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Raymond Brescia

**THE ROLE OF GOVERNMENT OFFICIALS**

Paris Baldacci  
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**IMPACT**

**COLLECTED  
ESSAYS ON  
EXPANDING  
ACCESS TO  
JUSTICE**



# Access to Justice in Buffalo and Beyond: Making the Justice System More Welcoming for Refugees

Fidèle Menavanza, MS, LLB<sup>1</sup>

## Introduction

As an essential human right, much has been written about access to justice. Still, too many poor people lack this essential access all over the world when they face major life challenges. The issue confronts people experiencing poverty around the globe, as well as close to home.

Access to justice for the most vulnerable is as encompassing as our country is diverse, affecting all races, ethnic groups, and ages. Victims of domestic violence, people with disabilities, homeowners facing foreclosure, renters facing eviction, families with or without children, and veterans all struggle to gain access to justice.

It is then no surprise to broadly list here asylees and refugees. According to the definition accepted by the United Nations and the United States, both asylees and refugees flee their home country based on a “well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group[,] or political opinion.”<sup>2</sup>

While “asylees request asylum once they enter the U.S. and based on the fear of returning to their home country, refugees are usually given this title outside the U.S., generally overseas in a country other than their own.”<sup>3</sup>

Still, their influx into the new land with a variety of needs poses new challenges to the U.S. Court system. It is important then that their impact within court proceedings occupy a central role in our discussion of access to justice.

Further, the U.S. Supreme Court has found a constitutional right to counsel for individuals in criminal proceedings,<sup>4</sup> but has failed to establish a similar categorical protection for individuals in civil proceedings. “The result is a crisis in unmet civil legal needs: less than one in five low-income

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<sup>1</sup> Paralegal at Legal Services for the Elderly, Disabled or Disadvantaged of Western New York, at Buffalo. Prior to coming to the U.S. in 2011, the author was an Attorney and Diplomat in the Democratic Republic of Congo. He would like to thank Karen Nicolson, Dave Shapiro, and Daniel Webster for enriching this paper with their comments. Some of the discussion in this article previously appeared in Fidèle Menavanza, *Setting the Stage: Western New York Refugee Flow Train Has Left the Station!*, BAR ASS'N OF ERIE COUNTY BULL., 12, 14 (May 2015), available at [http://www.eriebar.org/files/Bulletin\\_May\\_2015.web.pdf](http://www.eriebar.org/files/Bulletin_May_2015.web.pdf).

<sup>2</sup> United Nations Convention Relating to the Status of Refugees, art. 1(A) (2), Jul. 28, 1951, 189 U.N.T.S. 150, & United Nations Protocol Relating to the Status of Refugees, Jan. 31, 1967, 606 U.N.T.S. 267; 8 U.S.C. § 1101(a)(42).

<sup>3</sup> *Refugees & Asylum*, U.S. CITIZENSHIP AND IMMIGRATION SERVICES, <http://www.uscis.gov/humanitarian/refugees-asylum> (last visited Jan. 30, 2016). Someone may seek a referral for refugee status only from outside of the United States while asylum status is a form of protection available to people who meet the definition of refugee, are already in the United States and are seeking admission at a port of entry.

<sup>4</sup> See *Gideon v. Wainwright*, 372 U.S. 335 (1963).

persons in the United States obtains the necessary legal assistance.”<sup>5</sup> Indeed, with regard to New York State, the number of people lacking legal representation in court “is estimated at 2.3 million each year.”<sup>6</sup>

Why does access to justice so matter? What constraints are impeding access to justice, specifically for refugees (hereinafter referred to as “accessors”)? Lastly, what kind of reforms are desirable and practical, and how might they be implemented to bridge the justice gap?

This article is twofold. The first section, Impediments to Access to Justice, briefly examines some barriers to accessing justice mainly for accessors. The second and final section presents selected initiatives and best practices that have been adopted and implemented in Erie County, particularly in Buffalo, New York.

## 1. Impediments to access to justice

The question of access asks whether or not there are barriers for vulnerable people to access mechanisms of justice. It is frequently related to an assessment of the accessibility of legal services providers, attorneys and courts’ staff to potential accessors.

It is important to recognize that not all asylees, refugees, or immigrants who fall into vulnerable groups “will suffer difficulty with accessing justice. Individual circumstances will always differ, and some disadvantaged people will already have access to the means to overcome any or all of the barriers caused by their disadvantage.”<sup>7</sup>

For instance, a refugee with higher education and good literacy skills is likely to face fewer difficulties in seeking access to justice than another person with poor literacy skills.

In some cases, the inability to take effective action to enforce legal rights impedes access to justice. Due to disability or ignorance of the processes and avenues for seeking a remedy, or even lack of access to appropriate advocacy and support services, many vulnerable people are not mindful of their legal issues or need for advocacy services.

Nevertheless, many identified barriers resulting from the judicial system itself, the poverty of individuals, and ignorance of their rights and obligations impede access to justice. These multidimensional constraints have been categorized either from the justice system stakeholders or the accessors’ perspective.

From the refugee accessors’ perspective, mainly because of their unfamiliarity with the U.S. legal system and court procedures, a close examination shows that the problems in access to justice are different for U.S. citizens than for new immigrants.

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<sup>5</sup> Risa Kaufman et al, *Filling the Justice Gap: Access to Justice and Human Rights at Home*, HUFFPOST IMPACT (Nov. 13, 2012, updated Jan. 13, 2013), [http://www.huffingtonpost.com/risa-e-kaufman/access-to-justice-human-rights\\_b\\_2096981.html](http://www.huffingtonpost.com/risa-e-kaufman/access-to-justice-human-rights_b_2096981.html) (citing LEGAL SERVICES CORP., DOCUMENTING THE JUSTICE GAP IN AMERICA (2009)).

<sup>6</sup> ROCHELLE KLEMPNER, BEST PRACTICES FOR COURT HELP CENTERS: A GUIDE FOR COURT ADMINISTRATORS AND HELP CENTER STAFF INSIDE AND OUTSIDE NEW YORK STATE (2015), available at [http://www.nycourts.gov/ip/nya2j/pdfs/NYSA2J\\_BestPracticesHelpCenter.pdf](http://www.nycourts.gov/ip/nya2j/pdfs/NYSA2J_BestPracticesHelpCenter.pdf).

<sup>7</sup> LOUIS SCHETZER, JOANNA MULLINS & ROBERTO BUONAMANO, ACCESS TO JUSTICE AND LEGAL NEEDS 17 (2002), available at [http://www.lawfoundation.net.au/ljf/site/articleIDs/012E910236879BAECA257060007D13E0/\\$file/bkgr1.pdf](http://www.lawfoundation.net.au/ljf/site/articleIDs/012E910236879BAECA257060007D13E0/$file/bkgr1.pdf).

For instance, refugees from corrupted or repressive regimes will not necessarily understand the role of the police in an American context, and therefore may be reluctant to report crimes to the police. This was the case for one refugee student in Buffalo, as recently reported by his teacher, partner of our agency, the Legal Services for the Elderly, Disabled or Disadvantaged of Western New York. In this example, the student was the daily victim of bullying, but never reported it to the school or complained to anyone. When finally asked by his teacher the reason why he never called the police, he seemed surprised, and then put it: *I don't have money to pay the police!*

Multiple factors can undermine refugees' access to justice. A range of those issues can be listed: the lack of information about the law and legal services (sometimes including information in languages other than English), the lack of access to suitable interpreters, a lack of cultural competency amongst those administering the legal system, and a perception among refugee communities that there is widespread cultural insensitivity in the operation, administration or enforcement of the law. To complicate the situation further, some refugees have gone years without going to school and are barely literate, even in their home language.

On the other hand, court structures and litigation procedures bear directly upon the individual's ability to resolve his or her legal problem. The more prominent issues are those of the cost and delay of legal proceedings. Other fundamental and equally critical issues, however, reduce access to legal systems. The multiplicity of courts, and the complexity of the rules of courts and court forms may produce a significant barrier to accessors, especially those who are unfamiliar with the U.S. Court system, such as refugees.

Moreover, "the lack of interpreters' availability or experience, or the difficulties associated with their use in courts remains a constant challenge."<sup>8</sup> Even the physical environment of courts (with a security checkpoint system), may lead to the feeling of being intimidated that produces disinterest, disempowerment, or confusion for a refugee accessor.

In many respects our list is not exhaustive, but includes language barriers, the use of interpreters, and information and education. Recognizing the need to address the justice gap, the Federal and State governments are taking steps to improve access to justice and to make court proceedings fairer for people from different backgrounds or who do not have legal representation.

## 2. Efforts to ensure access to justice for refugees in Erie County, New York

New York is among the top five resettlement states in the United States, after Texas and California.<sup>9</sup> Historically, Buffalo, New York is among the former U.S. immigrant gateways, listed as one of the central cities that had the largest numbers of immigrant residents in the early 1900s.<sup>10</sup> Recent statistics from the New York State Office of Temporary and Disability Assistance show that the largest resettlement site in New York State is Erie County, more specifically, Buffalo. "Of the 4733 refugees served in [Federal Fiscal Year] 2014, 4591 (97%) were served Upstate and 142 (3%) were

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<sup>8</sup> Oral statement by Erie County Supreme Court Justice Honorable Jeannette Ogden, at Erie County Supreme Court, Buffalo, July 29, 2015.

<sup>9</sup> U.S. Dep't of Health and Human Services, *Fiscal Year 2014 Refugee Arrivals*, OFFICE OF REFUGEE RESETTLEMENT (Feb. 11, 2015), <http://www.acf.hhs.gov/programs/orr/resource/fiscal-year-2014-refugee-arrivals>.

<sup>10</sup> AUDREY SINGER, *THE RISE OF NEW IMMIGRANT GATEWAYS 5-6* (2004), available at [http://www.brookings.edu/~media/research/files/reports/2004/2/demographics%20singer/20040301\\_gateways.pdf](http://www.brookings.edu/~media/research/files/reports/2004/2/demographics%20singer/20040301_gateways.pdf).

served in New York City. The top five counties of refugees served are Upstate, (Erie, Onondaga, Monroe, Oneida, and Albany) accounting for 4564 (96%) of all served.”<sup>11</sup>

Over the past 15 years, nearly 10,000 refugees arrived in Erie County. “Every year, between 1,500 and 2,000 people are resettled in the Buffalo area.”<sup>12</sup> Although in 2000 it was ranked last of 48 major metro areas in gaining immigrants, Buffalo’s percentage of foreign-born individuals rose from just over four percent in 2000 to six percent in 2010.<sup>13</sup>

Beyond a shadow of a doubt, Buffalo’s refugee population has increased, and is still growing. Somalis, Ethiopian, Eritrean, Sudanese, Iraqi, Afghan, Iranian, Burmese, Bhutanese-Nepali, Cuban, Congolese and others<sup>14</sup> have come to call Buffalo home.

The influx of asylees and refugees with a variety of needs poses new challenges to the New York State Court system in supporting access to justice. To address the justice gap, the U.S. and State governments are taking steps to improve access to justice and to make court proceedings fairer for refugee accessors.

## 2.1. Statewide: Various Programs

New York State is taking encouraging steps to help asylees and refugees proceed more effectively without counsel and to make lawyers available for little or no cost.

It is important to recognize that statewide, there is greater awareness of the legal needs of New Yorkers experiencing poverty, and the severe consequences for the justice system and society as a whole if these needs go unmet. Laws, rules, policies, and initiatives have been developed across the state.

Across the state, various programs promote and protect access to justice rights. This article does not intend to describe in great detail the full range of programs and best practices. Rather, it selected certain programs that have been adopted and implemented statewide and locally, with a focus on the 8th Judicial District’s experience in Erie County.

Since the Court system was unified in 1978, the first change in the organizational structure of the New York State courts occurred in 1999 when the office of the Deputy Chief Administrative Judge for Justice Initiatives (“DCAJ-JI”) was created “to integrate the broad principles of access to justice into the core elements of court operations.”<sup>15</sup>

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<sup>11</sup> N.Y. STATE OFFICE OF TEMP. AND DISABILITY ASSISTANCE, BUREAU OF REFUGEE AND IMMIGRANT ASSISTANCE POPULATION DATA FOR FFY 2014, 2-3 (2014), available at <https://otda.ny.gov/programs/bria/documents/population-report.pdf>.

<sup>12</sup> Melinda Miller, *Refugees in Buffalo Deal with Scars from Their Homeland Long After Resettling Here*, BUFF. NEWS, Oct. 18, 2014, <http://www.buffalonews.com/city-region/refugees-in-buffalo-deal-with-scars-from-their-homeland-long-after-resettling-here-20141018>.

<sup>13</sup> See JILL WILSON & AUDREY SINGER, IMMIGRANTS IN 2010 METROPOLITAN AMERICA: A DECADE OF CHANGE 8 (2011), available at [http://www.brookings.edu/~media/research/files/papers/2011/10/13%20immigration%20wilson%20singer/1013\\_immigration\\_wilson\\_singer.pdf](http://www.brookings.edu/~media/research/files/papers/2011/10/13%20immigration%20wilson%20singer/1013_immigration_wilson_singer.pdf); Jerry Zremski, *Immigrants End the Decline in Erie County Population*, BUFF. NEWS, Mar. 26, 2015, <http://www.buffalonews.com/city-region/erie-county/immigrants-end-the-decline-in-erie-county-population-20150326>.

<sup>14</sup> See N.Y. STATE OFFICE OF TEMP. AND DISABILITY ASSISTANCE, *supra* note 11.

<sup>15</sup> OFFICE OF THE DEPUTY CHIEF ADMIN. JUDGE FOR JUSTICE INITIATIVES, EXPANDING ACCESS TO JUSTICE IN NEW YORK STATE 1 (2009), available at <http://www.nycourts.gov/ip/nya2/pdfs/TenYearReport2009.pdf>.

According to the 2009 Access to Justice in New York State Report, “as a result of the vision of [the late] Chief Judge Judith S. Kaye, there has been a dramatic change in the court and legal culture regarding access to justice.”<sup>16</sup> The Report emphasized five major initiatives of the DCAJ-JL, including, “(1) strengthening the delivery of civil legal services; (2) strengthening the delivery of criminal indigent defense services; (3) increasing the provision of pro bono services; (4) addressing the needs of self-represented litigants; and (5) expanding community education and outreach about the courts and how they operate.”<sup>17</sup>

More recently, the current evolution on Access to Justice Initiatives is in large part attributable to former Chief Judge Jonathan Lippman, who established in 2010 the Task Force to Expand Access to Civil Legal Services in New York in order “to address a crisis of the unrepresented in [New York] State’s courts.”<sup>18</sup>

As of today, the Task Force has been converted into the Permanent Commission on Access to Justice, to “recognize[] the continuing need to undertake reforms to diminish the gap between the need for civil legal services for low-income New Yorkers and the availability of such services.”<sup>19</sup>

Clearly, the Permanent Commission’s mission is to provide “support for the preparation of the Chief Judge’s annual hearings to assess the unmet needs for legal representation in civil legal proceedings involving fundamental human needs, as well as providing assistance in developing the Chief Judge’s report and recommendations to the Legislature and the Executive about the level of public resources necessary to meet those needs.”<sup>20</sup>

Moreover, its mission concerns “the expansion of access to civil legal services and the improvement of access to justice generally.”<sup>21</sup> As one can see, noticeable progress has been made to provide more legal resources to low-income individuals in New York State in order to ensure access to justice.<sup>22</sup>

Finally, it is worth mentioning that new developments could impact all of these fields very soon since the Advisory Council on Immigration Issues in Family Court was recently established.<sup>23</sup> The Advisory Council “will work to enhance training programs to better prepare Family Court judges to manage proceedings involving immigration-related issues; foster communication and coordination among the justice system players and other stakeholders to streamline case processing and ensure the fair administration of justice . . . and advance public education and other programs targeting the needs of litigants in these cases.”<sup>24</sup> Furthermore, “[m]embers of the advisory council will engage in a variety of outreach and education efforts, also proposing new court rules and legislative reforms to address relevant issues.”<sup>25</sup>

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<sup>16</sup> *Id.* at 36.

<sup>17</sup> *Id.* at 2.

<sup>18</sup> PERMANENT COMM’N ON ACCESS TO JUSTICE, REPORT TO THE CHIEF JUDGE OF THE STATE OF NEW YORK 1 (2015), available at <http://nylawyer.nylj.com/adgifs/decisions15/122915report.pdf>.

<sup>19</sup> *Id.*

<sup>20</sup> *Overview*, PERMANENT COMMISSION ON ACCESS TO JUST., <https://www.nycourts.gov/accesstojusticecommission/index.shtml> (last visited Jan. 30, 2015).

<sup>21</sup> *Id.*

<sup>22</sup> Judge Lippman discusses this progress, as well as work to be done, in an article in this volume of IMPACT. See Hon. Jonathan Lippman, *Justice, Justice Shall Ye Pursue*.

<sup>23</sup> Media Advisory, New York State Unified Court System, Members Named to New Advisory Council on Immigration Issues in Family Court (Oct. 5, 2015), <http://nylawyer.nylj.com/adgifs/decisions15/100615members.pdf>.

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

## 2.2. Local Efforts in Buffalo, New York

A broad range of community-based workers provide general support to individuals in accessing the justice system, which may include assistance or referral in relation to their legal problems or simply identifying the problem as legal in nature. Social workers, welfare workers, health workers, psychological counselors, credit counselors, and housing counselors can all play a role in improving access to justice. Numerous government authorities, not-for-profit organizations and professional bodies provide advice and assistance for refugees to access the justice system.

For instance, the Eighth Judicial District Court Help Center employs staff to provide free procedural information and guidance about the courts or available legal resources (without giving any legal advice).<sup>26</sup> In addition, in order to expand access to civil legal services and improve access to justice for refugees, asylees and immigrants, a coalition of legal services providers has been formed in Buffalo.

### a. The CRLS Project

As a new collaborative project launched in July 2014, the Coordinated Refugee/Asylee Legal Services Program (the CRLS Project) has been seen as the new social transformation vehicle for refugees and asylees in Buffalo.

In fact, responding to the major and rapid shifts in the flow of refugees, legal services providers came up with this program teaming up with seven partners providing civil legal services, including Legal Services for the Elderly, the Volunteer Lawyers Project, Journey's End, the Legal Aid Bureau, Neighborhood Legal Services, Vive La Casa (henceforth branch of Jericho Road Community Health Center), and the Western New York Law Center.

CRLS sought a pragmatic, proactive approach by developing a new delivery model that would deeply involve these organizations in the communities, places, and institutions that affect their clients' lives.

While its main purpose is to expand the capacity to serve refugees and asylum seekers on civil and immigration legal issues, it falls short of improving our understanding of client's values and culture. Certainly, the CRLS partners have forged new opportunities to work together in greater harmony, serving the refugees and asylum seekers who face struggles integrating into their new land where they experience differences in customs, behavior, and social relations.

Increasingly, the refugee population is assisted with legal issues involving housing, family matters, public benefits, health and disability, immigration, labor and employment, consumer law, and education.

During the July 2014-March 2015 reporting period, "CRLS legal partners accepted 925 legal cases and had the great privilege of providing direct legal services to clients from sixty different countries, speaking forty different languages. 158 of the legal matters have been resolved, with the remaining cases still pending."<sup>27</sup>

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<sup>26</sup> See N.Y. State Unified Court Sys., *8th Judicial District Court Help Center*, 8TH JUD. DISTRICT, [HTTPS://WWW.NYCOURTS.GOV/COURTS/8JD/HELPCTR.SHTML](https://www.nycourts.gov/courts/8JD/HELPCTR.SHTML) (last visited Jan. 30, 2016).

<sup>27</sup> LEGAL AID BUREAU OF BUFFALO, THE CRLS PROJECT, INTERNAL REPORT 10 (March 2015).



About half of the cases handled during the first reporting period were “immigration matters; family, consumer, income maintenance, and housing constituted about thirty percent of the cases; the remaining twenty percent involved a great variety of concerns, including civil rights, education, health, child welfare, employment issues and other miscellaneous.”<sup>28</sup>

By so doing, the CRLS partners recognize that we have as much to learn as we have to offer, and we can only make a difference on important community struggles by working alongside the people whose interests we represent. By meeting people where they are, both literally and figuratively, we are better positioned to assist refugees in overcoming their struggles and accessing justice.

We are providing on-site services and outreach programs in shelters, homes, churches and other places where people in need congregate. Also, we are seeking to establish a level of trust among community leaders, law enforcement and ourselves that should support the growth of further collective efforts.

Such a collaborative approach is effective, and legal service providers are playing a vital role. Committed to provide free legal assistance to individuals with limited English proficiency (“LEP”), the CRLS partners are aware of refugees’ struggles to adapt, adjust, cooperate, and comprehend the values and culture of their new society. This commitment to relationship-building is making possible a deeper awareness of refugees’ social realities, such as language barriers.

To overcome language and cultural barriers, over the past few months, we have made a concerted effort to hold cultural competency sessions, as well as develop personal and professional relationships in the refugees’ communities. We have also developed a Language Access Plan involving different approaches.

First, several partners have hired bilingual staff from immigrant communities to assist with cases when their language skills are needed (the author of this essay being one of them). Second, partners would hire interpreters through local programs for more in-depth conversations. Lastly, we have been using telephonic language access services for emergency circumstances. As state-funded agencies, we were entitled to telephonic language services at a reduced rate per minute, improving the time we could speak with clients.

To sum it up, the community lawyering approach has been useful and productive to develop relationships with refugee community organizations, familiarize ourselves with their struggles, and empower them. Thus, identifying, developing, and maintaining community partnerships and collaborations enhances capacity and extends services that would help refugees in accessing justice.

## **b. Immigrant and Refugee Community/Family Court Collaborative Effort**

Recognizing how important it is that the court system proactively address the new issues faced by people from diverse backgrounds, Honorable Lisa Bloch Rodwin, Erie County Family Court Judge, launched in 2010 the first Immigrant and Refugee Collaborative in New York to help immigrant families who land in the justice system.<sup>29</sup>

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<sup>28</sup> *Id.*

<sup>29</sup> See Michael Petro, *Erie County Judge Named to State’s New Immigration-related Advisory Board*, BUFF. L. J. (Oct. 28, 2015), <http://www.bizjournals.com/buffalo/blog/buffalo-law-journal/2015/10/erie-county-judge-named-to-state-s-new-immigration.html>.

This innovative approach to court-community collaboration tends to bridge the gap by allowing the refugee community to learn more about the court system.

In return, with the interest to educate as well as to be educated, this initiative strengthens a dialogue and partnership with judicial staff supplemented by periodic roundtable meetings and cultural competency trainings. To learn more about some best practices when interacting with refugees and increase ability to assist cross-cultural litigants, Erie County Family Court hosts on a regular basis trainings entitled “Knowing Our Neighbors,” involving refugee community leaders as the trainers.

As of today, the initiative has “grown to include more than 80 representatives of various religious and cultural groups, resettlement agencies, law enforcement, state, national and local government, legal services organizations and attorneys.”<sup>30</sup>

As the initiative brings a resounding impact on the community, Judge Rodwin has been recently appointed to the Advisory Council on Immigration Issues in Family Court discussed above.

## Conclusion

We should recognize a range of actions has been taken to advance the rights, power, and legal capacities of refugees and asylees. By helping them and those who are unfamiliar to the U.S. legal system to access justice, New York State seems to be offering a promising road forward, but it is not enough.

A declaration of rights does not guarantee its enforcement. It is important that the barriers for refugee accessors in court proceedings occupy a central role in the justice system’s discussion of access to justice, both at the federal and local levels.

Recognizing the interconnectedness of law and refugee social conditions, it is necessary to combine a pluralistic approach to law with institutions that are open and supportive. This should include partnership of individual lawyers, the organized bar, legal services providers, the non-legal sources of assistance and vulnerable groups themselves who must overcome the various impediments discussed in this article.

Nevertheless, efforts to eliminate disparities in accessing justice remain a process, not a conclusion. •

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<sup>30</sup> *Id.*