

# Exhibit R

Excerpt of the transcript of the December 6, 2018 deposition  
of Larilyn Reffett, filed in *Dvash-Banks v. Pompeo*,  
Case No. 2:18-cv-00523 (C.D. Cal. filed Jan. 7, 2019)

In the Matter Of:  
Andrew Mason Dvash-Banks, et al v.  
The United States Department of State, et al

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LARILYN REFFETT  
December 06, 2018

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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

ANDREW MASON DVASH-BANKS and)  
E [REDACTED] J [REDACTED] D [REDACTED]-B [REDACTED], ) COMPLAINT FOR  
Plaintiffs, ) DECLARATION AND  
 ) INJUNCTIVE RELIEF  
v. )  
THE UNITED STATES DEPARTMENT) Docket No. Case  
OF STATE, and THE HONORABLE ) 2:18-cv-00523-JFW-JCx  
MICHAEL R. POMPEO, Secretary) JFW  
of State, )  
Defendants.)

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--- This is the Transcript of the Audio-Recorded  
Deposition of LARILYN REFFETT, taken at the U.S.  
Consulate, 360 University Avenue, Toronto, Ontario,  
MSG 1S4, on the 6th day of December, 2018.

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Reported By: Deana Santedicola, CSR (Ont.), RPR,  
CRR

1 A P P E A R A N C E S :

2 FOR THE PLAINTIFFS, ANDREW MASON DVASH-BANKS

3 and E [REDACTED] J [REDACTED] D [REDACTED] -B [REDACTED] :

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13 FOR THE DEFENDANTS, THE UNITED STATES DEPARTMENT

14 OF STATE, AND THE HONOURABLE MICHAEL R. POMPEO,

15 SECRETARY OF STATE:

16 UNITED STATES DEPARTMENT OF JUSTICE, CIVIL DIVISION

17 FEDERAL PROGRAMS BRANCH

18 PER: Lisa Zeidner Marcus, Esq.

19 1100 L Street NW, 11th Floor,

20 Washington, DC, 20530

21 Email: lisa.marcus@usdoj.gov

22

23 Also Present: Jeremy Weinberg, U.S. Department of

24 State, Office of the Legal Advisor

25



I N D E X

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WITNESS: LARILYN REFFETT

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REDIRECT EXAMINATION BY MS. ZEIDNER

MARCUS..... 201

1 Goldsmith of Sullivan & Cromwell. I'm also  
2 representing Andrew and E [REDACTED] D [REDACTED]-B [REDACTED].

3 MS. ZEIDNER MARCUS: I am Lisa Zeidner  
4 Marcus, trial attorney, U.S. Department of Justice.  
5 I represent the Defendants in this matter, the U.S.  
6 Department of State and the Secretary of State who  
7 was sued in his official capacity.

8 MR. WEINBERG: Jeremy Weinberg,  
9 Department of State, Office of the Legal Advisor,  
10 also representing the U.S. government in this  
11 matter, Department of State.

12 AUDIO-RECORDER: Would the reporter  
13 please swear or affirm the witness.

14 LARILYN REFFETT; AFFIRMED.

15 EXAMINATION BY MS. KLEIN:

16 Q. Good morning, Ms. Reffett.

17 A. Good morning.

18 Q. As you heard, I am Jessica Klein  
19 and I am representing the Plaintiffs in this  
20 matter. Have you ever been deposed before?

21 A. No.

22 Q. And have you ever testified in  
23 Court?

24 A. No.

25 Q. Have you ever given testimony

1 Q. Did your training that you have  
2 received in your career include training you in the  
3 policies of the Toronto Consulate in adjudicating  
4 applications for U.S. passports?

5 A. There is nothing Toronto-specific  
6 in training.

7 Q. So is it correct then that the  
8 policies of the United States State Department are  
9 one and the same with the policies of the Toronto  
10 Consulate in the adjudication of applications for  
11 U.S. passports?

12 A. The adjudications here in Toronto  
13 are done solely based on the guidance and the  
14 references that we are provided by the Department  
15 of State.

16 Q. Is there any Toronto  
17 Consulate-specific guidance concerning  
18 adjudications of U.S. passports?

19 A. No.

20 Q. What about Canada-specific?

21 A. No.

22 Q. So is it correct then that the  
23 training you have received on the adjudication of  
24 passport applications has been training that, to  
25 your understanding, would apply in any consular

1 for Consular Reports of Birth Abroad?

2 A. Yes, when I mentioned the  
3 adjudication piece, we don't separate. Those  
4 appointments are all at the same time. You just  
5 take whatever comes as it comes in.

6 Q. So am I correct that in addition  
7 to adjudications randomly selected for your review,  
8 you sometimes adjudicate applications for Consular  
9 Reports of Birth Abroad?

10 A. I do.

11 Q. And do you make determinations of  
12 who is a U.S. citizen?

13 A. Yes, that is part and parcel of  
14 the adjudication.

15 Q. Is a determination of who is a  
16 U.S. citizen part and parcel of adjudicating a  
17 Consular Report of Birth Abroad?

18 A. That is the purpose of the  
19 Consular Report of Birth Abroad, is to determine  
20 whether someone is a U.S. citizen.

21 Q. And is the purpose of a Consular  
22 Report of Birth Abroad to determine whether someone  
23 is a U.S. citizen from birth?

24 A. Correct.

25 Q. And is the determination of U.S.

1 I mean, it is just a chart that just kind of has  
2 the relevant scenario and then the FAM section that  
3 you would consult for that.

4 Q. Okay. Is it accurate to say that  
5 in adjudicating U.S. passport applications, the  
6 Toronto Consulate applies the Foreign Affairs  
7 Manual?

8 A. Well, we comply with the  
9 instructions in the Foreign Affairs Manual, yes.

10 Q. All right. Is there any way in  
11 which you are aware that the Toronto Consulate does  
12 not comply with the Foreign Affairs Manual in the  
13 adjudication of U.S. passport applications?

14 A. No.

15 Q. And is that also the case for the  
16 application of Consular Reports for Birth Abroad?

17 A. Correct.

18 Q. So the Toronto Consulate applies  
19 the Foreign Affairs Manual in adjudicating Consular  
20 Reports for Birth Abroad?

21 A. We consult the Foreign Affairs  
22 Manual and follow all of the relevant guidance that  
23 we are required to follow.

24 Q. Is there any way in which you are  
25 aware that the Toronto Consulate does not follow

1 the Foreign Affairs Manual in adjudicating  
2 applications for Consular Reports of Birth Abroad?

3 A. No.

4 Q. And am I correct that the same is  
5 true for U.S. passport applications?

6 A. Correct.

7 Q. Is there a practice in the Toronto  
8 Consulate of an officer placing her initials on  
9 each page of a passport application that she  
10 adjudicates?

11 A. Not on each page that you  
12 adjudicate, but we are required when we have  
13 certified true copies, we are required as the  
14 officer to put our initials to verify that we saw  
15 the original document and that it matches the copy.

16 Q. So am I correct that if an officer  
17 places her initials on a page of a U.S. passport  
18 application file, that means to you that she has  
19 consulted the original document and compared it to  
20 the copy for accuracy between the two?

21 MS. ZEIDNER MARCUS: I would like to  
22 consult with my colleague about a potential  
23 privilege and briefly go off the record.

24 AUDIO-RECORDER: We are going off the  
25 record at 11:39 a.m.

1 looks like it.

2 Q. And whose name is listed as the  
3 person sending or writing this letter?

4 A. The letter was signed by Terri  
5 Day.

6 Q. And is it your understanding that  
7 E█████ D█████-B█████'s applications for U.S. passport  
8 and Consular Report of Birth Abroad were denied?

9 A. Yes.

10 Q. Who adjudicated those  
11 applications?

12 A. It is my understanding that Terri  
13 Day adjudicated those two cases.

14 Q. And did Ms. Day have authority to  
15 make the ultimate determination of whether to deny  
16 those applications?

17 A. Yes, she did.

18 Q. And was she employed at the  
19 Toronto Consulate on March 2nd, 2017?

20 A. Yes.

21 Q. Okay. And what reason or reasons  
22 does this document cite as the basis for those  
23 denials?

24 MS. ZEIDNER MARCUS: Objection, form,  
25 foundation.

1 a U.S. passport and Consular Report of Birth  
2 Abroad?

3 A. Making the determination? What do  
4 you mean by that? The case was adjudicated by  
5 Frankie Day -- Terri Day in this case.

6 Q. Am I correct that it is your  
7 understanding that Ms. Day interviewed E [REDACTED] and  
8 the Dvash-Bankses concerning these applications?

9 A. My understanding is that Terri Day  
10 did in fact interview the Dvash-Banks family, and  
11 based on her interview and based on the follow-up  
12 information that she requested, she denied these  
13 applications.

14 Q. And from the period of when the  
15 applications were initiated through March 2nd,  
16 2017, when this letter was dated, were you  
17 personally involved at all in these applications or  
18 their adjudication?

19 A. The day of the interview, Frankie  
20 asked me about -- she told me that she was going to  
21 request DNA testing. She asked me how she went  
22 about doing that. I explained to her that she just  
23 needs to ask a local staff to draft the letter.  
24 There is standard language that explains how to  
25 obtain a DNA test that is -- that meets the



1 requirements of the Department of State.

2 She asked for that letter and then  
3 presented it to the family, so I was aware at that  
4 point that she was requesting the DNA evidence. At  
5 that point, a case will go into pending status.  
6 Cases generally are allowed to remain in that  
7 status for up to 90 days without any further  
8 action. At the 90-day mark, we will review again  
9 to see whether or not we have received the  
10 information we have requested and try and proceed  
11 with the case.

12 Q. Ms. Day spoke to you on the date  
13 when the Dvash-Banks family came in about  
14 requesting DNA testing; is that correct?

15 A. Yes, she asked me to verify how  
16 the procedure works, what documentation needs to  
17 happen, because we aren't in charge of the DNA  
18 program as the adjudicating officers, so she wanted  
19 to verify that she was getting the right letter,  
20 giving them the right information about how to  
21 proceed with that testing.

22 Q. Did Ms. Day share with you the  
23 facts surrounding these applications for E [REDACTED] ?

24 A. She told me that she had a case  
25 that involved artificial reproductive technology.

1 She said that it was not clear from the  
2 documentation who was biologically related to who  
3 in the case and she was requesting the DNA in order  
4 to establish that.

5 Q. Did you ever meet any members of  
6 the Dvash-Banks family?

7 A. No.

8 Q. Did you ever see any members of  
9 the Dvash-Banks family?

10 A. I might have seen them through the  
11 interview windows. I generally walk up and down my  
12 section to check on how things are going and, you  
13 know, what is moving and what is not moving.

14 If they need additional assistance, for  
15 example, if there are too many cases and we need  
16 more interviews, I might be sort of checking on  
17 that, but nothing that would have stood out to me  
18 or that I realized, I mean, that I had seen this  
19 particular family, no.

20 Q. Did Ms. Day inform you that the  
21 Dvash-Banks family includes a same-sex couple?

22 A. She did.

23 Q. What did Ms. Day tell you?

24 A. She told me that she, as I  
25 mentioned, she had a case involving artificial

1 Oftentimes in those situations, the  
2 officers will make sure that all of the other  
3 officers know that this is pending because if, for  
4 example, the documentation came in while, for  
5 example, Frankie was on leave, we would need to be  
6 sure that we understood what we were waiting for.

7 Q. I would like to focus on your  
8 conversations with Ms. Day about these applications  
9 for the next several questions.

10 When Ms. Day first spoke with you about  
11 E [REDACTED]'s applications, had she already decided to  
12 give them pending status?

13 A. When she came to me, she explained  
14 to me that the documentation did not establish the  
15 biological relationship, so she was going to  
16 request the DNA testing and she asked me about the  
17 proper procedure for doing that.

18 Q. And did she ask you only what the  
19 procedure was or also whether to seek DNA testing?

20 A. I don't recall the specific  
21 details of the conversation, but what the result  
22 was, and what -- I mean, what I recall was that I  
23 explained to her how to do this and this is -- you  
24 know, she told me I don't have in front of me in  
25 this interview or this application the information

1 Q. And are you referring to being  
2 notified of an inquiry that was made with  
3 congressional staff?

4 A. Generally speaking, if  
5 congressional staff have received an inquiry from a  
6 member of the public about a case or a consular  
7 service that is taking place at your post, that  
8 staff will email you and ask you either for comment  
9 or will just give you the just FYI this is what we  
10 have received.

11 I know we did have correspondence from  
12 a congressional office, but I don't remember the  
13 date of it.

14 Q. Is it your understanding that when  
15 Ms. Day signed this letter on March 2nd, 2017, the  
16 adjudication was final?

17 A. Yes, that is my understanding.

18 Q. And sitting here today, do you  
19 remember any involvement you had in the  
20 adjudication or processing of E [REDACTED]'s applications  
21 for a passport or Consular Report of Birth Abroad  
22 other than the three brief conversations with Ms.  
23 Day that you described?

24 A. No.

25 Q. Okay. Have you read E [REDACTED]'s

1 application materials?

2 A. No.

3 Q. So you don't have any view as to  
4 the authenticity or completeness of the application  
5 that was filed?

6 A. I have not seen the application.  
7 I have only heard what Frankie told me about the  
8 facts that she was presented.

9 Q. So sitting here today, what is  
10 your understanding of why Frankie Terri Day denied  
11 E [REDACTED]'s applications for a U.S. passport and  
12 Consular Report of Birth Abroad?

13 A. My understanding is that the  
14 applicants did not establish the biological  
15 relationship between the American citizen parent  
16 and the child, which is required by the Immigration  
17 and Nationality Act.

18 Q. And are you aware of any other  
19 reason why E [REDACTED]'s applications were denied?

20 A. No.

21 Q. And as you read the document  
22 marked DVASH-BANKS30, Plaintiffs Deposition Exhibit  
23 1, do you read it to state that there was no other  
24 reason for the denial of the applications?

25 A. That is correct. I read it to

1 state that the denial was based on the  
2 non-establishment of the blood relationship  
3 required by the Immigration and Nationality Act.

4 Q. Do you know if anyone was involved  
5 in the adjudication of those applications other  
6 than Ms. Day?

7 A. In the adjudication, no.

8 Q. Do you know if anyone was involved  
9 in processing the applications other than Ms. Day?

10 A. I do know that the same way that I  
11 provided guidance on how to request a DNA test,  
12 that my colleague Margaret Ramsay also provided the  
13 relevant FAM citations, the Foreign Affairs Manual,  
14 so that Frankie could consult if she wanted to, if  
15 she needed to, the appropriate sections of the  
16 Foreign Affairs Manual.

17 Q. Do you know of anyone else who was  
18 involved?

19 A. No. Well, I mean, if you are  
20 talking about the adjudication, I mean, there would  
21 have been the receipt of the DNA, which that gets  
22 received by the Fraud Prevention Officer, but it is  
23 kind of a moving the mail.

24 Q. And do you know in what month and  
25 year E [REDACTED]'s applications were submitted to the

1 citizen was the parent, that application was  
2 approved.

3 Q. And were you personally involved  
4 in the adjudication of that application?

5 A. No.

6 Q. Did Ms. Day ever speak with you  
7 concerning the adjudication of that application?

8 A. Not separately. The two  
9 applications were part of the same set of  
10 circumstances, so when she informed me that she was  
11 requesting DNA for one, she informed me she was  
12 requesting DNA for the other as well. When the DNA  
13 results came back and she informed me of the  
14 results, she told me the results for each child.

15 Q. Is it your understanding that Ms.  
16 Day was the person who granted A [REDACTED]'s application  
17 for a U.S. passport?

18 A. It is my understanding that she  
19 approved that application.

20 Q. And is the same true for A [REDACTED]'s  
21 application for a Consular Report of Birth Abroad?

22 A. Yes.

23 Q. Under what circumstances does the  
24 consulate ask for DNA evidence in support of an  
25 application for a U.S. passport?

1 adjudicating that case would then have reference  
2 material. They would be able to reference the  
3 previous application so that they could see what  
4 happened and where that case was -- how it  
5 terminated.

6 Q. Does Ms. Day's letter dated March  
7 2nd, 2017, reflect a final adjudication of E [REDACTED]'s  
8 applications for a U.S. passport and Consular  
9 Report of Birth Abroad?

10 A. As far as the applications that  
11 were submitted here in Toronto, that letter  
12 absolutely is a final determination. In the  
13 second-to-last paragraph:

14 "[...] therefore the  
15 applications are denied."

16 That is the termination of that case  
17 from that point forward.

18 Q. So how would you describe the  
19 status of that case for the Toronto Consulate  
20 today?

21 A. The case was denied and it is  
22 closed.

23 Q. And does your office prepare  
24 additional paperwork concerning the adjudication of  
25 a U.S. passport application beyond this letter?



1 earlier, and it is case-specific. Medical  
2 documentation is one way that we can try and get to  
3 a point where we understand the biological  
4 relationships, but also in the interview that will  
5 be a question that will be asked.

6 Based on the answers and based on the  
7 conversation that the officer has with the  
8 applicant, that will determine whether -- what  
9 steps need to be taken next and what that entails,  
10 if it entails DNA or something else.

11 Q. Is there any example or scenario  
12 you are aware of in which two married men have  
13 applied for a U.S. passport for their child born  
14 abroad and not been asked to evidence the genetic  
15 relationships of the child?

16 A. The biological relationship has to  
17 be established, as we noted in the letter that you  
18 have provided as Exhibit 1, the Immigration and  
19 Nationality Act requires a blood relationship. We  
20 have to establish that blood relationship in every  
21 case.

22 Q. What is your understanding of in  
23 what cases the Immigration and Nationality Act  
24 requires a blood relationship between a child born  
25 outside of the United States and a U.S. citizen?

1                   A.    If the U.S. citizen is  
2   transmitting citizenship, there must be a  
3   biological relationship between the child and the  
4   parent, unless in the case of a female parent, if  
5   you are the gestational parent, that also meets the  
6   requirements.   There must be a biological or  
7   gestational relationship.

8                   MS. ZEIDNER MARCUS:   Can we go off the  
9   record for a moment for me to confer with my  
10   colleague, please.

11                  AUDIO-RECORDER:   We are going off the  
12   record at 2:25 p.m.

13                  -- RECESSED AT 2:25 P.M.

14                  -- RESUMED AT 2:27 P.M.

15                  AUDIO-RECORDER:   We are now back on the  
16   record at 2:27 p.m.

17                  BY MS. KLEIN:

18                  Q.    Ms. Reffett, is it correct that  
19   before we very briefly went off the record, you  
20   testified that with the exception of a gestational  
21   parent, a U.S. citizen must have a biological tie  
22   to his child in order to transmit citizenship?

23                  A.    To transmit citizenship from  
24   birth, yes, that is correct.

25                  Q.    And that is your understanding of

1 allow that U.S. citizen to confer citizenship upon  
2 his child?

3 A. It is not the Toronto Consulate.  
4 This would be the Immigration and Nationality Act.  
5 It will require that the biological relationship is  
6 established. Without the biological relationship,  
7 the American citizen parent cannot transmit  
8 citizenship.

9 Q. And you understand the Immigration  
10 and Nationality Act to require that even if the  
11 child's legal parents are married to each other?

12 A. That is not my understanding that  
13 that is the guidance from the Department of State.  
14 The Department of State, as referenced on our  
15 website, as in all of the information that is  
16 publicly available, requires that there be a  
17 biological relationship between the U.S. citizen  
18 parent and a child who is not born in the United  
19 States.

20 Q. Regardless of whether the parents  
21 are married?

22 A. Correct.

23 Q. And it is your understanding that  
24 that is what the INA requires?

25 A. That is the Department's guidance

1 as to the Immigration and Nationality Act. We must  
2 establish a biological relationship between the  
3 U.S. citizen parent and the child.

4 Q. Are you aware of any difference  
5 between the relevant provisions of the INA and of  
6 the guidance from the State Department concerning  
7 this issue?

8 A. No.

9 Q. And I believe you testified  
10 earlier today that in adjudicating most passport  
11 applications, the Toronto Consulate does not review  
12 any legal or policy materials; is that correct?

13 A. In many cases, it is not required.  
14 Most of the cases that we see here fall within a  
15 very limited range of, you know, circumstances, the  
16 things that we see on a very regular basis, and  
17 doesn't require us to reference the Foreign Affairs  
18 Manual every time that we see that type of case.

19 Q. And does the Toronto Consulate  
20 ever reference the INA in adjudicating applications  
21 for U.S. passports?

22 A. As I previously stated, the INA is  
23 one source of information. If we have questions  
24 about the case that is in front of us or the  
25 parameters, we could consult with the INA. Every

1           The reason that that requirement is  
2 specifically listed is to remind people who may not  
3 remember that one random date so that when they  
4 need to look at it and say, wait, what was the date  
5 that the law changed, it is right there for them.  
6 They can see very quickly what the differences are  
7 between those two requirements.

8           The blood relationship did not change  
9 on that date. It has always existed.

10           Q. A blood relationship has always  
11 been required for a child born in wedlock to one  
12 U.S. citizen parent?

13           A. If the U.S. citizen parent is --  
14 yes, the one U.S. citizen parent has to have the  
15 blood relationship in order to transmit the  
16 citizenship to the child. That is applicable  
17 before November 14th, 1986, as well as after  
18 November 14th, 1986, which is why it is not spelled  
19 out here, because that was consistent.

20           Q. And is there an exception for a  
21 woman who is a gestational parent without a  
22 biological relationship to the child?

23           A. Well, when I say a "biological,"  
24 because we have been talking about fathers and, you  
25 know, this particular, the row that you have

1 highlighted "Amcit Father out of Wedlock," we  
2 weren't discussing mothers.

3 For mothers, the relationship has to be  
4 either biological or gestational.

5 Q. And is the allowance for a  
6 gestational mother who is not biologically related  
7 to her child, as you understand it, in the INA?

8 A. I have not referenced the section  
9 of the INA that would spell that out in some time.  
10 I have seen the guidance from the Department. That  
11 isn't one that I have had to pull up recently to  
12 consult. I can't say with any confidence that I,  
13 again, can recite that section of the INA.

14 Q. Is it the case that since you have  
15 worked in the Toronto Consulate, there has been  
16 allowance of a gestational mother U.S. citizen to  
17 confer citizenship on a child who she is not  
18 biologically related to?

19 A. I don't know about the word  
20 "allowance." Whether somebody has transmitted and  
21 had approved an application to transmit citizenship  
22 as a gestational mother, I can't say for certain.  
23 I suspect yes. This wouldn't be something that was  
24 out of the unusual.

25 But again, I don't keep statistics on

1 about something that you are specifically looking  
2 at that might have changed, because there have been  
3 substantial changes.

4 Q. Are you aware of any changes to  
5 the biological relationship to a U.S. citizen  
6 parent requirement that have changed during your  
7 tenure at the Toronto Consulate?

8 A. I don't know the exact dates of  
9 changes as they have come and gone. I do -- we  
10 have touched on this issue earlier, but we have  
11 talked about the fact that the biological  
12 relationship does now include a gestational mother  
13 role, for example.

14 Being a gestational mother does in fact  
15 meet the biological -- does in fact qualify as a  
16 biological relationship. That has been a change,  
17 but when it happened, I honestly don't know. It is  
18 not something I keep track of.

19 Q. And other than the treatment of  
20 gestational mothers who are not genetically related  
21 to their children, are you aware of any other  
22 changes that have been made at the State Department  
23 in the requirements of a biological tie between a  
24 U.S. citizen and his child?

25 A. I am not specific -- I don't know

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REPORTER'S CERTIFICATE

I, DEANA SANTEDICOLA, RPR, CRR,  
CSR, Certified Shorthand Reporter, certify;

That the foregoing proceedings were  
taken before me at the time and place therein set  
forth, at which time the witness was put under oath  
by me;

That the testimony of the witness  
and all objections made at the time of the  
examination were recorded stenographically by me  
and were thereafter transcribed;

That the foregoing is a true and  
correct transcript of my shorthand notes so taken.

Dated this 12th day of December, 2018



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