# BEFORE THE
# NATIONAL LABOR RELATIONS BOARD

## PETITION FOR RULEMAKING
**Pursuant to 29 C.F.R. § 102.124**

Request to Initiate Rulemaking to Revisit the Standard Announced in Amazon.com Services LLC, 373 NLRB No. 136 (Nov. 13, 2024), Concerning Mandatory "Captive-Audience" Meetings

March 12, 2026

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March 12, 2026

Ms. Roxanne L. Rothschild
Executive Secretary
National Labor Relations Board
1015 Half Street, SE
Washington, DC 20570

**Re: Petition for Rulemaking – Captive-Audience Meetings**

Dear Executive Secretary:

The Associated Builders and Contractors, American Hotel & Lodging Association, CHRO Association, Coalition for a Democratic Workplace, FMI - The Food Industry Association, Independent Electrical Contractors, International Franchise Association, International Foodservice Distributors Association, National Association of Wholesaler-Distributors, National Federation of Independent Business, National Retail Federation, and Restaurant Law Center ("Petitioners") respectfully submits this Petition for Rulemaking to the National Labor Relations Board ("Board") pursuant to 29 C.F.R. § 102.124. Petitioners collectively represent millions of businesses that employ tens of millions of workers nationwide in nearly every industry. They are interested persons within the meaning of the Board's rulemaking regulations and ask the Board to commence rulemaking concerning employer-required meetings during which the employer discusses, or may discuss, union representation or unionization (commonly described as "captive-audience" meetings).

This petition requests that the Board initiate rulemaking to reconsider the standard announced in *Amazon.com Services LLC*, 373 NLRB No. 136 (Nov. 13, 2024) ("Amazon"), which overruled *Babcock & Wilcox Co.*, 77 NLRB 577 (1948), and held that mandatory captive-audience meetings violate Section 8(a)(1) because they have a reasonable tendency to interfere with and coerce employees in the exercise of their Section 7 rights.

As grounds in support of this petition, Petitioners explain (1) why there is a serious question as to the lawfulness of the Amazon standard; and (2) why rulemaking is the most practical mechanism for the Board to reconsider the Amazon captive-audience standard, particularly given the Board's framework announced in *Cemex Construction Materials Pacific, LLC*, 372 NLRB No. 130 (Aug. 25, 2023) ("Cemex").

## I. Rule or Regulation Requested

Petitioners request that the Board initiate notice-and-comment rulemaking under the Board's authority in Section 6 of the Act (29 U.S.C. § 156) to address the lawfulness under Section 8(a)(1) of requiring employees, under threat of discipline or discharge, to attend employer meetings during which the employer discusses union representation or unionization. The requested rulemaking would allow the Board to evaluate whether the standard announced in Amazon should be codified, modified, or rescinded through a transparent administrative process that invites public participation and produces a rule of general applicability.

Petitioners' request is limited to initiation of rulemaking on this subject. Petitioners do not propose specific regulatory text and do not request that the Board predetermine the outcome of the rulemaking.

## II. Background and Relevant Board Decisions

### A. *Amazon.com Services LLC* (373 NLRB No. 136)

*Amazon* presented, among other issues, "the important question of whether an employer violates Section 8(a)(1) … by compelling its employees, on pain of discipline or discharge, to attend a meeting during which it expresses its views concerning unionization." The Board held that it does. Specifically, the Board:

- Overruled *Babcock & Wilcox*, which had been the controlling law for more than 70 years, and concluded that captive-audience meetings violate Section 8(a)(1) because they have "a reasonable tendency to interfere with and coerce employees" in their Section 7 right to decide whether to unionize, including the "right to decide whether, when, and how they will listen to and consider their employer's views." 373 NLRB No. 136, slip op. at 9.
- Grounded the violation not in the viewpoint or content of the employer's remarks, but in "the employer's use of compulsion", i.e., "the threat, explicit or implicit, of discipline, discharge, or some other adverse consequence." *Id.*, slip op. at 17.

*Amazon* also articulated a safe harbor for employers wishing to hold voluntary meetings on unionization during work time to avoid Section 8(a)(1) liability. That safe harbor requires the employer to inform employees "reasonably in advance of the meeting" that it "intends to express its views on unionization," that attendance at the meeting is voluntary, that "employees will not be subject to discipline, discharge, or other adverse consequences for failing to attend the meeting or for leaving the meeting," and the employer will not keep records of who attends, fails to attend, or leaves the meeting. *Id*., slip op. at 85-86.

### B. *Cemex Construction Materials Pacific, LLC* (372 NLRB No. 130)

In *Cemex*, the Board announced a novel representation-case framework. Under this framework, when presented with a union demand for recognition, an employer may either voluntarily recognize and bargain with the union or, alternatively, "promptly" file an RM petition under Section 9(c)(1)(B) to test the union's claimed majority support and/or challenge the appropriateness of the unit.

Even when an election petition is filed (whether by the employer or the union), Cemex also authorizes recognition without an election if "the employer commits an unfair labor practice that requires setting aside the election." *Id*., slip op. at 129-30. In such instances, the election petition "will be dismissed, and the employer will be subject to a remedial bargaining order." *Id*. slip op. at 130. The Cemex majority emphasized the standard for dismissing a petition and ordering a remedial election is a very low bar: "Under long-established Board law," an election will be set aside when, during the "critical period between the filing of an election petition and the election," the employer violates Section 8(a)(1) of the Act, unless that violation is "so minimal or isolated that it is virtually impossible to conclude that the misconduct could have affected the election results." *Id*., at slip op. 130, n. 142.

## III. Serious Questions Regarding the Lawfulness of the Amazon Standard

### A. Conflict with NLRA § 8(c)

Section 8(c) is an express statutory safe harbor for noncoercive employer advocacy about unionization. Congress did not merely "tolerate" employer speech; it affirmatively directed that employer (and union) expression "shall not constitute or be evidence of an unfair labor practice" so long as the expression contains no "threat of reprisal or force or promise of benefit."

That language is difficult to reconcile with a rule that makes it per se unlawful for an employer to require employees to attend a meeting where the employer communicates its unionization views. The Amazon rule effectively treats the employer's act of communicating views about unionization in a meeting format as the thing that "constitute[s]" an unfair labor practice, even where the meeting's content is otherwise concededly noncoercive (i.e., contains no threats or promises). That is precisely the sort of "speech-as-ULP" theory § 8(c) was written to foreclose. Four points illustrate why:

#### 1. "Expressing of any views, argument, or opinion, or the dissemination thereof" naturally includes meetings used to convey campaign views.

Section 8(c) protects not just "the expressing of any views, argument, or opinion," but also "the dissemination thereof." As a textual matter, "dissemination" describes how views are spread, i.e., the method of communication. Meetings are a paradigmatic dissemination mechanism. The

Amazon rule narrows § 8(c) by treating the "meeting plus required attendance" mechanism as separable from the protected "views" being disseminated, and then prohibiting the mechanism whenever unionization is discussed. But § 8(c) does not say: "you may speak, but only in formats that employees may refuse to attend during paid time." It says the expressing of views, or dissemination, shall not be treated as a ULP absent threats or promises.

In other words, Amazon reads an extra limitation into § 8(c): "dissemination" is protected only if the audience is voluntary. That limitation is not in the statutory text.

**2. Section 8(c)'s "shall not constitute … under any … provisions" language blocks end runs via recharacterization.**

Section 8(c) is not merely an evidentiary rule. It states that protected expression and its dissemination "shall not constitute" an unfair labor practice and shall not be evidence of an unfair labor practice "under any of the provisions of this subchapter."

That broad "under any … provisions" clause matters because the Amazon prohibition is formally announced as a Section 8(a)(1) rule. If an employer's nonthreatening, non-promissory unionization advocacy delivered via meeting can be declared unlawful under § 8(a)(1), then § 8(c)'s "shall not constitute" command is drained of force. Put differently: Congress already decided the baseline—noncoercive persuasion about unionization is not itself an unfair labor practice. A tribunal cannot nullify that by saying "we're not regulating the views; we're regulating the circumstances (mandatory attendance)."

That "circumstances" move is exactly the type of interpretive end run courts often reject where Congress has enacted a specific carveout. Here, § 8(c) is a specific, speech-protective provision; § 8(a)(1) is a general prohibition on interference/coercion. Under ordinary interpretive principles, the specific provision controls the general prohibition if and when they collide. See, e.g., *RadLAX Gateway Hotel, LLC v. Amalgamated Bank*, 566 U.S. 639, 645 (2012*); Morton v. Mancari*, 417 U.S. 535, 550-51 (1974).

**3. The Board's "threat of reprisal" theory collapses into a content-based carveout that § 8(c) does not permit.**

The *Amazon* decision attempts to fit mandatory meetings outside § 8(c) by reasoning that a directive to attend a unionization meeting (on pain of discipline or discharge) is "plainly a threat of reprisal," and thus outside the statutory safe harbor.

There are two major statutory problems with that framing. First, it treats standard workplace compulsion as a "reprisal" targeted by § 8(c), even when the content contains no threats or promises. "Threat of reprisal" in § 8(c) is naturally read as threats tied to employees' protected choices (supporting or choosing a union, engaging in concerted activity), not the ordinary enforcement of workplace attendance rules for meetings held on paid time. If "reprisal" is

broadened to include any discipline for any failure to attend a meeting, then, logically, all mandatory meetings become "threats of reprisal." Yet *Amazon* does not say all mandatory meetings are unlawful; it singles out meetings at which union representation or unionization is discussed. That mismatch strongly suggests the "reprisal" characterization is doing covert content-selection work rather than applying § 8(c)'s actual language.

Second, it converts § 8(c) into a topic-triggered exception, contrary to the statute's design. Section 8(c) was enacted to protect robust advocacy in labor disputes, i.e., precisely the unionization context. Reading "reprisal" so broadly that it automatically disqualifies the most common dissemination form for employer advocacy effectively rewrites § 8(c) to permit speech only in less effective formats. That is a substantial narrowing Congress did not enact.

**4. The Board's rule is in tension with § 8(c)'s codification purpose and the Taft-Hartley settlement.**

The *Amazon* decision itself acknowledges that § 8(c) "protects speech by both unions and employers," and that it "implements the First Amendment." It also recounts the historical arc in which Congress enacted Taft-Hartley, including § 8(c), against a background of intense controversy over Board regulation of campaign speech. In that context, a court is likely to view *Amazon* as destabilizing the Taft-Hartley settlement by doing precisely what § 8(c) was meant to prevent: treating noncoercive employer campaign advocacy as an unfair labor practice by virtue of the mode of dissemination. Even if one disputes the best reading of the legislative history, the enacted text reflects Congress's choice to cabin sharply Board power over persuasion speech, leaving the Board to police on a case-by-case basis threats, promises, retaliation, interrogation, surveillance, and the like, rather than banning outright a widely used persuasion channel.

## B. First Amendment concerns: the Amazon rule is (at minimum) a content-based restriction on employer speech

Even apart from § 8(c), the Amazon prohibition is vulnerable as a First Amendment matter because it is triggered by the subject matter of the meeting: it applies when the meeting is one "at which the employer expresses its views on unionization." Those constitutional concerns are not merely academic. In his January 27, 2025, removal letter removing then-Member Gwynne A. Wilcox, President Trump criticized recent Board actions that, in his view, "improperly cabined employers' rights to speak on the subject of unionization," raising "serious First Amendment concerns about the censorship of important speech"—a critique that squarely encompasses the *Amazon* captive-audience standard challenged here. Four related concerns underscore the constitutional risk:

1. **The rule requires regulators to examine message content to determine if it applies.**

To decide whether a meeting is prohibited, enforcement authorities must determine whether the employer was expressing views "on unionization." That is quintessential content dependence: the legality turns on what the employer is talking about. The Board tried to characterize the rule as directed to "coercion" rather than content, but the compelled-attendance feature is not unique to unionization meetings—mandatory meetings are ubiquitous. The rule's selectivity of focusing solely on meetings in which unionization is discussed makes the content-based nature hard to avoid.

2. **Under-inclusiveness and mismatch between means and asserted interest weaken constitutional defensibility.**

The stated interest is protecting employee freedom of choice and preventing coercion derived from the employer's economic power. But if the constitutional problem were truly compelled attendance itself, then the Board's logic would push toward restricting compelled attendance at meetings about other terms and conditions of employment too, yet the rule expressly does not do that. The under-inclusiveness is constitutionally significant: it suggests the government is not targeting "coercive compulsion" as such, but rather a particular category of ideas conveyed in a particular setting. Courts often treat that kind of mismatch as evidence the regulation is not narrowly tailored, even assuming an important governmental interest.

3. **The "mandatory attendance constitutes unprotected threat" move does not eliminate strict scrutiny concerns.**

The Board asserts that the attendance directive is a "threat of reprisal" and thus outside § 8(c) and unprotected by the First Amendment. But labeling an instruction as a "threat" does not end the constitutional inquiry if the law still functions to suppress speech based on content. A key difficulty is that discipline for missing a mandatory meeting is the same mechanism employers use for safety training, HR compliance training, operational updates, etc. The Board's rule prohibits mandatory meetings only when the meeting's subject is unionization. That design feature makes it far more likely a reviewing court will treat the rule as content-based, not as a neutral regulation of threats.

4. "**Captive audience" doctrine is a poor fit for workplace speech during paid time.**

In other First Amendment contexts, the "captive audience" concept has been recognized in limited situations where the listener cannot practically avoid unwanted speech, often tied to heightened privacy interests in the home. For example, homeowners have a recognized right to exclude unwanted visitors or speakers from their property and can ordinarily avoid unwanted speech by closing the door or otherwise barring entry. *Watchtower Bible & Tract Soc'y of N.Y., Inc. v. Village of Stratton*, 536 U.S. 150, 168 (2002); *Rowan v. U.S. Post Office Dep't*, 397 U.S. 728, 736–37 (1970). The workplace is different: employees are present to perform paid work,

employers routinely require attendance at operational meetings, and employees do not have a comparable property-based right to exclude management communications during working time. The Board's decision invokes "unwilling listener" principles but importing that doctrine into the NLRA context to justify a topic-specific ban is constitutionally precarious.

### C. Constitutional avoidance: if § 8(c) is ambiguous, it should be read to avoid the First Amendment collision

The Board's interpretation raises serious First Amendment concerns because it penalizes a category of speech events defined by topic and enforced through government ULP findings and remedial orders. When an interpretation of a statute creates serious constitutional questions, courts frequently require a clear congressional statement before adopting it. That avoidance principle dovetails with § 8(c)'s text and function: Congress already wrote the statute to steer away from speech regulation by specifying that nonthreatening, non-promissory labor advocacy shall not be a ULP.

### D. Administrative-law vulnerability: abrupt reversal of a 75-year rule without adequate justification and reliance analysis

Even if a court viewed § 8(c) as ambiguous enough to permit the Board's change, *Amazon* is still exposed under standard arbitrary-and-capricious review principles, because it is a dramatic reversal of longstanding law with heavy reliance interests. For more than seven decades, employers have structured labor-relations compliance programs, manager training, and campaign communications around the premise that mandatory meetings are lawful so long as the content is nonthreatening and non-promissory. Reversing that rule changes the compliance baseline for a routine workplace practice and can attach liability to conduct that had been widely treated as lawful under prior Board precedent.

The Board itself effectively concedes the reliance point by applying the rule only prospectively, expressly citing "the reliance employers have reasonably placed" on the prior rule. That acknowledgement can cut both ways:

- It helps show the Board recognized that its new rule would attach liability to conduct previously "clearly lawful," which raises fairness concerns.
- But it also highlights the magnitude of the policy shift and the need for a particularly robust explanation—including a serious accounting of reliance and alternative approaches (e.g., policing threats, promises, or surveillance at meetings rather than banning meetings categorically).

Courts often scrutinize agencies most closely where (i) the agency reverses long-settled policy, (ii) regulated parties have structured conduct around it, and (iii) the agency's new approach implicates constitutional sensitivities. Amazon has all three features, which increases the litigation

risk to the standard on judicial review. These statutory, constitutional, and administrative-law vulnerabilities are reason enough for the Board to reconsider Amazon promptly.

### E. The Board's oath of office reinforces the need to reconsider *Amazon*

Each Board Member, like all federal officers, takes an oath to "support and defend the Constitution of the United States" and to "faithfully discharge the duties of the office." See 5 U.S.C. § 3331. That oath does not by itself resolve close constitutional questions, but it underscores the Board's duty to avoid maintaining rules and precedents that conflict with the Constitution.

For the reasons set out above, the *Amazon* standard raises substantial First Amendment concerns and is in serious tension with Congress's speech-protective settlement in § 8(c). Consistent with their oath and the Board's institutional responsibility, the Members should act promptly to reconsider and rescind Amazon through a transparent rulemaking process.

As explained below, rulemaking is the most practical mechanism for the Board to revisit Amazon in light of *Cemex*.

## IV. Rulemaking Is the Most Practical Mechanism to Address the Amazon Standard

### A. *Amazon* issues only commonly arise when union representation becomes an active issue

The Board's decision in *Amazon* announced a generally applicable rule regarding a common feature of employer communication when union representation is at issue. Specifically, the Board held that an employer violates Section 8(a)(1) when it requires employees, under threat of discipline or discharge, to attend meetings during which the employer expresses its views on unionization. Those discussions may occur in meetings convened primarily to address union representation, but they may also arise during broader operational meetings (e.g., safety meetings or shift briefings) where the employer addresses unionization alongside other workplace topics.

As a practical matter, the conduct regulated by *Amazon*—employer-required meetings during which union representation or unionization is discussed—most frequently arises in time-sensitive organizing contexts, when employees are deciding whether to select a bargaining representative. That practical reality matters for this petition because it means that any meaningful attempt to develop an adjudicatory record "testing" the Amazon standard will almost always arise in a context in which the Board's remedial framework determines whether employees will have the opportunity to express their preferences through a secret-ballot election.

### B. *Cemex* ties campaign-period violations to the loss of the election mechanism

The Board's decision in *Cemex* materially changes the stakes of any unfair labor practice allegation that occurs during a union campaign, particularly after a union has made a demand for recognition supported by evidence of majority status. Under *Cemex*, an employer confronted with

such a demand may test the union's majority claim and/or the appropriateness of the proposed unit by promptly filing an RM petition; the Board stated it will ordinarily interpret "promptly" to require filing within two weeks of the demand. If an election is pursued, however, *Cemex* further provides that if the employer commits an unfair labor practice that requires setting aside the election, the petition will be dismissed, the employer will be subject to a remedial bargaining order, and there will be no rerun election held.

The *Cemex* framework therefore links the availability of a secret-ballot election to the absence of campaign-period conduct that could invalidate the election. Litigating the legality of a campaign-related rule like *Amazon* through adjudication can itself eliminate the election option for the employees in the affected unit.

### C. The combined operation of Amazon and Cemex forecloses a realistic adjudicatory path to reconsider Amazon

The Board's *Amazon* rule is most likely to be litigated in the same circumstances where Cemex imposes the most severe consequences—and the Board has also indicated that representation proceedings are not a vehicle to seek reconsideration of *Amazon*. In *Satellite Healthcare, Inc.*, 32-RC-362037; 374 NLRB No. 39 (Feb. 10, 2026), the Board denied a request for review. Members Murphy and Mayer stated that they did not participate in *Amazon*, and expressed no view on whether it was correctly decided; in their view, the Employer's arguments in favor of overruling it were not properly cognizable in this representation proceeding.

That pronouncement reinforces the practical point: the only realistic vehicle to obtain reconsideration of *Amazon* is through a Section 8(a)(1) unfair labor practice case—precisely where *Cemex* can most readily convert a disputed campaign practice into an election-displacing bargaining order. Rulemaking is therefore the most practical and responsible mechanism for the Board to reconsider the *Amazon* standard while preserving free choice and providing advance, nationwide guidance. Three related dynamics underscore this point:

1. **No meaningful "test case" exists outside the campaign context—and representation proceedings are not a viable alternative path.**

Although employers may address union representation proactively, and unionization may come up as one topic among others in regular workplace meetings, disputes over mandatory attendance at meetings where unionization is discussed most commonly arise during organizing campaigns or other active representation disputes. Outside those contexts, employers rarely have occasion to require mandatory meetings principally devoted to union representation, and there is often no pending representation proceeding through which the issue could be teed up for review. Avoiding the campaign context therefore often means avoiding the circumstances in which *Amazon* is implicated at all—leaving no realistic vehicle to develop a record that would allow the Board (or a reviewing court) to reconsider the standard in a timely, case-driven manner.

**2. Any campaign-period "test case" necessarily proceeds through a ULP posture, and that posture carries an election-displacing risk under *Cemex*.**

Given the Board's stated unwillingness to entertain *Amazon* reconsideration in a representation-case proceeding, the only realistic route to adjudicating (and seeking reconsideration of) *Amazon* is to litigate it in a Section 8(a)(1) unfair labor practice case. But that typically requires an employer, during an active organizing campaign, to engage in the very conduct the Board has declared unlawful—requiring attendance under threat of adverse action—and then defend that conduct in ULP litigation to create a reviewable record.

Under *Cemex*, however, a campaign-period Section 8(a)(1) violation that would warrant setting aside an election can also trigger dismissal of the election petition and issuance of a bargaining order. The result is a practical dilemma: the only realistic context and procedural vehicle for adjudicating and obtaining review of *Amazon* is also the vehicle in which litigating the issue can deprive employees of the secret-ballot election option.

**3. The "single violation" dynamic is a realistic risk under existing set-aside standards.**

*Cemex* makes the remedial question whether the unfair labor practice would require setting aside the election. Under longstanding Board precedent, critical-period violations of Section 8(a)(1) generally warrant setting aside an election unless it is "virtually impossible" that the misconduct affected the result, considering factors such as severity, dissemination, proximity, unit size, and margin. Mandatory captive-audience meetings are typically designed to reach many or all employees in the unit; they can be alleged to have broad dissemination and to influence free choice. That is precisely the kind of allegation likely to be argued to meet the "set aside" threshold that Cemex makes dispositive for whether the election process continues—and thus the kind of "single violation" that can transform an attempted *Amazon* test case into a bargaining-order case.

## V. Executive Order 14192

Executive Order 14192, "Unleashing Prosperity Through Deregulation," does not impede the Board from granting this petition. The rulemaking requested here is, in substance, deregulatory and adjudicatory in nature: it would reconsider a Board-created standard that operates as a generally applicable prohibition on a longstanding means of employer communication, and it would not impose meaningful new compliance expenditures on the regulated community. See Exec. Order No. 14192 § 3(a), 90 Fed. Reg. 9065 (Feb. 6, 2025).

Under the Office of Management and Budget's implementing guidance, an "EO 14192 deregulatory action" is an action with "total costs less than zero," and such actions qualify as both (1) an action used to satisfy the "ten-for-one" requirement and (2) a cost savings for regulatory-budget purposes. OMB Memorandum M-25-20, Guidance Implementing Section 3 of Executive Order 14192, Q4 (Mar. 26, 2025). A rule that rescinds or materially narrows *Amazon*'s per se

prohibition would therefore generate deregulatory credit (rather than net new costs that must be offset), and it should not be delayed on the ground that the Board must first identify unrelated "offset" rules.

Even if the Board were to treat this action as a "new regulation," EO 14192 expressly contemplates exemptions for specific regulations or categories of regulations that "impose minimal costs or burdens on the private sector," and OMB guidance likewise recognizes exemptions for de minimis actions. Exec. Order No. 14192 § 5(c); OMB Memorandum M-25-20, Q36. The Board should accordingly view this petition as fully consistent with EO 14192 and capable of prompt initiation without any need for the Board to identify ten separate, unrelated repeals as a predicate to acting here.

Finally, the President's April 9, 2025, memorandum on "Directing the Repeal of Unlawful Regulations" directs agencies, after identifying unlawful or potentially unlawful regulations, to "immediately take steps to effectuate the repeal" of those that clearly exceed statutory authority or are otherwise unlawful, with a brief statement explaining why the Administrative Procedure Act's "good cause" exception applies. Memorandum on Directing the Repeal of Unlawful Regulations, Apr. 9, 2025. Although this petition requests initiation of notice-and-comment rulemaking (a transparent process well suited to a durable, generally applicable Board rule), the memorandum underscores that unlawful agency action should be corrected promptly and should not be delayed by collateral procedural hurdles. The Board's reconsideration of *Amazon* through rulemaking would advance that directive by addressing a rule that is subject to substantial statutory and constitutional objections and that carries significant consequences for employee free choice under *Cemex*.

## VI. Requested Board Action

For the foregoing reasons, Petitioners respectfully request that the Board grant this petition and initiate notice-and-comment rulemaking on the question whether—and under what conditions—employer-required meetings during which the employer discusses union representation or unionization should be treated as unlawful under Section 8(a)(1).

Respectfully submitted,

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