

## A death in the rain

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FROM THE ARCHIVE | This week Fijian fruit-picker Josefa Rauluni died in the Villawood detention centre. **Peter Mares** describes a similar case nearly ten years ago, and how the coroner's inquest unfolded



**Almost ten years ago, just prior to Christmas 2000, Viliami Tanginoa died at the Maribyrnong detention centre. A Tongan national, he had been detained by immigration officials when found picking fruit near Swan Hill. On the morning he was to be sent to the airport and “removed” from Australia, Mr Tanginoa climbed to the top of a basketball stanchion in the detention centre courtyard. His protest lasted eight hours and ended when he fell or jumped head-first onto the ground below.**

**It was three years before the inquest into his death was completed, and when the findings were handed down the coroner was scathing about the “haphazard, unmethodical, wholly inadequate approach” that the private operators of the detention centre had taken to Mr Tanginoa’s aerial protest. In his recommendations, the coroner said that if a similar situation were to arise in future, it was imperative that professional negotiators be brought in.**

**This is the essay that I wrote after the coroner handed down his findings in December 2003. Were the lessons of Mr Tanginoa’s death heeded? This week thirty-six-year-old Fijian fruit-picker Josefa Rauluni died in disturbingly similar circumstances in the Villawood detention centre in Sydney. Let us hope we do not have to wait three years for Mr Rauluni’s inquest to find out what went wrong this time.**

— *Peter Mares*

THE VIDEO shows a man sitting quite still, his face impassive. The only visible movement is an occasional puffing of the cheeks as he blows bursts of air through half-closed lips. It is a gesture that suggests forbearance, as if he is breathing through gritted teeth. Perhaps he is endeavouring to see off the pain in legs cramped after almost eight hours of crouching. Perhaps he is trying to ignore the growing pressure on his bladder. Perhaps the puffing helps to chase certain thoughts from his mind or disperses the water that is trickling down his face.

It is raining hard. A summer thunderstorm has dumped sheets of water on Melbourne’s western suburbs. The man’s back is hunched to the deluge but nothing can prevent him from being drenched. He is perched on top of the steel frame that supports a basketball hoop. Heavy drips fall steadily from the cuff of his sleeve to the backboard and then slide off to join the shallow lake that has formed in the courtyard three metres below. The basketball net hangs forlorn, half torn from its ring and flapping miserably in the wind.

Whoever is behind the camera informs us that it is now 15.46. The downpour has lasted the best part of an hour. The camera pans to show a second man, another Pacific Islander, who enters the courtyard from a doorway to the left, dressed in blue shorts and a white T-shirt. He walks around the perimeter of the courtyard towards the basketball ring and stops next to a small, raised garden bed constructed from concrete blocks. The blocks have been painted a lurid green and the garden bed itself contains a conifer which has been inexpertly draped with a long strand of silver Christmas tinsel. The two men converse, gesticulating but inaudible. After a couple of minutes the conversation ends and the man in the white T-shirt retreats inside, stepping gingerly around puddles.

The camera’s attention returns to the man sitting in the rain. The video is on a long zoom and the picture is a bit grainy but it is evident that he is no longer young. His hair shows patches of grey and his features are emphasised by the deep furrows in his face. He is big but not fat. He looks strong. One person who saw him scale the pole just after eight o’clock that morning described it as “an athletic feat for such a large man.” The minutes tick by and he continues to sit, continues puffing his cheeks. Once or twice he flicks the rain out of his eyes with a finger. Every now and again there is an exchange with someone who is out of view of the camera. Otherwise the man is still. Later one observer would say that he was “not looking at anyone or anything but staring at a place.” He was “very focused and concentrated in thought” as if he was “thinking about his whole life.”

At 15:51 the man clearly motions for a cigarette. A moment later he waves, as if to acknowledge that his friend cannot help, that he understands his request has been overruled by higher powers. Then, inexplicably, the video cuts out.

The next piece of footage shows a body lying motionless on the concrete. The body is half hidden by the garden bed that contains the Christmas tree but two bare feet protrude beyond the low green wall. The feet look small, too small for such a big man. It is still raining.

VILIAMI TANGINOVA died shortly after four o’clock on the afternoon of Friday 22 December 2000 at the Maribyrnong detention centre. He was fifty-three years old and he had been living in Australia for seventeen years, since arriving from Tonga in April 1983 and overstaying a six-month visitor’s visa. In August 2000, after a tip-off to the immigration department, Victorian police arrested Tanginoa near Swan Hill, where he had been working as a fruit-picker. His son Antonio was also detained. Antonio had followed his father to Australia, stowing away on a Sydney-bound vessel at the age of fifteen and then sneaking onto the docks to evade the immigration authorities.

Viliami Tanginoa, often called William or Bill, had three half-brothers in Sydney, all Australian citizens. He was known to the Tongan Catholic Church in Auburn, in Sydney’s west, where the local priest described him as “a good family man.” The general impression of those who knew Tanginoa, both in and out of detention, was of “a gentle giant”; taciturn, softly spoken and peaceful. The detention centre’s manager would

describe him as “polite and courteous, compliant.” Tanginoia would end discussions with his immigration department case officer with a blessing, saying things like “God bless you” to the woman who was organising his deportation.

Paul Lasalo, liaison officer for the Tongan Catholic Chaplaincy in Australia, says Tanginoia lived for many years in Marrickville, where he was employed as a process worker. More recently he had moved to join Antonio in Victoria. According to Lasalo, the two men were arrested shortly after a hospital visit to Antonio’s wife, who had just given birth to the couple’s first child. Antonio’s relationship with an Australian citizen meant that he had a chance of eventually re-entering Australia on a spousal visa, so he agreed to return to Tonga promptly, departing Australia just six weeks later.

Viliani was reluctant to join Antonio on a one-way trip to Tonga despite the opportunity of being reunited with his wife and six other children. Rocky, a Fijian also detained at Maribyrnong, said that his friend “William” had been “crushed” by the decision to deport him. He knew that unemployment awaited him in Tonga and he believed that he was in a better position to provide for his family and himself by staying in Australia, albeit as an illegal immigrant. After seventeen years the bonds with his homeland had also weakened and he had formed a relationship with an Australian woman, with whom he was living at the time he was picked up. Back in Tonga, four of his seven children hardly knew him; even the eldest son, Viliani jnr, was only eight years old when his father left.

It is not an uncommon story in Tonga. The total number of Tongans living outside their homeland – mostly in Australia, New Zealand and the United States – is roughly equal to the 100,000 who remain in the country. Remittances from Tongans living abroad make up the country’s single biggest source of income. Last year remittances were equivalent to 50 per cent of the country’s GDP and worth more than five times the income from exports and tourism combined. Like many Pacific Island nations, Tonga has limited natural resources and is experiencing population pressures; every year about 2000 young people leave school to look for work but only about a quarter of them find jobs. On reaching the age of sixteen, every Tongan male is theoretically entitled to an allotment of up to 3.4 hectares of land for growing food. But Tonga’s minister for lands recently told *Pacific Magazine* that he has “no more land to give.” The magazine *Matangi Tonga* reports there are now more than 10,000 landless citizens in the country. All this helps to explain why Tongans are among the nationalities most likely to overstay their visas on a visit to Australia and why Viliani Tanginoia was reluctant to return to the land of his birth.

After being taken to the Maribyrnong detention centre, Tanginoia sought the help of Lasalo, who coordinates the work of the Australia Pacific Amnesty Council on behalf of the Tongan Catholic Chaplaincy. The council mediates between the immigration department and Pacific Islanders who have been detained as illegal immigrants. Lasalo can often negotiate for detainees to be released on a bond so that they can finalise their affairs in Australia before departure. In most cases, he says, the department demands a definite departure date, evidence of a one-way ticket home and a “reasonable” bond of between \$1000 and \$1500. Lasalo was shocked when the bond suggested for Tanginoia was \$8000, an amount that was well beyond reach, even with the help of friends and relatives. He believes that if a reasonable bond had been set, then Tanginoia would have accepted the conditions and departed of his own accord.

Evidence given to the Migration Review Tribunal presents a slightly different story; it says that the department set a compliance bond of \$2000 with seven conditions attached, but that the deal was never finalised because the department “was not satisfied that the funds were available or could be accessed for the purpose.” Regardless of the exact amount involved, the department clearly saw Tanginoia as a flight risk. In the seventeen years he had lived in Australia he had come to official attention only once before, in October 1994, when he lodged an application for refugee status. The application was rejected five months later and he disappeared back into the community.

While the department believed that Tanginoia was determined to remain in Australia, it did little to prepare for the potential problems involved in sending him back to Tonga. Even though appeals to the Migration Review Tribunal and the Federal Court had failed, Tanginoia still seemed unable or unwilling to accept that his days in Australia were numbered. According to his immigration department case officer, when confronted with the reality Tanginoia “would just tend to go quiet” or would talk about being transferred to Villawood in Sydney, or about other options that had already been ruled out.

Three days before his scheduled departure, Tanginoia refused to sign a document acknowledging the travel arrangements that had been made on his behalf. He told other detainees that he “was not going to sign any deportation paper” and one detainee noted that his sleep patterns had changed and that he was staying up late. Yet there was no follow-up, no consultation about Tanginoia’s case between the department and Australasian Correctional Management, the private company which ran the Maribyrnong detention centre and which had the responsibility for transporting Tanginoia to the airport and putting him on a flight back to Tonga.

On the morning that he was due to depart Australia, Tanginoia woke his Fijian roommate Rocky (the man wearing the white T-shirt in the video) at 7 am and asked him to join him in prayer. He declined to accompany Rocky to breakfast, saying he was not hungry. At about 7.30 am the detention centre property officer Cyn Jones says he told Tanginoia to pack his things and prepare to leave for the airport. Some minutes later he repeated the request but, he says, Tanginoia “just wandered off.” Jones said a “funny feeling” came over him that Tanginoia “wasn’t really interested” in leaving. A few moments later he saw Tanginoia scale the basketball stanchion.

Rocky recalls a rather different scene. He says four officers were circling his friend in an effort to apprehend him, but that Tanginoia “managed to wrestle his way through the back door of the pool room, and pounce onto the pole and slither up to the top.” Either way, it was a particularly inconvenient time for such a protest action. On the morning in question, ACM was hosting a visit from Philip Flood, former head of the Department of Foreign Affairs and Trade, who was conducting an inquiry into immigration detention procedures at the request of the then immigration minister, Philip Ruddock. At one point, Flood walked through the courtyard and passed by Tanginoia sitting on the pole. Flood was accompanied by senior immigration department officials who must have been alerted to the protest, yet it appears that departmental managers did not take an active interest in events at the detention centre or closely monitor the situation after Flood had left. If they had, perhaps they might have urged ACM to activate Operation Clam, a protocol between ACM and the Victorian police to engage professional negotiators “in a hostage or similar situation.”

Shortly before noon, after his VIP guest had departed, ACM detention centre manager Tony Tipper turned his attention to the situation in the courtyard. By this stage the scheduled flight to Tonga was long gone and there was no chance of Tanginoia being deported until after Christmas. A parade of ACM staff and immigration department officials had trooped out to the basketball stanchion to point this out to Tanginoia, confident that it would convince him to end his protest. The centre manager endorsed the approach and made his own attempt to talk the big Tongan down: “Bill, come on down. Let’s go and have a cup of tea. You’ve achieved what you wanted to do. Let’s get back to normal operations.” When this approach failed, Tipper ordered that all other detainees be excluded from the courtyard. Up to this point, they too had been speaking with their colleague, occasionally throwing him up cigarettes or food.

At about 1.30 pm Tipper directed staff to place some mattresses around the base of the basketball pole, especially to cover the heavy bench seats. Half an hour later, staff approached again and this time Tanginoia became agitated. The video shows him standing up, balancing himself against the backboard with one hand, and waving at staff to move away with the other. The entire structure wobbles visibly under his weight. When the ACM officers retreat, he sits down again. A few minutes later the centre’s operations manager, David Randich, approaches once more. Tipper says he had instructed Randich to bring out a ladder, although no ladder is visible in the video. This time Tanginoia’s reaction is even more dramatic: he points at his own head, then stands again, waving Randich away and pointing at the ground. He is threatening to jump.

This may not have been the first time that day that Tanginoia threatened self-harm. Fellow detainee Yusuf Omar testified that when he spoke to the Tongan at around 10.30 am, Tanginoia had said “that he wanted to make a sacrifice for all refugees as Jesus had sacrificed for all men.” Omar thought he was joking. In the early afternoon, however, ACM officers were left in no doubt that Tanginoia was serious. Centre officer Alan Bessina recalled that Tanginoia shouted, “Fuck off or I’ll jump.”

By this time, at the very latest, ACM should have reconsidered its approach to the situation. Later, ACM managers investigating the death described the tactics used on the day as a "wait and see" approach and "passive negotiation." After viewing the evidence as an expert witness, psychiatrist Paul Mullen said that "common sense" would indicate that Tangino was "in a state of considerable distress and emotional turmoil" whatever his outward signs. "And it would seem that clambering up the pole and putting himself on the basketball hoop at the very least put him in immediate risk of harm."

Mullen's overall assessment of ACM's approach was nothing short of damning. Referring to the video, he said: "There are brief moments when something is done. There are enormous lengths of time when nothing, effectively, is being done. If you're asking me whether the approaches to him showed any evidence of an informed, structured approach or really thinking through what they were doing, I find it difficult to discern it. I think there was a culture which borders on contempt for this man and I think that that was what we saw."

THE CORONIAL inquest into Viliami Tangino's death opened on 20 January 2003, a day when Melbourne was sweltering in thirty-seven-degree heat and blanketed by a grey-brown haze and the smell of burning forest. More than two years had passed since Tangino's fall and many of the detainees who had witnessed the event had long been removed from Australia; in fact, a community lawyer reported after visiting Maribyrnong that four key witnesses had been removed or transferred interstate before police had begun taking formal statements. Detective senior constable Paul Allen told the inquest that the five-week delay in taking formal statements was caused by "the logistics of obtaining enough members to take statements and organising and pre-booking interpreters to have them all available at one time." It also took two weeks for police to secure videotapes of the incident from ACM staff. The police officer expressed little concern at this, saying the tapes had been "sealed in a clear vinyl bag and locked in a safe"; with hindsight, he admitted, it might have been a better idea to secure the tapes when he visited the detention centre on the day of Tangino's fall.

The first order of business at the inquest was an application by Brimbank Community Legal Centre to be represented. Brimbank argued that it brought particular expertise in relation to deaths in custody and that its participation in the inquest would be in the public interest. Coroner Phillip Byrne gave short shrift to the application, expressing concern that the hearing should not "become a forum for a 'free-ranging' debate on the question of the detention of unlawful non-citizens or the broad issue of privately operated detention centres." He expressed confidence in the capacity of the counsel assisting the coroner to bring all relevant issues to his attention.

Without the legal centre, the bar table was dominated by three separate legal teams representing ACM, the immigration department and an individual departmental officer. One wry observer in the gallery estimated the collective cost at \$15,000 per day. Proceedings over the next four days were largely a tussle between the teams from immigration and ACM, as each endeavoured to ensure that responsibility for the death was seen to reside solely with the other. This unseemly contest between the government and its private-sector enforcer may have offered some grim satisfaction to critics of Australia's immigration detention system but it was doing little to shed light on the circumstances of Tangino's fatal fall.

Immediately after the death, media reports had quoted detainee witnesses who accused detention centre guards of taunting Tangino while he sat on the pole. In unsworn statements collected by visitors to the detention centre in January 2001, Tangino's friend Rocky accuses ACM staff of "shooting the ball into the basketball post where Tangino was sitting." At least three other detainees made the same accusation in unsworn statements and the accusation was included in the brief of evidence presented to the court. The inquest heard no other testimony to support the allegation but at one point the video shows operations manager Randich walking through the frame bouncing a basketball. Quizzed about his behaviour, Randich told the inquest: "I was trying to show him that I wasn't there to antagonise him. I was there just purely to observe, and I wouldn't interfere with him." The explanation failed to impress the coroner, who said Randich's actions were "at best unhelpful and amateurish" and epitomised "the ineptitude of the approach adopted by ACM" towards Tangino's protest.

Detainees accused another officer, Helen Floros, of taunting Tangino when he asked for a cigarette by promising to give him her whole packet if he came down. The detainees claimed that he became angry when she laughed and joked that he was making her stand out in the rain. The incident is captured on video but it is impossible to decipher the words that pass between them. In her witness statement Floros said she had "pleaded" with Tangino to come down and told him that it "hurt" her to see him up the pole. She also said she was not concerned for Tangino's safety because she thought he was being "a stubborn old man." The coroner accepted that the cigarette incident was not a taunt but "a genuine offer to endeavour to persuade Mr Tangino down."

However well intentioned the actions of Floros, they reinforced the coroner's overall impression of ineptitude. As German detainee Jorg Diebel put it, detention centre staff did not seem to appreciate the seriousness of the situation and were tending to treat it "like children playing a game." Mitrevski Blagoj, a detainee from Macedonia, said he urged the detention officers to take the event seriously because "if he jump from the post, he will hurt himself very badly or maybe even kill himself." He said the officers dismissed his concerns, telling him that Tangino would come down when he became hungry and thirsty.

After the first four days of the inquest it seemed unlikely that the concerns of Tangino's fellow detainees would receive much attention, despite the efforts of counsel assisting the coroner. But when the inquest reconvened later in the year, proceedings took on a different hue.

At this point I must declare my own small intervention. In my efforts to piece together the story of Tangino I had asked a friend and colleague, Nic Maclellan, to see if he could track down the Tangino family while on a private visit to Tonga. I had assumed that the family had decided, for whatever reason, not to be represented at the inquest but I thought that they might wish nonetheless to be kept abreast of proceedings by someone who was following the matter in Melbourne. In return, I was hopeful that the family would agree to tell me more about Tangino and his life in Australia.

Nic had little trouble in tracking down the family, since Catholics are a small minority in the predominantly Methodist kingdom. After a couple of phone calls, he met with a nun who took him to meet Tangino's widow, Tongi, who lives in a simple fibro house on the outskirts of the capital, Nuku'alofa. Seated on pandanus mats under a mango tree with her children and grandchildren gathered around, they began a slow discussion in a mixture of Tongan and English. The family was welcoming but reserved and Nic sensed an undercurrent of conflicting emotions; partly anger and miscomprehension at what had happened, and perhaps some discomfort that they might not have had much contact with Viliami snr in recent years. At one point the eldest son, Viliami jnr, became quite emotional: he described the many bruises on his father's body when it was returned and asked why his chest had been covered in some kind of plastic. It was not a question that Nic could answer. When the inquest was mentioned there was another flash of emotion; the family said their only contact with Australia had been with Tangino's half-brothers in Sydney, to organise the return of his body through a funeral director. Australian authorities had never contacted the family directly. The family knew nothing at all about the inquest.

I put Viliami jnr in contact with the Brimbank Community Legal Centre, which organised pro bono legal assistance through the law firm Slater and Gordon. When the inquest reconvened briefly in March, Tangino's family was represented by a top-flight barrister, who asked that eleven witnesses be recalled for cross-examination. The coroner was initially reluctant to grant the request. He said it was "certainly somewhat regrettable" that the family in Tonga had not been advised of proceedings. But he warned that he "wouldn't be revisiting the whole exercise." Apparently the coroner's office had relied on the immigration department to contact the next of kin, and the immigration department had satisfied itself with contacting one of Tangino's half-brothers in Sydney. After considerable discussion the coroner eventually agreed to the recall of seven witnesses, all ACM staff, with the proviso that cross-examination be restricted to the issues of training and the question of whether Operation Clam should have been activated.

Hearings began again on a cold and rainy day in late July with Tongi Tangino and Viliami jnr in attendance. The rigorous cross-examination of ACM staff by the family's barrister lent a new intensity to proceedings and the quiet presence of the widow and her son brought a subtle change to the atmosphere in the courtroom. With the assistance of an interpreter, they listened intently to three days of complex and at times

distressing evidence. Years of separation from Viliami Tanginoa did not diminish the family's need to understand the circumstances of his death.

SHORTLY before four o'clock in the afternoon on 22 December 2000, Rocky was told that he could not take a cigarette out to his friend on the basketball pole. A few moments later Tanginoa turned his back to the common-room window from where he was being watched and stood up to urinate. Then he turned back to face the window, climbed to the very top of the basketball stanchion and dived to the ground. Detention centre officer Geoffrey Parkes retains a vivid picture of Tanginoa "flying through the air, head first, as if it was a swimming dive." Asked if Tanginoa might have slipped accidentally, Parkes was emphatic: "No, not in my mind, not one chance in a thousand, no."

In his finding, handed down in late November, coroner Byrne concluded that inaction by ACM had contributed to Tanginoa's death. Rather than a "strategic, informed, cohesive, active, structured management plan" in response to Tanginoa's protest, he saw only "a haphazard, unmethodical, wholly inadequate approach." The coroner said that it was imperative that professional negotiators be brought in. If this had happened, he concluded, then "the tragic event would have been prevented." Perhaps the coroner would have reached an identical conclusion even if the family had not been represented in the final stages of the inquest. Perhaps not.

The coroner also made six recommendations, including a revised protocol "for detainees who are known to be at risk of self-harm, in particular all persons who have been served with a Notice of Removal... and for whom removal is imminent." He said detainees who had been notified of their removal should be formally assessed and monitored under a management plan to ensure their well-being. He also called for a review of interpreting facilities and the development of a protocol for the use "of external facilitators in crisis situations." A spokesman for Group 4 Falck, which was gradually taking control of immigration detention centres from ACM, said that the company had "taken note" of the coroner's recommendations. There is certainly room for improvement: between December 2000 and December 2003 there were ten more deaths of people being held in immigration detention.

Viliami Tanginoa's story has implications that extend well beyond the system of immigration detention. In its voluminous report [A Pacific Engaged](#) <sup>[1]</sup>, the Senate Foreign Affairs, Defence and Trade Committee recommended a pilot program be set up to allow seasonal workers to be recruited from the Pacific to Australia. Such schemes have been under discussion in parliament since at least 1984. The potential advantages are obvious: Australian employers would be able to recruit short-term labour for peak employment periods while the workers would transfer money (and, ideally, skills) back to their homeland. The idea has the enthusiastic support of industry groups such as Queensland Fruit and Vegetable Growers which regularly experiences labour shortages, particularly at harvest time. Queensland asparagus farmer Ian Nielsen told the Senate committee that in 2002 labour shortages had stopped him harvesting 30 per cent of his crop. As a result 150 tonnes of asparagus, worth about \$1 million, had been left in the fields.

The complexities should not be underestimated; experience elsewhere in the developed world shows that "guest workers" do not always go home when they are supposed to: they become enmeshed in local communities, fall in love, have children, get sick or simply decide they like it and want to stay.

But the alternative to a formal labour migration scheme may simply be an informal one, the de facto situation we have now, where Pacific Island "illegals" and other "overstayers" plug the gaps in the labour market that unemployed Australians and European backpackers cannot or will not fill. At least a formal scheme would be regulated and open to scrutiny. And while some migrant workers may not want to go home, most will, to tend to their own fields, extend their homes, invest their earnings in a business venture, see their families and friends and fulfil traditional cultural and filial responsibilities. It is easier to go home at the end of the harvest season if you know that there is a good chance of coming back to work next year. If you are an "illegal," however, then going home means abandoning almost all possibility of returning legally to Australia.

Viliami Tanginoa's story is testimony to this; he did not want to go home because he knew that what awaited him was unemployment and that without a job he could not provide for his family. The tragic irony is that the longer Tanginoa stayed away, the weaker his ties to his family and his homeland became. If a guest-worker scheme had been operating, Tanginoa's story may have had a different trajectory. If the federal government were to introduce such a scheme, combined with an amnesty for Islanders already working here illegally, perhaps a repeat of Tanginoa's fate might be avoided. •

**Since this essay was published, the federal government has piloted a small seasonal work program to employ Pacific Islanders in Australian horticulture, although the trial has been beset by problems. [Islands Business](#) <sup>[2]</sup> and [The National Interest](#) <sup>[3]</sup> provide more details. Over the same time New Zealand has managed to establish a quite successful and expanding Pacific seasonal work program. I investigated the complexities of such a program with colleague Nic Maclellan in a research project in 2005 and 2006; the project outcomes are documented [here](#) <sup>[4]</sup>.**

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*Photo: Jean Rumbold/ iStockphoto*

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[3] The National Interest: <http://www.abc.net.au/rn/nationalinterest/stories/2009/2755902.htm>

[4] here: <http://www.sisr.net/Flagships/DJ/Projects/pacific.htm>

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