine, demonstrating that even after being fully vaccinated, 25% of D.C. Police Union members still contracted the coronavirus.

21. The Mayor did not base her Emergency Order on the study of data as it relates to members of the Metropolitan Police Department. The Mayor also did not hold public hearings, convene any medical advisory panel, or publish any medical or statistical analysis that was performed by her office before imposing the vaccine mandate. There is no evidence that the Mayor has referred to or published to support that the Mayor considered and continues to consider current data relating to the transmission of coronavirus by individuals who have been vaccinated. The Mayor has not explained or published any information explaining why there was a sudden change from the COVID-19 testing mandate to a vaccine mandate. This is particularly problematic and concerning because the change is being implemented in the face of plummeting COVID transmission numbers and a District-wide vaccination rate in excess of 92%. The MPD has admitted that most of its workforce has already contracted COVID-19, yet there was no consideration given by the Mayor as to whether any exceptions should be drawn for the natural immunity of police officers based on these observed prior infections. Although requested, the MPD and the Mayor have never provided any data regarding any contact tracing or studies relating to contact tracing that would illustrate whether or not the vaccine has had any

impact on the spread of coronavirus among government workers or members of the public that workers transmitted the virus to while on duty. The Mayor has also failed to provide any explanation for why her office and the MPD have decided to depart from their prior approach of merely encouraging vaccines. The Mayor's office has not published or provided any contingency plans for what the Department will do if forced to suspend or terminate such a large percentage of its workforce. This is a particularly acute problem given the MPD's admitted staffing shortages and soaring crime levels. *See Exhibit 8; see also* <https://wtop.com/local/2022/01/2021-wraps-up-as-one-of-regions-most-violent-years-in-ages/> (last accessed on February 4, 2022).

22. A substantial number of the unvaccinated D.C. Police Union members do not wish to receive any COVID-19 vaccine. *See* Affidavit of Chairman Pemberton, attached as **Exhibit 7**. Additionally, a significant number of vaccinated D.C. Police Union members have expressed that they do not wish to receive the COVID-19 booster shot. *See id.* This genuine desire not to receive the COVID-19 vaccine and/or a booster shot is based on various reasons, including skepticism of the safety and efficacy of the COVID-19 vaccine and booster shot and sincerely-held personal convictions against compulsory medical procedures imposed under threat of discipline. *See id.* Many of the vaccinated D.C. Police Union members have expressed that they obtained the COVID-19 vaccine solely out of fear of discipline, rather than any desire to receive the COVID-19 vaccine and/or booster shot. *See id.* These members have expressed that they would not have received the COVID-19 vaccine and/or booster shot, but-for the threat of discipline imposed by Mayor's Order 2021-147. *See id.*

23. Moreover, D.C. Police Union members who previously opted to test on a weekly basis for COVID-19 rather than receive the vaccine, but who failed to abide by the MPD's

stringent testing requirements were promptly scheduled for trial board termination hearings. *See* Affidavit of Chairman Pemberton, attached as **Exhibit 7**; *see also* Affidavit of Officer Wallace, attached as **Exhibit 9**. Before these termination hearings even occurred, these D.C. Police Union members had their police powers revoked and they were placed in a non-contact status, immediately stigmatizing them as being in the process of being terminated. A police officer who is revoked has his duty weapon confiscated, leaving the member unable to defend themselves and their families from violent acts of persons the officer may have previously arrested, making them more susceptible to grave physical injury. Obviously in a time when our country has seen an unprecedented rise in violence against police officers, this threat is far from speculative or immaterial. *See* Violent Attacks Against Police Officers on the Rise in 2022, *The Washington Times*, January 24, 2022.<sup>1</sup> Even D.C. Police Union members who actually conducted the weekly COVID-19 testing but made an innocent mistake in failing to properly provide the testing results to the MPD or who had a momentary lapse in getting tested were unable to escape trial board termination proceedings unless they agreed to be vaccinated. *See* **Exhibit 7**, *see also* Affidavit of Officer Wallace, attached as **Exhibit 9**. Based on these practices already employed by the MPD, it is clear that MPD members who refuse to be vaccinated will face immediate adverse employment action that threatens their safety, reputation and well-being through these promptly-initiated termination proceedings.

24. Several jurisdictions, including the District of Columbia and the State of Maryland, have passed legislation that precludes a law enforcement officer from being hired if they were previously terminated by another law enforcement agency or resigned while facing disciplinary charges. *See* D.C. Comprehensive Policing and Justice Reform Act of 2020,

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<sup>1</sup> <https://www.washingtontimes.com/news/2022/jan/24/violent-attacks-against-police-officers-rise-2022/>

Subtitle K (“An applicant shall be ineligible for appointment as a sworn member of the Metropolitan Police Department if the applicant . . . [w]as previously terminated or forced to resign for disciplinary reasons from any commissioned or recruit or probationary position with a law enforcement agency; or [p]reviously resigned from a law enforcement agency to avoid potential, proposed, or pending adverse disciplinary action or termination.”); *see also* Md. Code Ann., Pub. Safety § 3-212 (effective July 1, 2022). As a result, termination of employment for a D.C. Police Union member does not simply have a financial impact, but represents irreparable harm and precludes them from obtaining any employment in their chosen profession.

25. Officer Larry Reed is a member of the D.C. Police Union and a District of Columbia employee who is a sworn police officer employed by the Metropolitan Police Department. Officer Reed is subject to orders by the MPD to comply with the Mayor’s vaccine mandate or face discipline. Officer Reed is not vaccinated and will only receive the COVID-19 vaccine upon threat of discipline and to avoid discipline. Officer Reed has not received nor does he have any application pending for a medical or religious exemption from the Mayor’s COVID-19 vaccine mandate.

26. Sergeant Todd Korson is a member of the D.C. Police Union and a District of Columbia employee who is a sworn police officer employed by the Metropolitan Police Department. Sergeant Korson is subject to orders by the MPD to comply with the Mayor’s vaccine mandate or face discipline. Sergeant Korson has received the COVID-19 vaccine, but has not received the vaccine booster shot. Sergeant Korson is unwilling to receive the vaccine booster shot. Sergeant Korson has not received nor does he have an application pending for a medical or religious exemption from the Mayor’s COVID-19 booster shot mandate.

27. Sergeant Jeremy Kniseley is a member of the D.C. Police Union and a District of

Columbia employee who is a sworn police officer employed by the Metropolitan Police Department. Sergeant Kniseley is subject to orders by the MPD to comply with the Mayor's vaccine mandate or face discipline. Sergeant Kniseley has not received the COVID-19 vaccine and is unwilling to receive the vaccine. Sergeant Kniseley has not received nor does he have an application pending for a medical or religious exemption from the Mayor's COVID-19 vaccine mandate.

28. Officer David Wallace is a member of the D.C. Police Union and a District of Columbia employee who is a sworn police officer employed by the Metropolitan Police Department. Officer Wallace is subject to orders by the MPD to comply with the Mayor's vaccine mandate or face discipline. Officer Wallace is currently subject to an MPD trial board termination proceeding in which the MPD has proposed the termination of Officer Wallace for allegedly failing to comply with the MPD's weekly COVID-19 testing requirement for unvaccinated officers. Officer Wallace was opposed to receiving the COVID-19 vaccine, but was informed that the MPD would proceed with his termination hearing unless he obtained the COVID-19 vaccine. Against his will and in order to avoid being terminated, Officer Wallace received the first dose of the COVID-19 vaccine in late January 2022. Officer Wallace is currently scheduled to receive the second dose of the COVID-19 vaccine on February 15, 2022. Officer Wallace does not want to receive the second dose of the COVID-19 vaccine and will only do so to avoid his termination. Officer Wallace's trial board termination matter remains pending and his hearing is currently scheduled for February 16, 2022. *See* Affidavit of Officer Wallace, attached as **Exhibit 9**.

**Count I**  
**-Request for Declaratory Judgment and Injunctive Relief-**  
**Ultra Vires – Mayor’s Emergency Executive Order 2021-147 Expired and is a Nullity**  
**(Against All Defendants)**

29. Paragraphs 1-28 of this Complaint are restated and fully incorporated herein.

30. The vaccine mandate at issue was issued and is being enforced based on an expired Mayor’s Order. As a result, the Defendants’ imposition and enforcement of the vaccine mandate is *ultra vires*.

31. Mayor’s Order 2021-147 is an “emergency executive order” issued pursuant to D.C. Code § 7-2304, and therefore is limited in duration:

(a) An emergency executive order, or a public health emergency executive order, issued by the Mayor **shall be effective for a period of no more than 15 calendar days from the day it is signed by the Mayor**, but may be rescinded in whole or in part by the Mayor within that period should the Mayor determine that the public emergency no longer exists, or no longer warrants the part rescinded.

(b) An emergency executive order, or a public health emergency executive order, **may be extended for up to an additional 15-day period, only upon** request by the Mayor for, and the adoption of, an **emergency act by the Council** of the District of Columbia.

D.C. Code § 7-2306(a), (b) (emphasis added).

32. Mayor’s Order 2021-147 was issued and signed by Mayor Bowser on December 20, 2021. *See Exhibit 1*. Therefore, pursuant to D.C. Code § 7-2306(a), Mayor’s Order 2021-147 expired 15-days later on January 4, 2022.

33. The D.C. Council has not passed any emergency act to extend Mayor’s Order 2021-147 for an additional 15 calendar days pursuant to D.C. Code § 7-2306(b).

34. Despite Mayor’s Order 2021-147 having expired on January 4, 2022, the Mayor and officials and entities to whom she has purportedly delegated her claimed authority, are presently making executive decisions in reliance on the expired Mayor’s Order and have

explicitly stated that the executive branch will implement and enforce the vaccine mandate and accompanying disciplinary mandate contained in Mayor's Order 2021-147.

35. All provisions in Mayor's Order 2021-147, even if presumed to be legally and/or constitutionally valid, are without legal force and effect upon expiration of the Order. Thus, all such provisions became a nullity on January 4, 2022.

36. Defendants' current actions to impose and enforce the vaccine mandate contained in Mayor's Order 2021-147 are without legal basis and, as such, are *ultra vires*.

WHEREFORE, Plaintiffs request that the Court enter judgment in their favor against the Defendants:

1. Declaring that Defendants' creation, imposition, and enforcement of Mayor's Order 2021-147 are *ultra vires*, and, as such, violate District law, the Home Rule Act, and 42 U.S.C. § 1983;
2. Granting temporary, preliminary, and permanent injunctive relief enjoining the enforcement of Mayor's Order 2021-147;
3. Awarding the D.C. Police Union attorneys' fees and costs, pursuant to 42 U.S.C. § 1988; and
4. Granting such other and further relief as the Court may deem just and proper.

**Count II**  
**-Request for Declaratory Judgment and Injunctive Relief-**  
**Ultra Vires – D.C. Code § 7-2304(b)(16) Has Expired**  
**(Against All Defendants)**

37. Paragraphs 1-36 of this Complaint are restated and fully incorporated herein.

38. Mayor's Order 2021-147 is an "emergency executive order" issued pursuant to D.C. Code § 7-2304.

39. Upon issuance of an emergency executive order, the Mayor may take only the specific actions enumerated in the D.C. Code § 7-2304(b).

40. None of the enumerated actions set forth in D.C. Code § 7-2304(b)(16) include the power to involuntarily impose medical treatment or impose a mandatory vaccine. *See id.* In fact, these powers are not contained in any provision of D.C. Code § 7-2304 or any other District law enacted by the Council.

41. The D.C. Council amended D.C. Code § 7-2304 specifically in response to the COVID-19 pandemic to add subsection (b)(16). *See* Coronavirus Support Emergency Amendment Act of 2020, Act No. A23-0326, 67 DCR 7045, Sec. 507(a)(4) (May 27, 2020). This new subsection provided that the Mayor can take certain personnel actions that are explicitly enumerated therein as follows:

(16) Notwithstanding any provision of Chapter 6 of Title 1, or the rules issued pursuant to Chapter 6 of Title 1, the subchapter I-A of Chapter 5 of Title 1, or any other personnel law or rules, the Mayor may take the following personnel actions regarding executive branch subordinate agencies that the Mayor determines necessary and appropriate to address the emergency:

- (A) Redeploying employees within or between agencies;
- (B) Modifying employees' tours of duty;
- (C) Modifying employees' places of duty;
- (D) Mandating telework;
- (E) Extending shifts and assigning additional shifts;
- (F) Providing appropriate meals to employees required to work overtime or work without meal breaks;
- (G) Assigning additional duties to employees;
- (H) Extending existing terms of employees;
- (I) Hiring new employees into the Career, Education, and Management Supervisory Services without competition;
- (J) Eliminating any annuity offsets established by any law; or
- (K) Denying leave or rescinding approval of previously approved leave.

D.C. Code § 7-2304(b)(16). None of the enumerated provisions in D.C. Code § 7-2304(b)(16) include the power to involuntarily impose medical treatment or impose a mandatory vaccine.



42. Defendants have taken the position that the alleged authority to impose and enforce the vaccine mandate at issue is predicated upon D.C. Code § 7-2304(b)(16). Significantly, D.C. Code § 7-2304(b)(16) expired on February 4, 2022.

43. On January 27, 2022, in recognition of the fact that D.C. Code § 7-2304(b)(16) was set to expire on February 4, 2022, the Mayor requested that the D.C. Council pass emergency legislation to extend D.C. Code § 7-2304(b)(16). *See Exhibit 4.* The D.C. Council rejected the Mayor's request to extend D.C. Code § 7-2304(b)(16).

44. On January 31, 2022, the Mayor again proposed legislation to the D.C. Council that would extend D.C. Code § 7-2304(b)(16). Alternatively, the Mayor proposed legislation to the D.C. Council that would amend D.C. Code § 7-2304(b)(16) to include a new subsection providing her with the authority to: “**Implement vaccine, testing, and masking requirements for District employees.**” *Exhibit 5* (emphasis added). The D.C. Council rejected the Mayor's request to extend D.C. Code § 7-2304(b)(16) and rejected her request to pass new legislation providing her with the authority to: “Implement vaccine, testing, and masking requirements for District employees.” The Mayor's proposal to the Council is an express admission that the Mayor did not have the authority to impose and enforce the vaccine mandate and accompanying discipline through the now-expired iteration of D.C. Code § 7-2304(b)(16). Even the Mayor's perceived authority to issue a vaccine mandate based upon D.C. Code § 7-2304(b)(16) no longer exists because D.C. Code § 7-2304(b)(16) expired on February 4, 2022.

45. Therefore, Defendants' current actions to impose and enforce the vaccine mandate contained in Mayor's Order 2021-147 are without legal basis and beyond the permissible scope of D.C. § 7-2304(b) and, as such, are *ultra vires*.

WHEREFORE, Plaintiffs request that the Court enter judgment in their favor against the Defendants:

1. Declaring that Defendants' creation, imposition, and enforcement of Mayor's Order 2021-147 is *ultra vires*, and, as such, violates District law, the Home Rule Act, 42 U.S.C. § 1983;
2. Granting temporary, preliminary, and permanent injunctive relief enjoining the enforcement of Mayor's Order 2021-147;
3. Awarding the D.C. Police Union attorneys' fees and costs, pursuant to 42 U.S.C. § 1988; and
4. Granting such other and further relief as the Court may deem just and proper.

**Count III**  
**-Request for Declaratory Judgment and Injunctive Relief-**  
**Violation of Separation of Powers Under the District of Columbia Home Rule Act**  
**(Against All Defendants)**

46. Paragraphs 1-45 of this Complaint are restated and fully incorporated herein.

47. The authority in the District of Columbia to issue a vaccine mandate belongs exclusively to the D.C. Council, which is the legislative body of the District of Columbia.

48. The Mayor does not have the authority to create, issue, or enforce a vaccine mandate.

49. The constitutional principle of separation of powers applies to the District of Columbia's tripartite system of government through the District of Columbia Self-Government and Governmental Reorganization Act (the "Home Rule Act"). *See Wilson v. Kelly*, 615 A.2d 229, 231 (D.C. 1992); *see also Convention Ctr. Referendum Comm. v. D.C. Bd. of Elections & Ethics*, 441 A.2d 871, 878 (D.C. 1980).

50. Under the District of Columbia Home Rule Act, there is a separation of powers between the executive and the legislative branches of government.

51. The executive power of the District of Columbia is vested in the Mayor. *See* D.C. Code § 1-204.22. This executive power does not include the authority to make law, but is explicitly limited to “the proper execution of all laws relating to the District, and for the proper administration of the affairs of the District coming under his jurisdiction or control. . .”. *Id.* (emphasis added).

52. The legislative power of the District of Columbia is vested in the D.C. Council. *See* D.C. Code § 1-204.02(a). In addition to that general, exclusive legislative power, the D.C. Council has exclusive legislative authority over certain specific subjects:

In addition, except as otherwise provided in this chapter, all functions granted to or imposed upon, or vested in or transferred to the District of Columbia Council, as established by Reorganization Plan No. 3 of 1967, shall be carried out by the Council in accordance with the provisions of this chapter.

*Id.*

53. Reorganization Plan No. 3 of 1967 (“Reorganization Plan”) states as follows, in pertinent part:

Sec. 402. *Transfer of functions to Council.* The following regulatory and other functions now vested in the Board of Commissioners of the District of Columbia are hereby transferred to the Council (subject to the provisions of section 406 of this reorganization plan [concerning the Mayor’s signature of laws]): . . .

(93) Making and modifying rules and regulations for the proper . . . discipline . . . of the Metropolitan Police force . . .

(134) Promulgating rules and regulations to prevent and control the spread of communicable diseases under D.C. Code, sec 6-118.

(135) By regulation, denominating the diseases within the meaning of “communicable diseases” under D.C. Code, sec. 6-119.

(136) Prescribing penalties for violations of communicable disease regulations under D.C. Code, sec. 6-119h.<sup>2</sup>

5 U.S.C.A. Appendix 1, Reorganization Plan No. 3 of 1967 (italics in original).

54. Consistent with these functions and the split of executive and legislative authority between the Mayor and D.C. Council, D.C. Code § 1-303.03, in effect and unrepealed since 1892, provides as follows:

The Council of the District of Columbia is hereby authorized and empowered to make, and the Mayor of the District of Columbia is hereby authorized and empowered to enforce, all such reasonable and usual police regulations . . . as the Council may deem necessary for the protection of lives, limbs, health, comfort, and quiet of all persons . . . within the District of Columbia.

D.C. Code § 1-303.03.

55. The D.C. Council's exclusive power to legislate and regulate in the areas of the prevention and control of communicable diseases is evidenced by numerous D.C. statutes. *See, e.g.,* D.C. Code §§ 7-131, *et seq.* (concerning the prevention of the spread of communicable diseases); D.C. Code § 7-311 (limiting the liability of healthcare providers for injuries resulting from administration of COVID-19 treatments); D.C. Code §§ 7-1651.01, *et seq.* (requiring the Mayor to administer an educational campaign concerning vaccination against the human papillomavirus<sup>3</sup>). Notably, the D.C. Council has passed a law mandating the COVID-19 for members of the Council and its staff, thereby demonstrating that COVID-19 vaccine mandates are required legislative acts, not mayoral powers.

56. Thus, the D.C. Council's legislative power encompasses the authority to pass laws concerning the prevention and control of communicable diseases. No such authority is provided

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<sup>2</sup> The section numbers cited within the Reorganization Plan relate to the D.C. Code in existence at the time of the Reorganization Plan.

<sup>3</sup> Of note, this program permitted parents of children eligible for the human papillomavirus vaccine to opt out of receiving the vaccine "in his or her discretion . . . for any reason . . .". D.C. Code § 7-1651.04(b)(1)(B)(iii).

to the Mayor, and such general legislative acts cannot be delegated. Indeed, the Mayor conceded that she does not have the authority to impose and implement a vaccine mandate when she explicitly requested that the D.C. Council pass legislation to provide her with the authority to: **“Implement vaccine, testing, and masking requirements for District employees.”** Exhibit 5 (emphasis added). The D.C. Council rejected the Mayor’s request to pass this new legislation thereby expressly retaining the sole authority to pass laws concerning a vaccine requirement.

57. The D.C. Council’s legislative power also encompasses the authority to make certain laws concerning discipline of MPD officers, which includes the D.C. Police Union’s members. The authority to make law on these subjects is explicitly committed to and vested in the D.C. Council. *See* D.C. Code § 1-204.02(a).

58. Mayor’s Order 2021-147 substantially infringes and encroaches upon the legislative power of the D.C. Council because it attempts to impose a vaccine mandate (*i.e.*, a law) upon District public employees, rather than enforce or administer a law passed by the D.C. Council, that falls within the D.C. Council’s exclusive authority to create law on the subjects of public health, communicable disease, and employee discipline. Even if the Council desired to pass such a law delegating this power to the Mayor, the law would violate the non-delegation doctrine. Currently, there is no such law and the Mayor’s unilateral creation, imposition, and enforcement of the vaccine mandate in Mayor’s Order 2021-147 violates the separation of powers principles applicable to the D.C. government.

WHEREFORE, Plaintiffs request that the Court enter judgment in their favor against the Defendants:

1. Declaring that Mayor’s Order 2021-147 is invalid because it violates the Separation of Powers principles of the District of Columbia Home Rule Act and 42 U.S.C. § 1983;

2. Granting temporary, preliminary, and permanent injunctive relief enjoining the enforcement of Mayor's Order 2021-147;
3. Awarding the D.C. Police Union attorneys' fees and costs, pursuant to 42 U.S.C. § 1988; and
4. Granting such other and further relief as the Court may deem just and proper.

**Count IV**  
**Violation of the Supremacy Clause Article VI, Clause 2**  
**of The Constitution of the United States and**  
**Violation of Article I, Section 8, Clause 17 of The Constitution of the United States**  
**(Against All Defendants)**

59. Paragraphs 1-58 of this Complaint are restated and fully incorporated herein.

60. The separation of powers between the Mayor and the D.C. Council is created pursuant to Congressional law and, as such, any violation of that principle by Defendants violates both the Supremacy Clause and Congress' exclusive constitutional authority to legislate for the District of Columbia.

61. Article VI, Clause 2 of the United States Constitution, known as the Supremacy Clause, states that "[t]his Constitution, and the Laws of the United States which shall be made in Pursuance thereof . . . shall be the supreme Law of the Land. . . ."

62. Article I, Section 8, Clause 17 of the United States Constitution provides that "The Congress shall have Power . . . To exercise exclusive Legislation in all Cases whatsoever over [the District of Columbia]. . . ." This Constitutional provision grants Congress "ultimate legislative authority over the nation's capital." D.C. Code § 1-201.02(a).

63. The District of Columbia government, unlike a state, is a product of Congressional law. Specifically, the current system of government in the District of Columbia, and the powers thereof, were created under the District of Columbia Self-Government and

Governmental Reorganization Act (the “Home Rule Act”), Pub. Law 93-198, 87 Stat. 774 (Dec. 24, 1973), as amended, codified at D.C. Code, Title I, Chapter 2. This system of government is discretionary, and, as this Court has recognized, Congress could choose not to grant any governmental authority to the District. *See Md. & D.C. Rifle & Pistol Ass’n, Inc. v. Washington*, 442 F.2d 123, 129-30 (D.D.C. 1971) (“Congress may at any time withdraw authority previously delegated to the District.”); *see also* D.C. Code § 1-206.01.

64. Thus, the powers and limitations on the District of Columbia government are subject to the supreme law of the land pursuant to the Supremacy Clause of the Constitution.

65. The powers and limitations on the District of Columbia government are also the product of Congress’ plenary legislative authority over the District of Columbia pursuant to Article I, Section 8, Clause 17 of the United States Constitution.

66. Mayor’s Order 2021-147 infringes upon the legislative authority vested in the D.C. Council and violates the separation of powers principles inherent in the District of Columbia Home Rule Act that has been established by Congress.

67. In doing so, Defendants’ creation, imposition, and enforcement of the vaccine mandate in Mayor’s Order 2021-147 attempts to override Congressional law and Congress’ explicit decision to limit the executive authority of the D.C. Mayor.

68. By avoiding the mandatory Congressional review process through her independent actions amounting to legislating a vaccine mandate through a Mayor’s Order, Mayor Bowser has violated the Supremacy Clause.

69. Thus, Defendants’ creation, imposition, and enforcement of the vaccine mandate in Mayor’s Order 2021-147 violates Article I, Section 8, Clause 17 and Article VI, Clause 2 of the United States Constitution.

WHEREFORE, Plaintiffs request that the Court enter judgment in their favor against the Defendants:

1. Declaring that Mayor's Order 2021-147 is invalid and unconstitutional because it violates the Supremacy Clause of the United States Constitution, and, thus, 42 U.S.C. § 1983;
2. Declaring that Mayor's Order 2021-147 is invalid and unconstitutional because it violates Article I, Section 8, Clause 17 of the United States Constitution, and, thus, 42 U.S.C. § 1983;
3. Granting temporary, preliminary, and permanent injunctive relief enjoining the enforcement of Mayor's Order 2021-147;
4. Awarding the D.C. Police Union attorneys' fees and costs, pursuant to 42 U.S.C. § 1988; and
5. Granting such other and further relief as the Court may deem just and proper.

**Count V**

**Violation of the Substantive Due Process Guarantees Arising under the District of Columbia Home Rule Act and the Fifth Amendment and the Fourteenth Amendment to The Constitution of the United States (Against All Defendants)**

70. Paragraphs 1-69 of this Complaint are restated and fully incorporated herein.

71. The District of Columbia Home Rule Act states that "the legislative power of the District shall extend to all rightful subjects of legislation within the District consistent with the Constitution of the United States and the provisions of this chapter subject to all the restrictions and limitation imposed upon the states by the 10th section of the 1st article of the Constitution of the United States." D.C. Code § 1-203.02.



72. The Due Process Clause of the Fifth Amendment to the Constitution of the United States contains a substantive due process component, which prohibits governmental actions that infringe upon the exercise of or violate a person's fundamental rights.

73. Individuals have a fundamental privacy right of personal autonomy and bodily integrity under the Constitution. Contained within this fundamental right is "[t]he principle that a competent person has a constitutionally protected liberty interest in refusing unwanted medical treatment . . .". *Cruzan v. Dir., Mo. Dep't of Health*, 497 U.S. 261, 278 (1990); *see also Washington v. Harper*, 494 U.S. 210, 221-22 (1990).

74. "The public interest in the right to bodily integrity . . . is of 'constitutional magnitude' and intruding upon this right requires a 'showing of overriding justification and medical appropriateness.'" *Does v. District of Columbia*, 374 F.Supp.2d 107, 118 (D.D.C. 2005) (internal citation and following quotation omitted).

75. District public employees, including the D.C. Police Union's members, also have a constitutional property interest in their continued public employment. *See Crockett v. D.C. Metro. Police Dep't*, 293 F.Supp.2d 63, 67 (D.D.C. 2003) (citing *Bd. of Regents v. Roth*, 408 U.S. 564, 576-79 (1972)). Specific to D.C. Police Union members, such members also have significant property interests in the various financial benefits that accompany their continued employment with the MPD, such as employee pensions, health insurance, and life insurance.

76. Denial of substantive due process is present when the government creates a "grave unfairness" in relation to the fundamental right, including "a deliberate flouting of the law that trammels significant personal or property rights." *Tri Cnty. Industries, Inc. v. District of Columbia*, 104 F.3d 455, 459 (D.C. Cir. 1997) (quotation omitted). Substantive due process rights are also violated where there is an "abuse of government power that shocks the

conscience.” *Washington Teachers’ Union v. Bd. of Educ.*, 109 F.3d 774, 781 (D.C. Cir. 1997) (quotation omitted).

77. The vaccine mandate and accompanying disciplinary provision in Mayor’s Order 2021-147 forces unvaccinated members to choose between their fundamental right to bodily integrity and their constitutionally-protected employment interests for which they have worked for years – and in some cases decades – to build. The obvious intent and consequence of this fundamentally unfair Hobson’s choice is that unvaccinated members will unwillingly sacrifice their personal autonomy and bodily integrity in order to protect their livelihood. This problem is exacerbated for police officers because once terminated, by law, custom, and practice, they become largely ineligible for employment in the law enforcement field. This type of governmental mandate, that forces citizens to forego fundamental rights in order to exercise significant rights relating to their livelihood, gravely infringes upon members’ substantive due process rights of personal autonomy, bodily integrity, and privacy.

78. Furthermore, Defendants seek to impose and enforce the vaccine mandate, under pain of discipline, including termination from employment, despite the fact that it has clearly expired and despite the fact that the law does not provide the Mayor with the authority to issue the vaccination mandate at issue. Thus, Defendants have flagrantly trampled upon members’ personal and property rights in an abusive and unauthorized manner, thereby violating members’ substantive due process rights.

79. The COVID-19 vaccine is irreversible, in that a person receiving the vaccine cannot undo the effects of the vaccine or extract the vaccine once administered. While the COVID-19 vaccine may be safe for some, the CDC explicitly recognizes that certain adverse events after COVID-19 vaccination may occur. See <https://www.cdc.gov/coronavirus/2019->

ncoy/vaccines/safety/adverse-events.html (last accessed February 4, 2022). These adverse events include the following: (1) anaphylaxis (severe allergic reaction); (2) thrombosis with thrombocytopenia syndrome (“causes blood clots in large blood vessels”); (3) Guillain-Barré Syndrome (nerve damage that can cause “muscle weakness and sometimes paralysis” and for which some people “have permanent nerve damage”); (4) myocarditis and pericarditis (inflammation of the heart tissue); and (5) death. *Id.*

80. The COVID-19 vaccine has proven to be ineffective at reducing the transmission rates of coronavirus to members of the public or co-workers in District government, which was the stated basis behind the vaccine mandate. Indeed, according to information provided by the MPD, 696 vaccinated D.C. Police Union members (25%) have tested positive for COVID-19 after receiving the COVID-19 vaccine. *See Exhibit 6.* Compelling all remaining District employees to be vaccinated serves no legitimate governmental purpose.

WHEREFORE, Plaintiffs request that the Court enter judgment in their favor against the Defendants:

1. Declaring that Mayor’s Order 2021-147 is invalid and unconstitutional because it violates the Due Process Clause of the Fifth Amendment to the Constitution of the United States, 42 U.S.C. § 1983, and the District of Columbia Home Rule Act;
2. Granting temporary, preliminary, and permanent injunctive relief enjoining the enforcement of Mayor’s Order 2021-147;
3. Awarding the D.C. Police Union attorneys’ fees and costs, pursuant to 42 U.S.C. § 1988; and
4. Granting such other and further relief as the Court may deem just and proper.

**Count VI**  
**Violation of the Equal Protection Requirements of the District of Columbia**  
**Home Rule Act and the Fifth Amendment and the Fourteenth Amendment of**  
**The Constitution of the United States**  
**(Against All Defendants)**

81. Paragraphs 1-80 of this Complaint are restated and fully incorporated herein.

82. The District of Columbia Home Rule Act states that “the legislative power of the District shall extend to all rightful subjects of legislation within the District consistent with the Constitution of the United States and the provisions of this chapter subject to all the restrictions and limitation imposed upon the states by the 10th section of the 1st article of the Constitution of the United States.” D.C. Code § 1-203.02.

83. The Equal Protection Clause of the Fourteenth Amendment to the United States Constitution provides that the government shall not “deny to any person within its jurisdiction the equal protection of the laws.”

84. The equal protection requirements of the Fourteenth Amendment have been incorporated into the Due Process Clause of the Fifth Amendment, and “the reach of the equal protection guarantee of the Fifth Amendment is coextensive with that of the Fourteenth.” *United States v. Paradise*, 480 U.S. 149, 166 n.16 (1987) (plurality opinion of Brennan, J.). The “approach to Fifth Amendment equal protection claims has always been precisely the same as to equal protection claims under the Fourteenth Amendment.” *Weinberger v. Weisenfeld*, 420 U.S. 636, 638 n.2 (1975); *see also Buckley v. Valeo*, 424 U.S. 1, 93 (1976) (“Equal protection analysis in the Fifth Amendment area is the same as that under the Fourteenth Amendment.”)

85. The vaccine mandate in Mayor’s Order 2021-147 selectively targets District employees to the exclusion of all other persons in the District. No similarly situated groups, such

as private employees or persons engaged in employment-like activities, are subject to the vaccinate mandate at issue.

86. The vaccine mandate in Mayor's Order 2021-147 does not differentiate between groups of public employees or even nominally address factors that could have bearing on the District's purported concerns over the spread of COVID-19 and related variants through factors such as employee density and inside-versus-outside working conditions.

87. Similarly, the vaccination mandate does not apply to persons engaged in activities that are akin to employment, including, but not limited to, volunteer work, fundraisers, and not-for-profit events.

88. The COVID-19 vaccine has proven to be ineffective at reducing the transmission rates to members of the public or co-workers in District government, which was the stated basis behind the vaccine mandate. Indeed, according to information provided by the MPD, 696 vaccinated D.C. Police Union members (25%) have tested positive for COVID-19 after receiving the COVID-19 vaccine. *See Exhibit 6.* Compelling all remaining District employees to be vaccinated serves no legitimate governmental purpose. There is no rational basis to mandate a vaccine for all employees of the District, while not imposing the same requirement on private employers or the general population. This targeting of District employees is more egregious given that it comes with a threat of discipline by the government, which threatens the livelihoods and careers of these individuals.

89. The Mayor did not base her Emergency Order on the study of data as it relates to members of the Metropolitan Police Department. The Mayor also did not hold public hearings, convene any medical advisory panel, or publish any medical or statistical analysis that was performed by her office before imposing the vaccine mandate. There is no evidence that the

Mayor has referred to or published to support that the Mayor considered and continues to consider current data relating to the transmission of coronavirus by individuals who have been vaccinated. The Mayor has not explained or published any information explaining why there was a sudden change from the COVID-19 testing mandate to a vaccine mandate. This is particularly problematic and concerning because the change is being implemented in the face of plummeting COVID transmission numbers and a District-wide vaccination rate in excess of 92%. The MPD has admitted that most of its workforce has already contracted COVID-19, yet there was no consideration given by the Mayor as to whether any exceptions should be drawn for the natural immunity of police officers based on these observed prior infections. Although requested, the MPD and the Mayor have never provided any data regarding any contact tracing or studies relating to contact tracing that would illustrate whether or not the vaccine has had any impact on the spread of coronavirus among government workers or members of the public that workers transmitted the virus to while on duty. The Mayor has also failed to provide any explanation for why her office and the MPD have decided to depart from their prior approach of merely encouraging vaccines. The Mayor's office has not published or provided any contingency plans for what the Department will do if forced to suspend or terminate such a large percentage of its workforce. This is a particularly acute problem given the MPD's admitted staffing shortages and soaring crime levels. All of these failures indicate two indisputable conclusions. Mayor Bowser has issued a general public health directive, but directed it at a specific, limited group without any particular basis to support such a targeted measure. The data Mayor Bowser cited, while scant, relates solely to public health numbers and was not specific to employment-based contraction and transmission. The Mayor has disguised a general public

health law in the form of a Mayor's Order because she clearly lacks the authority to promulgate a law of general applicability.

90. The selective and discriminatory application of the vaccine mandate at issue to District public employees does not have any rational connection to a legitimate government objective and does not have any rational connection to the District's alleged concern of transmission of the COVID-19 virus.

91. Additionally, the selective and discriminatory application of the vaccine mandate at issue to District public employees is an abuse of governmental power and discretion and is not substantially related to an important government objective and is not substantially related to the District's alleged concern of transmission of the COVID-19 virus.

WHEREFORE, Plaintiffs request that the Court enter judgment in their favor against the Defendants:

1. Declaring that Mayor's Order 2021-147 is invalid and unconstitutional because it violates the Equal Protection Requirements of the Fifth Amendment and the Fourteenth Amendment to the United States Constitution, 42 U.S.C. § 1983, and the District of Columbia Home Rule Act;
2. Granting temporary, preliminary, and permanent injunctive relief enjoining the enforcement of Mayor's Order 2021-147;
3. Awarding the D.C. Police Union attorneys' fees and costs, pursuant to 42 U.S.C. § 1988; and
4. Granting such other and further relief as the Court may deem just and proper.

Respectfully submitted,



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