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“The pursuit of justice is a team effort.”

Newsletter

Legal News Briefs for Law Libraries & Defense Attorneys

2010 FEDERAL SENTENCING GUIDELINES ISSUED - FEDERAL COURT HOLDS THAT NEW CRACK GUIDELINES APPLY TO DEFENDANTS CONVICTED BEFORE FAIR SENTENCING ACT & LEGISLATION INTRODUCED TO MAKE CRACK LAW RETROACTIVE

On July 27, 2010, the Fair Sentencing Act (FSA) of 2010 was passed by the United States House of Representatives after being passed by the Senate on March 17, and was signed by the President on August 3, 2010. The law went into effect on November 1, 2010. The Fair Sentencing Act replaced the 100-to-1 crack to powder cocaine sentencing ratio with an 18-to-1 ratio (28 grams will trigger a 5-year mandatory minimum and 280 grams will trigger a ten-year

mandatory minimum) under 21 U.S.C. § 841. Unfortunately, Congress did not act to have this law applied retroactively, meaning that those convicted and sentenced prior to the enactment of the law have not yet been able to receive the benefit of the legislation.

However, realizing its error, Congress has started the process of making the Fair Sentencing Act apply retroactively. On December 17, 2010, Representative Robert Scott (D-Va) introduced the Fair Sentencing Clarification Act of 2010, which would apply the Fair Sentencing Act retroactively when it is passed and enacted.

WHAT ARE THE FEDERAL COURTS SAYING ABOUT THIS?

Realizing that the new crack law discriminates against many crack defendants who have already been convicted and sentenced, many federal judges have already joined with Congress to correct this inequity.

In the recent case of US v. Douglas, (No. 09-202-P-H)(D. Maine) decided on October 27, 2010, Judge Brock Hornby ruled that a pre-August 3, 2010 defendant who committed his crime before the effective date of the new law but has not yet been sentenced is entitled to be sentenced under the amended guidelines and the Fair Sentencing Act altered mandatory minimum provisions. He made it very clear that for a defendant not to receive the benefit of this new

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law even though he may have committed his crime before the law went into effect is a violation of the defendant's due process rights and the intent of Congress.

So far at least three additional District Courts have found that the Fair Sentencing Act is retroactive to cases pending before August 3, 2010. Those cases are:

UNITED STATES v. ANGELO, 10th Cr. 10004 (RWZ)(D.Mass)(Zobel,J.). The docket entry on this case reads as follows: "*Motion for fair sentencing act as to Bryant Angelo (1). Allowed, as I fully concur with Judge Hornby's thorough and thoughtful opinion. US v. Douglas. Cr. No, 09-202-P-H, 10/27/10. (Urso,Lisa)(Entered:10/29/10)*".

UNITED STATES v. DIXON, United States District Court, Middle District of Florida, 08 Cr. 360 (WMC)(M.D. Fl)(Covington,J.). Judge Covington found that the Fair Sentencing Act was retroactive.

UNITED STATES v. SHELBY, 09 Cr. 379 (CJA)(E.D.La)(Barbee,J.) This case not having yet proceeded to trial, the judge wrote, "*Should Defendant Shelby be convicted, in imposing sentence this Court will apply the Fair Sentencing Act of 2010, for the reasons fully stated in an opinion by Judge D. Brock Hornby, United States District Court for the District of Maine...*" (Douglas). Although this case from the Eastern District of Louisiana does not fully address the ripeness issue, it is clear that Judge Barbier believed it was ripe to decide this issue concerning where a defendant had not been convicted.

A more difficult course exists for those already sentenced under the pre-amendment Guidelines. However, there is good news here as well. Although, the

amended Guidelines have not been given retroactive effect, meaning that the amended Guidelines do not apply to those who have already been sentenced, while we wait for the passing of Rep. Scott's bill, NLPA notes, that such should not prevent defendants pursuing a direct appeal and sentenced under the pre-amendment Guidelines from raising a claim that they should be entitled to the benefit of the amended Guidelines, as their convictions have not yet technically become final.

The Douglas line of cases can also be of assistance to defendants in their direct appeals. For those defendants currently on direct appeal, and that fall within Judge Brock's time line of being sentenced for involvement with crack cocaine prior to November 1, 2010, now have a strong argument that they should have received the benefit of the amended Guidelines.

For those who are out of time or who have completed the direct appeal process, attempts can be made to receive the benefit of the amended Guidelines via a motion for reduced sentence under 18 U.S.C. § 3582 or a motion for post-conviction relief under 28 U.S.C. § 2255. NLPA submits that, as the amended Guidelines have not been declared retroactively applicable, any avenue of relief pursued by a defendant will have to focus on the elements of fairness in sentencing as called for by 18 U.S.C. § 3553. As the amended Guidelines are based upon years of testimony and research regarding the insidious nature of overly harsh crack cocaine sentences, defendants will have to argue that their sentences should be reduced based upon the unfairness of such sentencing practices.

Of course this is not to say that the amendment will not be

applied retroactively at some time in the future. As we saw with the 2007 amendments, they were applied retroactively. Nonetheless, even if this new amendment is not applied retroactively, there are still ways in which NLPA can help.

We are at a time where the government realizes the backlashes of the harsh sentences that have been imposed over the past several decades and the prison population matters are a clear result of this approach. Certainly we appreciate that the government appears to be attempting to take corrective steps to this. However, clearly, not accounting for the thousands of inmates in the BOP who are already serving time may not be the best approach to correcting this problem quickly. Obviously NLPA strongly disagrees with this approach as we firmly believe that in fairness, an amendment such as this should be available to the thousands of inmates already serving their sentences in the federal prison system. Fortunately you may not be without options.

The key to keep in mind about this amendment not having been applied retroactively at this time is that this means that a defendant cannot simply file a motion solely requesting a reduction in sentence based upon this amendment. It does not, however, mean that a defendant who receives a remand in his/her case for a new sentencing cannot receive the consideration of this amendment at that resentencing.

NLPA has been providing research and assistance to attorneys in matters such as these for more than the past two decades. We have enjoyed a great number of phenomenal victories as the result of our assistance as well. Therefore, it is very important that, even if a

defendant cannot proceed with a motion requesting a reduction in sentence based upon the amendment alone, that he/she not give up and continue to look into all other areas that may merit a remand for a new sentencing so that they can not only receive the benefit of the amendment at that time, but also consideration for many of the other issues in their case.

Clearly, it is an exciting time in the federal justice system, as the federal government continues to rapidly erase years of unfair and unconscionable sentencing practices for those involved with crack cocaine. It is NLPA's hope, and strong belief, that the Fair Sentencing Act will be made retroactive. NLPA urges defendants not to wait on a retroactivity decision that is not guaranteed to be issued by Congress. It is imperative that defendants seek the relief that they are entitled to as soon as possible. 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 to assist with the preparation of the necessary motions to obtain a fair sentence. Should you have concerns that you are entitled to a lesser sentence based upon involvement with crack cocaine, contact NLPA immediately, and we will help you in your fight for justice!

If you are interested in viewing the new 2010 Federal Sentencing Guidelines, you can obtain your electronic copy - including the Emergency Amendment for the Fair Sentencing Act by visiting the website of the United States Sentencing

Commission at: www.ussc.gov, where you can also view a full analysis of the retroactive application of the crack cocaine amendment and the emergency press release issued on October 15, 2010.

112th congress to convene
January 5th, 2011 -
FEDERAL
LEGISLATION
STATU^S of bills that
didn't pass during the 111th
congress

For the past two years the 111th Congress ended when it adjourned on December 22, 2010. The 112th Congress will convene on January 5, 2011. For bills that have not been decided or passed by the 111th Congress, they will then need to be reintroduced before the 112th Congress.

Below is a listing of some of the bills that NLPA expects will be reintroduced, and one of which we are all hoping will be passed rapidly:

H.R. 6548, The Fair Sentencing Clarification Act of 2010 (Rep. Robert "Bobby" Scott (D-VA)). This bill would allow the thousands of inmates serving crack-cocaine sentences under the old guidelines to request a reduction in their sentences based upon the retroactive application of the new guidelines. The Fair Sentencing Act (FSA) which passed in 2010 eliminated the mandatory minimum sentence for simple possession charges involving crack-cocaine and set new amounts of 28 grams and 280 grams for five and ten year mandatory minimums respectively. The bill was introduced on December 17, 2010 and was referred to the House Committee on

the Judiciary.

H.R. 3327, the Ramos-Compean Justice Act of 2009 (Rep. Robert "Bobby" Scott (D-Va) and Ted Poe (R-TX)). This bill would not just benefit its namesakes, it would empower the courts to use their discretion and impose a sentence below a mandatory minimum in cases where the mandatory minimum would be greater than necessary to achieve the goals of punishment. The bill passed out of the House Judiciary Committee Subcommittee on Crime, Terrorism and Homeland Security.

As all of you faithful followers of the law are aware, should this bill pass it would be in support of the already existing changes based upon the Blakely/Booker/FanFan chain of cases.

H.R. 1466, The Major Drug Trafficking Prosecution Act of 2009, (Rep. Maxine Waters (D-Ca)). This bill would eliminate all mandatory minimum sentences for drug offenses, curb federal prosecutions of low-level drug offenders and allow courts to place offenders on probation or suspended sentences. This bill was introduced on March 12, 2009 and referred to Committee.

H.R. 4328, The Literacy, Education and Rehabilitation Act (LERA), (Rep. Robert "Bobby" Scott (D-VA)). This bill would change how good time credit is awarded and would expand the program to permit prisons to earn good time credit for satisfactory participation in designated programs. At first it would modify the current good time statute to make clear that an inmate serving more than one year can earn up to 54 days per year of good time credit. Secondly it would authorize the Bureau of Prisons

director to grant up to 60 more days of good time credit for each year to an inmate who successfully participates in designated literacy, education, work training, treatment and other programs. This translates into a possible 114 days of good time credit an eligible defendant can earn for each year! This bill was introduced on December 16, 2009 and referred to the Committee.

H.R. 61 The Federal Prison Bureau Nonviolent Offender Relief Act of 2009 (Sheila Jackson (D-TX)). This bill would direct the BOP to release individuals from prison who have served 50% or more of their sentence if that prisoner is 45 years of age or older; has never been convicted of a crime of violence; and has not engaged in any actions resulting in institutional disciplinary actions. This bill was introduced in the House on January 6, 2009 and referred to the Subcommittee on February 9, 2009.

H.R. 5491, The Fresh Start Act of 2010, (Rep. Steve Cohen (D-TN)). This Act would enable eligible offenders convicted of nonviolent offenses to file a request to expunge that offense from their record and permit the record to be sealed and make it available only for 1) Federal/State Court/Law Enforcement in the case of a criminal investigation, prosecution, or in conducting a background search and 2) State/Local agency issuing licenses to possess firearms. The bill was introduced on June 9, 2010 and referred to the Subcommittee on July 26, 2010.

As with all bills and proposals, the best way to get them pushed forward quickly is to push your congressmen and representatives to stress the importance and your support of passing such bills. Take action to gather support and call, write, and

continue to contact your representatives to let them know how you feel!

NLPA CONTINUES A TREND OF EXCELLENCE - A REFLECTION ON THE SUCCESSFUL OUTCOMES WE HELPED TO ACHIEVE IN 2010:

During 2011 NLPA continues obtaining successful outcomes for its clients. While obviously no one can guarantee the successful outcome of every case, we're very proud of our track record. Here is a spotlight of some of what we were able to accomplish during the year 2010!

Crabb, C - NLPA assisted counsel for Mr. Crabb with his sentencing. His case was heard in the USDC MD PA (Case No. 4:07-cr-00423-9). His PSI recommended a guideline range of 168-210 months. At sentencing the court imposed 96 months - saving Mr. Crabb almost ten years in prison!

Payne, T - NLPA assisted Mr. Payne's counsel with sentencing research. His case was heard in the USDC ND AL (Case No. 5:09-cr-00050-1). The PSI in his case was requesting **mandatory life** in prison with the government recommending at least twenty years. However, at sentencing the court imposed an eight year sentence!

Green, M - NLPA assisted counsel for Mr. Green in preparing for his sentencing which was being heard in the USDC ED MI (Case No. 2:09-cr-20143-1). Mr. Green entered into a Rule 11 plea agreement and

the PSI requested a sentence of 108-135 months pursuant to that plea. However, at sentencing the court imposed 78 months along with a recommendation for the RDAP program (which would reduce the sentence by another 12 months upon completion) and also designation close to his family. This has saved Mr. Green more than five years in prison and, with credit for time served thus far, he should be home with his family soon!

Estevez-Estevez, F - NLPA assisted Mr. Estevez's counsel in preparing for his sentencing which was heard in the USDC MD FL - Jacksonville Division (Case No. 3:08-cr-00011-1). Mr. Estevez's PSI Report listed him in the guideline range of 188-235 months. However, the court instead imposed a sentence of 115 months - saving him TEN YEARS in prison!

Davidson, T - NLPA assisted counsel for Mr. Davidson in drafting research to assist with the sentencing in his case. His case was heard in the USDC of SC - Columbia Division (Case No. 3:08-cr-00885-1). The PSI in the case recommended a sentencing guideline range of 57-71 months. However, the court imposed a sentence of 45 months - saving Mr. Davidson more than two years in prison!

Velazquez, A - NLPA assisted Mr. Velazquez's counsel in the preparation of his direct appeal in the Appellate Court of Illinois for the Second District (Case No. 2-08-0872) to challenge his life sentence imposed on a murder conviction. Upon receipt of the arguments on appeal, the State's response brief conceded to the many errors made in the case and the original sentence was declared unconstitutional. Therefore, the case has been remanded for a re-sentencing to be

held.

Mirzoyan, A - NLPA assisted Mr. Mirzoyan in the preparation of a transfer request to a halfway house. He was serving time in the Bureau of Prisons on a federal case. We have been advised that the BOP has confirmed that Mr. Mirzoyan will be released to a halfway house in May 2010.

Sills, J - NLPA assisted Mr. Sills' counsel in the preparation of a 2255 motion. His case was heard in the USDC SD FL (Case No. 2:04-cr-14033-2). Mr. Sills 2255 motion was denied unfortunately. However, the good news is that the judge gave a favorable decision that could be of use to Mr. Sills on his Certificate of Appealability so that a higher court could review this matter. Mr. Sills request for Certificate of Appealability which was based upon his 2255 arguments was then granted.

Riley, J - NLPA assisted counsel for Mr. Riley with the sentencing in his case. His case was heard in the USDC of South Carolina, Orangeburg Division (Case No. 5:08-cr-00945-4) and involved charges of possession with intent to distribute cocaine, crack-cocaine with forfeiture allegations; use of a communication facility in commission of a felony; and aiding and abetting. The PSI in his case called for a sentencing guideline range of 121-151 months with a **mandatory minimum** of 10 years. However, at the sentencing, the court imposed a term of confinement of 87 months - saving Mr. Riley more than five years in prison and escaping a mandatory minimum sentence!

Hawkins, R - NLPA assisted the office of James Belt in the preparation of a direct appeal for the case of his client, Mr. Hawkins.

The case was heard in the Fifth Circuit Court of Appeals (Case Nos. 09-10057 & 09-10253). Mr. Hawkins was convicted in the Northern District of Texas for charges involving selling defaced firearms. He plead guilty and was sentenced to 60 months. In its opinion, the Court of Appeals vacated the District Court's judgment and remanded the case for a new trial.

Baker, M - NLPA assisted attorney George Sallaway in the preparation of sentencing research in the case of his client, Mr. Baker. Mr. Baker's case was heard in the USDC ND of NY, Syracuse Division (Case No. 5:08-cr-00671-2) and his charges involved conspiracy to distribute cocaine and cocaine-base and selling of same. After entering into a plea of guilty in the case, the PSI was returned requesting a sentence of 51-63 months. However, at sentencing, the court imposed only **27 months** - saving Mr. Baker three years in prison!

Solano, B - NLPA assisted counsel for Mr. Solano in the preparation of research designed to attack the PSI recommendation in his case of 188 months. The case was heard in the USDC ND IL (Case No. 1:08-cr-00777-5). At the sentencing hearing the court imposed just 42 months - saving Mr. Solano more than TWELVE YEARS in prison!

Ellison, V - NLPA assisted counsel for Mr. Ellison in the preparation of sentencing research in the case of Mr. Ellison which involved a crack-cocaine conspiracy charge. His case was heard in the USDC ED TX (Case No. 4:09-cr-00107-3). The PSI in the case listed a guideline range of 108-135 months. However, at sentencing the court imposed only 54 months - saving Mr. Ellison more than six years in prison!

Carson, L - NLPA assisted Attorney

Robert Ratliff in the preparation of sentencing research in the case of Mr. Carson who was charged in a multi-drug conspiracy indictment in the USDC SD of AL (Case No. 1:09-cr-00066-1). The PSI originally listed a guideline range of 324-405 months. However, the court instead imposed a sentence of 121 months - saving Mr. Carson more than **23 YEARS IN PRISON!**

Peele, L - NLPA assisted Attorney George Sallaway in the preparation of sentencing research in the case of Mr. Peele who was charged in crack conspiracy and firearm case in the USDC WD NY (Case No. 6:07-cr-06173-11). The PSI Report listed a sentence of 292-365 months. However, at sentencing, Mr. Peele received 288 months - saving him more than six years in prison!

Irving, L - NLPA assisted counsel in the case of Mr. Irving with the preparation of sentencing research. The case was heard in the USDC CT, New Haven Division (Case No. 3:09-cr-00117-17) where Mr. Irving was involved in cocaine and crack-cocaine conspiracy charges. The PSI in this case listed a guideline range of sixth (60) months or, if the court applied a safety valve - a range of 37-46 months. However, at the sentencing the defendant received a sentence of only 24 months - Saving Mr. Irving three years in prison!

Harrell, R - NLPA assisted counsel for Mr. Harrell in the preparation of sentencing research in his case. The case was heard in the USDC CD IL, Urbana Division (Case No. 2:08-cr-20039-1) where the defendant was charged with cocaine and crack cocaine conspiracy. The PSI listed a sentencing guideline range of 360 to **Life**. However, at sentencing the court instead imposed a sentence of 180 months! - Saving Mr. Harrell more than **FIFTEEN YEARS TO**

LIFE in prison!

Calvin, E- NLPA assisted Mr. Calvin's attorney in the preparation of research for his sentencing. The case was heard in the USDC ED LA, New Orleans Division (Case No. 2:09-cr-00175-2) where Mr. Calvin was charged with possession and intent to distribute cocaine. The PSI Report listed a guideline range of 135-168 months. However, at the sentencing the court instead imposed a sentence of 120 months - saving Mr. Calvin four years in prison!

Clark, D. - NLPA assisted counsel for Mr. Clark in the preparation of sentencing research to help fight his guideline level of 292 to 365 months. His case was heard in the USDC ED VA (Case No. 3:03cr00079-7). At sentencing the court imposed 240 months - saving Mr. Clark more than 10 years in prison!

Redding, E. - NLPA assisted Mr. Redding's counsel in the preparation of research to help fight a guideline range of 135-168 months. His case was heard in the USDC ND WV (Case No. 3:09-cr-00067-1). At sentencing the court imposed 110 months - saving Mr. Redding almost five years in prison!

Epps, N. - NLPA assisted Mr. Epps' counsel in the preparation of sentencing research. The case was heard in the USDC ND NY (Case No. 3:09-cr-00581-1). Mr. Epps' guidelines were calculated at 188-235. However, at sentencing the court imposed 110 months - saving Mr. Epps more than ten years in prison!

Taylor, A- NLPA assisted counsel for Mr. Taylor in the preparation of sentencing research for his case. The case, involving crack-cocaine,

marijuana and a firearm, was heard in the USDC SC, Charles Division (Case No. 2:08-cr-00331-1). The PSI Report in the case listed a guideline range of a mandatory minimum of 10 years to Life plus 5 years. However, at the sentencing the court imposed a total sentence of 106 months - beating the mandatory minimum and saving Mr. Taylor 7 years to life in prison!

Williams, M - NLPA assisted the firm of Robinson & Brandt in the preparation of research for the sentencing in the case which involved charges of CCE and multiple drug conspiracy, use of communications facilities and violent crime/machine gun. The case was heard in the USDC SD OH Columbus Division (Case No. 2:08-cr-00186-2) and the PSI Report listed a guideline of **LIFE** in prison. However, at the sentencing the court instead imposed a term of 30 years!

Lopez, J- NLPA assisted counsel for Mr. Lopez in the sentencing stage of his case which was heard in the USDC ED TX (Sherman Division) in case number 4:09-cr-00153-4 involving a methamphetamine conspiracy and firearm charge. Mr. Lopez entered a Rule 11 plea agreement for a sentence of 210 months. The PSI Report stated that the guideline range for Mr. Lopez was 135-168 and that had he been convicted on both counts would be subject to this guideline range plus 60 months imprisonment (195-228 months). However, at the sentencing the court instead imposed a sentence of 180 months - saving Mr. Lopez between two and four years in prison.

Robertson, C - NLPA was hired by the firm of Robinson & Brandt in 2004 in the case of Mr. Robertson who was charged in a State of Kentucky case. NLPA assisted counsel in the preparation of a 2254

petition in the federal courts after Mr. Robertson had exhausted his State of Kentucky remedies. On appeal to the U.S. Court of Appeals for the Sixth Circuit, the case was remanded. Counsel confirms that NLPA's research on the initial 2254 was instrumental in achieving this result.

Smith, N - NLPA assisted counsel in the case of Mr. Smith who was charged in the USDC MD TN (Case No. 3:10-cr-00061-2) with Conspiracy, Bank Fraud and Stolen Mail. NLPA prepared research including a sentencing memorandum for counsel. The PSI in the case listed a guideline range of 41-51 months. However, at sentencing the court instead imposed a term of 29 months - saving Mr. Smith almost two years in prison!

Primm, P. - NLPA assisted Mr. Primm's counsel in the preparation of research to argue his 37-46 month guideline range. The case was heard in the USDC MD TN (Case No. 3:09-cr-00194-1). At sentencing the court imposed a thirty month sentence - saving Mr. Primm more than a year in prison.

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 office.

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. NLPA cannot provide legal advice, representation, research or guidance to those who need legal help.

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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 the past two decades' 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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