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No. 26-577

In the
Supreme Court of the United States

Peter Gibbons O'Connor
Petitioner

v.

Commissioner of Internal Revenue
Respondent

———{}———

On petition for Writ of Certiorari before judgment in the United States Court of Appeals for the Ninth Circuit, to the Supreme Court of the United States.

———{}———

PETITION FOR WRIT OF CERTIORARI

Petitioner, *in propria persona*

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QUESTION PRESENTED

Should this Court invoke its extraordinary power of supervisory control to halt a pervasive and indefensible practice by both Article I Tax Court judges and Article III federal judges in tax cases of routinely branding constitutional challenges as frivolous? By doing so, these courts effectively issue judicial bills of attainder of the very sort the Constitution expressly forbids legislatures to enact, thereby stripping litigants of any meaningful opportunity to be heard, denying them core due process protections under the Fifth Amendment, and allowing the government to prevail through summary dismissal rather than reasoned adjudication.

PARTIES TO THE PROCEEDINGS

The Petitioner appears in the caption of the case on the cover page. The petitioner is Peter Joseph Isaiah Gibbons O'Connor, who was the Petitioner in the Tax Court proceeding (Docket No. 21651-19). The Respondent is the Commissioner of Internal Revenue. The Respondent has appeared in the Ninth Circuit Court of Appeals through counsel as follows:

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PROCEEDINGS BELOW

United States Tax Court Docket # 21651-19

Peter Joseph Isaiah Gibbons O'Connor,
Petitioner
v.
Commissioner of Internal Revenue,
Respondent

T.C. Memo. 2025-42, entered on May 12, 2025, Final decision of the Tax Court entered on November 25, 2025.

United States Court of Appeals for the Ninth Circuit, Docket # 26-806

Peter Gibbons O'Connor, Appellant
v.
Commissioner of Internal Revenue,
Respondent

Final judgment on appeal not yet entered. This petition is interlocutory pursuant to Supreme Court Rule 10(a) and 11.

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PETITION FOR A WRIT OF CERTIORARI BEFORE JUDGMENT IN THE NINTH CIRCUIT COURT OF APPEALS

Petitioner respectfully yet urgently petitions this Court to invoke its extraordinary supervisory jurisdiction to end a grave and now-routine constitutional abuse in tax litigation: Article I Tax Court and Article III federal judges routinely brand non-frivolous constitutional challenges and the litigants who advance them, as 'frivolous,' wielding the label as a de facto bill of attainder of the very sort the Framers expressly forbade legislatures to enact. By punishing citizens for raising sound constitutional defenses, without trial, without meaningful evidence, and without any reasoned opportunity to be heard, this practice inflicts summary sanctions, penalties, and outright denial of access to justice, directly contravening core due process protections under the Fifth Amendment and undermining the separation of powers the Constitution demands.

OPINIONS BELOW

The memorandum opinion of the United States Tax Court (T.C. Memo. 2025-42) was entered on May 12, 2025, and is reproduced in the appendix to this petition at App. p, 3-21. The final decision of the Tax Court was entered on November 20, 2025, following approval of computations under Tax Court Rule 155. Notice of Appeal was taken to the Ninth Circuit on February 5, 2026. This petition seeks Supreme Court supervisory control before judgment.

JURISDICTION

Jurisdiction of this Court over lower federal courts is inherent and distinct from constitutional or statutory mandates. This Court possesses the authority to prescribe rules, procedures, or standards for inferior federal courts to maintain the integrity of the federal judicial system, promote fairness in judicial administration, and correct abuses. *McNabb v. United States*, 318 U.S. 332 (1943) *Thiel v. Southern Pacific Co.*, 328 U.S. 217 (1946); *La Buy v. Howes Leather Co.*, 352 U.S. 249 (1957)..

This supervisory authority, specifically enunciated in Rule 10(a), exists to prevent lower courts from departing so far from the accepted and usual course of judicial proceedings as to warrant intervention. See also 28 U.S.C. § 2101.

> An application to the Supreme Court for a writ of certiorari to review a case before judgment has been rendered in the court of appeals may be made at any time before judgment.

Rule 11 also allows a petition for writ of certiorari to a United States court of appeals before judgment.

Although Tax Court decisions are generally appealable to the U.S. Court of Appeals for the Ninth Circuit under 26 U.S.C. § 7482, and such appeal has been taken to the Ninth Circuit, direct review by this Court before judgment in the Ninth Circuit is warranted because prosecution of the appeal in the Ninth Circuit is futile.

The Ninth Circuit has a long history of classifying those who challenge tax law as tax protesters and summarily rejecting constitutional and statutory challenges to the federal income tax as frivolous, in dereliction of its duty to provide substantive adjudication and consider controlling Supreme Court precedent. See, e.g., *United States v. Romero*, 640 F.2d 1014 (9th Cir. 1981) (calling the argument that wages are not income fatuous as well as obviously incorrect); *Grimes v. Commissioner*, 806 F.2d 1451 (9th Cir. 1986) (affirming that wages are income under 1 and 61); *Waltner v. Commissioner*, 659 F. Appx 440 (9th Cir. 2016) (imposing sanctions for frivolous arguments that wages are not taxable).

This pattern demonstrates that the Ninth Circuit sanctions the same departures from due process as the Tax Court, making it an ineffective and hostile forum for addressing the systemic issues raised here. **Supervisory review under Rule 10(a) is thus appropriate to bypass the circuit court and correct these entrenched errors directly.** A corrective decision by this Court in this case would also resolve the several splits among the various circuit courts over the scope and effect of the federal income tax, all of which depart significantly from the current and binding precedent laid down by this Court.

RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS

Article V of the United States Constitution provides in relevant part:

> The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution ... which shall be valid to all Intents and Purposes, as Part of this Constitution, when ratified by the Legislatures of three fourths of the several States. ...

The Sixteenth Amendment to the United States Constitution provides:

> The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration.

United States Constitution, 16th Amendment.

Revised Statute 205, which was in force at the time the 16th Amendment was proposed by Congress and sent to the several States for ratification read:

> Whenever official notice is received at the Department of State that any amendment proposed to the Constitution of the United States has been adopted, according to the provisions of the Constitution, the Secretary of State shall forthwith cause the amendment to be published in the newspapers authorized to promulgate the laws, with his certificate, specifying the States by which the same may have been adopted, and that the same has become valid, to all intents and purposes, as a part of the Constitution of the United States.

26 U.S.C. § 61(a)(1-3) provides in relevant part:

> Except as otherwise provided in this subtitle, gross income means all income from whatever source derived, including (but not limited to) the following items: (1) Compensation for services, including fees, commissions, fringe benefits, and similar items; (2) Gross income derived from business; (3) Gains derived from dealings in property....

STATEMENT OF THE CASE

On May 21, 2024, Petitioner filed his Brief in Support of his Third Amended Petition in the United States Tax Court, along with the Declaration of Jeffrey A. Dickstein, a Memorandum in Support, and a Request for Judicial Notice with supporting brief (Tax Court Docket Nos. 49, 5254, 5859). These filings raised numerous issues regarding the constitutionality of an unapportioned, direct tax on his labor.

The Tax Court issued its Memorandum Opinion on May 12, 2025, (Docket No. 70) in which it:

a) Labeled Petitioner a "tax defier":

b) Without reference to any supporting Supreme Court authority, the Tax Court held that Petitioners brief was frivolous, rejected each of Petitioners arguments out of hand, ignored the certified facts, and relied entirely on contradictory rulings by inferior courts, thereby ignoring this Court's binding holdings. For example:

i) The Tax Court cited *United States v. Stahl*, 792 F.2d 1438 (9th Cir. 1986), while ignoring *Leser v. Garnett*, 258 U.S. 130 (1922) (App. 12);

ii) The Tax Court cited *Cabirac v. Commissioner*, 120 T.C. 163 (2003), while ignoring *Moore v. United States*, 144 S. Ct. 1680 (2024), and *Brushaber v. Union Pacific R.R. Co.*, 240 U.S. 1 (1916) (App. 13);

iii) The Tax Court cited to *Crain v. Commissioner*, 737 F.2d 1417 (5th Cir. 1984), and *United States v. Stahl*, 792 F.2d 1438 (9th Cir. 1986), while completely ignoring *Moore* (*supra*), *Pollock v. Farmers' Loan & Trust Co.*, 157 U.S. 429; aff. reh., 158 U.S. 601 (1895) and *Eisner v. Macomber*, 252 U.S. 189 (1920) (App. p. 10):

c) Noted that Petitioner was an attorney (App. p. 18):

d) Threatened the imposition of a $2,000 penalty for bringing such frivolity before the tribunal, but mercifully restrained itself (App. 20). This occurred despite Petitioners argument that inferior courts cannot overrule Supreme Court precedent, citing *Wilson v. Layne*, 526 U.S. 603 (1999) (holding that lower courts are bound by Supreme Court authority).

Then, in further punitive action, the Tax Court issued an Order to Show Cause on September 25, 2025, threatening Petitioner with disbarment if he did not resign from the Tax Court Bar, ostensibly for bringing frivolous arguments before the Court (App. 23). Petitioner resigned from the Tax Court Bar on October 16, 2025, to avoid punitive disbarment.

The Tax Court issued its final judgment November 25, 2025. (App. p. 27)

This petition seeks a writ of certiorari under Rule 10(a) to exercise this Court's supervisory power. The Tax Court has willfully disregarded binding Supreme Court precedent, denied due process, and used summary dismissals to penalize litigants for raising constitutional challenges. Similarly, Ninth Circuit precedent confirms that any litigant raising these issues will face the same, or even harsher, punitive treatment. This pattern of lower-court defiance urgently warrants this Court's review to remedy these systemic abuses.

REASONS FOR GRANTING THE PETITION

Chief Justice John Marshall famously capsulated these core features of the judicial power in *Marbury v. Madison*: "It is emphatically the province and duty of the Judicial Department to say what the law is." 5 U.S. 137, 177 (1803). Or, as Justice Story later declared, "[T]he Judicial Department has imposed upon it by the Constitution, the solemn duty to interpret the laws, in the last resort; and however disagreeable that duty may be, . . . [the judiciary] is not at liberty to surrender, or to waive it." *United States v. Dickson*, 40 U.S. 141, 162 (1841).

Chief Justice Hughes emphasized that due process of law requires cases to be brought before "'a judicial tribunal for **determination upon its own independent judgment** as to both law and facts.'" *Crowell v. Benson*, 285 U.S. 22, 60 (1932) [emphasis added] (quoting *Ohio Valley Water Co. v. Ben Avon Borough*, 253 U.S. 287, 289 (1920)); *see also St.*

Joseph Stock Yards Co. v. United States, 298 U.S. 38, 73 (1936) (Brandeis, J., concurring).

The Fifth Amendment bars the government from depriving persons of "life, liberty, or property, without due process of law." U.S. CONST. amend. V. A fundamental element of due process is having one's case adjudicated by a neutral court: "A fair trial in a fair tribunal is a basic requirement of due process." *In re Murchison*, 349 U.S. 133, 136 (1955). And "[f]airness of course requires an absence of actual bias in the trial of cases."

While U.S. Const. art. I, 9, cl. 3, prohibits Congress from passing a bill of attainder, the Tax Court's opinion demonstrates that it relied on what is tantamount to a judicial bill of attainder by labeling Petitioner a "tax defier" and "potentially threatening" (App. 11-13).

A bill of attainder denies due process by biasing judges to resolve questions of law in a manner that systematically sides with one party (the government) even when that party's interpretation of the law is contrary to this Court's precedent and the clear wording of the statutes at issue.

In such cases, the judiciary assumes magistracy, pronouncing upon the guilt or liability of the party without any of the common forms and guards of trial, ignoring sound evidence and law, when such proofs are readily within its reach, adhering instead to inferior "proofs" whether they are conformable to the rules of evidence, or not. In short, in all such cases, the judge exercises the highest power of sovereignty,

and what may be properly deemed an irresponsible despotic discretion, being governed solely by what he deems political necessity or expediency, and too often under the influence of unreasonable fears, or unfounded suspicions. *See*, 3 J. Story, Commentaries on the Constitution of the United States 1338 (1833). The irrebuttable presumption of the frivolous label introduces systematic prejudice into the adjudication of cases, in precisely the same manner as a bill of attainder.

Section 3707 of the Internal Revenue Service Restructuring and Reform Act of 1998, Pub. L. 105-206, 112 Stat. 778, provided that "The officers and employees of the Internal Revenue Service ... shall not designate taxpayers as illegal tax protesters", because Congress was "concerned that taxpayers may be stigmatized", S. Rept. 105-174, at 105 (1998), 1998-3 C.B. 537, 641. Despite this legislation, the Tax Court decided it could substitute "tax defier" for "tax protester": "This prohibition applies only to IRS employees and not to the courts; and we use here the alternative term 'tax defier.'" *Wnuck v. Comm'r*, 136 T.C. 498, 502, fn. 2 (2011).

According to the sophistry of *Wnuck*:

> [W]e use here the alternative term 'tax defier' for a reason having nothing to do with any supposed stigma attached to being a 'protester'. Protest of the Government, if undertaken lawfully, is protected by the First Amendment to our Constitution and is as American as apple pie. In this country no stigma attaches to being a legitimate

> 'protester'. But people who file dishonest 'zero returns' or who otherwise try to shirk their civic responsibility, evade their fair share of the tax burden, waste tax enforcement resources, and clog the courts with pointless lawsuits are simply scoff-laws. They enjoy the benefits of American security and stability while refusing to shoulder their portion of the burden. **They are not protesters but are defiers**... [emphasis added]

Wnuck, id.

The result is a systemic double standard. While the Tax Court deems constitutional challenges to the income tax as 'frivolous,' it simultaneously penalized Petitioner for using that same term to describe the Government's position, labeling it 'disparaging' and akin to 'threatening' (App. p. 8). This asymmetry demonstrates patent judicial bias. If the term 'frivolous' is considered so charged that its use by a litigant is deemed disparaging and threatening, then the Court's unilateral application of that label to dismiss serious constitutional questions, without meaningful adjudication, constitutes a prejudicial abuse of power that denies due process.

The Tax Court addressed the issue of various States intentionally amending the language of the proposed Sixteenth Amendment in the same manner as every other lower Court that has refused to address the issue. The Tax Court, rather than addressing the facts, instead flatly refused to take judicial notice of the relevant law and documents submitted by Petitioner and decided *sua sponte* instead that the issue was nothing more than the incompetence of various legislative Clerks to accurately recite or

transcribe the pertinent language proposed by Congress:

> Petitioner boldly proclaims his arguments are a fresh take (as many tax defiers do) but proceeds to give the same tired arguments challenging ratification in a handful of states based on claimed typographical errors.

App. p. 12.

The more than 1,000 pages submitted by Petitioner in the Tax Court (Tax Court Docket Nos. 49, 52-54, 58-59), consist of the actual legislative histories of each State's ratification debates, and the enrolled bills submitted by those states, and conclusively show the following states intentionally amended the language of the Sixteenth Amendment proposed by the federal legislature: Missouri, Washington, Oklahoma, Tennessee, Vermont, Maryland, Arkansas, California, Kentucky and South Dakota. Therefore, an insufficient number of states ratified the Sixteenth Amendment pursuant to Article V of the United States Constitution. Those documents, which the Court was required to take judicial notice,

conclusively[1] show intentional, deliberate amendments of the language proposed by Congress, as was reflected in the "enrolled bills" from each State that voted on the proposed Sixteenth Amendment. These are matters of fact, that cannot be logically construed as political questions, as facts can never be subject to a vote.

But, because Petitioner, an attorney, is a "tax defier" the Court ignored the legitimacy of the documents and refused to address the Constitutional issues

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1 An example is what happened in Oklahoma. There the House received a letter from the Governor dated February 10, 1910, transmitting a copy of Senate Joint Res. 40, legally and explicitly telling them they were to "approve or reject" the proposed amendment. This became House Joint Res. No. 5. After passing in the House it was sent to the Senate where it was reviewed by the Committee on Legal Advisory who suggested it be amended. On March 9, 1910, on the motion of Senator Thomas, House Joint Res. No. 5 was amended to read: "Article 16. The Congress shall have power to lay on collect taxes on incomes, from whatever source derived, without apportionment among the several states, and from any census or enumeration." On March 10, 1910, the House received a message from the Senate that it had passed House Joint Res. No. 5 as amended, and transmitted a copy, with the amendments, for House consideration. The Senate amendments were read, and Mr. Terral moved that the House agree to the Senate amendments. The House concurred by the vote of 91 yeas, no nays, with 17 absent. The Speaker declared the motion carried. Thereafter, in both the House and the Senate, the enrolled copy of House Joint Res. No. 5 as amended was read, compared to the engrossed version, found to be correct, and signed in the House by the Speaker and by the President pro tempore of the Senate. The amended version was sent to the Secretary of State where he concluded what he received showed mere typographical errors.

presented for adjudication. Yet, no Court has ever addressed the multiple intentional amendments made by the several states and other uncontested factual errors raised by Petitioner.

So too, the Tax Court, as well as other courts, have decided that 26 U.S.C. § 61 defines items of income, and therefore, wages are income. Congress, however, cannot define the word income:

> In order, therefore, that the clauses cited from Article I of the Constitution may have proper force and effect, save only as modified by the Amendment, and that the latter also may have proper effect, it becomes essential to distinguish between what is and what is not "income," as the term is there used; and to apply the distinction, as cases arise, according to truth and substance, without regard to form. **Congress cannot by any definition it may adopt conclude the matter, since it cannot by legislation alter** the Constitution, from which alone it derives its power to legislate, and within whose limitations alone that power can be lawfully exercised. [emphasis added]

Eisner v. Macomber, 252 U.S. 189, 206 (1920).

This Court has defined income as the term is used in the Sixteenth Amendment "as the gain derived from capital, from labor, or from both combined, provided it be understood to include profit gained through a sale or conversion of capital assets." *Eisner, id.* at p. 207.

The Courts, in treating wages as income as opposed to the potential source from which income may be derived, are doing what they have already been told they cannot do:

> The Government, although basing its argument upon the definition as quoted, placed chief emphasis upon the word "gain," which was extended to include a variety of meanings; while the significance of the next three words was either overlooked or misconceived. "Derived ... from ... capital"; ... "the gain ... derived ... from ... capital", etc.

Eisner, id.

26 U.S.C. § 61(a)(1-3) provides in relevant part:

> Except as otherwise provided in this subtitle, gross income means all income from whatever source derived, including (but not limited to) the following items: (1) Compensation for services, including fees, commissions, fringe benefits, and similar items; (2) Gross income derived from business; (3) Gains derived from dealings in property...

If this Court's definition of 'income' is substituted into 26 U.S.C. § 61, the statute reduces to a circular definition: 'gross gain derived from labor or capital means all gain derived from labor or capital.' To establish specific rules for calculating tax liability, Congress created distinct statutory subsets of 'gross income,' including 'adjusted gross income' (26 U.S.C. § 62), 'taxable income' (§ 63), and 'ordinary income' (§ 64). In distinguishing between the source of wealth

and the gain derived from it, this Court has explained:

> The property, which every man has in his own labor, as it is the original foundation of all other property, so it is the most sacred and inviolable.

Butchers' Union Co. v. Crescent City Co., 111 U.S. 746, 757 (1883) (*concurring opinion of Justice Fields).*

This Court has also held the right to enter into contracts for employment is a personal property right. *Coppage v. Kansas*, 236 U.S. 1, 14 (1914); *Adair v. United States*, 208 U.S. 161, 172 (1908).

In his First Amended Seriatim Reply Brief (Document No. 67, August 9, 2024), Petitioner highlighted this Court's decision in *Moore v. United States*, 144 S. Ct. 1680 (2024), reaffirming the tax as indirect excise:

> "Income" in the Sixteenth Amendment refers only to income realized by the taxpayer. The Amendment resolved a long-running conflict over the scope of the Federal Government's taxing power. It paved the way for a federal income tax by creating **a new constitutional distinction between "income" and the "source" from which that income is "derived."** Drawing that distinction necessitates a realization requirement. [emphasis added]

Moore, id.

Congress has enacted the statutory procedure to determine if there is a gain from the sale of personal

property at 26 U.S.C. §§ 1001(a)-(b), 1011 and 1012. The lower Courts ignore this language, as well as the established precedents of this Court cited above. Instead the IRS, with full cooperation of the courts, directly taxes labor as measured by gross receipts, instead of taxing the gain, if any, derived from labor, in direct contravention of This Court's many holdings to the contrary.

It is a court's absolute duty to give effect, where possible, to every word of a statute and not to treat statutory terms as surplus. *Duncan v Walker*, 533 U.S. 167, 121 S. Ct. 2120 (2001); *Montclair v. Ramsdell*, 107 U.S. 147, 152 (1882).

Petitioner asks the Court to exercise its power of supervisory control to prevent the lower Courts from ignoring the Supreme Law of the Land, supplanting reasoned judicial opinion based on the facts and the law by using judicial bills of attainder to declare the litigant "frivolous." Such conduct denies due process as a matter of law and must be stopped.

Supervisory control is also necessary as Petitioner has no recourse to appeal, as he has been clearly warned he is not entitled to allege that the federal government is violating the Constitution with respect to taxation, without facing sanctions. According to the Ninth Circuit:

> Taxpayers' claim that their wages are not income is frivolous. So too the appeal is frivolous. **Therefore any one using that argument is subject to attorneys fees and double or single cost.** *See United States v.*

> *Romero*, 640 F.2d 1014, 1016 (9th Cir. 1981); *United States v. Buras*, 633 F.2d 1356, 1361 (9th Cir. 1980); *Funk v. CIR*, 687 F.2d 264, 265 (8th Cir. 1982)". [emphasis and cases cited therein, added]

Gattuso v. Pecorella, 733 F.2d 709, 710 (9th Cir. 1984) (quoting and citing *Romero, Buras*, and *Funk*).

No reasonable man, much less an attorney, would dare to ask the Ninth Circuit to enforce the Constitution in a tax case. Thus, this Court is the only Court to resolve whether or not Petitioner's allegations are in fact true.

> The law in this area is clear. This Court has supervisory authority over the federal courts, **and we may use that authority to prescribe rules of evidence and procedure that are binding in those tribunals.** *Carlisle v. United States*, 517 U.S. 416. 4263 (1996). [emphasis added]

Dickerson v. United States, 530 U.S. 428, 437, 120 S.Ct. 2326, 2332, 147 L.Ed.2d 405, 415 2000).

CONCLUSION

The Tax Court's and Ninth Circuit Court's entrenched pattern of disregarding binding Supreme Court precedent while imposing prejudicial outcomes, solely on the basis of contradicting inferior court rulings is essentially a rebellion by renegade inferior courts, which demands this Court's direct supervisory intervention. As the Ninth Circuit has made clear in current *stare decisis,* any appeal to the Ninth Circuit of these issues will result in the summary rejection of the appeal and the imposition

of sanctions and penalties against Petitioner, making direct review by this Court the only possible redress for these patent judicial abuses.

This systematic refusal of the Tax Court and federal circuit courts to apply controlling Supreme Court precedent to the facts and law before them routinely denies due process, in violation of the Fifth Amendment. By refusing to consider unresolved tax-related issues on the merits these courts violate their judicial duty for fair and impartial adjudication. The practice of summary rejection of well-supported constitutional challenges creates in effect, a judicial Bill of Attainder. The resulting confusion in the inferior courts is damaging to the economy and thousands of Americans are financially harmed through what can only be described as institutionalized prejudice against resolution on the merits of important unresolved questions of law.

This case presents an ideal, unclouded vehicle (with fully stipulated facts and straightforward questions of law) for resolving the important issues presented, the ramifications of which will profoundly impact tens of millions of Americans. Absent this Court's decisive action, inferior courts will perpetuate their attainder-like rejections, dismissals, and imposition of sanctions and penalties, eviscerating due process and shattering public faith in the judicial system (*Coleman v. Commissioner*, 791 F.2d 68 (7th Cir. 1986)). Rule 10(a). The ongoing practice of prejudicial attainder through judicial fiat by inferior courts, compels Supreme Court correction to restore constitutional fidelity and judicial integrity.

Respectfully submitted,

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