

Federal Court



Cour fédérale

**Date: 20211208**

**Docket: IMM-7673-19**

**Citation: 2021 FC 1375**

**Ottawa, Ontario, December 8, 2021**

**PRESENT: The Honourable Madam Justice Strickland**

**BETWEEN:**

**AHMAD NASSER MAHMOUD ALDAHER**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

[1] This is the judicial review of the decision of the Refugee Protection Division [RPD] of the Immigration Board of Canada, which found that the Applicant, his spouse and their two minor children are not Convention refugees or persons in need of protection pursuant to s 96 and 97, respectively, of the *Immigration and Refugee Protection Act*, SC 2001 c 27 [IRPA].

[2] This application for judicial review is brought only by the Applicant.

## **Background**

[3] The Applicant is a citizen of Jordan. He claims that he was employed at the Jordan University of Science & Technology as a researcher and lab technician. In 2010, he began working with a Master's student named Muneer Abu Ismail [Muneer]. The Applicant claims that the results of a study conducted by Muneer were suppressed by his academic supervisors. However, the Applicant gave the results to Muneer who published them without the consent of the university and also sued the university.

[4] The Applicant claims that the university and his supervising faculty began to suspect that it was the Applicant who had leaked the data to Muneer. They ostracized him. On November 15, 2012, he received an anonymous death threat by phone which the Applicant assumed was related to his work.

[5] In December 2012, the Applicant spoke to his father-in-law about his problems at the University, hoping that his father-in-law could use his influence as a member of the Jordanian Parliament to get the university to publish the research the Applicant had done with Muneer. The Applicant's father-in-law did not believe his story and suggested that he drop the matter. The Applicant, in retaliation, told his father-in-law that he would not support his upcoming re-election campaign. He claims that his father-in-law became angry and, when the Applicant would not apologise, began to put pressure on his daughter to divorce the Applicant.

[6] The Applicant claims that on April 10, 2013, he was ambushed by four masked men who beat him and told him that he was “playing with fire”, that this would be his last warning and that he would die if he did not stop. He suffered a broken arm, bruises and a bloody nose. Police stationed at the hospital asked him about the attack but he did not tell them that he thought it was related to his work because he was afraid of being detained. In May 2013, the Applicant flew to the United States [US].

[7] His wife then moved back into her parents’ home. The Applicant claims that his wife’s parents were angry with him for refusing to apologize and were of the view that he should return to live with their daughter in Jordan or she should divorce him. The Applicant claims his wife overheard her parents making vague threats about what would happen to him if he returned to Jordan.

[8] In 2015, his wife came to the US for three months. The Applicant claims that when his wife returned to Jordan her parents were upset because she had failed to convince the Applicant to return to Jordan with her and because she was pregnant for the second time. In his Basis of Claim [BOC] narrative the Applicant claims that his father-in-law assaulted the Applicant’s wife in 2015. In her BOC, the Applicant’s wife claims that her father (the Applicant’s father-in-law) was physically abusive between 2013 and 2015 and that this worsened after her return from the US. The Applicant’s wife again left Jordan for the US in September 2017, with the couple’s two daughters, and stayed for about 6 months. She claims that she was then again pregnant, she was having problems with haemorrhaging and that her mother was scheduled to have surgery, so she returned to Jordan in February 2018. She claims that in August 2018 her health had improved

and her father was often absent from the house, so she left Jordan a third time, arriving in Canada on August 20, 2018.

[9] The Applicant entered Canada on September 4, 2018 by way of a port of entry from the US.

[10] The Applicant claims that he fears being harmed by superiors at the university or by his father-in-law.

[11] The RPD denied the family's claims.

#### **Decision under review**

[12] The RPD found that the determinative issue was credibility.

[13] The RPD found that there was no persuasive evidence that the Applicant was being pursued by his superiors at the university or that he would be pursued by his superiors six years later. The RPD drew an adverse inference from the fact that the Applicant had not raised his problems with the university with any non-governmental organizations or scientific bodies in the six years since he had left Jordan.

[14] The RPD did not find it credible that the police would not have made a record of a serious assault suffered by the Applicant. The RPD also found that the Applicant's allegations about the phone call threat and the assault were speculative in that there were no identifying

features and no specifics of the threats tying them to the university. The RPD found that there was nothing in relation to the timing of the threat or the assault to connect them to the university.

[15] The RPD found that it was reasonable to expect that if the Applicant's university superiors were harming or threatening him, they also would have targeted Muneer, as he was the primary instigator in relation to steps taken against the university; but there was no evidence of harm or threats to Muneer. The Applicant also unreasonably failed to seek a letter of support from Muneer. The RPD found that a court record and a news article both referring to a lawsuit by Muneer against the university were not credible evidence establishing the existence of that litigation.

[16] The RPD further found that the Applicant's his father-in-law was not pursuing him and would not pursue him if the Applicant were to return to Jordan and that the Applicant's spouse was not and is not facing persecution from her father as those claims were premised on the Applicant's claim of risk from his university superiors which the RPD found not to be credible.

[17] In addition, the RPD found that the actions of the Applicant's spouse were not credible as they were not consistent with the behaviour of someone who was being persecuted by her father. She left Jordan three times and on two occasions returned to live with her parents although she claimed ongoing abuse by her father. The RPD also did not accept her explanation that she returned to Jordan, rather than making a claim for asylum in the United States, because her husband's house was not clean and that she did not think the US was a good place to raise

children. The RPD concluded, on a balance of probabilities, that the Applicant's spouse's father was not persecuting her in Jordan.

### **Issues and standard of review**

[18] All of the concerns raised by the Applicant in this matter pertain to the issue of whether the RPD's decision was reasonable. The parties submit, and I agree, when a court reviews the merits of an administrative decision the presumptive stand of review is reasonableness. No exceptions to that presumption have been raised nor apply (*Canada (MCI) v Vavilov*, 2019 SCC 65 [*Vavilov*] at paras 23, 25).

[19] On judicial review, the Court "must develop an understanding of the decision maker's reasoning process in order to determine whether the decision as a whole is reasonable. To make this determination, the reviewing court asks whether the decision bears the hallmarks of reasonableness — justification, transparency and intelligibility — and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision" (*Vavilov* at para 99).

### **Was the RPD's decision reasonable?**

#### *Applicant's position*

[20] The Applicant submits that the RPD erred in its credibility assessment by making impermissible implausibility findings. The Applicant submits that the RPD's decision is based entirely on speculation and conjecture about what other people would have done if the

Applicant's allegations were true and that the RPD did not rely on or cite any evidence to support its conclusions. The Applicant asserts that many of the RPD's conclusions are "veiled implausibility findings" and that making implausibility findings without a reliable and verifiable evidentiary basis may be nothing more than unfounded speculation, referencing *Aguilar Zacarias v Canada (Citizenship and Immigration)*, 2012 FC 1155 [*Aguilar Zacarias*] at para 11).

*Respondent's position*

[21] The Respondent submits that the RPD conducted a cogent, thorough review of the Applicant's evidence, and reasonably concluded that his allegations were not credible. The adverse credibility inferences concerned matters central to the Applicant's claims and the RPD's credibility findings are owed deference. The Respondent submits that the RPD did not make veiled implausibility findings based on speculation. Rather, the RPD made specific adverse credibility findings based on: the Applicant's failure to make any efforts to bring to light his alleged problems with the university after he left Jordan; the lack of a police record regarding the assault against the Applicant; the Applicant's failure to contact Muneer to provide support for the Applicant's claim; the Applicant's failure to provide any credible evidence regarding the status of the litigation against the university; and, the lack of any credible reason for his father-in-law's anger against him. The Respondent submits that the Applicant's arguments amount to a disagreement with the RPD's weighing of the evidence, and an invitation to the Court to reweigh the evidence in his favour, which is not the role of the Court on judicial review.

*Analysis*

[22] As a preliminary point, I note that the Applicant's submissions are lengthy. While I have read and considered all of the Applicant's submissions, I have not addressed each discrete point raised by the Applicant in these reasons.

[23] Further, the Applicant's submissions are largely concerned with the RPD's credibility findings. As this Court has stated many times, the assessment of an applicant's testimony and their credibility is owed deference. For example, as stated by Justice Gascon in *Lunda v Canada (Citizenship and Immigration)*, 2020 FC 704:

[36] It is settled law that the Court owes deference to the RPD's assessment of a refugee claimant's credibility (*Dunsmuir* at para 53; *Aguebor v Canada (Minister of Employment and Immigration)* (1993), 160 NR 315 (FCA) at para 4). RPD findings of credibility require a high degree of deference from the courts on judicial review, given the role of the trier of fact attributed to the administrative tribunal (*Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at paras 59, 89; *Lawal v Canada (Citizenship and Immigration)*, 2015 FC 155 at para 9). These credibility issues are the heartland of the RPD's jurisdiction and expertise (*Pepaj v Canada (Citizenship and Immigration)*, 2014 FC 938 at para 13), and have been described as lying within "the heartland" of its jurisdiction (*Siad v Canada (Secretary of State)*, [1997] 1 FC 608 (FCA) at para 24; *Lubana v Canada (Minister of Citizenship and Immigration)*, 2003 FCT 116 at paras 7, 8).

[24] With respect to implausibly findings, in *Lawani v Canada (Citizenship and Immigration)*, 2018 FC 924 [*Lawani*], Justice Gascon restated the applicable principles as follows:

[26] Finally, the RPD is also entitled to draw conclusions concerning an applicant's credibility based on implausibilities, common sense and rationality. It can reject evidence if it is inconsistent with the probabilities affecting the case as a whole, or where inconsistencies are found in the evidence (*Shahamati v*



*Canada (Minister of Employment and Immigration)*, [1994] FCJ No 415 (FCA) (QL) at para 2; *Mohamed v Canada (Citizenship and Immigration)*, 2015 FC 1379 at para 25; *Yin v Canada (Citizenship and Immigration)*, 2010 FC 544 at para 59; *Lubana* at para 10). A finding of implausibility must however be rational, sensitive to cultural differences and clearly expressed (*Rahal v Canada (Citizenship and Immigration)*, 2012 FC 319 [*Rahal*] at para 44). The RPD's conclusions and inferences on a claimant's credibility must always remain reasonable and the analysis must be formulated in "clear and unmistakable terms" (*Hilo v Canada (Minister of Employment and Immigration)* (1991), 130 NR 236 (FCA) [*Hilo*] at para 6; *Cooper* at para 4; *Lubana* at para 9). Situations where implausibility findings can be made include where the applicant's testimony is outside of the realm of what could reasonably be expected, or where the documentary evidence demonstrates that the events could not have taken place as alleged. Conversely, merely casting a "nebulous cloud" over the reliability of the evidence will be insufficient, as the RPD must state why credibility is affected in more than vague and general terms (*Hilo* at para 6).

[25] Against that legal backdrop I will now consider the Applicant's submissions.

*Pursuit by agents of persecution*

[26] The Applicant takes issue with the RPD's finding that there is no persuasive evidence that the Applicant was being pursued by his superiors at the university. In reaching that conclusion, the RPD noted that the Applicant's own evidence was that he gave Muneer the test results in the first quarter of 2011, Muneer brought a lawsuit in June 2011, he published his findings in May 2012 and the Applicant spoke out publicly in support of Muneer in July 2012. Thus, matters came to a head in June 2012. While the Applicant's evidence was that he was not given projects to work on during that time, the RPD found it notable that he was not actually terminated or demoted. He was able to get a letter from the university confirming his employment from November 22, 2009 until his resignation on August 5, 2013. The RPD found

that it would be reasonable to expect that if the Applicant's university superiors were persecuting him, then he would have been terminated and unable to obtain a confirmatory letter.

[27] The subject letter is the Applicant's evidence, it is in the record and it does confirm his continued employment at the university after the alleged events. It certifies the Applicant's employment at the university with an annual contract from November 22, 2009, until his resignation on August 5, 2013, which, I note, is after he left for the US on May 2013.

[28] The Applicant characterizes the RPD's finding as speculation about the behaviour of the university officials as agents of the Applicant's persecution which is lacking any evidentiary basis. More specifically, that the RPD speculates that because the Applicant was able to obtain the confirmation letter he must be fabricating his claim of persecution by his university superiors.

[29] While I agree that this finding was somewhat speculative, this is not what the RPD found. The RPD's finding concerning the confirmation letter was one of many findings that added up to the RPD's conclusion that, on a balance of probabilities, the Applicant did not do anything during his work tenure at the university that would cause his superiors to want to harm him. This was based on his continued employment at the university after the events in issue occurred as well as the lack of any evidence of harm, attempts or threats tying the university or his superiors to either the Applicant or Muneer.

[30] The Applicant also submits that the RPD's finding that if the Applicant were being threatened or pursued by his university superiors then so too would Muneer, was also speculation as to what the agent of persecution might do. The Applicant states that there are reasonable explanations for why only he may have been targeted, if that is what happened. For example, he speculates that he may have been viewed as more vulnerable or an easier target or because he tried to involve his father-in-law.

[31] The Applicant's BOC narrative states that the research was being done by Muneer and that the Applicant was testing samples in support of that research. Muneer wrote to the University president seeking funding for a patent and seeking grants to continue the research. Muneer published the research results in 2012 without the university's consent and brought a lawsuit against members of the university. Based on the Applicant's narrative, Muneer was the central character of the dispute with the university as the RPD found. However, I agree that the RPD speculates when it finds that it was reasonable to expect that if the Applicant was being persecuted, then so too would Muneer. That said, the RPD's finding was consistent with "the probabilities affecting the case as a whole" (*Lawani* at para 26), as discussed further below.

*Absence of a letter from Muneer*

[32] Significantly, the RPD also found that the Applicant had not reached out to Muneer for a letter of support. It states that although the Applicant had testified at one point that his research and his treatment by the university was very important to him, he later testified that he cut all ties with Muneer because he wanted to forget about it. He stated that it had not occurred to him to seek a letter of support from Muneer. The RPD found that the Applicant's evidence indicated

that Muneer would likely have been able to be located – as he remained employed in the academic world – and would likely have been cooperative in providing such a letter given the Applicant’s support of Muneer at great expense to himself. The RPD rejected the Applicant’s explanation that it did not occur to him to seek a letter of support given that Muneer was central to the Applicant’s claim and he had obtained letters of support from his brother and a lawyer in Jordan who were not involved with this central issue.

[33] In other words, that the Applicant failed to provide key corroborating evidence that could reasonably have been expected to have been submitted in the circumstances. Where, as in this case, corroborating evidence should reasonably be available to establish essential elements of a claim and there is no reasonable explanation for its absence, a decision maker can draw a negative inference of credibility based on the applicant’s lack of effort to obtain such corroborating evidence (*Lawani* at para 25; *Ismaili v Canada (Citizenship and Immigration)*, 2014 FC 84 at paras 33, 35; *Luo v Canada (Citizenship and Immigration)*, 2019 FC 823 at para 20).

[34] Although the Applicant takes issue with this finding, including asserting that the RPD’s reasoning as to the letters of support from others who were not central figures in the university events “demonstrates the complete fallacy of making credibility determinations based on the belief that claimants have the same understanding as the member, of what evidence is relevant (or irrelevant) to establishing a claim”, these are of no merit. The onus is on an applicant to establish their claim and it is the role of the RPD to assess and weigh the evidence submitted (*Luo v Canada (Citizenship and Immigration)*, 2019 FC 823 at para 18; *Cao v Canada*

*(Citizenship and Immigration)*, 2019 FC 231 at para 56; *Dag v Canada (Citizenship and Immigration)*, 2017 FC 375 at paras 14-15).

[35] The critical aspect of the Applicant's claim was his allegation of persecution by the university arising from Muneer's research and the events related to it. The letters from his brother and a lawyer make no connection to the university and speak primarily to an alleged search of the Applicant's house for illegal artifacts. The lawyer's letter states that "there is no legal liability and he holds no accountability when West Erbid police conducted a search and found no item that was contravening the law" and that the lawyer's consultation was granted with respect to that subject.

[36] Conversely, if events transpired as the Applicant alleges, a letter from Muneer would have established the central aspect of the Applicant's claim for protection.

*Post-departure behaviour/risk upon return*

[37] The Applicant submits that the RPD indulges in speculation and unreasonably drew an adverse inference concerning the Applicant's behaviour after he left Jordan. That is, this failure to pursue his fight with the university or to pursue his research.

[38] This submission is made in reference to the RPD's finding that there was no persuasive evidence that the Applicant would be pursued by his superiors at the university if he returned to Jordan. The RPD found that if the Applicant were going to cause harm to the reputations of the university or his superiors, then he could have done so during the six years that he was in the US.

However, his testimony was that he had not reached out to any non-governmental organizations or scientific bodies about the problems he had at the university. And, if as he testified, the issue of his treatment by the university was of great importance to him, then it would be reasonable to expect that he would have taken action in that regard while he was out of the country. The RPD drew an adverse inference from his failure to do so.

[39] The Applicant points to a segment of his testimony where he says he tried to find research places in the US but that he lacked funding and “social security”, that is immigration status. The Applicant suggests that he was preoccupied with resuming his life in the US and that this makes the RPD’s conclusion unreasonable.

[40] I fail to see how that argument is connected to the RPD’s concern with the fact that the Applicant did not pursue his dispute with the university over the 6 years he was in the US and, therefore, that there was no reason to believe that the university and his superiors would pursue him on his return. That is, that there was no motive or reason to persecute him upon return to Jordan. Nor does the Applicant’s argument speak to his allegation of speculation or the unreasonableness of the RPD finding that he would not be at risk from the university or his superiors there if he were to return to Jordan.

[41] The RPD’s adverse credibility inference was based on the Applicant’s testimony that the dispute with the university was very important to him. It was open to the RPD to find that if the Applicant was precluded by the university from pursuing the subject research and that his life was threatened in connection with the research project, then the Applicant would have brought

this to light while he was in the US and he had the opportunity to do so. The RPD did not accept his conflicting explanation that he just wanted to forget about the alleged events.

*Police Report*

[42] The Applicant next submits that the RPD speculated about police practices in Jordan. The RPD asked the Applicant if he had attempted to obtain a copy of the police report. His evidence was that he had not because the police had not written anything. The RPD found that it was not credible that the police would not have made a record of such a serious assault. The Applicant challenges this finding on the basis that the RPD did not point to any objective evidence that supports its conclusion. The Applicant submits that the country conditions evidence indicates that far from following any “best practices” that the police in Jordan regularly engage in human rights violations and that there is serious corruption in Jordan. Based on this, the Applicant submits that the RPD had no evidence-based reason to be skeptical of the Applicant’s testimony that the police did not make a written record of his assault.

[43] The country conditions evidence referenced by the Applicant concerns human rights abuses and police corruption, however, as confirmed by the Applicant when appearing before me, it does not address the making of police reports. Thus, this is not a circumstance like *Aguilar Zacarias* where there was extensive evidence in the record to the effect that formal police procedures were not followed.

[44] Here the Applicant did not seek a copy of the police report and surmises that one was not made. Given that the Applicant’s evidence was that the police attended at the hospital after his

assault and that he did not seek a copy of the report or obtain confirmation from the police that there was no report, the RPD's credibility finding was open to it.

[45] In sum, while the Applicant attempts to frame the RPD's reasoning as entirely speculative, I do not agree. Again, it is the Applicant's onus to prove all elements of their claim.

[46] And, significantly, in addition to the above the RPD found that the Applicant had not established a connection between the anonymous phone call threatening death, or the assault, with the university. Further, that there was no precipitating event that would have led to the phone call in November 2012 or the "last warning" assault in April 10, 2013. That is, by that time the research result had already been published, the lawsuit against the university had been commenced and the Applicant had already publicly indicated his support of Muneer. The RPD therefore found that there was nothing in relation to the timing of the threat and assault to connect them with the university.

*Evidence regarding Muneer's lawsuit*

[47] The RPD also found that the Applicant had produced no credible evidence of the status of the litigation said to have been commenced by Muneer. The RPD noted that the Applicant's testimony was that there were many newspaper articles and much internet activity regarding the litigation. However, the only article that he produced was undated and appeared to have been written contemporaneously with the events. The Applicant testified that he acquired this article via a Google search conducted in in July 2019. When asked why he did not provide anything more current, he responded that he was trying to get it out of his mind. The RPD acknowledged



that the Applicant had also produced a document which he claimed he asked his brother to obtain for him at court. The RPD noted that the Applicant's testimony was that five months before the RPD hearing, his brother went to the court where he learned that the case had either been appealed or postponed since 2016. The RPD stated that the document produced refers to a criminal reconciliation case with very little information and that nothing on its face connected it to the lawsuit allegedly brought in 2012.

[48] The Applicant submits that the RPD's finding that there was no credible evidence of the litigation is unreasonable. The Applicant submits that it was nonsensical for the RPD to ask why the Applicant had not obtained anything more current as he conducted his Google search a mere two or three months before the hearing was held and provided what he found. In my view, this does not demonstrate that the RPD's finding was unreasonable. As indicated above, the Applicant's own testimony was that there was a lot of news and internet coverage of the events. Those events occurred in 2011-2012. Thus, a Google search conducted by the Applicant in 2019 could reasonably be expected to have turned up many results from that time period as well as subsequent developments. Instead, the Applicant provided only an undated article, purportedly from Zad Jordan News, which as the RPD points out, reports on a lawsuit being filed and appears have been written contemporaneously with that event.

[49] As to the court document, the Applicant submits that it was completely nonsensical for the RPD to conclude that it was of little assistance because the document refers to the Applicant being a witness which, combined with the news article, provides significant evidence corroborating his allegations. The undated court document states:

To whom it may concern:

After scrutinizing the criminal reconciliation case file No. 2016/3232, it was found that the complainant in this lawsuit is Mounir Taleb Saleh Abu Ismail against the defendant (University of Science and Technology and faculty members) and that Ahmed Naser Mahmoud Al Daher had been a witness in this lawsuit.

[50] In my view, the RPD did not unreasonably assess this document. It does not comprise a filed court document commencing an action and setting out what the action concerns. It does not say when the action was filed and, given that the Applicant left Jordan in 2013, it is difficult to see how he could have been a witness in the action as the document suggests. Nor does it support the Applicant's testimony that his brother had learned that the case had either been appealed or postponed since 2016.

### **Conclusion**

[51] The RPD's reasons could certainly have been better framed. However, the reasons are not to be reviewed against a standard of perfection (*Vavilov* at para 91). And, while the Applicant takes issue with each and every finding of the RPD, viewed in whole and read together with the record, I am not persuaded that the RPD's conclusion was not justified, intelligible and transparent. Based on its findings, the RPD found that the Applicant would not face a serious possibility of persecution should he return to Jordan as he was not being pursued by his identified agents of persecution and there was no motivation for them to do so. Therefore, he was not a Convention refugee, nor was he in need of protection.

[52] And, as the RPD found, the Applicant's claim that he and his wife were also at risk of harm from his father-in-law was premised on the Applicant's claim concerning the university. As the RPD did not accept the Applicant's claim that he was being persecuted by the university or his superiors, the RPD also found that there was no reason for the Applicant to have sought his father-in-law's assistance. And, therefore, he would not have incurred his father-in-law's ire for refusing to apologize and refusing to support his father-in-law's election campaign.

[53] As I have found that the RPD's decision as to the allegation of persecution by the university was reasonable, the Applicant's related and dependent submission concerning his father-in-law as his agent of persecution cannot succeed.

[54] Finally, the Applicant's submissions indicate that his wife is not a party to this application because she was permitted to appeal to the RAD. Although the Applicant makes lengthy submissions asserting that the RPD erred in its assessment of his wife's credibility because the RPD did not properly assess her claims of domestic violence, I am not persuaded that those submissions must be addressed in this application for judicial review, which concerns only the Applicant. In any event, as the Applicant's wife asserts that her father abused her because he was angry with the Applicant and because the Applicant went to the US, this claim too originally stems from the allegation of persecution of the Applicant by the university and his superiors there which the RPD did not accept.

**JUDGMENT IN IMM-7673-19**

**THIS COURT'S JUDGMENT is that**

1. The application for judicial review is dismissed;
2. There shall be no order as to costs; and
3. No question of general importance for certification was proposed or arises.

"Cecily Y. Strickland"

Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-7673-19

**STYLE OF CAUSE:** AHMAD NASSER MAHMOUD ALDAHHER v THE  
MINISTER OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** BY VIDEOCONFERENCE USING ZOOM

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**DATED:** DECEMBER 8, 2021

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