



RSC Backgrounder *Biden's Dangerous Immigration Agenda*

President Biden's has made it a mission of his to refashion our nation's immigration system into one that focuses on mollifying the political aspirations of the Far Left rather than those of American citizens. The Biden administration has wasted no time in executing its radical vision. President Biden has signed numerous immigration-related Executive Orders (EOs) and Presidential proclamations while his administration has undertaken other troubling policies. The main thrust of these early efforts is to reverse the immigration policies of the Trump administration and pave the way for massive expansions in the number, method, and ease by which prospective immigrants, both legal and illegal, can come to or remain in the United States.

President Biden has also released an unprecedented legislative package, the [U.S. Citizenship Act of 2021](#), containing even more liberal immigration reforms he hopes to usher through Congress. This legislation would build off his executive actions and Obama-era precedent to reshape the American immigration system in the Progressive image. It would grant amnesty to [11 – 22 million](#) illegal immigrants, gift billions of dollars to those Central American countries that produce the most illegal immigrants, and unwind enforcement of immigration laws. Conservatives recognize that these policies would only exacerbate illegal immigration and draw more and more men, women, and children to our border.

Under normal circumstances, President Biden's immigration agenda would be irresponsible. During the present pandemic, and when viewed in light of Biden's domestic policies, they are immoral. As the Biden administration pushes to open our borders for illegal immigrants, it also contemplates restricting the ability of Americans to travel freely between our states. All the while, schools remain closed across the nation. While American businesses remain shuttered due to draconian shutdown orders, Biden seeks to send billions to corrupt foreign governments. While millions of Americans are trying to get back to work, Biden is pushing legislation that would result in millions more non-Americans coming to the United States each year. Just a month into his administration, President Biden's policies are already creating a crisis at the border. His administration's answer? Give illegal immigrants the same access to COVID-19 vaccines as law abiding American citizens.

This RSC Backgrounder outlines the executive actions President Biden has unilaterally taken to date, previews those actions his administration is expected to take in the future, and provides an overview of his proposed legislative package. Last, it provides an outlook on possible future Congressional action.

Biden Administration's Early Executive Actions

President Biden's first action to undermine Trump era immigration and border policies was to end the state of emergency which Trump declared along the U.S. southern border. By issuing his [Proclamation on the Termination Of Emergency With Respect To The Southern Border Of The United States And Redirection Of Funds Diverted To Border Wall Construction](#), President Biden began to bring all construction of the Southern border wall to a halt and started the process of redirecting work and funds specifically contracted for construction to other projects. While the legal ramifications of such actions are still being fleshed out by the current administration, it is highly unlikely that substantial progress will be made on the wall for the foreseeable future. An unsecured border is a gift to the Narcos, MS-13, human traffickers, and other criminal enterprises as it guarantees that existing routes used for the smuggling of people and drugs will remain open for the foreseeable future. As James Jay Carafano of the Heritage Foundation [explained](#) in October 2020, "What distinguishes the border effort is both the effectiveness of the wall and its location. The barriers being built now are not only more robust, but the administration also has put walls where the Border Patrol says it really needs them to block the most prevalent and dangerous smuggling corridors into the United States."

Going further down the path of loosening immigration enforcement and dangerously eroding the Trump legacy, Biden issued the [Executive Order on the Revision of Civil Immigration Enforcement Policies and Priorities](#). The order states that it is the new policy of the federal government to reset all policies and practices for enforcing civil immigration laws. The order also revokes President Trump's EO 13768 titled [Enhancing Public Safety in the Interior of the United States](#), which was one of the Trump administration's signature EOs, allowing federal agents to deputize state and local law enforcement to assist with immigration enforcement when they found themselves stretched thin or overwhelmed. The Biden EO effectively also demands the rescission of all agency actions developed pursuant to EO 13768. With EO 13768 and its progeny gone, the day-to-day realities of immigration enforcement will fundamentally change, and states will be left with fewer resources to combat human trafficking, narcoterrorism, and multinational gangs like MS-13 and Barrio 18.

As a result of this Biden EO, Acting DHS Secretary David Pekoske issued a [memo](#) on the same day that directed a DHS-wide review of all civil immigration enforcement policies, established interim enforcement priorities, and undertook an egregious and illegal power to place a 100-day pause on certain deportations. Unsurprisingly, five days later, the U.S. District Court for the Southern District of Texas enjoined the deportation pause but left other provisions of the memo in effect. Left intact is the re-prioritization of DHS enforcement to focus on the following priorities, which was later clarified in a February 18, 2021 interim guidance [memo](#). Of concern is the fact that aliens who have been convicted of murder, assault, rape, or other aggravated felonies, but who have been released before the memo was published would not be considered a priority for ICE. Similarly, aliens convicted of DUI, fraud, or other non-aggravated felonies would not be considered a priority for ICE.

The January 20, 2021 memo also rescinded a number of Trump-era memos, including two ICE-related memos. Generally, the memos were designed to adhere to Trump-era DHS [guidance](#) that "the Department no longer will exempt classes or categories of removable aliens from potential enforcement." For instance, one ICE-related [memo](#) simply said that ICE officers "will take enforcement action against all removable aliens encountered in the course of their duties." In other

words, they were told to enforce the laws of our nation. The other ICE-related memo similarly directed DHS attorneys to prioritize legal actions supporting the removal of aliens, including those who have been charged with or committed crimes, lied to the federal government, abused federal welfare programs, violated removal orders, or pose a risk to public safety or national security. Again, they were simply told to enforce the laws of our nation.

Further ignoring the goals of “unity” and “healing” stated at the inauguration just that morning, President Biden reignited one of the largest areas of contention from his previous tenure as Vice President. Via unilateral action, President Biden issued a memo [Preserving and Fortifying Deferred Action for Childhood Arrivals \(DACA\)](#). The proclamation directs the Secretary of Homeland Security, in consultation with the Attorney General, to take all legal actions they deems appropriate to preserve and fortify DACA, ensuring that [prior efforts](#) of the Trump administration to unwind the program would be fully abandoned.

In yet another opening day action, President Biden issued the [Proclamation on Ending Discriminatory Bans on Entry to The United States](#). The proclamation rescinds a number of President Trump’s hallmark counter-terrorism and immigration security policies. It rescinds Trump’s Executive Order 13780 titled [Protecting the Nation From Foreign Terrorist Entry Into the United States](#). EO 13780, the second so-called “travel ban” of President Trump, suspended entry of nationals from Syria, Iran, Libya, Somalia, Sudan, and Yemen for at least 90 days. The legality of Trump’s EO was upheld by the United States Supreme Court on June 26, 2018 when it held that the travel ban fell within legal bounds as the President is allowed to “suspend the entry of all aliens or any class of aliens” if he “finds” that entry “would be [detrimental to the interests of the United States](#).” The Court’s majority [stated](#) that President Trump was “squarely within the scope of Presidential authority under the INA (Immigration and Nationality Act).”

Biden’s Proclamation also rescinds Trump’s Proclamation 9645 titled [Enhancing Vetting Capabilities and Processes for Detecting Attempted Entry Into the United States by Terrorists or Other Public-Safety Threats](#), Proclamation 9723 titled [Maintaining Enhanced Vetting Capabilities and Processes for Detecting Attempted Entry Into the United States by Terrorists or Other Public-Safety Threats](#), and Proclamation 9983 titled [Improving Enhanced Vetting Capabilities and Processes for Detecting Attempted Entry Into the United States by Terrorists or Other Public-Safety Threats](#). These measures modified and built off of EO 13780 to suspend immigration and travel from certain countries while a review of vetting practices was conducted and new policies and procedures were implemented. Once that review was complete, some nations had their citizens’ ability to travel to the U.S. restored, while others were either modified pending implementation of best practices for information sharing, or conditioned on compliance with shared guidelines. Similar measures were common practice in previous [Democratic administrations](#) in the case of Iraq and Syria, as well as [Republican administrations](#) in the case of Cuba, and were not previously considered “discriminatory bans on entry.”

The Biden administration then issued a memo to the Secretaries of State and DHS titled [Reinstating Deferred Enforced Departure for Liberians](#). This action defers deportation through June 30, 2022 for any Liberian national who was in the country and who was already covered under Deferred Enforcement Departure (DED) as of January 10, 2021. Additionally, this memo extends employment authorization to Liberians covered under DED through June 30, 2022. President Trump previously allowed his prior extension of DED for Liberians to expire on January 10, 2021.

On February 2, 2021, Biden issued the [Executive Order on Creating a Comprehensive Regional Framework to Address the Causes of Migration, to Manage Migration Throughout North and Central America, and to Provide Safe and Orderly Processing of Asylum Seekers at the United States Border](#). While the order begins with seemingly benign mandates that relevant federal agencies develop strategies for “Addressing the Root Causes of Irregular Migration” and for “Collaboratively Managing Migration in the Region,” it quickly undertakes a comprehensive attack on many important Trump-era immigration policies designed to strengthen our nation’s border security. In the midst of the ongoing pandemic and associated vaccine shortage, the order directs the Secretaries of Homeland Security and State to expand pathways for individuals from the Northern Triangle to enter the United States, including by chain migration—a primary target for immigration reform among conservatives. It also sets the stage for the resumption of processing asylum claims—assuredly pursuant to irresponsible Obama-era standards—at U.S. borders. To this end, the Biden order targets for rescission Trump era EOs, including the [“Order Suspending the Right To Introduce Certain Persons From Countries Where a Quarantinable Communicable Disease Exists,”](#) and [“Control of Communicable Diseases; Foreign Quarantine: Suspension of the Right to Introduce and Prohibition of Introduction of Persons into United States from Designated Foreign Countries or Places for Public Health Purposes.”](#) Rescinding these policies would constitute wiping away controls on disease transmission and public health during the biggest pandemic since the 1916 Spanish Flu. Conservatives may believe that such a move by the Biden administration can only be explained by the fact that it was President Trump that signed the orders subject to possible rescission. Such a move would serve only to subjugate science to partisan politics.

President Biden’s order also targets for likely rescission President Trump’s [Migrant Protection Protocols \(MPP\)](#), also known as his “Remain in Mexico” policy. Under MPP, asylum seekers arrive at the southern border could be required wait in Mexico, rather than released into the United States, while U.S. immigration courts process their cases. Trump’s DHS instituted the policy to address a “security and humanitarian crisis on the Southern border.” Biden’s executive order also targets for rescission Trump’s interim final rule titled [“Aliens Subject to a Bar on Entry Under Certain Presidential Proclamations Procedures for Protection Claims,”](#) the final rule titled [“Asylum Eligibility and Procedural Modifications”](#) and Trump’s interim final rule titled [“Implementing Bilateral and Multilateral Asylum Cooperative Agreements Under the Immigration and Nationality Act.”](#) The Biden order also targets for rescission Trump’s designation titled [“Designating Aliens for Expedited Removal,”](#) which expanded expedited removal to the full degree authorized by statute: to aliens apprehended in any part of the United States who have not been admitted or paroled by immigration authorities, and who have been physically present in the country for less than two years.

Biden’s order also takes aim at all policies carried over from the Trump administration governing the adjudication of asylum claims and determinations of refugee status, particularly with an eye to whether they provide protection from those “fleeing domestic or gang violence.” It also directs promulgation of new regulations defining “particular social group” for purposes of determining asylum or refugee eligibility due to persecution related to an applicant’s membership in a particular social group. These terms were wisely limited by the Trump administration to rein in the out-of-control asylum process. The certain outcome of Biden’s move will be implementation of rules that drastically [expand and distort](#) the processes for being admitted to the United States as asylees or refugees. This in turn will attract even more illegal immigrants that will be able to live and work here while their claims are processed or permanently on an illegal basis if they never attend to their legal proceedings.

President Biden, in the same order, directly strikes down many of President Trump's hallmark border security and immigration initiatives, including; Executive Order 13767 titled [Border Security and Immigration Enforcement Improvements](#), Proclamation 9880 titled [Addressing Mass Migration Through the Southern Border of the United States](#), the Presidential Memorandum of April 29, 2019 regarding [Additional Measures to Enhance Border Security and Restore Integrity to Our Immigration System](#), the Presidential Memorandum of April 6, 2018 titled [Ending "Catch and Release" at the Border of the United States and Directing Other Enhancements to Immigration Enforcement](#), and the Presidential Memorandum of April 4, 2018 titled [Securing the Southern Border of the United States](#). These orders were designed to curb common illegal immigration practices, such as caravan style mass migration that would overrun processing facilities and stretch Customs and Border Protection resources thin. It is no surprise that as these orders are being rescinded [another caravan is approaching the Southern Border](#). The wholesale removal of these protocols, including Trump's termination of the disastrous "catch-and-release" policy of the Obama era, during a pandemic, an accompanying scarcity of vaccines, and an [immigration surge](#), will only further destabilize an already tumultuous situation that should be addressed carefully and thoughtfully, rather than in mad dashes of executive action.

Also on February 2 2021, President Biden signed the [Executive Order on Restoring Faith in Our Legal Immigration Systems and Strengthening Integration and Inclusion Efforts for New Americans](#). The EO states that "The Federal Government should develop welcoming strategies that promote integration, inclusion, and citizenship." Within this order, President Biden directs relevant pieces of the federal government to identify "barriers that impede access to immigration benefits" and to reduce the current naturalization process timetable. No mention is made whether the integrity of the security and criminal records check process will be protected from being truncated in the name of timetable reduction. The EO also establishes the Working Group on Promoting Naturalization, consisting of the Secretaries of Labor, HHS, HUD, Education, Homeland Security, and the Commissioner of Social Security. To add insult to injury, the order also flatly revokes the Presidential Memorandum of May 23, 2019 titled [Enforcing the Legal Responsibilities of Sponsors of Aliens](#). This measure protected the American taxpayer from waste, fraud, and abuse of public benefits by ensuring sponsors of aliens clearly understood that they were fiscally responsible for the individuals they were sponsoring.

President Biden then signed the [Executive Order on the Establishment of Interagency Task Force on the Reunification of Families](#). The task force would work to identify all children who were separated from their parents between January 20, 2017, and January 20, 2021. It should be noted that this is not inclusive of the children who were separated from their families during the Obama-Biden administration, or of those who have been separated so far under the Biden administration. The EO also revokes Trump's Executive Order 13841, or [Affording Congress an Opportunity To Address Family Separation](#). The Trump EO explicitly stated that administration policy was to keep family units together barring a direct danger to any alien children. Furthermore, the order directed that the Attorney General should prioritize adjudicating cases involving detained families. Revoking the Trump EO does nothing substantial to further President Biden's stated goals, other than to strike another of President Trump's orders.

Stunningly, the Department of Homeland Security released a [statement](#) on February 1, 2021 that announce that it would not be prioritizing American citizens over illegal immigrants for access to the COVID-19 vaccine. The statement even promised that DHS would look the other way when illegal

immigrants sought access to vaccine distribution centers. RSC Chairman Jim Banks, in a [letter](#) eviscerating the policy, noted that this and other policies are creating a crisis at the border, threaten the health of American citizens, and disincentivize other nations from taking responsibility in vaccinating their own populations.

Biden's Immigration Legislation

President Biden's progressive immigration bill has recently been introduced in the House and Senate as the "[U.S. Citizenship Act of 2021](#)." The bill serves as the roadmap for President Biden's reckless and progressive image of a new immigration system. It undercuts almost every modern principle that America has engrained as a necessary part of becoming an American.

The bill would establish new pathways to citizenship for immigrants and illegal aliens. According to a recent [Yale study](#), "using mathematical modeling on a range of demographic and immigration operations data, suggests that the actual undocumented immigrant population may be more than 22 million." Under the bill's massive amnesty program, illegal immigrants would be able to attain "lawful prospective immigrant" (LPI) status, which would last for six years and be renewable for six-year terms. LPIs would receive work authorization and Social Security Numbers. After five years, LPIs could receive a green card to become legal permanent residents. So-called Dreamers, TPS holders, and immigrant farmworkers who performed 400 workdays of agricultural labor over the past five years, as well as their spouses and children, would be eligible to receive green cards immediately under the legislation. Holders of green cards could then apply for U.S. citizenship after three years. Conservatives should note that shortening the period to citizenship would expedite the creation of new voters in advance of the 2024 presidential election. This application process would also be open to people previously deported during the Trump administration, but not during the Obama-Biden administration.

The proposal also strikes on a favorite pastime of the Progressive Left: changing the usage, meaning, or definition of historical terms to fit its narrative. In this case, the bill would change the word "alien," which has been used [in U.S. law since 1798](#), to "noncitizen" in U.S. immigration laws.

The bill includes Biden's plan to increase immigration under the guise of "keeping families together." Among other things, the bill would increase the per-country family-based immigration caps, the effect being increased chain migration. The bill would also facilitate chain migration by expanding the definition of "immediate relative" and by allowing immigrants with approved family-sponsorship petitions to come to the U.S. while they wait for processing. Additionally, the bill would remove current law's three and ten-year bars that prevent illegal immigrants that were present in the United States for varying degrees of time from reentering the United States. Illegal aliens that were deported during the Trump administration that lived in the U.S. for three years prior to their deportation could return to the United States under the bill. The bill would also undercut our nation's asylum system, with the likely effect of increasing fraud, by eliminating the current application filing deadline of one-year for aliens seeking asylum.

The proposal makes no accounting for what causes backlogs and wait times, be it the time it takes to properly vet an applicant, lengthy appeals processes, or otherwise. The bill also does virtually nothing to address the [well-known issue of detainees claiming false familial relations](#), often in order to conceal human trafficking or sexual exploitation, or how juvenile detainees might be safely housed with asserted relatives while measures are taken to ascertain the veracity of their claims. The bill threatens to keep sex traffickers housed with their victims, and potentially release them together.

The bill would also include language from the NO BAN Act, which Biden claims will stop discrimination based on religion in immigration-related decisions. It should be noted that [religion is already a protected class](#), and the travel suspensions that President Trump put into place, and President Biden removed via executive order, were based on country of origin, rather than the religious affiliation of any potential or real immigrant. In fact, a notice by Trump's DOJ on October 26, 2017 specifically and explicitly states that "[Government may not officially favor or disfavor particular religious groups.](#)" As noted above, the legality of Trump's EO was upheld by the United States Supreme Court on June 26, 2018.

The bill contains provisions designed to integrate immigrants, including those granted amnesty, into American society through a number of programs exclusive to immigrants. For instance, the bill would create a the "United States Citizenship and Integration Foundation." Services would include citizenship instruction and naturalization application services. The Foundation would also award grants created by the bill to state and local entities for integrating immigrants. The bill would also create and fund a number of new grants that would teach immigrants English, provide job training, provide citizenship education and training, and provide assistance in applying for legal status under the bill. The bill would also require states to charge illegal immigrants in-state college tuition and specifically revoke regulations requiring proof of citizenship to work in parts of the federal government. Under the bill, the Attorney General would be able to provide counsel to aliens at government expense in immigration proceedings, a luxury that is not bestowed upon Americans in civil proceedings.

The bill would reduce our immigration systems restrictions on criminals. It would do so by shrinking the types of adjudications that would constitute a "conviction" under the INA. It would also provide that restrictions based on a term of imprisonment or sentence would exclude portions of the sentence or imprisonment that was suspended. Further, the bill would allow sentencing courts to effectively override grounds for inadmissibility and deportability based on criminal convictions by simply recommending that the noncitizen not be removed from the United States because of the crime. Biden's bill would also double from one to two the number of crimes of moral turpitude that an alien could commit and still potentially be admissible into the United States. As [noted](#) by the U.S. Citizenship and Immigration Services, courts have held that moral turpitude "refers generally to conduct that shocks the public conscience as being inherently base, vile, or depraved, contrary to the rules of morality and the duties owed between man and man, either one's fellow man or society in general." The bill also would grant the Secretary of Homeland Security and the Attorney General broad authority to waive grounds for inadmissibility and deportability, including criminal grounds, in the name of the "public interest." Judicial review by federal district courts would be permitted, even following multiple levels of prior review, which could extend court backlogs and the removal of illegal aliens.

The bill includes provisions that seek to expand legal immigration in a number of ways. For instance, it would eliminate per-country employment visa caps. Some conservatives may [feel](#) the per-country cap treats all countries fairly and its removal would disadvantage immigration from favored allies while disproportionately benefitting China and India. The bill would exempt children and spouses of green card holders from employment-based immigration quotas. This exemption would effectively expand the number of green cards available to employment-based immigrants without directly raising those caps. Biden's bill would make it easier for foreign students who graduate from American universities with STEM degrees to remain in the United States after their student visas expire by

granting them a green card upon graduation. Dependents of H-1B visa holders would receive work authorization and could not “[age out](#).” The bill would also increase the number of visas issued annually under the diversity visa program, which conservatives have long targeted for elimination, from 55,000 to 80,000.

It should be noted that there is some disagreement within the conservative movement over the H-1B visa program and employment-based visas generally. Some conservatives have sought to varying degrees to expand the availability of non-immigrant work visas, arguing that such immigrant workers are needed to fill employment vacancies and boost economic productivity. Other conservatives oppose expanding such visas arguing that they reduce jobs available to Americans and depress wages.

To appease liberals that have widely expressed opposition to the E-Verify system, the Biden bill would, rather than institute mandatory E-Verify, simply create a commission to review and make recommendations related to verifying the eligibility of illegal aliens for employment in the United States.

Despite revoking many, if not all, of President Trump’s EOs on border infrastructure and security, the Biden administration has outlined in the legislative proposal its plan to supplement existing technology and infrastructure along the border and ports of entry. Goals would include asylum processing—albeit under Biden’s progressive reforms—facilitating trade, and prevention of narcotics entering the United States. It is worth noting that the Trump administration [implemented many policies](#) with overlapping goals, but in the rush to eliminate every vestige of the previous President’s work, the Biden administration has axed or “set aside for review” the policies in question. If nothing else, this proves that in some cases the current administration cares more about the name appended to the bottom of the policy than the effects of the policy itself.

In order to address what Biden calls the “root causes of migration,” the White House’s bill would provide \$4 billion over four years in assistance to Central American nations. This funding would be largely [duplicative](#) of the billions of dollars already spent annually by the United States in foreign aid in and around the region. Moreover, it would largely contradict President Trump’s prior efforts to [withhold funding](#) from Central America as a means of eliciting concessions from those nations designed to stem the tide of illegal immigration.

The bill would also establish Designated Processing Centers within the Northern Triangle, so that applicant refugees can begin the process before they arrive at the U.S. border. The bill would also reinstitute the Central American Minors program, which would grant special immigrant status to certain Central American minors, and create a Central American Family Reunification Parole Program for processing parole applications of Central American “noncitizens.” Designated Processing Centers would be used to process individuals seeking benefits under these programs. How these programs would be affected by COVID-19 transmission and control concerns, or vaccine prioritization, is not addressed in the bill. In addition to serving as a potential disease transmission vector to bring potentially infected individuals into the country, the Central American Minors program would [exempt all participants from numerical limitations](#) under the Immigration and Nationality Act. This would create an almost unlimited vector for chain migration.

Looking Forward

When seeking to understand a President's priorities, political scholars have often examined the first 100 days of the administration. To understand President Biden's priorities, one need only look at the first few days. Biden released progressive proposals while at the same time canceling policies, memoranda, and orders from the Trump administration. What the Left calls "[bold](#)" or "[ambitious](#)" the rest of America calls radical under normal circumstances, and wildly irresponsible under the current pandemic. Undoubtedly, this trend will continue throughout the Biden administration, regardless of how the U.S. Citizenship Act of 2021 progresses in Congress. It is possible that the measure is never considered in full in both chambers. Rather, less controversial pieces with enough bipartisan support to garner 60 votes in the Senate could be broken out into [piecemeal legislation](#). In pursuit of such a path, Democrats could seek to sweeten piecemeal bills by including elements that have appeal to conservatives, such as mandatory E-Verify. Democrats could additionally seek to extract elements of the bill having a greater budgetary focus and attempt to enact them through the [reconciliation](#) process with a simple majority in the Senate, a hyperpartisan strategy that conservatives should stand ready to oppose. Democrats may also try to attach elements of the proposal to so-called must pass legislative vehicles, another strategy conservatives should prepare to fight.

Meanwhile, as long as the Biden administration is considering an [interstate travel ban](#) while opening its arms for illegal immigrants traveling under less than sanitary conditions, across multiple national borders, without quarantining, without vaccinations, and without PPE, conservatives will object. Until the Biden administration stops kneecapping small businesses with overly burdensome regulations and mandated lockdowns while using taxes generated by those very same businesses to provide services to illegal immigrants and start them on the process towards amnesty, conservatives will push back. As long as American students miss multiple years of their education while the Biden administration is expending precious resources elsewhere, conservatives will demand recompense. The implications are clear. The Biden administration does not value conservative voices. The Biden administration values the ability of illegal aliens to come to America over stopping COVID-19 and the freedom of Americans to live on our own terms and travel throughout our Republic.

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