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“The pursuit of justice is a team effort.”

Newsletter

Legal News Briefs for Law Libraries & Defense Attorneys

FINALLY, AN EASY WAY TO FINANCE YOUR LEGAL FEES!

WHETHER YOU'RE AN ATTORNEY WHO OFTEN HAS TO TURN DOWN BUSINESS DUE TO THE FINANCIAL DIFFICULTIES OF YOUR POTENTIAL CLIENTS OR, A CLIENT WHO CAN'T AFFORD TO PAY ALL OF YOUR LEGAL EXPENSES UP FRONT OR IN THE TIME FRAME PERMITTED BY YOUR ATTORNEY'S IN-HOUSE PAYMENT PLANS, NOW THERE'S A WAY TO GET THE FINANCING HELP YOU NEED!

Have you tried in the past to obtain a loan for your legal expenses but were turned down? As you probably have learned, it's quite complicated to obtain a loan for a legal expense. Added to that the heavy requirements of having spotless credit, no bankruptcies or repossessions, it certainly can seem like you're trying to tackle Mount Everest just to obtain a loan!

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At NLPA we realize that you're not "made of money" and that money doesn't grow on trees! Times are tough these days. It's getting harder to manage your own monthly bills with the increasing costs of gas and groceries. However, NLPA can help! Through the resources of our affiliate, Lenders Financial Group, now you can obtain financing for all of your legal fees - whether it be for your attorney, for your legal defense team, for legal expenses or even COURT ASSESSED FINES/FEES!

For so many years there have been loan programs that make it easier to buy homes, cars, and a number of other luxury items but, when it came to legal defense financing, it seemed there was no way to turn!

Lenders Financial Group, Inc is a financial brokerage firm that can get you approved - regardless of your credit history - to finally be able to finance your legal expenses. Not only can you get a loan but, you can get a loan with a lower payment than most firms will allow you to pay to them on an installment plan. Lenders Financial Group makes the loan process painless through their network of affiliated

lenders. All you have to do is simply contact Lenders Financial Group to provide some very basic information about yourself and what your needs are and they will do the rest.

FOR FULL LEGAL DEFENSE FEE/HIGHER DOLLAR LOANS

If you are interested in hiring NLPA- or any attorney for that matter - and need to obtain a loan for the full amount, simply visit: www.lendersfinancialgroup.com and select the second green button on the home page. This will direct you to an online application that you can fill out to be approved for a loan. This can even include special assessment fees, restitution, or miscellaneous legal expense fees. By obtaining a loan for the full amount, you can enable your attorney to do all the work needed much quicker and avoid any painful delays that would otherwise be the case if you had to finance the fees through their in-house payment plan. If you're an attorney and have potential clients that desire to hire you but are having trouble coming up with the necessary funds to do so, now you can help them to get things resolved much quicker by having them apply for a loan through LFG to pay your legal representation fees!

FOR INITIAL DEPOSIT/SMALL LOANS

If you are interested in hiring NLPA or any attorney for that matter - but, can't come up with the initial deposit needed, simply visit: www.lendersfinancialgroup.com and select the first green button on the home page. This will direct you to an online application that you can fill out to be approved for a payday advance loan of up to \$1,000.00. Typically you can be approved in less than one day and, once approved, your funds will be wired directly to your bank account **within 24 hours!** Once you have applied for your express loan (if the loan is for NLPA's retainer fee), please let NLPA know. Then, once the funds have been deposited to your bank account, you can contact NLPA to make arrangements to pay our initial retainer fee. From there NLPA can work with you through our in-house payment plan or, if you are interested in financing the remaining balance over a long-term period (affording you much more time to pay and offering a lower monthly payment than NLPA's in-house financing program may offer) you can apply for a long-term loan through Lenders Financial Group directly.

NLPA is pleased to participate in Lenders Financial Group's program. This means that if you have a legal expense that you are currently paying toward with NLPA or, if you would like to obtain NLPA's services for the first time - Lenders Financial Group can make it happen. Further, although NLPA offers an installment plan, often times if pressing deadlines become an issue, it does not afford you the time to stretch out your payments over a long enough period of time that would enable you to pay with ease. That's not a problem anymore. Once you have paid your initial deposit to NLPA to get started, you can apply for a loan for the balance owed to NLPA through Lenders Financial Group and they will be able to pay that balance for you and leave you with the ability to pay that balance to them over a far more extended period of time.

As mentioned above, Lenders Financial Group can also get you approved to finance your attorney's fees as well. You then only have to pay one place each month for the total fee.

If you are interested in getting qualified with Lenders Financial Group, please contact them at:

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The bottom line is that we know how hard it is when you have a loved one in trouble. The troubles of paying for the legal defense team should not be an added stress to anyone seeking justice. At NLPA, we care about our clients and helping to make the financing of their legal defense as easy as possible. If you have any questions, please don't hesitate to contact us!

CHALLENGING THE IMPOSITION OF THE CAREER OFFENDER GUIDELINE

NLPA has been in the vanguard of challenging the propriety of the career offender sentencing enhancement pursuant to U.S.S.G. § 4B1.1 in the post-Booker world. NLPA's research has largely centered upon language from the decisions in Shepard v. United States, 125 S.Ct. 1254, 1262 (2005) and Almendarez-Torres v. United States, 523 U.S. 224 (1998), that suggests that the career offender label, like all sentencing enhancements, must be submitted to the jury for a finding beyond a reasonable doubt. However, other methods of challenging the career offender enhancement exist. Key among those is to argue that district courts have the power to vary from the Guidelines based solely on policy considerations, including disagreements with the Guidelines.

See Kimbrough v. United States, 128 S.Ct. 558 (2007).

Judges are free to issue a sentence below the Guidelines as long as "nonfrivolous reasons" are presented. Rita v. United States, 127 S.Ct. 2456, 2468 (2007). One such nonfrivolous reason could be the aforementioned policy disagreement with the Guidelines, specifically the career offender enhancement, which results in sentences that are among the most severe and least likely to promote the purposes of sentencing as put forth by the Guidelines. [Http://www.usc.gov/15_year/15year.htm](http://www.usc.gov/15_year/15year.htm). (Hereafter referred to as the "Fifteen Year Report").

In enacting the Guidelines, the United States Sentencing Commission was charged with creating a sentencing system that would further the goals of sentencing as put forth by 18 U.S.C. § 3553(a)(2): (a) retribution (to reflect seriousness of the offense, to promote respect for the law, and to provide just punishment); (b) deterrence; (c) incapacitation (to protect the public from further crimes); and (d) rehabilitation (to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner). It has been assumed that relying on empirical evidence of pre-Guideline sentencing practice and then reviewing and revising the Guidelines in response to data and feedback, will result in Guidelines that comply with the aforementioned purposes of sentencing. However, the career offender Guideline does not reflect "empirical data and national experience" and "does not exemplify the Commission's exercise of its characteristic institutional role." Kimbrough, 128 S.Ct. at 575. The career offender Guideline was not based upon past practice at its inception, and it has been "greatly broadened beyond what Congress intended, without careful study, without apparent reason, and directly contrary to feedback from the courts." Amy Baron-Evans, Jennifer Coffin, Sara Noonan, Deconstructing the Career Offender Guidelines. (June 16, 2008). The career offender Guideline was unduly broadened by

extending the definition of "crime of violence," adding to the qualifying list of drug offenses, and expanding the definition of prior felony without citing to any reasons or date. Id.

Regarding the need for the career offender to reflect data and feedback from the courts, the Sentencing Commission has been woefully lax in this matter. Since the Booker decision, the Commission has not published in its Annual Sourcebooks or its Quarterly Updates any information regarding the number of defendants sentenced under the career offender Guideline, the nature of the prior convictions, the mean or median sentence length, or the rate of or reasons for below-Guidelines sentences. Id. Clearly, the sentencing Commission is not fulfilling its mandate and performing necessary duties to insure that the Guidelines, and specifically the career offender Guideline, reflect the opinion of the judiciary and the purposes of sentencing.

The career offender Guideline certainly has some other purpose than ameliorating recidivism, as "assigning offenders to criminal history category VI" under said Guideline "is for reasons other than their recidivism risk," as the difference in the rate of recidivism between offenders in criminal history categories V and VI is "almost nonexistent." [Http://www.ussc.gov/publicate/Recidivism_General.pdf](http://www.ussc.gov/publicate/Recidivism_General.pdf). Further, utilizing the career offender Guideline does little to stem the flow of traffic, at least in drug related cases, as retail level drug traffickers are readily replaced by new sellers, as long as demand for a particular drug remains intact. See "Fifteen Year Report."

What is accomplished by the imposition of the career offender Guideline is racial disparity in sentencing, as the increasingly severe treatment of repeat offenders has contributed to a "greater adverse impact on Black offenders" than was present pre-Guidelines. "Fifteen Year Report." In 2000, Black offenders received 26% of the Guideline sentences, but comprised an overwhelming 58% of those receiving a

career offender enhancement. These enhancements, based largely upon prior drug trafficking offenses, do not promote an important purpose of sentencing, but merely serve to have "unwarranted adverse impacts on minority groups." "Fifteen Year Report." The career offender Guideline also fails to offer "just punishment" in order to "promote respect for the law." 18 U.S.C. § 3553(a)(2)(A). As early as 1997, research of public opinion found that "there was little support for sentences consistent with most habitual offender legislation." [Http://www.ussc.gov/nss/jp_exsum.htm](http://www.ussc.gov/nss/jp_exsum.htm).

There can be little doubt that the career offender Guideline reflects an improper exercise of power by the Sentencing Commission, which neither reflects the mandate and proper procedures of the Commission nor the goals of sentencing. Fortunately, district courts can overrule the unbridled exercise of power by the Commission and depart from the unduly harsh career offender enhancement. Given the harsh penalties associated with being labeled a career offender, NLPA urges that no possible arguments be overlooked! As with many arguments regarding novel and creative defenses to criminal charges, NLPA has been at the fore in advocating for criminal defendants. If you have been accused of being a career offender, or need assistance regarding any criminal charge, contact NLPA immediately, and we will help you in your fight for justice!

DEFENSES TO CONSPIRACY CHARGES

The federal government will often charge defendants involved in drug related crimes with conspiracy. After all, in order to be involved with illegal drugs, one must be in agreement with another individual concerning either the procurement or distribution of the substance. In order to prove that an individual participated in a conspiracy, the government need only "prove the existence of an agreement to violate the drug laws and that each conspirator

knew of, intended to join and participated in the conspiracy." United States v. Ferguson, 23 F.3d 135, 140 (6th Cir. 1994). Once a conspiracy is found, the Government must then tie the defendant to the conspiracy beyond a reasonable doubt. United States v. DeFranco, 30 F.3d 664, 668 (6th Cir. 1994). In order to tie a defendant to the conspiracy, such means as presenting "coded" phone calls and receiving and/or selling drugs will be utilized. Fortunately, the mere charge that one has been involved in a conspiracy is not without defenses.

A conspiracy charge requires proof that the defendant and at least one other person agreed to engage in unlawful activity. United States v. Billops, 43 F.3d 281, 284 (7th Cir. 1994). Although the government need not always establish specifically with whom the defendant conspired, see United States v. Stephenson, 53 F.3d 836, 846 (7th Cir. 1995)(citing United States v. Smith, 995 F.2d 662, 666 (7th Cir. 1993)), it must nonetheless establish that a conspiratorial agreement existed between the defendant and another individual. United States v. Carraway, 108 F.3d 745, 750 (7th Cir.) (per curiam), cert. denied, 522 U.S. 891, 118 S. Ct. 228 (1997). If the agreement is between only a defendant and an individual seeking to expose rather than to commit, a crime, there could not be the meeting of the minds required to establish a conspiratorial agreement. See United States v. Mahkimetas, 991 F.2d 379, 383 (7th Cir. 1993); , United States v. Contreras, 249 F.3d 595, 599 (7th Cir. 2001)(one cannot conspire with a police informant); United States v. Millet, 510 F.3d 668 (7th Cir. 2007). Accordingly, in order to engage in a conspiracy, a defendant must enter into an agreement with at least one other individual who also intends to break the law.

NLPA notes that agreement solely with a law enforcement officials is not the same defense as entrapment. When claiming entrapment, a defendant must proffer evidence in support of both of the elements of entrapment: (1) lack of predisposition on the part of the defendant to engage in criminal conduct and government inducement

of the crime. See United States v. Haddad, 462 F.3d 783, 789-90 (7th Cir. 2006); and (2) whether the defendant was induced into committing a crime. United States v. Bek, 493 F.3d 790, 800 (7th Cir. 2007).

In assessing whether a defendant was predisposed to commit the charged offense, a district court consider the following factors: (1) the defendant's character or reputation; (2) whether the government initially suggested the criminal activity; (3) whether the defendant engaged in the criminal activity for profit; (4) whether the defendant evidenced a reluctance to commit the offense that was overcome by government persuasion; and (5) the nature of the inducement or persuasion by the government. United States v. Blasingame, 197 F.3d 271, 281 (7th Cir. 1999).

Importantly, the mere fact that the government crafted a scheme, which included drugs, is not sufficient to prove entrapment. See United States v. Higham, 98 F.3d 285 (7th Cir. 1996); United States v. Akinsanya, 53 F.3d 852, 858 (7th Cir. 1995). Moreover, "the government's persistence in attempting to set up a drug transaction is not alone sufficient to carry the case beyond an ordinary opportunity." United States v. Santiago-Godinez, 12 F.3d 722, 729 (7th Cir. 1993).

Also available as a defense to conspiracy is a claim that one was merely involved in a buyer/seller relationship of the drugs involved in a case. United States v. Baker, 985 F.2d 1248, 1251 (4th Cir. 1993). Further, mere presence is not enough to convict an individual for participation in a conspiracy. Id.

Clearly, a charge of conspiracy is not without viable defenses. Even an individual who agrees to commit a crime may have a defense to a conspiracy charge, as the agreement may have been induced by government action or may have only been with a government agent. As such, it is imperative that criminal defendants are aware of all evidence against them, and are in a position in which to challenge any un-supportable and

unsubstantiated charges. As with all issues involved in a criminal case, NLPA has been at the fore in protecting defendants' rights, from the time of indictment until all avenues of relief have been pursued. Due to its long tradition of criminal research, NLPA is in a position not only to assist with the evaluation of evidence, but to distinguish between the available defenses to conspiracy charges. Should you have concerns that you have been improperly accused of engaging in a conspiracy, contact NLPA immediately, and we will help you in your fight for justice!

PRISON POPULATION TOPS 7.2 MILLION!

Washington, D.C. (AHN) - It is not just gas and food prices and mortgage foreclosure rates that are soaring in the U.S. The country's prison population is also on an all time high, with one percent of American adults behind bars.

A Pew Center on the States report pointed out the U.S. has the largest number of people in prison. Among black males, the ratio was one in 15, while it was one in 35 for Hispanic men. Women prisoners also logged its highest rate of increase in 2006 compared to the previous five years. Bureau of Justice Statistics data said the spike in female inmates was felt mostly in Hawaii, North Dakota, Wyoming and Oklahoma.

In 1980 1.8 million were behind bars which cost federal and state governments \$11 billion to maintain. By 2006, the numbers had ballooned to 7.2 million inmates and a whooping maintenance bill of \$45 billion.

Ryan King, policy analyst of the Sentencing Project, compared the spiraling numbers to "a runaway train."

"Nobody's taking a step back and asking where all these billions of dollars are going," King told Washington Post, adding, "States need billions of dollars to build enough beds

to catch up to where they need to be."

To address the growing federal and state prison headcount, various measures are underway including early release of offenders with non-threatening crimes.

A key factor to the growing number of prisoners was the availability and depth of sentencing guidelines. According to a study by the National Center for State Courts released in May, state sentencing guidelines were linked to predictability, lesser discrimination and higher transparency in sentencing.

Scott Thorpe, chief executive of the California District Attorneys Association, finds nothing wrong in the non-stop growth of the U.S. prison population. Thorpe explained to the Washington Post, "If you look at the fact that these people who are committing a crime, creating a danger to the public, you can't look at it as wrong."

He added, "What is the appropriate number of people to be incarcerated to ensure public safety? I don't know if you can answer that." - Vittorio Hernandez - AHN News Writer

CASES YOU CAN USE

U.S. v. Chapman, 2008 WL 1946744 - 9th Circuit Blasts U.S. Prosecutor for Withholding Documents: Roundly denouncing a Las Vegas federal prosecutor for withholding 650 pages of evidence potentially helpful to two lawyers charged in a stock fraud case, the 9th Circuit U.S. Court of Appeals upheld dismissal of 1164 charges and refused to all retrial.

"This is prosecutorial misconduct in its highest form; conduct in flagrant disregard of the United States Constitution ; and conduct which should be deterred by the strongest sanction available," wrote Judge Kim Wardlaw.

The panel found that the Nevada U.S. Attorney's Office violated the

constitutional obligation to turn over potentially exculpatory information to the defense under Brady v. Maryland, 373 US 83 (1963).

NLPA CONTINUES A TREND OF EXCELLENCE -A RECAP ON OUR SUCCESSFUL CASES FOR THE SECOND QUARTER OF 2008

During the second quarter NLPA enjoyed sharing in its victories with many of our clients. Below is out an outline of three of our victories during the second quarter that we felt deserved an "honorable mention".

J. Smith - NLPA assisted counsel for Mr. Smith in preparing for his sentencing which was being heard in the USDC SD of NY (Case No. 04-cr-00186-SCR-13). The PSI in Mr. Smith's case recommended a guideline range of 262-327 months. At his sentencing the court imposed a sentence of 165 months - saving Mr. Smith 162 months (**MORE THAN 13 YEARS IN PRISON!**).

D. Mobley - NLPA assisted Mr. Mobley's attorney in preparing research designed to keep his sentencing at the lowest level possible. His sentencing was heard in the USDC WD of NY (Case No. 1:06-CR-00228-1). The PSI in this case recommended a guideline range of 168-210 months. At his sentencing the court imposed a sentence of 122 months - saving Mr. Mobley more than **7 YEARS** in prison!

F. Dowell - NLPA assisted counsel for Mr. Dowell in raising all positive sentencing arguments to assist in attacking his guideline range of 262-327 months. His case was heard in the

USDC SD of Indiana (Evansville Division) in case number 3:07-CR-00008-1. At his sentencing the judge imposed a term of 180 months imprisonment - saving Mr. Dowell more than **TWELVE YEARS** in prison!

TAKING A DEEPER LOOK: THE DOWELL VICTORY

For more than 20 years, National Legal Professional Associates (NLPA) has provided attorneys with relevant and cutting edge research to use in preparation for their client's sentencing. Even when the Sentencing Guidelines were mandatory, NLPA's assistance proved beneficial. Now that the Guidelines are advisory, NLPA's research assistance has proven to be an invaluable tool in keeping sentences to a minimum.

The case of USA v Dowell, Case No. 3:07-CR-008-01 is just such a situation. After pleading guilty to a federal drug offense involving crack cocaine, the probation officer made the determination that Mr. Dowell qualified for an enhancement under USSG § 4B1.1. This finding was critical. Without the § 4B1.1 enhancement, Mr. Dowell would face a guideline range of 87-108 months imprisonment. However, the § 4B1.1 enhancement increased that range to 262-327 months. NLPA provided counsel with a two pronged attack on the sentence recommended by the probation officer.

First, it was argued that the two prior offenses used to trigger the § 4B1.1 enhancement should not be counted under § 4A1.2(a)(1), App. N. 1. Mr. Dowell's prior two prior offenses occurred during the same time period charged in the instant conspiracy, involved drug sales, and occurred in

similar locations. Because of the overlap in time, conduct, and geography with the instant offense, it was argued that the prior offenses should be considered relevant conduct and related to the instant offense under § 4A1.2(a)(1).

Second, NLPA provided an argument that even if the § 4B1.1 enhancement technically applied, the resulting range of 262-327 months imprisonment was "greater than necessary" to achieve the goals of sentencing listed under 18 USC § 3553(a)(2). The penalty range was partially based on the fact the instant offense involved crack cocaine, which disparately impacts African-Americans, low level drug dealers, and promotes disrespect for the law. See, Kimbrough v. United States, 128 S.Ct. 558, 570 (2007). Had Mr. Dowell pleaded guilty to a crime of 50 grams or more of powder cocaine instead of 50 grams or more of crack cocaine, his offense level under § 4B1.1(b)(C) would be 32. Thus, the factor of "crack" cocaine has pushed the guideline range of imprisonment from 151-188 months to 262-327 months - a truly massive increase.

The court disagreed with the first argument and applied the § 4B1.1 enhancement. But, the court agreed that the guideline range was greater than necessary to achieve the goals of sentencing under § 3553(a), and sentenced Mr. Dowell to 180 months imprisonment - a sentence that would be in the range had the offense involved powder cocaine instead of crack.

As you can see from the attached letter from Attorney Golden, NLPA's efforts **saved Mr. Dowell 82 months in prison** and were greatly appreciated. If you or your client is facing sentencing in federal court and would like NLPA's experienced team of attorneys on your side, please contact NLPA.

INTERESTED IN HIRING NLPA?

Do you have pressing deadlines? - Give us a due date and you can relax.

Have a brief due? - Call us for a free preliminary consultation so we can determine a cost estimate. NLPA can provide anything from a research memorandum to a file-ready brief - whichever you may need.

If you're considering hiring someone to assist with your criminal proceedings, NLPA offers realistic fees that may suit you in your pursuit of finding top-notch yet affordable legal research & consulting assistance. We believe you will find our fees to be extremely competitive compared to other legal research firms in the country. We also have several alternative options for paying our fees.

- NLPA can accept payment via cashier's check or money order through the mail.
- We also can accept credit/debit card payments over the telephone as well as electronic check (check by phone) payments over the telephone.
- For most services provided NLPA also offers payment plans as well. With a minimum down payment you could soon be financing your legal fees.

Therefore, if you are interested in discussing the financing options available to you for your specific matter, please contact us.

NLPA assists in virtually every stage of criminal proceedings from pretrial to post-conviction and also assists in immigration matters. For additional information on the services offered by National Legal Professional Associates please contact our offices

This newsletter is designed to introduce you to NLPA. As NLPA is not a law firm, professional services are only provided to licensed counsel in all areas that involve the practice of law. NLPA has created this publication to provide you with authoritative and accurate information concerning the subject matter covered. However, this publication was not necessarily prepared by persons licensed to practice law in a particular jurisdiction. This publication is not meant to be a substitute for legal or other professional advice, which NLPA is not rendering herein.

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Hi, I'm Adam Hancock, the Director of Lenders Financial Group and I am sending this to you personally to invite you to allow us to assist you in the arranging for the funds to pay for the defense of your loved one.

For years I've helped thousands of people obtain the money they needed for worthwhile projects and I'm here to help you with the most important matter of all - the protection of the legal rights of your family or loved ones!

We can help you (1) pay off any balances that you may owe to your defense team; (2) obtain the funds to hire a new defense team.

We can arrange for as little as \$1000.00 so that you can make an initial deposit and set up an in-house installment plan with your attorney and NLPA or, up to \$50,000.00 for your entire legal team including a new attorney to represent your loved one.

It's easy. You have no cost or obligation so why not apply today? To apply you can go online to www.lendersfinancialgroup.com or complete and mail (or fax) the enclosed application. All personal loans are subject to status.

DON'T FORGET - Justice delayed is justice denied. Let us help you with the money you need.



JUSTICE

Sincerely yours,

Adam Hancock

Adam Hancock, Director
Lenders Financial Group

About NLPA

NLPA is a research and consulting firm, owned and staffed by attorneys, and dedicated to the professional mission of providing counsel, research, and related work product to members of the Bar. Our ownership structure includes attorneys licensed to practice before many local, state, and federal courts; however, NLPA is not a law firm and provides no "front line" legal services. On the other hand, we are much more than your typical paralegal service as our work is prepared by attorneys. Our sole purpose is to provide research and consulting assistance by lawyers, for lawyers . . . and their clients. With cutting-edge computer research capabilities, an experienced and top quality staff, and more than sixteen years' experience, NLPA is well-positioned to provide the types of assistance members of the Bar need. You are important to us and we hope we can commence and maintain a long-term relationship with you. Please know that we are here to assist in all your needs. If you would like to know more about the services we offer, please contact us at:

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NLPA: WE LISTEN, WE CARE, WE GET RESULTS !

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