

No. 19-8268

ORIGINAL

In The Supreme Court of the United States

Ade Brown #884273- Petitioner

vs.

Reid desrochers, etc. al - respondents case # 19-1317

and

Desiree Thomas, ~~et al.~~... - respondent case # 19-1322

On Petition For a writ of certiorari To
United States Court of Appeals for Sixth Circuit

Pro se

Ade Brown #884273
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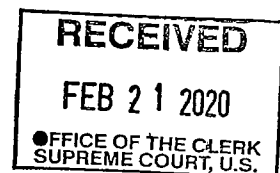
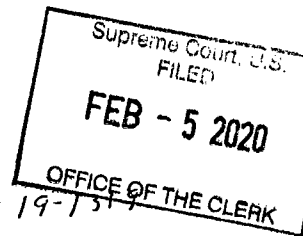
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Questions Presented

I. Does the petitioner properly satisfy Exhaustion of all available Administrative Remedies under The Prison Litigation Reform Act (PLRA), and 6th circuit, other circuits, Supreme Court, and MOOC Law and policies where Petitioner grievance disappears after He turns it in, it's never processed, and petitioner cannot Appeal to a step 2 or 3 when his step 1 was never processed by grievance coordinator?

II. Does the 6th circuit and District Court err in granting summary judgment to respondents when petitioner was never given / allowed a chance to conduct a full discovery?

III. Does the petitioner exhaust all administrative Available remedies where the prison officials refused him request for a grievance form he requested making the grievance process unavailable?

Petitioner Answers yes to all ~~the~~ 3 questions.

List of Parties

[X] All parties do not appear in the Caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

Reid Desruchers, sergeant; Ronald Stambaugh, c/o; Michael Enderlie, c/o;
Micah Fracker, c/o; Glenda Carlisle, c/o; Shane Tumbleson, c/o; Keith
Sikkema, R.N. case # 19-1319

and

Desiree Thomas case # 19-1322

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In the Supreme Court of the United States
Petition For writ of Certiorari
Opinions Below

[X] For cases from Federal Courts:

The opinion of the United States court of appeals appears at
Appendix A to the petition and is [X] is unpublished

The opinion of the United States district court ~~against~~ appears at
Appendix B to the petition and is [X] is unpublished.

The ^{and} opinion of the United States district court appears at
Appendix C to the petition and is [X] is unpublished.

The Denial of an untimely filed petition for rehearing, appears at
Appendix D to the petition and is [X] is unpublished.

The Report & Recommendation of the United States district court appears at
Appendix E to the petition and is [X] is unpublished.

The ^{and} Report & Recommendation of the United States district court appears at
Appendix F to the petition and is [X] is unpublished.

The denial of a Timely motion to reconsider of the United States district
court appears at Appendix G to the petition and is [X] is unpublished.

Jurisdiction

[X] For cases from federal courts:

The date on which the United States Court of Appeals decided my case was November 14, 2019.

[X] No petition for rehearing was timely filed in my case.

[X] An untimely petition for rehearing was denied by the United States Court of Appeals on the following date: 12-12-2019, and a copy of the order denying ~~the~~ untimely rehearing appears at Appendix D.

The jurisdiction of this court is invoked under 28 U.S.C. section 1254(1).

Constitutional and Statutory Provisions Involved

Pages

Constitutional provisions

V III Constitutional Rights

5

Statutory provisions

28 U.S.C. section 1254 (1)

2

42 U.S.C. section 1997e(a)

9

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pd. 03.02.130

7, 8, 9, 10

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- Appendix C- ^{2nd} Decision of the U.S. District Court
- Appendix D- Order of the U.S. Court of Appeals denying untimely petition for rehearing
- Appendix E- Report & Recommendation of the U.S. District Court
- Appendix ~~B~~ F- 2nd Report & Recommendation of the U.S. District Court
- Appendix G- Order of the U.S. District Court denying a timely motion for reconsideration.

Statement of the Case Facts

This case started off in the Western District Court of Michigan, against all respondents. At First only, respondents Sirkmer, Desrochers, Stambaul, Fracker, Enderlie, Jambalson, and Stambaugh; filed appearance of counsel (ecf# 12-17), and summary judgment motion for failure to exhaust! (ecf# 21-22). Defendant ^{Thomas} filed her motion for summary judgment at a different time due to her late appearance of counsel. (ecf# ~~21-22~~ 50).

On 6-1-16 I was placed in Fetal chains (Hogties) by defendants after I consented to let them close my food slot which I had open. Desrochers along with other respondents came to my cell took me out, strip searched me, then placed me in Fetal chains (Hogties), before placing me back in my cell and tighten the Hogties as much as possible to cut off all blood circulation in my body.

I was left like this for over 14 hours. From around 9:30am to 12:00pm.

At no time could I move while in Hogties, and respondents made fun of me the whole time and refuse to take me out. The two nurses Sirkmer, allowed respondents to place extremely tight Fetal chains on me, and denied me any medical treatment during his shift as well as Thomas on her shift.

I sued them for violations of my 4th Amendment rights to be free from cruel and unusual punishment and for being deliberate indifferent to my safety, thus failing to protect me, and denial of medical treatment. On 6-2-16 I wrote a grievance turned it in, but retained my back copy like I was suppose to. (my gold copy). After I turned it in, it vanished 100%. It was never processed into the computer database, I never received a receipt from the grievance coordinators like I'm suppose to get saying she received my grievance and give me a grievance identifier number for that grievance. So I could not even step 2 appeal the grievance let alone step 3 with-out a grievance identifier number to identify what grievance I want to appeal.

Then on 6-8-16 I received a mysterious notice letter from grievance coordinator stating I was on modified Access, for some grievances I filed in May 2016. So I started bitching her asking her for a response to my 6-2-16 grievance and why I never received a receipt from her.

1) ECF is electronic filing in U.S. District Court

acknowledging my grievance. But she never responded. So I started sending her notes can I re-grieve my issue over than since she put me on modified Access, she also never responded. So on 6-21-16 I re-wrote the grievance over and stated This is my 2nd time grieving this issue. It was rejected at all 3 steps for not following policy and procedures.

But this is what I wanted, I only wrote this grievance To try to prove some~~way~~^{way} somehow I wrote the grievance on 6-21-16 and that it vanished. The grievance coordinator was trying to cover up the Incident on me being in chains by throwing my grievance out, and not re-sending me one to grieve over. When I sent my step 2 grievance to Lansing for step 3, the 6-21-16 grievance, Lansing stamped over the part I said This was my 2nd time grieving this issue. So this was the issue in Defendants Desrochers, etc, summary judgment for fail to exhaust (ecf# 21-22) and also Thomas summary judgment motion (ecf# 50). Both respondents used the 6-21-16 as I didn't exhaust, and I used the 6-21-16 to back up the 6-21-16 grievance, stating that I exhausted on 6-21-16 and the 6-21-16 grievance support that (ecf# 31, 35, 80).

But I Lost in the District Court against Desrochers and those defendants and Thomas because The District Court stated my 6-21-16 grievance said nothing about the re-filing of an earlier grievance, and If it did they could not see it because Lansing stamped over it, and because the step 3 did not match the step I provided (ecf# 46 page ID 336-338). Because The Courts could not see where I wrote This was my 2nd time grieving the Issue, I attached another copy of the grievance I still had with the identical signatures on their from the grievance coordinator and Deputy Warden. But on the copy I had my NAME was spelled A. Brown and I used failure 2 instead of failure to like I did on the step 3, (ecf# 46 page ID 336-338). And this is because when writing a grievance I have to write 4 copies, because the End doesn't go all the way through to the next page so I had to keep tracing it over and on 1 of the pages there's just how I traced it. When I turned it in, it was rejected, but at least all 4 pages was still signed by the grievance coordinator and Deputy Warden. But the District Court still rejected this and found favor for Defendants Desrochers, etc. that I fail to exhaust.

When Thomas filed her motion for summary judgment (ecf# 50), I did not know because I did not receive it until May 31, 2018. The Courts issued a 561 docket sheet for Western District. In (ecf# 47), The Courts issued a case management order to do discovery. Because I never received Thomas motion

For summary judgment she filed (ecf# 50). Around the time she said she filed it, I did do discovery request ^{against} for her. But I never knew Thomas filed an appearance of counsel either (ecf# 51). So I sent my discovery request on her to the district court (ecf# 51). Along with a ^{affidavit} letter stating I do not know Thomas address or location because she has not filed an appearance of counsel, so I have to send this to the courts (ecf# 53). Even until this day, the courts sent her my discovery request I never did.

The courts still found in favor for Thomas ~~despite~~ for summary judgment (ecf# 101 page ID 675-677), based on the same reasons it found for defendants Desrochers, etc. al. despite me not being able to conduct a full discovery against Thomas. The courts denied my request for extension of time (ecf# 68). And rejected my argument that I did not receive Thomas motion until 14 days before discovery ended against her, because I filed my discovery request on her right after she filed her summary judgment motion or appearance of counsel back in ^{March} April of 2018, which I never received though until May 2, 2018 (ecf# 58, ecf# 88). The reason I received her ~~rec~~ motion so late was because there was an issue with her postage when she originally filed her motion, she did not place enough postage on the envelope so it was sent back to her; and she did not re-send it back to me until May 1, 2018, 14 days before our discovery ended. Not only does she openly admits to this in a few of her motions and responses (ecf# 65) (ecf# 92) (ecf# ~~92~~), she included the receipts of postage which I have and attached to a few of my motions (ecf# 58, ecf# 59), (ecf# 88), (ecf# 93). Discovery against her could have got me the official and original grievance from 6-21-16 with-out the coverings over there from Lansing, which would have showed it was my 2nd time grieving the issue. Because I did not do discovery ~~in the~~ against Desrochers, etc. al.

So I appealed all District Court Report and Recommendations granting the respondents summary judgment for failure to exhaust (ecf# 101), (ecf# 100 page ID 672-673), (ecf# 46). And the 6th circuit Appellate Agreed with District Court that I failed to exhaust (Appellate Court order from November 14, 2019.) But their decision was not based on the 6-21-16 grievance, instead the 6-2-16 grievance. They stated ~~they~~ "For the purpose of this Appeal, we can assume that Brown filed a grievance on June 2." (Appellate Court order page 6). They state on this same page "Brown maintains that he was excused from exhausting his administrative remedy because the grievance that he submitted on June 2 was neither reported to nor processed. For the reasons set forth below, this argument lacks merit and is insufficient to establish a triable issue of fact regarding Brown's non-exhaustion." (Appellate Court order page 6). And they go on to rule that the reason for this is because the "MDOC policy directive explicitly makes further administrative proceedings

available even in the absence of a step 1 response, and then quotes MDOC policy directive 03-02-130 (T) (Appeal Court order page 6-7). Further saying "Brown was required to ~~proceed~~ proceed to step II within ten business days after the response deadline expired. MDOC PD 03, 02-130 (T) (Appeal Court order page 7).

With respect to The 6th Circuit conclusion Against Thomas, The 6th circuit ~~stated~~ concluded that I was not entitled to extra time to conduct discovery against her for late filing of Her summary judgment. 14 days before our discovery ended. (Appeal Court order page 7-8). For the same reasons the District Court ruled. The Appeal Court stated " Even if Brown did not receive Thomas's motion until May, he cannot show that he suffered prejudice. He was on notice that exhaustion was an issue in the case as early as August 21, 2017, when the MDOC defendants filed their motion for summary judgment based on lack of exhaustion. None of the discovery requests that Brown purports he would have made beyond the deadline would have altered the conclusion that Brown failed to exhaust his administrative remedies, as that issue had already been decided on March 1, 2018, when the district court granted the MDOC defendants' summary judgment motion. Under these circumstances, we find that the district court did not abuse its discretion when it denied Brown's discovery motions".

The 6th circuit ~~consolidated~~ consolidated case 19-1319 against Deshaies and those ~~at~~ appellates and Thomas case 19-1322 as 1. Now I have filed this petition for writ of certiorari to the Supreme Court.

Reasons for Granting the Petition

There are a few quick reasons this petition should be granted. The main issue is the Appeal Court erred and was wrong in making a decision that I failed to exhaust available remedies from my 6-2-16 grievance, because I did not Appeal it to step 2 or 3. After my step 1 was never even processed in the 1st place by the grievance coordinator (Appeal court order page 6-7).

Under the Prison Litigation Reform Act (PLRA), prisoners are generally required to exhaust all available administrative remedies prior to filing civil rights suits in Federal court. 42 U.S.C. section 1997e(a); *Jones v. Bock*, 549 U.S. 199, 211 (2007). "To exhaust his administrative remedies, a prisoner must adhere to the institutional grievance policy, including any time limitations." *Risher v. Lappin*, 639 F.3d 236, 240 (6th Cir. 2011) (Citing *Woodford v. Ngo*, 548 U.S. 81, 90-91 (2006)).

The Appeal Court ~~order~~ ^{Decision} page #6, stated "We will assume that Brown filed a grievance on June 2". So they acknowledge my June 2, grievance, but states "But here, Brown cannot show that the administrative process was unavailable because the applicable MOOC Policy directive explicitly makes further administrative proceedings available even in the absence of a step 1 response. In particular, MOOC Policy directive 03-02-130(T) provides that, if there is no timely response at step I or II, then the prisoner "may forward the grievance to the next step of the grievance process within ten business days after the response deadline expired". (Appeal court ~~order~~ ^{Decision} page #6 - 7)

Appeal Court used the wrong Law, using *Carr v. Booker*, No. 14-1258, 2014 U.S. App. LEXIS 25042, at *5-6 (6th Cir. Dec. 4, 2014) (Finding that the prisoner failed to exhaust his claim where he did not receive a response to his grievance at step 1 and failed to proceed to steps 2 and 3). (~~The~~ Appeal Court ^{Decision} ~~order~~ page #7). In my situation, my grievance was never processed at step 1 at all. This means the grievance coordinator threw it away, after I turned it in. There was never no step 1 to Appeal. If my grievance was processed at step 1, I would have been able to step 2 and 3 appeal in the absence of a step 1 response. But when my entire grievance vanished before it is even processed at step 1 there's no possible way to even request a step 2 appeal form, for a grievance that was thrown away by grievance coordinator.

"When a prison administrator thwart inmates from taking advantage of a grievance process through machination, misrepresentation, or intimidation..., such interference with an inmate's pursuit of relief renders the administrative process unavailable". *Ross v. Blake*, 136 S. Ct. 1850, 1860 (2016). And if the Administrative process is unavailable, then exhaustion is not a prerequisite for initiation of a civil rights action. *Id.* at 1858-60; *Walker v. Mich. Dep't of Corr.* 128 F. App'x 441, 446-47 (6th Cir. 2005). My administrative

remedies were unavailable to me because after I wrote my June 2, 2016 grievance the grievance coordinator threw it away and never registered the grievance. MDOC's grievance policy, directive, 03.02.130, does not give any instruction to a prisoner what to do when his grievance vanishes before it is processed at step 1. Policy directive 03.02.130^{paragraph 11w} () does state the grievance coordinator must assign a unique grievance identification number to each grievance to identify it. But in my case, since my grievance was never processed by the coordinator, I did not receive an I.d. number, and without that I.d. number, I cannot make any appeals, because the I.d. number is what identifies the grievance.

Furthermore, my 6-2-16 grievance was never processed. I was placed on modified access on 6-8-16 (appeal court decision page #3). It usually takes 2 days for the coordinator to receive your step 1 grievance, process it, and assign an I.d. number to it, and send you a receipt acknowledging your grievance was received along with the deadline requirements. Six days went by and I didn't receive any of this. So when I got my modified access papers, but not a receipt for my grievance, I started hitting the coordinator about my grievance from 6-2-16, what happened to it? Is she going to process it?, or will she let me grieve the issue over? For about a week and a half I hit the coordinator for a new form to grieve the issue on me being in chains and she would not respond to any of my hits while I was on modified access. "If prison officials refused plaintiff's request for a grievance form, the grievance process was unavailable to plaintiff and the claims asserted in the subjective grievance cannot be dismissed on failure to exhaust". Taylor v. Burt, No. 1:16-cv-9, 2016 WL 4276284 (W.D. Mich. July 20, 2016).

With that being said, the decisions of the lower courts were in complete error to decide that I did not properly exhaust all available remedies, because the coordinator still refused to send me a form while I was on modified access, although I kept asking her. That led me to writing the 6-21-16 grievance in which I stated was my 2nd time grieving the issue, but Lansing stamped over that part on my step 3. And although I still have copies of the step 1 where you can see it, the lower courts still rejected that copy although it was signed and dated by both the coordinator and Deputy Warden despite the differences I made on the papers. There were two officers' signatures on those papers identical to the step 3 version and should have been admissible and self-authentic under Federal Rules Evidence 901-903.

The final reason my petition should be granted is because the lower courts granted summary judgment in favor of defendant/respondent, Desiree Thomas, for on the exhaust issue, when I was not given a chance to conduct a full discovery against her. "District Court abuses its discretion

if it grants summary judgment to the defendant without giving the plaintiff a full opportunity to conduct discovery. An abuse of discretion occurs when the reviewing court is left with a definite and firm conviction that the district court committed a clear error of judgment". *Bunche v. United States*, 2018 U.S. App. LEXIS 16748 (6th Cir. 2018).

When Thomas First filed her motion for summary judgment in March 2018 (ecf# 50), I didn't receive it until May 2 or 3rd of 2018. Although lower courts, mainly district court disagreed. I have the proof. After Thomas filed (ecf# 50), her motion for summary judgment, I filed discovery request on Thomas, but I did not send them to Thomas, I sent them to the District Court, Clerk (ecf# 51-53). The reason I did this was because I did not have an address for her, so along with that discovery request, I sent a letter to the court, specifically stating I don't have an address for Thomas, because she has not filed an appearance of counsel or responded to the complaint.

Thomas, raised issues on fail to exhaust and my discovery request had nothing to do with that because at that time I didn't know she filed it. I finally received her motion around May 3, 2018. I filed an extension of time motion to extend my discovery, and allow extra discovery (ecf# 58, 59), but I was denied (ecf# 68). Thomas admits on the record (ecf# 65) that the reason I did not receive her motion for summary judgment was because she did not apply enough postage the first time, so it was sent back to me and she had forgot to re-send it to me until May. Actually I'm not sure what ECF it was, either (ecf# 65), (ecf# 75), (ecf# 78), (ecf# 90), (ecf# 91), or (ecf# 92).

The Court of Appeals decision page # 8 states "Even if Brown did not receive ~~Thomas~~ Thomas's motion until May, he cannot show that he suffered any prejudice". And Anytime a plaintiff does not have a chance to conduct discovery, and defendants is granted summary judgment is automatic prejudice, *Bunche (Id.)*. I would have requested the documents of the original grievance from 6-21-16 which would have showed it stated it was my and time grievance the issue. This would have ~~helped~~ helped me win in the District Courts. Just because other defendants raised the exhaustion issue in August of 2017, Thomas was not aware of that she did not file counsel appearance until 2018, and did not necessarily mean she would raise fail to exhaust. Although the appeal court decision blames me (page # 8 of court of Appeals decision), that I should have known she'll raise this issue. A prisoner's does not have to raise the fail to exhaust issue. "A prisoner's failure to exhaust administrative remedies is an affirmative defense" that the defendants have "The burden to plead and prove by a preponderance of the evidence". *Lee v. Wiley*, 789 F.3d 673, 677 (6th Cir.

2015). So I didn't have to raise such issue until Thomas brought it up. I received Thomas motion for summary judgment around 5-3-18, which was 14 days before discovery ended. In (ecf# 50), her motion for summary judgment, she re-sent it to me on May 1, 2018. But the Docket sheet for this case in the District Court, Does not show anything on the record she had re-sent it. But I still have the copies of the postage receipt she sent with the May date on their.

I don't remember which documented. I submitted it with but either (ecf# 80) or (ecf# 43). I submitted that receipt with and I believe Thomas admits all this in (ecf# 94 exhibit #2 exhibit A). I was suppose to get a 45 day discovery clocking with failure to exhaust against Thomas but only given 14 days. Even though I requested extension of time to do discovery (ecf# 59). and for extra discovery against her (ecf# 88). It was all denied. Because I was only given 14 days, I could not do a full discovery and requests the grievances I needed from her to respond to her summary judgment, therefore the Lower Courts Abused their discretion by giving Her summary judgment, ~~therefore the~~ ^{with-out} giving me a full opportunity to do discovery. Bunch v. United States, 2018 U.S. App. LEXIS 16748 (6th Cir. 2018)

Our circuit decision that I fail to exhaust on 6-2-16 is in conflict with other circuit cases and Law. In Dale v. Chandler, 438 F.3d 804, 811-12 (7th Cir. 2006) Courts held all prisoner exhausted all claims when he did everything necessary to exhaust but his grievance simply disappeared and he received no instruction as to what if Anything to do About it. "As well as Johnson v. Tedford, 616 F. Supp. 2d 32 (N.D. W. Va. 2007) stated "when a prisoner asserts a grievance to which there is none on record or given a grievance I.d. number, Available a remedy may be completely exhausted as there is none on record for next Administrative level to review" at Johnson 616 F. Supp. 2d at 76.

The National Importance of Having the Supreme Court decide this case and the questions Involved is because the 6th circuit and Lower courts have made a decision that compromises what it truly mean to exhaust all available remedies. They have made 2 fatal errors, 1 is deciding that when a prisoner's grievance totally Vanishes when he turns it in, and not giving a I.d. number so it can be traced. And he can appeal it. He still must Appeal this grievance that has totally vanished and there's no trace of it in the system because it was never processed at Step 1. 2 is deciding that a defendant is allowed summary judgment with-out giving a plaintiff a chance at full discovery. And 3 is deciding when a grievance coordinator refuse a prisoner request for a grievance form to grieve an issue, that prisoner fails to Exhaust all available administrative remedies. Every other circuit court should be aware. that the 6th circuit and District Court of Michigan Have made a

bad ruling, an error, on what it means to exhaust. If the Supreme Court did not decide on the question, of this case, then the 6th circuit and District Court could rule on another case like this by totally misreading and overlooking all the facts by ruling mainly that a prisoner has to step 2 and step 3 Appeal a grievance that was never even processed at step 1.

The National importance of this court⁵ to decide this case is to not let the lower courts abuse their discretion in improperly ruling on a case.

This is very important to others similar situated like me because they too could be affected by this decision. If they have requested grievance forms and the coordinator refuse them grievances, if they grievance form was never processed at step 1 and given an I.d. number^{not} to the prisoner could Appeal if necessary, the lower courts could also rule against them also and make a very bad precedent in our circuit and District that can change nationally and state-wide what it means to exhaust all available administrative remedies.

This also is nationally important because the Supreme Court needs to put other circuits in the country aware that they will not allow the lower courts to abuse their discretion or change the dynamics and law on failure to exhaust by over-ruling binding precedents that has already established the issues I have raised in this petition, that those issues, the petitioner should be granted that he exhausted all available remedies.

The reason I filed a petition for rehearing 2 days late was because of mis-information from the legal writer program and law librarian clerks, who informed me I could not file such motion, because no rule of the appellate Federal procedures allowed that. When requesting their assistance, I was sent federal Rule civil procedure 62 instead, and by the time I discovered I could file the motion. It was too late. "Prison officials may not take unfair advantage of the exhaustion requirement, however, and a remedy becomes unavailable if prison employees do not respond to a properly filed grievance or otherwise does not assign grievance an I.d. # and does not process it at all at step 1, and the entire grievance disappears" *Hardy v. Wood* 2011 U.S. Dist. LEXIS 33910 citing *Alexander v. Calzetta* 2019 U.S. Dist. LEXIS 34083, citing *Dale v. Chandler*, 438 F.3d 804 2006 U.S. App. LEXIS 4461 (7th Cir. Ill, Feb 4, 2006), and *Spigelman v. Samuels* 2013 U.S. Dist LEXIS 151240.

Relief Requested

I request this court grants this writ of certiorari, reverse the decision of the Court of Appeals and remand back to the lower courts for further proceedings, And also appoint attorney to represent plaintiff in lower courts proceeding as well as waive the remainder filing fee of this ~~motion~~ writ of certiorari and court of appeals filing fee.

Under the Penalty of perjury I solemnly swear the foregoing is true and correct

Ade Brown #884273

Ade Brown

~~ECF~~ ECF

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Manistee, MI, 49846

2.4.20