

No. 07-10441

IN THE SUPREME COURT OF THE UNITED STATES

JOHNNIE CORLEY, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether 18 U.S.C. 3501 permits the suppression of a voluntary confession that was made more than six hours after a defendant's arrest on federal charges, but before his presentment to a magistrate, as a consequence of an unreasonable delay in presentment.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. A1-A29) is reported at 500 F.3d 210. The memorandum and order of the district court denying petitioner's motion to suppress his confessions (Pet. App. C1-C6) is not reported but is available at 2004 WL 1102367.

JURISDICTION

The judgment of the court of appeals was entered on August 31, 2007. A petition for rehearing was denied on November 16, 2007. On February 5, 2008, Justice Souter extended the time within which to file a petition for a writ of certiorari to and including April

14, 2008, and the petition was filed on that date. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

After a jury trial in the United States District Court for the Eastern District of Pennsylvania, petitioner was convicted of conspiring to commit armed bank robbery, in violation of 18 U.S.C. 371, and armed bank robbery, in violation of 18 U.S.C. 2113(d). He was sentenced to 170 months of imprisonment, to be followed by five years of supervised release. Pet. App. A4. The court of appeals affirmed.

1. On June 16, 2003, three men robbed the Norsco Federal Credit Union in Norristown, Pennsylvania. Pet. App. A3. Federal officials identified petitioner as a suspect in the robbery, and they later learned that there was an outstanding state bench warrant for his arrest for an unrelated crime. Ibid. On September 17, 2003, a team of federal and state officers sought to execute the state arrest warrant. Ibid. Petitioner attempted to evade arrest: he backed his Jeep into an officer's car, pushed his nine-year-old daughter into another officer, and then led the officers on a lengthy foot chase down a public street, through private yards and a creek, and up an embankment. Gov't C.A. Br. 7. Petitioner was ultimately arrested at about 8:00 a.m. on charges of assaulting a federal officer. Pet. App. A3; Gov't C.A. Br. 8.

Petitioner's hand was injured during his altercation with the

officers. Gov't C.A. Br. 8. At approximately 11:45 a.m., after having been processed at the Sharon Hill Borough Police Department, petitioner was transported to a hospital, where he received five stitches and medication. Pet. App. A3; Gov't C.A. Br. 8. Petitioner was then taken to the Philadelphia FBI office, arriving at about 3:30 p.m. Pet. App. A3.

At the FBI office, petitioner was given food and drink and was informed that he was under arrest for assaulting a federal officer and under investigation for the credit-union robbery. Pet. App. A3; Gov't C.A. Br. 8. At 5:07 p.m., petitioner was verbally advised of his rights under Miranda v. Arizona, 384 U.S. 436 (1966), was given a written advice-of-rights form, and signed a written waiver. Pet. App. A3; Gov't C.A. Br. 9. Between 5:27 and 6:38 p.m., petitioner orally confessed to the credit-union robbery. Pet. App. A3; Gov't C.A. Br. 9. The agents asked petitioner to make a written confession as well, but petitioner stated that he was tired and asked to continue the following day. Pet. App. A3. The agents agreed, and the interrogation was suspended. Ibid. At 10:30 the following morning, the interrogation resumed. Ibid. Petitioner was advised of his Miranda rights a second time, and he signed a written confession shortly thereafter. Ibid.; Gov't C.A. Br. 9. At 1:30 p.m., petitioner appeared before a federal magistrate judge. Pet. App. A3.

2. Petitioner moved to exclude his oral and written confes-

sions, arguing that they were obtained in violation of Federal Rule of Criminal Procedure 5(a)(1)(A), which states, in pertinent part, that “[a] person making an arrest within the United States must take the defendant without unnecessary delay before a magistrate judge.” The district court denied the motion. Pet. App. C1-C6. The court stated that 18 U.S.C. 3501(c) “provides a ‘safe harbor’ for law enforcement, setting a six-hour window within which otherwise admissible confessions may not be excluded solely on the basis of the defendant not having been brought before a magistrate judge.” Id. at C2-C3. The district court concluded that the three-hour-and-forty-five-minute period during which petitioner was receiving medical care “is excluded from the six-hour window provided by § 3501” and that petitioner’s oral confession thus fell within the six-hour safe harbor. Id. at C3-C4. With respect to petitioner’s written confession, the district court concluded that “a break from interrogation requested by an arrestee who has already begun his confession does not constitute unreasonable delay under Rule 5(a)” and that “the period between [petitioner’s] arrest and his written confession was not ‘unnecessary’ for the purposes of [that rule].” Id. at C4-C5.

3. A divided panel of the court of appeals affirmed in a published opinion. Pet. App. A1-A29.

a. The majority explained that 18 U.S.C. 3501 was enacted in 1968 in response to this Court’s decisions in McNabb v. United

States, 318 U.S. 332 (1943), Mallory v. United States, 354 U.S. 449 (1957), and Miranda v. Arizona, 384 U.S. 436 (1966). Pet. App. A6. Section 3501(a) provides that, in federal prosecutions, "a confession * * * shall be admissible in evidence if it is voluntarily given." 18 U.S.C. 3501(a). Section 3501(b) "instructs the trial judge to determine the voluntariness of a confession by 'tak[ing] into consideration all the circumstances surrounding the giving of [it],' " and it sets forth "a nonexclusive list" of five relevant circumstances, "including 'the time elapsing between arrest and arraignment,'" whether the confession "'was made after arrest and before arraignment,'" and whether the defendant had been advised of his rights before making the confession." Pet. App. A6 (quoting 18 U.S.C. 3501(b)). And Section 3501(c) states that a confession "shall not be inadmissible solely because of delay in bringing [the defendant] before a magistrate judge" so long as the "confession is found by the trial judge to have been made voluntarily and if the weight to be given to the confession is left to the jury and if [the] confession was made or given * * * within six hours immediately following [the defendant's] arrest." 18 U.S.C. 3501(c). Section 3501(c) further provides that the six-hour "time limitation * * * shall not apply in any case in which the delay in bringing [the defendant] before [a] magistrate judge * * * beyond such six-hour period is found by the trial judge to be reasonable considering the means of transportation and

the distance to be traveled to the nearest available such magistrate judge." Ibid.

Relying on its previous decision in Government of the Virgin Islands v. Gereau, 502 F.2d 914 (3d Cir. 1974), cert. denied, 420 U.S. 909 (1975), the court of appeals held that Section 3501(a) "makes voluntariness the sole criterion for admissibility of a confession." Pet. App. A8. The court explained that Section 3501(c) "instructs courts that they may not find a confession involuntarily 'solely' because of the length of presentment delay where the confession is otherwise voluntary and where the delay is less than six hours (or longer than six hours but explained by transportation difficulties)." Ibid. The court noted that "at least four other Courts of Appeals read the statute in essentially the same way." Ibid. (citing cases). The court of appeals acknowledged that three other circuits had held that Section 3501(c) also permits the exclusion of a confession made outside the six-hour safe harbor period if the confession was "elicited after a period of 'unnecessary delay' within the meaning of Rule 5(a)," and it remarked that "[w]ere we writing on a clean slate, we might agree." Id. at A10. But the court determined that it was bound by Gereau's construction of Section 3501, and it affirmed petitioner's convictions because it understood the district court to have held that petitioner's confessions were voluntary, petitioner had not "seriously dispute[d]" that conclusion, "and we discern no error in

it." Id. at A11. In light of that holding, the court of appeals found it "unnecessary * * * to address the [d]istrict [c]ourt's holding that [petitioner's] oral confession should be treated as having been made within six hours of arrest," although it observed that "that conclusion is contrary to the text of the statute." Id. at A11 n.7.¹

b. Judge Sloviter dissented. Pet. App. A19-A29. In her view, the general rule is that "even a voluntary statement may be excluded if the presentment delay is unreasonable or unnecessary," id. at A27, and Section 3501(c) merely creates a "safe harbor period" during which a confession may be excluded only if it was involuntary, id. at A28; see id. at A27 (observing that "courts have generally equated 'unnecessary' [the term used in Federal Rule of Criminal Procedure 5(a)(1)(A)] to 'unreasonable' [which appears in the final clause of Section 3501(c)]"). Judge Sloviter also disagreed with the district court's conclusion that the time petitioner spent receiving medical treatment should be excluded for purposes of calculating the six-hour safe harbor period, id. at A24, and she argued that the delay in bringing petitioner before the magistrate had been "unnecessary" within the meaning of Federal Rule of Criminal Procedure 5(a)(1), see Pet. App. A27-A29.

¹ The court of appeals also rejected a variety of other claims relating to petitioner's sentence that petitioner does not renew before this Court. See Pet. App. A11-A19.

ARGUMENT

The court of appeals correctly rejected petitioner's contention (Pet. 14-15) that 18 U.S.C. 3501 permits the suppression of a voluntary confession made more than six hours after arrest, but before presentment, as a consequence of an unreasonable delay in presentment. Although petitioner is correct (Pet. 13-15) that the courts of appeals are divided on that question, the conflict has generated relatively few decisions in recent years, likely because other legal remedies protect against the abuses at which a suppression remedy for delayed presentment was originally aimed. Absent a pressing need for resolution of the conflict over Section 3501(c), which decisional law and experience does not reveal, the Court's expenditure of its certiorari resources is not warranted.

1. In McNabb v. United States, 318 U.S. 332 (1943), this Court, "[i]n the exercise of its supervisory authority over the administration of criminal justice in the federal courts," id. at 341, held inadmissible confessions obtained as the direct result of federal officers' failure to comply with statutes mandating that an arrested person be taken promptly before the nearest committing magistrate. In 1946, the statutes on which the Court relied in McNabb were superseded by the adoption of Federal Rule of Criminal Procedure 5. In Mallory v. United States, 354 U.S. 449, 453-456 (1957), the Court relied on McNabb's reasoning in ordering the suppression of a confession by a defendant who had not been

promptly taken before a magistrate as required under the then-current version of Federal Rule of Criminal Procedure 5(b). In 1968, Congress enacted 18 U.S.C. 3501 as "a legislative reaction to McNabb, Mallory, and Miranda [v. Arizona, 384 U.S. 436 (1966)]." Pet. App. A5; see Omnibus Crime Control and Safe Streets Act of 1968, Pub. L. No. 90-351, § 701, 82 Stat. 210. The current version of Federal Rule of Criminal Procedure 5(a)(1)(A) -- which states in pertinent part that "[a] person making an arrest within the United States must take the defendant without unnecessary delay before a magistrate judge" -- was promulgated in 2002.

As the court of appeals correctly held, Section 3501 displaces the McNabb-Mallory rule and makes voluntariness the sole non-constitutional test for determining the admissibility of a confession in federal prosecutions. Section 3501(a) expressly provides that "a confession * * * shall be admissible if it is voluntarily given." 18 U.S.C. 3501(a). Cf. Dickerson v. United States, 530 U.S. 428, 436 (2000) (noting "§ 3501's express designation of voluntariness as the touchstone of admissibility"). Section 3501(c), in turn, creates a six-hour safe harbor period during which a confession "shall not be inadmissible solely because of delay in bringing [a defendant] before a magistrate." 18 U.S.C. 3501(c). Section 3501(c) does not, however, prescribe what consequences follow when a confession is made outside the six-hour safe harbor period: the statute provides only that some confessions

shall be admitted; it does not state that all others must be suppressed.

Petitioner errs in contending (Pet. 15) that reading Section 3501(a) in accordance with its plain terms "would render § 3501(c) superfluous." Petitioner does not and could not assert that the interpretation adopted by the court below makes Section 3501(c) "superfluous" in the sense that Section 3501(c) has no effect in any case. As the court of appeals recognized (Pet. App. A9), in cases where a confession is made within six hours of arrest, Section 3501(c) plainly precludes a district judge from declaring the confession inadmissible based solely on the delay in presentment.

At heart, petitioner's contention is that construing Section 3501(a) as written would override what he asserts is the negative pregnant of Section 3501(c) -- i.e., that there must be some circumstances in which a delay in presentment will render suppression appropriate regardless of whether a confession was voluntary. See Pet. 14-15 (noting that Section 3501(c) provides that a confession "shall not be inadmissible solely because of delay" if it "is found by the trial judge to have been voluntary and * * * if such confession was made" within six hours of arrest) (emphases added). Whatever negative implications might otherwise be drawn from Section 3501(c) standing alone, however, cannot override what Congress has expressly said in Section 3501(a). See Springer v.

Government of Philippine Islands, 277 U.S. 189, 206 (1928) (negative implications drawn from statutory language and canons of construction must yield when "a contrary intention on the part of the law-maker is apparent"); see also Field v. Mans, 516 U.S. 59, 67-68 (1995); Burns v. United States, 501 U.S. 129, 136-137 (1991).

In any event, there is no conflict between the negative implication of Section 3501(c) -- i.e., that delay in presenting the defendant to a magistrate judge can sometimes affect the admissibility of a confession -- and the language of Section 3501(a). The two subsections can be read consistently, together with Section 3501(b), to produce the following regime: confessions are to be admitted if they are voluntary (Section 3501(a)); voluntariness turns on a consideration of a variety of factors, including any period of delay after arrest and before presentment (Section 3501(b)); if the confession is given before presentment but within six hours of arrest, the delay in presentment shall not be a basis for holding the confession inadmissible (Section 3501(c)); but if the confession occurs outside that six-hour period, the "safe harbor" of Section 3501(c) is unavailable, and the delay in presentment may in some circumstances justify a finding of involuntariness, either alone (in cases where the delay is extraordinarily long and oppressive) or in conjunction with other factors set forth in Section 3501(b). See U.S. Br. at 26-30, United States v. Alvarez-Sanchez, 511 U.S. 350 (1994) (No. 92-1812)

(explaining that the legislative history confirms the view that Section 3501 makes voluntariness the sole inquiry about the admissibility of a confession).

2. Although most of the decisions on the issue are relatively dated, the lower courts are divided on whether Section 3501 makes voluntariness the sole nonconstitutional test for the admissibility of a confession in federal prosecutions, or whether the statute also permits (or even requires) the exclusion of a voluntary confession as a sanction for unreasonable presentment delay when the period between arrest and presentment was longer than six hours. The Third, Sixth, and Tenth Circuits have expressly adopted the former view. See Pet. App. A8-A11 (decision below); United States v. Glover, 104 F.3d 1570, 1583 (10th Cir. 1997) (stating that, under Section 3501, "[v]oluntariness is the sole test for admissibility of a confession")(quoting United States v. Shoemaker, 542 F.2d 561, 563 (10th Cir.), cert. denied, 429 U.S. 1004 (1976)); United States v. Christopher, 956 F.2d 536, 538-539 (6th Cir. 1991) ("unnecessary delay, standing alone, is not sufficient to justify the suppression of an otherwise voluntary confession under 18 U.S.C. § 3501"), cert. denied, 505 U.S. 1027 (1992).² The

² In United States v. Bear Killer, 534 F.2d 1253 (1976), the Eighth Circuit stated that voluntariness is "the critical inquiry under Section 3501" and that "delay alone will not render a confession inadmissible." Id. at 1257. In its later decision in United States v. Hornbeck, 118 F.3d 615 (1997), however, that same court stated that a confession made more than six hours after arrest but before presentment is properly admitted "only if

First Circuit has twice upheld the admission of confessions that were made more than six hours after arrest and before presentment after determining that the confession was voluntary. See United States v. Rosario-Diaz, 202 F.3d 54, 70 (2000); United States v. Beltran, 761 F.2d 1, 8 (1985). In Beltran, the court expressly concluded that the extent of presentment delay had been "unreasonable," but stated that "[a] lapse of time between arrest and initial appearance, standing alone, does not require the exclusion of a statement made during th[e] period" of unreasonable delay, and it held that the defendant's confession had been properly admitted because that period had not been "used by the various law enforcement agencies for proscribed purposes envisioned by the Supreme Court when it created its exclusionary remedy for violation of the defendant's right to a prompt arraignment." 761 F.2d at 8.

Other circuits have held that Section 3501 preserves the McNabb-Mallory rule in whole or in part with respect to confessions made outside the six-hour safe harbor provided by Section 3501(c). The District of Columbia Circuit has held that unreasonable presentment delay, standing alone, mandates suppression in such circumstances. United States v. Robinson, 439 F.2d 553, 563-564

* * * the delay in bringing [the defendant] before a magistrate was reasonable" and the "statement was voluntary." Id. at 618. See Pet. App. A8 n.4 (interpreting that statement from Hornbeck as "refer[ring] to the circumstances under which the six-hour period may be extended, rather than * * * the standards that apply to a confession elicited outside that period").

(1970) (stating that “[u]nder Mallory a confession made during a period of unnecessary delay in complying with the requirement that the defendant be taken before a magistrate is inadmissible at his trial” and that “18 U.S.C. § 3501(c) does not nullify this judicial rule of evidence, but only restricts its application in circumstances” where the confession is made within the first six hours following arrest) (footnote omitted). The Second, Seventh, and Ninth Circuits have held that courts have discretion to suppress voluntary statements made more than six hours after arrest based on unreasonable presentment delay and that, in deciding whether to exercise that power, they should consider factors such as judicial integrity, the need to discourage unnecessary presentment delay, and the need to prevent involuntary confessions. United States v. Mansoori, 304 F.3d 635, 660 (7th Cir. 2002) (“A voluntary confession that occurs after the six-hour safe-harbor period may be inadmissible pursuant to McNabb, Mallory, and their progeny. Exclusion is not automatic but discretionary[.]”), cert. denied, 538 U.S. 967 (2003); United States v. Van Poyck, 77 F.3d 285, 288 (9th Cir.) (“Statements made outside the six-hour ‘safe harbor’ may be excluded solely for delay, but a court is not obligated to do so.”), cert. denied, 519 U.S. 912 (1996); United States v. Perez, 733 F.2d 1026, 1035 (2d Cir. 1984) (“discretion is vested in a district court judge to exclude a confession upon his finding that a delay of more than six hours was not reasonable”).

In 1993, this Court granted a government petition for a writ of certiorari that sought review of several questions pertaining to the application of Section 3501(c), including the question that is presented by this petition. See Pet. at 13-14, United States v. Alvarez-Sanchez, 511 U.S. 350 (1994) (No. 92-1812). The Court resolved that case by agreeing with the government's principal submission, i.e., that Section 3501(c) does not apply to statements made by a person who is being held solely on state charges. See 511 U.S. at 355-360.³ As a result, the Court found it unnecessary to address the "subtle questions of statutory construction" involved in determining "whether § 3501(c) requires suppression of a confession that is made by an arrestee prior to presentment and more than six hours after arrest, regardless of whether the confession was voluntarily made." Id. at 355-356; see id. at 361 (Ginsburg, J., concurring) ("I write separately only to emphasize that we do not decide today a question on which the Courts of Appeals remain divided: the effect of §3501(c) on confessions obtained more than six hours after an arrest on federal charges.").

During the 14 years since Alvarez-Sanchez was decided, little evidence has emerged that Section 3501(c) plays a major role in

³ As noted previously, petitioner was arrested as part of a joint operation by federal and state authorities whose immediate goal was to execute a state warrant for his arrest. The courts below expressly determined, however, that petitioner was "placed under federal arrest for assault on a law enforcement officer" from the beginning, Pet. App. A3, C1, and the government did not contend otherwise before the court of appeals, see Gov't C.A. Br. 8, 14-26.

federal criminal law. Several post-Alvarez-Sanchez decisions have expressly rejected the argument that Section 3501 permits the suppression of a voluntary confession made outside the six-hour safe harbor period and have upheld the admission of the confessions in question based solely on the ground that they were voluntary. See Pet. App. A11 (decision below); United States v. Ostrander, 411 F.3d 684, 696 (6th Cir.) (unpublished appendix), cert. denied, 546 U.S. 956 (2005); United States v. Johnson, No. 98-3138, 2000 WL 712385, at *6-*7 (6th Cir. May 24, 2000), cert. denied, 531 U.S. 1025 (2000); United States v. Valme, No. 98-1340, 1999 WL 519232, at *4-*5 (6th Cir. July 16, 1999); Glover, 104 F.3d at 1583. Other courts of appeals have reiterated their pre-Alvarez-Sanchez holdings that unreasonable delays in presentment that exceed six hours may sometimes warrant suppression of a voluntary confession, but they have done so in the course of declining to order suppression in the particular cases before them. See United States v. Gamez, 301 F.3d 1138, 1143 (9th Cir. 2002), cert. denied, 538 U.S. 1067 (2003); Van Poyck, 77 F.3d at 288-290; United States v. Fullwood, 86 F.3d 27, 30-32 (2d Cir.), cert. denied, 519 U.S. 585 (1996). In a 2002 decision, the Seventh Circuit held that a district court had erred in not suppressing a confession made more than six hours after arrest based solely on grounds of unreasonable presentment delay, but it affirmed the defendant's convictions because it concluded that the error had been harmless. See

Mansoori, 304 F.3d at 660-663. Finally, a handful of post-Alvarez-Sanchez district court decisions have ordered suppression of confessions based solely upon a finding of unreasonable presentment delay where the delay exceeded six hours. See, e.g., United States v. Pena Ontiveros, 547 F. Supp. 2d 323, 342-346 (S.D.N.Y. 2008); United States v. Wilbon, 911 F. Supp. 1420, 1432 (D.N.M. 1995); United States v. Evans, No. CR-95-H-67-E, 1995 WL 254422, at *2-*3 (N.D. Ala. Apr. 17, 1995).

The relatively small number of decisions involving Section 3501(c) since Alvarez-Sanchez suggests that issues surrounding confessions obtained more than six hours after arrest but before presentment do not arise with great frequency. In addition, the courts of appeals that have held that Section 3501 does not permit suppression of a voluntary confession made outside the six-hour safe harbor period have nonetheless stated that delay in presentment is a factor that may be considered in assessing voluntariness. See Pet. A8-A9; Glover, 104 F.3d at 1583; Christopher, 956 F.2d at 538. As a result, the division among the lower courts will affect the outcome only in that category of cases where: (i) the defendant is arrested on federal charges but is not taken before a magistrate within six hours of arrest; (ii) the delay in presentment beyond six hours is not reasonable; (iii) the defendant confesses during the period beyond six hours in which presentment was unreasonably delayed; (iv) the confession is not inadmissible under Miranda or

the Fourth Amendment exclusionary rule; and (v) neither the delay alone nor the delay in conjunction with any other relevant factor renders the confession involuntary under the standards set forth in Section 3501(b). It would appear that not many such cases exist. Indeed, the court of appeals did not determine whether this is such a case. The government argued below "that there were reasonable grounds for each of the steps which caused delay in [petitioner's] presentment to the magistrate," Gov't C.A. Br. 14-15; see *id.* at 14-26,⁴ but the court of appeals majority did not address the issue because it concluded that Section 3501 "narrows the meaning of 'unnecessary delay' [in Federal Rule of Criminal Procedure 5(a)(1)(A)] by restricting it to delays that are part of making a defendant's statements 'involuntary,'" Pet. App. A8.

On balance, it does not appear that certiorari is warranted at this time. The conflict on the meaning of Section 3501(c) does not appear to arise with sufficient frequency to justify review, and other legal rules (such as Miranda) largely protect against the abuses at which McNabb and Mallory were originally aimed. Indeed,

⁴ In brief, the government's position is that the delay in bringing petitioner before the magistrate was reasonable because a period of three hours and forty-five minutes was attributable to the need to obtain medical treatment for petitioner's injuries, meaning that the period of other delay before petitioner's oral confession was less than six hours; petitioner was twice advised of his rights and was treated respectfully throughout; petitioner has made no assertion that his statements were coerced in any way; and petitioner was detained overnight only after he had already made an oral confession and said he was tired and wanted to rest.

whatever delay occurred here, it is undisputed that petitioner received Miranda warnings and that petitioner's confessions were entirely voluntary. Pet. App. A11. Nor does the case law or any other source of information suggest that federal officers have a pattern of disregarding the requirement of Federal Rule of Criminal Procedure 5(a)(1)(A) that an arrestee is to be taken before a magistrate judge "without unnecessary delay." Accordingly, this Court's review of a question of federal law that seems to have relatively little impact on federal law enforcement is not necessary.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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