

**Joint Submission by PEN International, PEN America,
Independent Chinese PEN Center and PEN Tibet
Abroad Center
to the United Nations Human Rights Council in
Advance of the Fourth Universal Periodic Review of
the People's Republic of China**

July 18, 2023

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Freedom of expression in China

1. Despite having accepted numerous recommendations concerning the right to free expression in its third Universal Periodic Review (UPR) in 2018,¹ the government of the People's Republic of China (PRC) continues to restrict the right to freedom of expression through legislation policy and practise in which the space to exercise this right has continued to deteriorate across the country. Over the intervening period since the last UPR, the restrictions that the PRC government has continued to implement, undermine its commitments to the right to freedom of expression as accorded within the Constitution of the People's Republic of China,² and its international obligations as signatory to the International Covenant on Civil and Political Rights.³

Legislation and policies

2. This includes increasing restrictions which unduly infringe on the right to freedom of expression online, resulting in widespread censorship and surveillance. Following the outbreak of the COVID-19 pandemic, authorities initially responded by carrying out an intense crackdown on any content deemed to be critical of the PRC government's response to the pandemic. Examples include the removal of social media posts and the arbitrary detention of medical professionals, citizen journalists,⁴ and internet users,⁵ for any online expression that diverged from or directly challenged state discourse around the pandemic and the government's implementation of public health measures.
3. At the national level, China has also sought to increase its control over online expression by implementing legislation that bolsters its broad powers to censor and monitor internet users. On July 10, 2023, the Office of the Central Cybersecurity and Information Commission, a CCP body that mirrors the State Information Commission, issued a "Notice On Strengthening the Management of Self-Media", which further tightened the control of speech on self-media (accounts that publish information or news but are not government approved).⁶ This regulation requires that "it is not allowed to collect negative information, to stir up old news and events, to stir up hot social events, to consume disasters, and not to induce users to pay attention to other accounts by preventing loss of contact, paying attention in advance, leaving suspense, etc., which will bring further restrictions to freedom of expression.
4. This comes after the Cyberspace Administration of China in 2022 promulgated a revised version of the 2017 Provisions on the Management of Internet Post Comments Services which further tightens controls over online comments.⁷ Specific revisions include requiring social media operators to review and report any online comments that contain unlawful and "negative" information.⁸ The inclusion of the term "negative" without providing a clear and narrowly-drawn definition undercuts freedom of expression protections by making websites and other online platforms arbitrarily determine whether content falls within these definitions and should be reported to the authorities. In doing so, the 2022 regulations risk creating a chilling effect on online expression, undermining the exchange of any information and ideas that could be construed as "negative" by social media platforms and government authorities.

5. Both laws and policies that control and regulate user generated content, combined with the deliberate undermining access to independent media, has direct impact on right to expression, especially the right to seek, receive and impart information and ideas through the media and regardless of frontiers.
6. In 2023, the Standing Committee of the National People's Congress promulgated an amended version of the 2014 Counter-Espionage Law of the People's Republic of China.⁹ It includes an expansive definition of what constitutes espionage, providing authorities with broad discretionary powers to identify and investigate individuals for a wide range of activities. Included in its amendments are measures banning the transfer of any information "related to national security and national interests", which would grant authorities with powers to arbitrarily criminalize the sharing of information overseas.
7. Within the Hong Kong Special Administrative Region,¹⁰ the promulgation of the National Security Law (NSL) by the Standing Committee of the National People's Congress on 30 June 2020,¹¹ has had a devastating impact on freedom of expression in the territory as well as leading to self-censorship overseas out of fear of prosecution under extraterritorial provisions of the law. Brought into force by the PRC's national legislature, its adoption is a stark example of how Hong Kong's tradition of rule of law, served by its once-independent judicial system and its constitutional human rights framework under the Basic Law, has been fundamentally undermined.
8. Several of the offences contained within the NSL, including secession,¹² subversion,¹³ terrorism,¹⁴ and collusion with a foreign country or external elements,¹⁵ are ambiguously defined and sweepingly broad in scope, providing authorities with the ability to arbitrarily determine whether any form of critical expression towards the Hong Kong or PRC government may constitute a criminal offence.
9. The NSL also undermines due process and fair trial norms by providing police with enhanced powers to carry out warrantless searches, covert surveillance and communications' interception and the censorship of published information, both online and offline, of anyone suspected of violating the NSL.¹⁶ For those targeted under the NSL, there is no right to bail,¹⁷ and the prosecution has the ability to waive the right to a trial by jury (an otherwise established principle within Hong Kong's judicial system and enshrined within the Basic Law).¹⁸ Those convicted of violating the NSL face a potential life sentence.
10. The impact of the NSL on the freedom of expression environment in Hong Kong has been severe. Since it came into force, over 250 people have been arrested on national security offences under the NSL, including journalists, academics, students, and activists.¹⁹ Several independent media organisations have been forced into closure following raids by national security police, including Stand News²⁰ and Apple Daily, once-Hong Kong's largest pro-democracy news outlet.²¹ Over the last three years, dozens of CSOs,²² including Amnesty International's Hong Kong office,²³ have also been forced to disband due to the NSL criminalising their work.

11. The chilling effect caused by the NSL has also extended into cultural and educational spheres. The vague nature of the provisions within the NSL has contributed to the climate of self-censorship, impacting authors and booksellers' ability to publish or disseminate books without fear of potential criminal liability under NSL. In 2022, several booksellers were reportedly prevented from participating in Hong Kong's annual book fair – the territory's largest literary event – after they had exhibited books about the 2019-2020 protest movement during the previous year's event. This impact has a trickle-down effect across the bookselling ecosystem, impacting the ability of independent bookshops to stock and sell books through a non-transparent process which leads to content being deemed to be politically sensitive.
12. Many books with political content are also increasingly being removed from library bookshelves, a change in the right to free expression in the territory where books banned in the mainland used to be available. Reports from local media emerged in 2021 that books containing potentially politically sensitive content concerning Hong Kong's protest movement and the 1989 Tiananmen Square Massacre have been removed from both public²⁴ and school libraries.²⁵ According to a report published by the Hong Kong government's audit commission on 31 March 2023, the government authority responsible for Hong Kong's network of public libraries has conducted a review of "library books which are manifestly contrary to the interests of national security" and has removed them from its public libraries.²⁶ This has been corroborated by local media, including an investigative report which found that approximately 40% of politically themed books that were available in 2020 are no longer on public library shelves.²⁷
13. The expansive nature of the NSL has also emboldened authorities to criminalise slogans and song lyrics. This includes 'Glory to Hong Kong', a song which came to prominence during the 2019-2020 protests, and which has been increasingly targeted by the authorities who view its lyrics as secessionist. On 5 June 2023, the Hong Kong government sought a court injunction to prohibit the "[b]roadcasting, performing, printing, publishing, selling, offering for sale, distributing, disseminating, displaying or reproducing in any way" of the song.²⁸ Included in the song's lyrics is the slogan "Liberate Hong Kong, revolution of our times," a slogan which was banned by the Hong Kong government just days after the NSL came into force.²⁹

Xinjiang Uyghur Autonomous Region

14. Within the Xinjiang Uyghur Autonomous Region,³⁰ the PRC government has continued to systematically subjugate the region's Uyghur and other minority populations, resulting in widespread human rights violations that, as per the UN High Commissioner for Human Rights, may constitute crimes against humanity.³¹
15. The mass detainment of Uyghurs remains of the utmost concern, with the PRC government shifting from a programme of extrajudicial internment to the imposition of lengthy prison sentences and coercive labour practices.³² Included among those

detained are hundreds of Uyghur writers, poets, publishers, editors, academics and public intellectuals,³³ who together represent the living embodiment of Uyghur culture. Their arbitrary imprisonment should be considered as part of the PRC government's broader efforts to degrade and destroy Uyghur culture and dislocate the Uyghur population from their identity and heritage.³⁴

16. The PRC government has continually implemented education policies in Xinjiang for over six years that deliberately marginalizes the use of the Uyghur language as part of the school curriculum, prioritising Mandarin Chinese as the primary language of instruction.³⁵ The implementation of these policies has a profoundly detrimental impact on the use of the Uyghur language, a key marker of Uyghur culture and ethnic identity. Examples of such policies include the "Xinjiang Class" boarding school programme, which relocates Uyghur children from Xinjiang to Central or Eastern China to receive an education that prioritises Mandarin Chinese as the language of instruction,³⁶ and the implementation of directives that have prohibited the use of the Uyghur language in education settings at the prefectural level.³⁷

Tibet Autonomous Region

17. Similar processes of cultural repression continue to take place within the Tibet Autonomous Region, where the longstanding implementation of assimilatory language policies continue to undermine Tibetan children's access to education in their mother tongue. This includes reports on the expansive use of Chinese-medium education in "residential" or boarding schools in both urban and rural areas, eroding the provision of education through the Tibetan language.³⁸
18. Concerns over the forced assimilation of Tibetan children in education settings were expressed by several United Nations Special Rapporteurs in a communication sent on 11 November 2022. In the communication, the independent experts expressed serious concern over the reported "policy of acculturation and assimilation of the Tibetan culture into the dominant Han-Chinese majority", noting that "the residential schools system for Tibetan children appears to act as a large-scale program to assimilate Tibetans into majority Han culture, contrary to the international human rights standards".³⁹

Inner Mongolia Autonomous Region

19. Within Inner Mongolia, education reforms announced in 2020 increased the number of class hours taught in schools through Chinese by changing subjects previously taught in Mongolian to Chinese as the language of instruction.⁴⁰ The measures sparked protests and the government reportedly shut down a Mongolian-language social media platform that had 400,000 Inner Mongolian users at the time. For Mongolian-medium schools in the region, the recent changes have diminished their ability to provide children with an education in the Mongolian language. The policies were formally legalised when the

revised Inner Mongolia Autonomous Region Education Regulations went into effect on January 1, 2022.⁴¹

20. These policies have been imposed on populations and strongly opposed by local minority communities, who are subjected to arbitrary detention, including long-term imprisonment, and other forms of harassment when they try to express their concerns about these policies through peaceful demonstrations or online writing.

Arbitrary arrest and detention and conditions of detention for imprisoned writers¹

21. Writers, poets, journalists, bloggers academics and public intellectuals continue to be targeted and persecuted for exercising their rights to freedom of expression through a range of coercive measures including arbitrary arrest, imprisonment, torture, and various forms of harassment, including surveillance, and denial of basic services, including adequate healthcare while in custody.
22. Many of these measures are justified by the authorities under national security loopholes in the Criminal Procedure Law, which provides authorities with the ability to overrule due process and fair trial norms enshrined elsewhere in China's legal system. However, in many cases involving free expression, due process norms are denied regardless of the charges and Chinese and Hong Kong authorities have increasingly attempted to prosecute overseas expression on extraterritorial grounds.
23. Included among those currently detained on national security charges is writer, media publisher and activist, Jimmy Lai, who has been continuously imprisoned since December 2020 following his initial detention in August 2020 on multiple charges in relation to his journalism and activism.⁴² Owner of now-defunct Apple Daily newspaper, which was regarded as Hong Kong's most prolific pro-democracy news outlet before it was forced to close by the authorities on 24 June 2021,⁴³ Lai has already served multiple prison sentences for exercising his right to peaceful assembly, including a 13-month sentence for briefly appearing at a vigil on 4 June 2020 to commemorate the 1989 Tiananmen Square massacre. He faces further charges under the NSL,⁴⁴ which could result in a maximum sentence of life imprisonment.⁴⁵
24. Gui Minhai is a poet, publisher, bookseller, and member of the Independent Chinese PEN Center (ICPC). A Swedish citizen and was a recipient of Swedish PEN's Tucholsky Prize in 2019,⁴⁶ Gui is one of five Hong Kong booksellers who were forcibly disappeared in October 2015. Gui was taken from his vacation home in Thailand by individuals thought to be connected with the PRC government and was not seen in public until three months later,⁴⁷ when PRC state media aired a forced confession video where Gui Minhai claimed he had voluntarily returned to China to turn himself in for a 2003 traffic offence.⁴⁸ After being released briefly in 2017, Gui Minhai was subsequently re-detained in January 2018 while he was travelling from Shanghai to Beijing in order to receive medical care

¹ PEN has received consent from the families of all the individual cases raised by name in this section.

for a neurological condition.⁴⁹ On 24 January 2020, Gui was sentenced to 10 years' imprisonment on national security charges.⁵⁰

25. Writer, scholar and political commentator, Yang Hengjun, has been in various forms of detention since January 2019,⁵¹ after he returned to China from the US with his family. Yang was initially held at a secret location for six months in a notorious form of incommunicado detention called Residential Surveillance at a Designated Location,⁵² where he was reportedly tortured.⁵³ In August 2019, Yang was formally arrested on suspicion of 'espionage' without any evidence supporting the charge disclosed to his family or consular representatives.⁵⁴ After over two years of pre-trial detention, Yang's trial was held behind closed doors on 27 May 2021. It reportedly lasted less than seven hours,⁵⁵ with his consular representatives denied the ability to attend,⁵⁶ a breach of both the Vienna Convention,⁵⁷ and the Australia-China bilateral consular agreement.⁵⁸ As of June 2023, the court has postponed the public sentencing of his case on nine separate occasions, raising serious questions concerning the fairness of his trial.
26. On 26 July 2022, Zhang Guiqi, a poet and member of ICPC, was sentenced to six years' imprisonment and a further three years' deprivation of his political rights for "inciting subversion of state power", a national security charge that has been routinely used by the authorities to target government critics.⁵⁹ While Zhang's family were reportedly denied the ability to view the judgement on national security grounds, the conviction is thought to relate to a video that Zhang shared with a small group on social media just hours before he was initially detained in May 2020.⁶⁰ The video featured a recording of Zhang in which he called for President Xi Jinping to step down and for an end to the "CCP's regime".⁶¹ The severe sentence imposed on Zhang for his peaceful expression is indicative of the level of intolerance that the PRC government has towards any criticism of its rule.
27. In another emblematic case, Chinese writer and journalist Dong Yuyu has been detained on charges of "espionage" since February 2021. Dong Yuyu is a liberal commentator and deputy head of the editorial department for *Guangming Daily*, a state-owned newspaper, where he has worked since 1987. Dong Yuyu often met with diplomats, journalists, and scholars from other countries as a part of his job to better understand global issues. He knew his communications were monitored by state security and the meetings were always held in a public location. His arrest, and the subsequent revision of Counter-Espionage Law, are part of a broader effort by the PRC government to create a chilling effect that makes Chinese nationals, especially journalists and scholars in state-owned institutions, afraid to contact foreign nationals by labelling such interactions as "espionage".⁶²
28. Among the hundreds of Uyghur writers, poets, scholars, and public intellectuals who have been imprisoned by the PRC government is Rahile Dawut, a renowned academic and leading expert on the study of Uyghur folklore. In late 2017, Dawut disappeared shortly after she had made plans to travel from Xinjiang to Beijing for an academic conference. The PRC government has subjected her to five years on enforced

disappearance, despite international outcry and media attention,⁶³ and a campaign led by Dawut's daughter calling for her release.⁶⁴ Dawut's imprisonment is emblematic of the PRC government's persistent efforts to dislocate the Uyghur population from their cultural identity and heritage through overwhelming levels of censorship and repression. Just a year before she was detained, Dawut received a research grant from the Ministry of Culture, reportedly the largest ever given to a Uyghur research project.⁶⁵

29. Uyghur writer and scholar Ilham Tohti has been serving a life sentence for "separatism" since 2014 for co-founding the website Uyghur Online, also known as Uyghurbiz, which aimed to promote (cultural?) understanding between Uyghurs and Han Chinese. After being prevented from leaving the country in 2013, his formal detention came in February 2014, and Tohti was charged with separatism and held incommunicado under inhumane treatment for months before he could meet his lawyer. He was tried behind closed doors and sentenced in September 2014. Ilham Tohti has been incarcerated incommunicado since 2017, with no access to his family or his lawyers.⁶⁶ His case is emblematic of the criminalization of Uyghur expression on and offline, and systematic due process violations that run counter to China's domestic and international obligations.

30. Tibetan writers have also been subjected to long-term prison sentences for peacefully criticising the impact of PRC government policy on Tibetan language and culture. Included among those currently detained is Tibetan writer, educator and public intellectual, Go Sherab Gyatso (known as Gosher), who is currently serving a 10-year prison sentence reportedly imposed following a secret trial held in late 2021.⁶⁷ Gosher was detained by PRC security services on 26 October 2020, in the Sichuan province's city of Chengdu on suspicion of inciting secession.⁶⁸ He was subsequently transferred to the Tibetan Autonomous Region where he was formally charged on 3 February 2021. There are ongoing concerns over Gosher's health and access to adequate medical care, following reports that he was detained while seeking medical treatment for a chronic lung condition.⁶⁹

Recommendations

1. Amend or repeal legislation, including the National Security Law in Hong Kong and newly enacted regulations governing internet access in mainland China, that infringe on the right to freedom of expression.
2. End all policies that marginalize minority languages and stop the practice of forced assimilation of ethnic minorities to protect the right of cultural expression of ethnic minorities.
3. Release from detention writers, bloggers, journalists, human rights defenders, and others held in violation of their right to free expression to protect and guarantee the right to free expression.
4. Ensure all detainees including those held on national security charges are ensured access to a lawyer of their choice, provided with adequate medical care and access to their families, in accordance with international law.

¹ <https://www.ohchr.org/sites/default/files/lib-docs/HRBodies/UPR/Documents/Session31/CN/MatriceRecommendationsChina.docx>

²

<http://www.npc.gov.cn/englishnpc/constitution2019/201911/1f65146fb6104dd3a2793875d19b5b29.shtml>

³ <https://www.latimes.com/world-nation/story/2020-02-06/coronavirus-china-xi-li-wenliang>

⁴ <https://www.bbc.co.uk/news/world-asia-china-55463241>

⁵ <https://edition.cnn.com/interactive/2021/02/asia/china-wuhan-covid-truth-tellers-intl-hnk-dst/>;
<https://www.scmp.com/news/china/politics/article/3192237/chinese-internet-users-detained-over-xinjiang-covid-19-outbreak>

⁶ <http://politics.people.com.cn/n1/2023/0710/c1001-40032189.html>

⁷ 2022 Provisions on the Management of Internet Post Comments Services:

https://web.archive.org/web/20230112155807/http://www.cac.gov.cn/2022-11/16/c_1670253725725039.htm.

⁸ See Article 4, 10, 11, 13.

⁹ 2023 Counter-Espionage Law of the People's Republic of China:

<https://web.archive.org/web/20230510194031/http://www.npc.gov.cn/npc/c30834/202304/a386e8ffa3d94047ab2f0d89b1ea73c4.shtml>.

¹⁰ Henceforth referred to as Hong Kong.

¹¹ Law of the People's Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region:

<http://www.npc.gov.cn/npc/c30834/202006/f6cdd771017b4f2bb28f4113805ef85a.shtml>.

¹² NSL, Article 20.

¹³ NSL, Article 22.

¹⁴ NSL, Article 24.

¹⁵ NSL, Article 29.

¹⁶ NSL, Article 43.

¹⁷ NSL, Article 41. This is in violation with the right to bail under Article 5(3) of the Bill of Rights Ordinance.

¹⁸ NSL, Article 46.

¹⁹ <https://hongkongfp.com/2023/07/02/explainer-hong-kongs-national-security-crackdown-month-36/>

²⁰ <https://www.reuters.com/business/media-telecom/hong-kong-police-arrest-6-current-or-former-staff-online-media-outlet-2021-12-28/>.

²¹ <https://www.pen-international.org/news/oe878lz4is383e92p74rfi44uko72u>.

²² <https://hongkongfp.com/2022/06/30/explainer-over-50-groups-gone-in-11-months-how-hong-kongs-pro-democracy-forces-crumbled/>

²³ <https://www.amnesty.org/en/latest/news/2021/10/amnesty-international-to-close-its-hong-kong-offices/>

²⁴ <https://hongkongfp.com/2021/05/10/hong-kong-pulls-more-democracy-books-from-library-shelves-citing-security-law-concerns/>

²⁵ <https://www.scmp.com/yp/discover/news/hong-kong/article/3144340/fearing-national-security-law-schools-hong-kong-remove>.

²⁶ <https://www.legco.gov.hk/yr2023/english/counmtg/papers/cm20230426-sp037-e.pdf>.

²⁷ <https://news.mingpao.com/pns/%e8%a6%81%e8%81%9e/article/20230515/s00001/1684089306936>.

²⁸ <https://www.info.gov.hk/gia/general/202306/06/P2023060600301.htm>.

²⁹ <https://www.theguardian.com/world/2020/jul/02/hong-kong-protesters-laying-low-following-mass-arrests-china>

³⁰ Henceforth referred to as Xinjiang.

³¹ <https://www.ohchr.org/en/documents/country-reports/ohchr-assessment-human-rights-concerns-xinjiang-uyghur-autonomous-region>.

³² <https://www.pen-international.org/news/china-xinjiang-severe-prison-sentences-uyghur-writers-latest-example-government-efforts-erase-uyghur-culture>.

³³ A recent list of known detainees is available at: <https://uyghurhijelp.org/2023/01/list-of-uyghur-intellectuals-imprisoned-in-china-from-2016-to-the-present-last-updated-by-abduweli-ayup-december-31-2022/>. For further reporting, see: <https://uhrp.org/report/the-disappearance-of-uyghur-intellectual-and-cultural-elites-a-new-form-of-eliticide/>.

- ³⁴ <https://uhrp.org/report/the-complicity-of-heritage-cultural-heritage-and-genocide-in-the-uyghur-region/>.
- ³⁵ AL CHN 14/2022 February 6, 2023, <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=27776>
- ³⁶ Ministry of Education of the People's Republic of China, 2000. *Regulations of the Inland Xinjiang High School Class Management (trial)* (□□□□□□□□□□办法 (试行)), art. 6. http://www.moe.gov.cn/s78/A09/mzs_left/moe_752/tnull_1009.html.
- ³⁷ PEN America, 2017. *Decision to Ban Uyghur Language in Xinjiang Schools an Attack on the Minority Group's Linguistic and Cultural rights* <https://pen.org/press-release/decision-ban-uyghur-language-xinjiang-schools-attack-minority-groups-linguistic-cultural-rights/>.
- ³⁸ Human Rights Watch, 2020. *China's "Bilingual Education" Policy in Tibet*. <https://www.hrw.org/report/2020/03/05/chinas-bilingual-education-policy-tibet/tibetan-medium-schooling-under-threat>.
- ³⁹ Mandates of the Special Rapporteur on minority issues; the Special Rapporteur in the field of cultural rights; the Special Rapporteur on the right to education and the Special Rapporteur on freedom of religion or belief, 2022. (AL CHN 6/2022). <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=27444>.
- ⁴⁰ PEN America, 2020. *New Inner Mongolia Education Policy Threatens to Degrade Language Rights*. <https://pen.org/press-release/new-mongolia-education-policy-threatens-to-degrade-language-rights/>; <https://www.pen-international.org/news/china-inner-mongolia-changes-education-policy-endangers-linguistic-diversity-undermines-free-expression>; <https://madeinchinajournal.com/2020/08/30/bilingual-education-in-inner-mongolia-an-explainer/>
- ⁴¹ Article 9 requires schools and educational institutions to use written and spoken Mandarin for education and teaching. Article 10 states that "Schools and other educational institutions with minority students as the majority" should "respect and ensure that minority students learn the language commonly used by their own or local ethnic groups" but does not have equal provisions for its requirement to be used in education and teaching. Inner Mongolia Autonomous Region Education Regulations (内蒙古自治区教育条例), <http://inews.nmgnews.com.cn/system/2021/11/11/013220360.shtml>
- ⁴² <https://www.pen-international.org/news/china-hong-kong-serious-concerns-over-arrest-of-media-publisher-and-pro-democracy-activist-jimmy-lai>
- ⁴³ <https://www.pen-international.org/news/china-hong-kong-dawn-raid-independent-newspaper-highlights-ongoing-assault-against-freedom-expression-government>.
- ⁴⁴ <https://www.pen-international.org/news/hong-kong-pen-centres-join-cpbs-call-hong-kong-leader-secure-jimmy-lais-release>.
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- ⁵⁶ <https://www.smh.com.au/world/asia/australian-ambassador-barred-from-yang-hengjun-spy-hearing-20210527-p57vn3.html>
- ⁵⁷ https://legal.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf

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