Human Smuggling Across the U.S.-Mexico Border: U.S. Laws Are Not Stopping It

Outside the South Texas town of Victoria last week, more than 100 victims of a coyote [a person that preys on desperate people looking for new opportunities in a nation that has long been a promised land for immigrants]—from ages 3 to 91—were locked in a sweltering semi-trailer that quickly became a death trap. By the time authorities got to the abandoned trailer, 17 people had died, including a boy between the ages of 5 and 7. Another person would die at a local hospital. All these people had left their homes in Mexico and Central America, paid money for the clandestine passage, entrusted their lives to unknown human traffickers and then allowed themselves to be packed into conditions worse than those reserved for cattle. The result was an eerie scene at a truck stop, with bodies lying inside and outside the trailer and the survivors gasping for air. Unfortunately, this is becoming a familiar scene.1

I. INTRODUCTION

In 1999, smuggled aliens constituted fourteen percent of all apprehensions made at the U.S.-Mexico border [the border], up from nine percent in 1997.2 That number has increased as the human smuggling industry grows in popularity and necessity.3 Fearing they cannot safely make the journey across the border alone, illegal immigrants obtain the assistance of a “coyote”—the Mexican term for smuggler—in order to secure passage across the border.4

1. Eric Gay, Preying, FORT WORTH STAR-TELEGRAM, May 19, 2003, at 8. The human smuggling attempt that ended tragically in Victoria, TX in 2003 was the deadliest in fifteen years. Lee Hockstader & Karin Brulliard, 18 Migrants Found Dead in Trailer at Texas Truck Stop; Victims Are Believed To Be Illegal Immigrants, WASH. POST, May 15, 2003, at A01 (stating seventeen found dead, one died in hospital).

2. U.S. GEN. ACCOUNTING OFFICE, REPORT TO CONGRESSIONAL COMMITTEES, ALIEN SMUGGLING: MANAGEMENT & OPERATIONAL IMPROVEMENTS NEEDED TO ADDRESS GROWING PROBLEM 2 (2000) [hereinafter GROWING PROBLEM GAO REPORT] (reporting data collected by Immigration and Nationalization Services (INS)).

3. See id. at 6 (reporting on growing epidemic of alien smuggling in United States); Letta Tayler, Booming Business: Desperation Fuels Sophisticated Networks of Human Smugglers, NEWSDAY, July 20, 2003, at A05 (explaining methods by which immigrants employ smugglers to get them across border). Tayler reported that in 2002, smugglers introduced an estimated one million illegal aliens into the United States through Mexico. See Tayler, supra, at A05.

4. See Gay, supra note 1, at 8 (explaining how smugglers prey on desperate Mexicans); see also Tayler, supra note 3, at A5 (describing stories of desperate attempts by Mexicans to cross U.S.-Mexico border).
Some immigrants willing to take the risk pay up to $1500 to the coyote; others, ultimately, pay with their lives.\(^5\)

As the United States spends more government funds to fortify the border, demand for human smugglers increases.\(^6\) According to United States immigration officials, the human smuggling industry grossed $9.5 billion in 2002 alone.\(^7\)

Many reasons exist for the boom in this dangerous and clandestine form of migration.\(^8\) Each time the government appropriates funds to build higher fences and develop technological methods to restrict potential border crossings, the United States ensures that coyotes will be kept in business.\(^9\) The government’s failure to enforce employment laws already favorable to employers has augmented the steady stream of illegal immigrants who have little reason to fear punishment by the government once inside United States territory.\(^10\) The communities and networks that the successful immigrants smuggled from Mexico create in the United States stimulate the increasing flow of smuggled immigrants.\(^11\)

It is the hope of most immigrants for a more prosperous life in the United States that eclipses the perils associated with the risky journey across the border.\(^12\) Such dangers have only increased in recent years with stricter border

\(^5\) See Peter Andreas, The Transformation of Migrant-Smuggling Across the U.S.–Mexican Border, in GLOBAL HUMAN SMUGGLING 107, 116 (David Kyle & Rey Koslowski eds., 2001) (reporting trip from Agua Preta, Mexico to Phoenix, AZ costs $1500); Tayler, supra note 3, at A5 (recounting story of man who lost $1500 fee when caught by border control). Between 1998 and 2003, fees demanded by coyotes grew from $300 to $1500. Tayler supra note 3, at A05; see also, e.g., Kim Cobb, For Migrants, Jobs Come with a Price, HOUS. CHRON., June 7, 2003, at 1 (reporting three men who illegally entered United States found dead in train car); Gay, supra note 1, at 8 (stating death toll in botched smuggling attempt); Tayler, supra note 3, at A5 (noting over two thousand reported deaths of migrants attempting to cross border).

\(^6\) Regina Germain, Panel Discussion, Perspectives on the Bush Administration’s New Immigrant Guestworker Proposal: The Time For Immigration Reform is Now, 32 DENV. J. INT’L L. & POL’Y 747, 748-49 (2004) (correlating increased government expenditures for enforcement with increase in number of aliens in United States); see also Andreas, supra note 5, at 117 (opining tougher border enforcement causes higher fee for smugglers); Friedrich Heckmann et al., Transatlantic Workshop on Human Smuggling, Conference Report, 15 GEO. IMMIGR. L.J. 167, 170 (2000) (arguing reliance on smugglers leads to smugglers’ organization and strength).

\(^7\) Tayler, supra note 3, at A5 (arguing crackdown on border control leads to increased need for smugglers).

\(^8\) See infra notes 9-11 and accompanying text (listing reasons for growth in alien smuggling).

\(^9\) Andreas, supra note 5, at 116 (noting smugglers not needed before border enforcement).

\(^10\) See Andreas, supra note 5, at 114 (suggesting law enforcement should instead concentrate on catching illegal entrants once in United States).


\(^12\) See Brunson McKinley, There Are Ways to Curb the Worldwide Traffic in Migrants, 21 TRAFFICKING IN MIGRANTS 1 (2000) (suggesting potential immigrants may be unaware of dangers of smuggling); see also Heckmann, et al., supra note 6, at 170 (articulating one reason for high demand of human smugglers). A study of illegal immigrants from Ecuador living in New York suggests that the success of smuggled immigrants from
When the easiest and safest routes are closed off, smugglers must improvise to find open, and usually more treacherous, paths across the border.\(^{13}\) Because each trip across the fortified border carries increased risks for the smuggler himself, he raises his fee.\(^{14}\) Not only do smugglers continue to benefit from the United States’ increased border enforcement, but they also profit from the lack of coordination among government entities charged with controlling immigration to the United States.\(^{16}\)

Human “smuggling” is distinguished from human “trafficking.”\(^{17}\) Smuggling is a business transaction in which a fee is exchanged for the services of the smuggler.\(^{18}\) Trafficking involves coercion of people—usually women and children—for the purpose of selling that person’s sexual services or labor in the destination country.\(^{19}\)

This Note will address the ways in which United States immigration and employment laws foster the demand for human smuggling through Mexico.\(^{20}\) First, this Note will explore the history of employment and immigration laws.

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14. See William J. Clinton, Memorandum, Deterring Illegal Immigration, 60 Fed. Reg. 7885, 7786 (Feb. 7, 1995) (admitting closing of entry points causes smugglers to seek new routes); Tayler, supra note 3, at A5 (acknowledging sealed entry points force smugglers into more dangerous routes).

15. See Andreas, supra note 5, at 116 (suggesting smuggling fees increase as dangers increase); Tayler, supra note 3, at A5 (arguing smugglers’ fees increase as demand for their services increases).


19. Id. at 25 (stating men most often smuggled while women and children most often trafficked).

20. See infra Sections II-IV.
relating to undocumented workers in the United States. Next, this Note will analyze how these laws and policies have encouraged, rather than deterred, human smuggling. Finally, this Note will propose a strategy to curb the smuggling of humans across the border.

II. HISTORY

Since the United States began passing laws to restrict immigration, people desperately seeking a higher quality of life in America have paid smugglers to aid in their mission. Throughout the twentieth century, human smuggling grew as an industry because the United States lacked the resources to monitor the entire border and enforce its immigration laws. Largely undeterred, smuggling operations grew more organized as demand increased in the 1960s and 1970s. Today, human smuggling from Mexico to the United States is a sophisticated and dangerous industry. In this decade, human smuggling operations range from small outfits accomplished through the help of family and friends, to major networks where smugglers pack immigrants into containers and trucks without food or water. Once in the United States, the smugglers often hold immigrants in drop houses until relatives wire any outstanding payments. Immigrants are often physically abused and sexually

21. See infra Section II.
22. See infra Section III.
23. See infra Section IV.
24. See Andreas, supra note 5, at 109 (noting lack of regulation in Mexico-to-United States migration prior to 1882). The Chinese Exclusion Act of 1882 sought to stop Chinese immigrants arriving on the Mexican coast who would then use smugglers to get across the border into the American Southwest. Id.
26. Andreas, supra note 5, at 110 (noting competition among smugglers for growing business stimulated growth and organization of smuggling operations).
27. GROWING PROBLEM GAO REPORT, supra note 2, at 2 (admitting INS believes increase in border enforcement has led to greater organization of smuggling industry); COMBATING ALIEN SMUGGLING GAO REPORT, supra note 17, at 5 (reporting “criminal networks increasingly control the transnational flow of migrants”). Mexico’s Undersecretary for Migration estimates that over eighty percent of illegal immigrants from Mexico hire a smuggler, as opposed to fewer than ten percent in the 1970s. Tayler, supra note 3, at A5. U.S. and Mexican authorities state that the price of a trip from Central Mexico to Houston, Texas has risen from $300 in the late 1990s to about $1,500 today. Tayler, supra note 3, at A5.
A. Criminal Laws Addressing Alien Smuggling

The Immigration and Nationality Act of 1952 (INA) prohibits bringing aliens into the United States and provides criminal penalties of up to ten years imprisonment for violations. The Immigration and Customs Enforcement (ICE) branch of the Department of Homeland Security (DHS) is responsible for investigating violations of the human smuggling laws. Before the creation of ICE, the Immigration and Naturalization Service (INS)—formerly in charge of preventing human smuggling—failed to adequately enforce the law, mostly due to lack of coordination among field offices along the border, and a disorganized case management system. In the relatively rare cases where smugglers were captured, penalties lacked deterrent effect. For example, in fiscal year 1999, convicted smugglers received an average of ten months imprisonment and only a $140 fine despite the § 1324 provision which allows for a ten year maximum

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31. 8 U.S.C. § 1324(a)(1)(A)(i), (a)(2) (2000). Section (a)(1)(A)(i) provides criminal penalties for any person who “knowing that a person is an alien, brings to or attempts to bring to the United States in any manner whatsoever such a person at a place other that a designated port of entry or place other than as designated by the Commissioner . . . .” Id. Section (a)(2) provides that “[a]ny person who, knowing or in reckless disregard violates Section(a)(1)(A)(i) shall be fined and imprisoned not more than ten years. Id.

32. U.S. Immigration and Customs Enforcement, http: //www.ice.gov/graphics/about/index.htm (last visited Feb. 26, 2006) (setting forth purpose, responsibilities, and goals of ICE). When the Department of Homeland Security was created in 2001, many border and security agencies—including the INS, the United States Customs Service, the Federal Protective Service, and the Federal Air Marshals Service—were merged into ICE in order to form a more unified front against illegal immigration. Id. Since its creation, however, ICE has been plagued by financial and organizational problems. John Mintz, Cutsback Threaten Work of Homeland Security Unit, WASH. POST, Oct. 31, 2004, at A6. The main financial conflict stems from amounts owed to ICE, Customs and Border Protection, and Citizenship and Immigration Services for services rendered and funds provided during their creation. Id. ICE field agents say that a lack of funds will almost certainly threaten its ability to provide effective national security. Id.

33. GROWING PROBLEM GAO REPORT, supra note 2, at 3 (assessing difficulties prosecuting human smugglers). The report also lists a focus on prosecution of smugglers, not deterrence of human smuggling, among its findings of impediments to effective anti-smuggling enforcement. Id. at 3.

34. See infra note 35 and accompanying text (discussing lax consequences).
punishment for human smuggling. In 1999, the INS reported that many drug smugglers were turning to human smuggling because of the lesser penalties. Some lawmakers are concerned that the lack of resources in the border districts’ U.S. Attorney’s Offices may result in low prioritization of prosecuting human smugglers because of the short sentences imposed on those criminals.

Since September 11, 2001, a number of bills have been introduced in Congress that, along with a primary focus on homeland security, address human smuggling. In December 2005, the House of Representatives passed the Border Protection, Antiterrorism, and Illegal Immigration Control Act of 2005. This Act not only establishes mandatory minimum sentences, but also increases prison sentences for alien smugglers by ten years. The Act also broadens the definition of alien smuggling, potentially casting a wider net over anyone who “assists, encourages, . . . or induces” aliens to enter the United States. Another bill that has been introduced, the Commercial Alien Smuggling Elimination Act (CASE Act), addresses the non-penal aspects of alien smuggling. The CASE Act creates a rewards program offering visas and monetary compensation for informants who cooperate with the government in prosecuting or otherwise disrupting human smuggling operations.


36. GROWING PROBLEM GAO REPORT, supra note 2, at 9 (citing one reason for growth of human smuggling industry).


40. Id. at § 202.

41. Id. (delineating prohibited activities).


43. Id. at § 4. The rewards program would offer visas to potential informants and their families, allowing them to stay in the United States in return for information provided to the government that aids in its anti-alien smuggling efforts. Id. In addition, up to $100,000 may be awarded to informants at the discretion of the Secretary of Homeland Security. Id.
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CASE Act also creates an outreach program to educate the public on the penalties involved in bringing illegal aliens into the United States and the financial rewards and visa incentives available for providing information to the government about human smuggling operations.44

B. Misguided Immigration Laws

Employment related immigration law also affects the human smuggling industry.45 Prior to 1986, it was legal for an American employer to hire illegal aliens.46 That year Congress passed the Immigration Reform and Control Act (IRCA) amending the INA of 1952.47 The Act granted amnesty for millions of illegal immigrants already residing in the United States, while at the same time providing for employer sanctions against the hiring of illegal immigrants.48 Congress intended for employer sanctions to discourage the hiring of illegal aliens, thereby reducing the possibility of job placement as an incentive to immigrate illegally.49 IRCA rewarded 2.8 million illegal aliens living in the United States with permanent resident status.50 Employer sanctions have, however, been given out sparingly.51 One reason for the difficulty in fining

44. Id. (suggesting outreach program but without guidelines for implementation).
45. See infra notes 51-56 and accompanying text (demonstrating employer sanctions easy to avoid).
48. Id. (allowing illegal aliens to gain citizenship once certain criteria met). An illegal alien would be given the status of lawful temporary resident if he had entered the United States illegally before January 1, 1982, had maintained a “continuous unlawful status” since that date, had applied for adjustment of status within one year of Nov. 6, 1986, and had maintained a “continuous physical presence” in the United States since Nov. 6, 1986. 8 U.S.C. § 1255a(a)(1)(A)-(a)(2)(A) (2000). After nineteen months of continuous presence in the United States, the temporary resident had two years in which to apply for permanent resident status. 8 U.S.C. § 1255a(b)(1)(A)(B) (2000). If the immigrant was not a criminal and demonstrated “[b]asic citizenship skills,” he would be granted permanent resident status. 8 U.S.C. § 1255a(b)(1)(C),(D) (2000). IRCA also made the employment of illegal aliens unlawful. 8 U.S.C. § 1324a(a) (2000). Civil penalties for violations are $250-$2000 per alien for a first offense and up to $10,000 for a second and third violation, and employers who demonstrate a “criminal pattern” of employing illegal aliens face up to $3000 per alien and up to six months imprisonment. 8 U.S.C. § 1324a(e)(4)(A)(i)-(iii), (f)(1).
51. Kris Axtman, Wal-Mart Raids Send Signal to Other Firms, Intentional or Not, CHRISTIAN SCI. MONITOR, Oct. 27, 2003, at 3 (illustrating recent decline in employers fined for immigration violations). According to the Center for Comparative Immigration Studies at the University of California at San Diego, 14,311 employers were fined for employing illegal aliens in 1990, and only 178 in 2000. Id. In 2003, only fifteen employers were fined. Alan Zarembo, The Nation: Garment Laborers Say Bush Guest-Worker Plan an
employers for violations of IRCA is that they must have hired the immigrant knowing that he or she was an illegal alien, and workers often provide genuine-looking fraudulent documents to employers.\footnote{8 U.S.C. § 1324a(a)(1),(2) (2000) (making it illegal to knowingly hire and retain illegal aliens).} In what would have been a precedent-setting case in the enforcement of employer sanctions, a federal jury in Tennessee acquitted a large food company of charges that it violated IRCA.\footnote{Scott Kilman, Tyson Acquitted of Scheme to Hire Illegal Workers, WALL ST. J., Mar. 27, 2003, at A3 (suggesting government hoped for precedent-setting decision enforcing immigration law).} Tyson Foods could not be penalized for charges of “bringing in and harboring aliens” and fraudulent misuse of visas because the prosecution failed to prove that Tyson employed illegal aliens “knowingly.”\footnote{United States v. Tyson Foods, Inc., No. 4: 01-cr-061, available at https://ecf.tned.uscourts.gov (last visited Feb. 9, 2005) (acquitting corporation and its executives of all thirty-six counts); Marisa Taylor & Leonel Sanchez, Working in Plain Sight: More Companies Hiring Illegal Employees as Government Enforcement Drops Sharply, SAN DIEGO UNION-TRIB., Jan. 11, 2004, at A1 (illustrating inability to prove Tyson knowingly hired illegal aliens demonstrates failure of immigration law).}

Government officials have ignored alleged IRCA violations in exchange for employers’ cooperation in deporting illegal aliens, and have even warned employers in advance of a raid.\footnote{Stephen J. Hedges et al., The New Jungle, U.S. NEWS & WORLD REPORT, Sept. 23, 1996, available at 1996 WLNR 4185886 (noting INS allows meatpacking plants to hire replacement workers before raid).} Employers who are penalized receive relatively small fines compared to the amount of money saved by employing illegal immigrants.\footnote{See Linda S. Bosniak, Exclusion and Membership: The Dual Identity of the Undocumented Worker Under United States Law, 1988 Wis. L. REV. 955, 1014-15 (1988) (noting employers willing to absorb costs of fines as costs of doing business).}

IRCA’s requirement that illegal aliens must have arrived before January 1, 1982 caused a five-year gap of illegal aliens residing in the United States to be ineligible for legalization.\footnote{Evaluating a Temporary Guest Worker Proposal, Papademetriou Testimony, supra note 16, at 170 (estimating number of ineligible illegal immigrants at three million).} Due to lax enforcement, however, those millions of ineligible immigrants had little incentive to leave the United States, and

\footnote{Ill Fit, L.A. TIMES, Feb. 8, 2004, at A1. During the last decade, the number of illegal immigrants living and working in the United States has risen steadily. See id.}


\footnote{Scott Kilman, Tyson Acquitted of Scheme to Hire Illegal Workers, WALL ST. J., Mar. 27, 2003, at A3 (suggesting government hoped for precedent-setting decision enforcing immigration law).}


\footnote{Stephen J. Hedges et al., The New Jungle, U.S. NEWS & WORLD REPORT, Sept. 23, 1996, available at 1996 WLNR 4185886 (noting INS allows meatpacking plants to hire replacement workers before raid).} In a press conference after a major raid in a large meatpacking plant in Nebraska, INS officials stated that because the company had cooperated with the INS, the company would not be penalized for employing illegal immigrants. \textit{Id}. The chief of police in the town in which one of the largest meatpacking plants in the United States employs thousands of illegal aliens says that he does not call INS when an illegal alien is arrested because INS officials say they are too busy. \textit{Id}.


\footnote{Evaluating a Temporary Guest Worker Proposal, Papademetriou Testimony, supra note 16, at 170 (estimating number of ineligible illegal immigrants at three million).}
therefore their communities continued to exist underground. For most illegal immigrants, once inside the border there is little fear of prosecution.

To advance the government’s attack on illegal immigration by “prevention through deterrence,” in 1996, the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) amended the IRCA. One of IIRIRA’s main components reinforced border security again by adding one thousand border agents for five years and using new identification verification technologies. IIRIRA also sought to place a greater burden on employers hiring illegal immigrants by implementing three pilot programs for automated employee identification systems. The government believed that a system of employment verification would deter potential immigrants from seeking jobs in the United States. It is not required that employers participate in these verification programs; thereby perpetuating the status quo of non-compliance. IIRIRA recognized human smuggling as a concern and probable consequence of strict border enforcement, creating stiffer penalties for smugglers and

58. Evaluating a Temporary Guest Worker Proposal, Papademetriou Testimony, supra note 16, at 170 (suggesting illegal immigrants remaining in United States perpetuate future generations). Papademetriou also opines that during legislative debates regarding IRCA, few lawmakers addressed the fact that the United States labor market depends on illegal immigrants. Id. at 168.

59. See Axtman, supra note 51, at 3 (suggesting getting past border biggest hurdle for illegal immigrants seeking work); see also Zarembo, supra note 51, at A1 (citing less than one percent of eight to eleven million illegal United States immigrants deported in 2003).


62. Pub. L. No. 104-208, 110 Stat. 3009, Division C, § 401. The programs are voluntary for employers. Id. at § 402(a). Under the Basic Pilot Program, a potential employee must present a Social Security Number in addition to his I-9. Id. at § 403(a). The employer then has three days to verify the employee’s identity by transmitting his identification information. Report to Congress on the Basic Pilot Program, June 2004, at 2 [hereinafter INS Report to Congress] at http://uscis.gov/graphics/aboutus/repsstudies/pivoteval/BasicFINAL0704.pdf. The information is then checked against either the Social Security Administration’s Numerical Identification File if the employee attests to being a U.S. citizen, or the Citizenship and Immigration Service’s Customer Processing System. Id. The Citizen Attestation Verification Pilot and the Machine-Readable Document Pilot were terminated in 2003. Id. at 1. In December of 2004 the Basic Pilot program was made available to employers in all states. Id. at 10.

63. Clinton, supra note 14, at 7886 (arguing employment deterrence will augment border deterrence).

increasing the base sentencing level.65

1. NAFTA’s Failure to Address Immigration Law

Congress had another opportunity to affect illegal immigration reform in 1995 when it passed the North American Free Trade Agreement (NAFTA).66 Because it is a trade agreement, NAFTA does not directly address the illegal immigration that was sure to follow in its wake.67 Proponents believed that NAFTA would decrease wage disparities between the United States and Mexico by not only providing an export market for Mexico, but also by relocating industry to Mexico from the United States and Canada, thereby reducing incentive to illegally emigrate north.68 NAFTA sought to open the economic border between the United States and Mexican economies, yet fortify the physical border between the two countries.69 Consequently, the INS created Operation Gatekeeper in San Diego, Operation Hold the Line in El Paso, and Operation Rio Grande in southeast Texas to put into effect the increased border fortification provisions of NAFTA.70 In reality, tighter border security at usual crossing points only drove immigrants willing to make the cross into the United States further underground, and into more dangerous sections of the border with less enforcement, perpetuating the reliance on experienced smugglers.71


66. See generally Susan Pozo, Illegal Immigration, Wage Volatility, and NAFTA, 1 SUM NAFTA: L. & BUS. REV. AM. 3, 3 (1995) (arguing reasons why illegal immigration reform received little attention in legislating NAFTA). Pozo suggests that analysts believed that NAFTA would freeze illegal immigration because it was intended to decrease wage disparities between the United States and Mexico. Id. at 3.


68. See Pozo, supra note 66, at 3 (stating reasons for belief in decrease in wage disparity between United States and Mexico). Migration expert Douglas Massey argues that it is also the “social capital” formation in the United States and facility of transportation through new infrastructures that agreements like NAFTA create, and not solely wage differentials, that drive the migration. See Douglas S. Massey, March of Folly, AM. PROSPECT, Mar.-Apr. 1998, at 22.


71. See, e.g., Andreas, supra note 5, at 116 (correlating increased demand for smugglers with increased difficulty in crossing); Mitchell, supra note 69, at 159 (arguing Operation Gatekeeper has drastically increased risks associated with smuggling); Ken Ellingwood, Data on Border Arrests Raise Gatekeeper Debate, L.A. TIMES, Oct. 1, 1999, at A3 (proffering border enforcement in San Diego shifting smuggling routes to rural California). Between 1999 and 2004, 1896 people died trying to cross the border. Germain, supra note 6, at 749.
C. Employment Law: Lessons Not Learned From History

Labor shortages in the United States during World War II led to the formal recruitment of Mexican laborers in agriculture through the Bracero Program. The goal of the program was to provide temporary labor for American businesses without adding any new permanent American residents. Due to heavy lobbying from American farmers, the Bracero program extended beyond the war years and was not terminated until 1964. Because the existence of readily-available cheap labor suppressed working conditions and wages for farm workers in America, farmers lobbied the government to continue the program, rather than spend money on labor-saving innovations. The intention of the Bracero program was that upon its termination, the laborers would return to Mexico. Yet the emigration from Mexico that occurred during the twenty-two years of the Bracero program created a strong network tying together American agriculture and Mexican laborers. It was not only Mexican farm laborers legally participating in the Bracero program who came to the United States; the program also caused a surge of illegal immigration in other economic sectors spurred on by lack of workplace enforcement. The termination of the program did not end the need for cheap labor, thus the Mexican labor supply was driven underground. Because both supply and demand for cheap labor continued after the termination of the program, the

73. Martin, supra note 72, at 1 (arguing program’s failure to provide merely temporary residents).
75. Martin, supra note 72, at 2 (arguing farmers favor maintenance of program over mechanization); see also Krikorian, supra note 74, at 6 (pointing out increase in low-skilled workers reduces incentive for innovation).
76. Krikorian, supra note 74, at 5 (noting unlike goods, people have free will); Andreas, supra note 5, at 110 (noting farmers’ desire to continue hiring Mexican workers).
77. Krikorian, supra note 74, at 5 (calling Mexican guestworkers participating in Bracero “magnets for further immigration”); Martin, supra note 72, at ¶ 9 (noting interdependence between U.S. agriculture and Mexican laborers).
78. See Krikorian, supra note 74, at 5 (noting increase of both legal and illegal immigration). The Center for Immigration Studies states that in addition to admitting 4.6 million Mexicans to work on U.S. farms during the program, the United States apprehended between 4.9 and 5.3 million illegal Mexican immigrants. Id.; Martin, supra note 72, at 1-2 (suggesting requirement for knowingly hiring unauthorized workers not enforced).
79. Andreas, supra note 5, at 110 (pointing out symbiosis between Mexican laborers and U.S. employers perpetuated by Bracero). Andreas also notes that employers had little to fear if caught employing illegal immigrants because it was not illegal to do so at the time. Id. at 110; see also supra note 46 and accompanying text.
human smuggling industry boomed.80 Despite the unintended results of the Bracero program, the current administration seeks to implement another guest worker plan.81 Under President George W. Bush’s guest worker proposal, the United States, for a one-time fee, would grant to currently illegal immigrants legal status in the United States for three years.82 The status would be renewable, and the workers could travel freely between the United States and Mexico.83 The program would also require employers to try to fill positions with Americans before foreigners, and to report to the government when foreigners enter and leave their employment.84 The Administration believes that temporary legal status will satisfy immigrant workers, resulting in the elimination of illegal immigration as the status quo in the United States.85 Supporters also argue that increasing the supply of legal workers will discourage employers from hiring illegal workers.86 By increasing the number of immigrant workers who may legally enter and exit over the border, the need for illegal smuggling should decrease.87

82. Fact Sheet, supra note 81; see also Secure America and Orderly Immigration Act, S. 1033, 109th Cong. § 306 (2005) (allowing nonimmigrant aliens to petition for lawful permanent resident status after four years).
83. Fact Sheet, supra note 81.
84. Fact Sheet, supra note 81; Evaluating a Temporary Guest Worker Program, Hutchinson Testimony, supra note 13, at 148 (assuming employers willing to take on burden and cooperate with government); Sergio Bustos & Daniel Gonzalez, Laboring in Vain?, ARIZ. REPUBLIC, Oct. 24, 2004, at A1 (arguing costs of participation offset by assurance program will force competitors to comply).
85. Evaluating a Temporary Guest Worker Proposal, Papademetriou Testimony, supra note 16, at 166 (articulating Administration’s expected result from guest worker program). Papademetriou remains skeptical of this lofty goal, stating that visa control is only one “leg” of the “three-legged stool” of immigration along with hope for permanent legal status, and destruction of alien smuggling operations. Id.
86. Bustos & Gonzalez, supra note 84, at A1 (suggesting employers would prefer to hire legal workers instead of illegal workers).
Lack of coordination among ICE, the Internal Revenue Service (IRS), and the Social Security Administration (SSA) is one reason for the rampant use of fraudulent documents obtained by illegal immigrants for the purpose of procuring work in the United States. When employers file income tax returns with the IRS, the SSA compares the names listed as employees with the Social Security Number (SSN) given to the employer by the worker. When a name and SSN do not match information on file with the SSA, the wages of that worker are not credited to his SSA account, but are placed in an Earnings Suspense File. In 2004, the Earnings Suspense File totaled $463 billion in wages. The SSA’s only recourse against this problem is to send “no-match” letters to employers in order to inform them that at least one of their employees is using fraudulent documentation. The SSA has no legal authority to penalize employers who submit mismatched SSNs or the workers who use them. The SSA relies on the IRS to penalize the employers of workers with fraudulent SSNs. The IRS has the authority to impose a $50 fine per no-match employee up to $250,000 but it has yet to do so. If confronted by their employer regarding the no-match letter, employees usually leave on their own before they are fired, and use the same false document to work for another employer.

Mexico’s wage rates at one tenth of United States’ wage rates will still drive illegal immigrants to U.S.).

88. See Olvera & Gutierrez, supra note 52, at 15A (noting privacy laws prevent agencies from sharing information); Hernan Rozemberg, Migrants Forced Out of Jobs, ARIZ. REPUBLIC, July 6, 2002, at 1 (stating federal law prohibits SSA from sharing social security numbers with INS).

89. Marti Dinerstein, Giving Cover to Illegal Aliens: IRS Tax I.D. Numbers Subvert Immigration Law, CTR. FOR IMMIGR. STUD. 1, 2 (Nov. 2002) (describing process by which government discovers fraudulent SSNs).


93. Dinerstein, supra note 89, at 2 (noting inability of SSA to enforce illegal employment law).

94. Dinerstein, supra note 89, at 2 (pointing out SSA’s reliance on IRS for enforcement); SSA Begins Sending No-Match Letter to Employers for 2004, supra note 92, (explaining imposition of penalty not permitted until IRS notifies employer, not when no-match letter received).

employer.96 Some immigration experts argue that without sharing of information, each agency acts like its own government; facilitating the ease with which illegal immigrants can go without detection or prosecution.97 Recently, Diplomatic Security, the law enforcement branch of the State Department, recognized that document fraud and alien smuggling are “inextricably linked” and neither can be effectively combated without interagency cooperation.98

Another reason for the growth of the fraudulent document industry is that IRCA does not require employers to verify the authenticity of documents presented to them.99 Therefore, employees face few obstacles in obtaining employment in the United States if they can acquire false documents.100 Smugglers often obtain green cards and Social Security Cards and distribute them to immigrants based on similarity of appearance.101 Fake SSNs can be obtained easily, and enforcement at the border has forced frauds to use more sophisticated means of producing more valid-looking documents.102

96. Id. (suggesting options for employees caught using fraudulent SSNs); Rozemberg, supra note 88 at 1 (noting most caught employees leave before investigation begins). Because a forged social security card can be bought for only fifty dollars, workers often buy another or use the same fake card with another employer. Rozemberg, supra note 88, at 1.


98. Pushing the Border Out on Alien Smuggling: New Tools and Intelligence Initiatives: Hearing Before the Subcomm. on Immigration, Border Security, and Claims, H. Comm. on the Judiciary, 108th Cong. 9 (2004) (testimony of Joe D. Morton, Principal Deputy Assistant Sec’y, and Director, Diplomatic Sec. Service, Dep’t of State) [hereinafter Pushing the Border Out, Morton Testimony] (calling for cooperation among law enforcement branches of government against document fraud and alien smuggling); see also Secure America and Orderly Immigration Act, S. 1033, 109th Cong. § 124 (2005) (calling for sharing of government branches’ databases); COMBATING ALIEN SMUGGLING GAO REPORT, supra note 17, at 13 (emphasizing importance of information sharing to identify “connectivity” of each violation).


100. See, e.g., Andreas, supra note 5, at 117 (noting few requirements for employers to verify documents encourages use of false documents); Olvera & Gutierrez, supra note 52, at 15A (questioning likelihood employers unaware of employing illegal workers); Rozemberg, supra note 88, at 1 (pointing out obligation to enforce belongs to immigration agents, not employers).

101. See BINATIONAL STUDY, supra note 80, at 969 (describing one method by which smuggled migrants obtain fraudulent identification); Legislation Concerning Immigrant Issues: Hearing Before the Subcomm. on Immigration, Border Sec., and Claims, H.R. Comm. on the Judiciary, 105th Cong. 91-92 (1997) (statement of Rosemary Jenkins, Senior Fellow, Center for Immigration Studies) [hereinafter Legislation Concerning Immigrant Issues, Jenkins Statement] (reporting smugglers include fraudulent identification as part of “package deals”).

102. See Rozemberg, supra note 88, at 1 (quoting illegal immigrant whose fifty dollar false social security card worked for seven years); Juan Gabriel Ronderos, Identity Fraud and Transnational Crime, presented at Seventh Meeting of the CSCAP Working Group on Transnational Crime, Manila, Philippines (May 31-June 1, 2000) (arguing identity fraud more organized as result of laws imposed); Fake Green Cards,
1. Individual Taxpayer Identification Numbers and Matricula Consular

In 1996, the IRS began issuing Individual Taxpayer Identification Numbers (ITINs) to people who do not qualify to receive a Social Security Number but are nonetheless required to file federal income taxes. An IRS audit conducted in 1999 states that “over 340,000 of the ITINs were issued to self- documented illegal aliens.” Moreover, ITINs are not being used only for tax identification, but for other purposes such as obtaining drivers’ licenses.

As a result of feelings toward foreigners in America in the wake of the September 11th terrorist attacks, the Mexican government took a new tack towards supporting its nationals in the United States by lobbying at the state and local level for the acceptance of the Mexican identification card, Matricula Consular. Matriculas are only issued to Mexican nationals living outside Mexico and thus demonstrate to any United States authority that the holder of...
the card is residing in the United States illegally. Matriculas are accepted for the purpose of establishing identity, opening bank accounts, and obtaining drivers’ licenses. Not surprisingly, the majority of states accepting matriculas are those with the highest number of Mexican immigrants.

III. ANALYSIS

The most effective means by which to eradicate human smuggling from Mexico is to erect legal barriers, not physical ones. The current criminal laws designed to punish human smugglers are not severe enough to threaten them, as evidenced by the rapid increase in human smuggling operations in recent years. An expensive and technologically-advanced physical border alone will not deter desperate immigrants from attempting to cross, especially when they are aided by experienced smugglers and genuine-looking identification. Potential immigrants know that if they can reach American soil, the American government will do little to send them home. In fact, American businesses may make a conscious effort to keep them here.

The United States can take an affirmative step toward ceasing its encouragement of human smuggling through Mexico by passing provisions of the Border Protection, Antiterrorism, and Illegal Immigration Control Act and

107. See Matricula Consular ID Cards, supra note 106 (arguing acceptance of matriculas by American governments and businesses undermining illegal immigration enforcement). Mexico issued more than 2.2 million consular identification cards (CIDs) in 2002-2003. BORDER SECURITY GAO REPORT, supra note 105, at 1. Austin, Texas permits the use of CIDs to help its residents gain access to community courts and library cards. Id. at 7; see also Letter from House Homeland Security Committee Chairman Christopher Cox (R-Cal.), House Judiciary Committee Chairman F. James Sensenbrenner, Jr. (R-Wis.), House Judiciary Subcommittee on Courts, the Internet, and Intellectual Property Chairman Lamar Smith (R-Tex.), and House Appropriations Subcommittee on Homeland Security Chairman Harold Rogers (R-Ky.), to Tom Ridge, Secretary of Homeland Security (July 8, 2003) available at http://hsc.house.gov/text_release.cfm?id=47 (acknowledging matricula “breeder document for establishing a false identity”).

108. See BORDER SECURITY GAO REPORT, supra note 105, at 7-8. Some 1159 U.S. police departments accept the matricula as proof of identity, 160 financial institutions in the United States accept the matricula for the purposes of opening a bank account, and 13 states accept the matricula for issuing driver’s licenses. Id.

109. ID’s for Illegals, supra note 105, at 5 (citing sixty-four percent of matriculas issued in 2002 by consulates in Arizona, Texas, and California).

110. See supra notes 9-11 and accompanying text (suggesting stricter border enforcement leads to greater reliance on smugglers).

111. See 8 U.S.C. § 1324(a)(2) (2000) (setting forth law against human smuggling); supra note 35 and accompanying text (contrasting actual punishment to punishment prescribed by statute); supra text accompanying note 2 (noting sharp increase in smugglers apprehended in two years).

112. See supra note 61 and accompanying text (noting border reinforcements prescribed by IIRIRA); supra notes 69-70 and accompanying text (giving examples of border reinforcement operations prescribed by NAFTA); supra notes 100-102 and accompanying text (describing ease with which illegal immigrants obtain fraudulent identification).

113. See supra note 59 and accompanying text (citing relatively few illegal immigrants deported from United States).

114. See supra note 55 and accompanying text (reporting employers avoid employer sanctions if assist INS); supra text accompanying note 64 (noting employers not required to participate in electronic employee verification systems).
the Commercial Alien Smuggling Act. The increase in length of prison sentences is vital to deterring alien smuggling, but only if effectively enforced. It is also important for the government to educate the public about the dangers of human smuggling and the consequences of participating in this illegal activity.

President Bush’s guest worker plan will not decrease the incentive for people to be smuggled from Mexico into the United States. There is little reason for immigrant workers to register with the federal government for a plan that would deport them in three years with no possibility for permanent legal status. Immigrants likely would prefer to work in the United States illegally and evade detection indefinitely than participate in a program resulting in certain deportation.

Foreign workers who do register for the program will have up to six years to reside legally in the United States and most certainly will put down roots in the United States. The number of initially legal temporary laborers likely will strengthen the Mexican immigrant network in the United States, thereby encouraging those ineligible to participate in the plan to use smugglers to join family members and friends in the United States. Moreover, it will be difficult for the government to enforce deportation after three years because

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116. See supra note 40 and accompanying text (describing more serious punishment provided by Border Protection, Antiterrorism, and Illegal Immigration Act of 2005).
117. See supra text accompanying notes 43-44 (recognizing need to educate U.S. nationals and non-nationals about human smuggling).
118. See Andreas, supra note 5, at 109 (arguing Bracero instigated “mass” labor migration from Mexico to United States); Krikorian, supra note 74, at 2 (asserting government policies induce immigration); Martin, supra note 72, at ¶ 7 (reporting both Mexico and United States recognized Bracero program facilitated illegal immigration).
119. See Bustos & Gonzalez, supra note 84, at A1 (suggesting no incentive to register if no prospect of legal residency); Zarembo, supra note 51, at A1 (reporting current illegal workers find registration drawback to program).
120. See Bustos & Gonzalez, supra note 84, at A1 (reporting immigrants fear registering with government); Zarembo, supra note 51, at A1 (interviewing illegal garment workers who do not fear deportation and will not register for plan).
121. See Evaluating a Temporary Guest Worker Proposal, Papademetriou Testimony, supra note 16, at 167 (noting many illegal aliens in United States for years and now parents of citizen children); Andreas, supra note 5, at 110 (noting entrenchment of Mexican labor after Bracero program); supra note 78 and accompanying text (citing 4.9 million illegal immigrants deported during Bracero program); Krikorian, supra note 74, at 5 (recognizing people not goods, people have free will). Krikorian notes that laborers who come to the United States through guest worker programs serve as “magnets” for friends and family who might immigrate illegally. Krikorian, supra note 74, at 5.
122. See BINATIONAL STUDY, supra note 80, at 966 (reporting coyotes means by which workers with no job contacts can migrate to United States); Zarembo, supra note 51, at A1 (noting network of similar immigrants facilitates blending into United States). But see Evaluating a Temporary Guest Worker Program, Hutchinson Testimony, supra note 13, at 147 (suggesting provision of plan permitting travel between countries will ensure roots maintained in home country).
laborers can easily obtain new jobs with new identification.\footnote{123}{See Fake Green Cards, supra note 102 (describing ease with which fraudulent identification obtained); see also Krikorian, supra note 74, at 7. Krikorian hypothesizes that the need to register and track guest workers will overwhelm the currently backlogged immigration processing system. Krikorian, supra note 74, at 7.}

A temporary guest worker program would result in a bureaucracy that employers will seek to avoid because it imposes greater requirements on them in terms of wage levels and working conditions.\footnote{124}{See Martin, supra note 72, at ¶23 (suggesting employers deterred from hiring temporary guest workers to avoid compliance with governmental regulations). But see Evaluating a Temporary Guest Worker Program, Hutchinson Testimony, supra note 13, at 148 (assuming employers will report to government when foreign workers leave their employment).} In addition, because it will be impossible to prove that an employer sought American workers first, employers, particularly in agriculture, easily can hire illegal immigrants who will work for reduced wages and in deplorable conditions without recourse.\footnote{125}{See Fact Sheet, supra note 81 (stating employers required to look for American workers first but not suggesting plan for implementation of requirement); Bustos & Gonzalez, supra note 84, at A1 (discussing government’s previous attempts to coerce employers into compliance with guest worker program). In 1997, onion farmers in Georgia denounced the guest worker program in place at the time claiming the program’s required wages were too high. Bustos & Gonzalez, supra note 84, at A1; see also Germain, supra note 6, at 750 (pointing out program participants protected by U.S. labor laws).}

Creating a class of temporary workers does not eliminate the huge supply of illegal workers who will still be able to find jobs if they are successfully smuggled over the border.\footnote{126}{See supra text accompanying notes 77-80 (noting failure of employer compliance in Bracero program led to increase in illegal immigration).} In addition, the acceptance of ITINs and Matriculas at American banks and Departments of Motor Vehicles encourages, rather than deters, human smuggling because it facilitates the mainstreaming of illegal immigrants into America once they are here.\footnote{127}{See Joint Hearing on SSN and ITIN Mismatches and Misuse, Everson Statement, supra note 95, at 11 (suggesting ITIN has taken on identification validity of SSN); IRS Memo, supra note 104 (admitting ITINs counter-productive to INS goal of identifying illegal aliens).}

In issuing ITINs, the IRS is actually thwarting ICE’s efforts to identify and remove illegal immigrants in the United States.\footnote{128}{Dinerstein, supra note 89, at 2 (pointing out illegal residents receiving same tax benefits as legal residents); IRS Memo, supra note 104. Some immigrant advocates advise their clients to continue using fraudulent SSNs for identity purposes, but also to use their ITIN when dealing with the IRS. Dinerstein, supra note 89, at 2; Avila, supra note 105, at 1 (same).} Clearly, the IRS is more concerned with culling taxes from more people rather than curbing illegal workers.\footnote{129}{Dinerstein, supra note 89, at 2 (suggesting IRS’ goal in issuing ITINs to collect more tax revenue); Avila, supra note 105, at 1 (pointing out IRS presents workshops to educate immigrants on ITINs).} The very attractive message that ITINs convey to potential immigrants is that not only will they be able to work once they make it to the United States, but they also will enjoy access to the same public and private services as legal residents.\footnote{130}{See IRS Memo, supra note 104 (pointing out policy concern that illegal aliens gaining tax benefits over nonresident aliens); supra note 107 (discussing ways in which ITINs used besides tax identification).}

By accepting the Mexican Matricula Consular for the purpose of opening a
bank account, obtaining a driver’s license, and accessing other public services, these public and private institutions further the ease with which a successfully smuggled Mexican immigrant can blend into mainstream America.\textsuperscript{131} While these governments and businesses realize the financial benefit of extending their services to illegal aliens, they ignore their encouragement of further illegal immigration.\textsuperscript{132} State governments should not accept Matriculas for anything more than identification, because doing so is tantamount to granting amnesty to illegal aliens who have successfully crossed the border.\textsuperscript{133}

The ease with which identification documents may be forged helps smugglers obtain more customers.\textsuperscript{134} One way to impede the widespread use of fraudulent identification by migrants smuggled into the United States is to make the Social Security Card more secure and more difficult to forge.\textsuperscript{135} Knowing that United States travel documents are the most sought after in the world, Diplomatic Security must prosecute all cases of fraudulent document use at the border in order to deter smugglers from offering that service to immigrants.\textsuperscript{136}

Because the documents required for employment under existing laws are so easily forged, and fraudulent documents so easy to obtain, it must be mandatory that employers verify the identification of every applicant, regardless of whether the applicant might be illegal.\textsuperscript{137} Participation in a work eligibility


\textsuperscript{133} See Letter to Tom Ridge, Secretary of Homeland Security, supra note 107 (reporting FBI testimony regarding matriculas). In testimony before the House Judiciary Committee’s Subcommittee on Immigration, Border Security, and Claims, the FBI witness stated that the Matricula draws greater numbers of aliens who are smuggled because they believe that the Matricula will entitle them to benefits once they reach the United States. Id.

\textsuperscript{134} See supra note 101 and accompanying text (reporting immigrants obtain fraudulent identification from smugglers).

\textsuperscript{135} See Legislation Concerning Immigrant Issues, Jenks Statement, supra note 101, at 92 (suggesting measures government could take to secure Social Security Card).

\textsuperscript{136} See Pushing the Border Out, Morton Statement, supra note 98, at 8 (stating document fraud and alien smuggling go hand in hand). Joe Morton, Principal Deputy Assistant Secretary for Diplomatic Security, has recognized in congressional testimony that increasing investigations of document fraud should have the effect of thwarting human smuggling operations. Id. at 11.

\textsuperscript{137} See INS Report to Congress, supra note 62, at 3. The U.S. Customs and Immigration Service admitted that a volunteer program placing additional burdens on employers caused employers not to participate in the program, thereby limiting the programs usefulness in deterring illegal employment. Id. The evaluations also revealed that participating employers did not fully comply, thereby losing sight of the program’s purpose of deterring illegal employment, and thus causing discrimination against foreign-born, yet eligible, employees. Id.; see also Legislation Concerning Immigrant Issues, Jenks Statement, supra note 101, at 92 (arguing system
verification system must be mandatory because most employers are not likely to volunteer to participate in burdensome programs. 138 Only when such a system is enforced and non-complying employers are penalized, however, will the lure of guaranteed employment be tarnished for immigrants contemplating smuggling. 139

IV. CONCLUSION

People are not goods; humans deserve respect for their physical beings and freedom from exploitation. Tragedies like that which occurred in Victoria, Texas are sure to happen often if the United States continues to encourage human smuggling from Mexico. Because it is unlikely that the American government could ever achieve a total seal of the United States-Mexico border, the United States must focus on the underlying reasons for the prevalence of human smuggling from Mexico to the United States. The government must reconsider its desire for the economic benefits of the mainstreaming of illegal immigrants who arrive in the United States by way of smugglers in order to end that dangerous practice and save human lives.

When immigrants discover that they are able to work and live in the United States illegally, that message spreads among potential immigrant populations. Many of those potential immigrants, desirous of a more prosperous life in the United States, must obtain the services of a smuggler in order to reach America. In order to stop this message from being sent home to Mexico, the United States must focus on interior enforcement of its employment and immigration laws. Hopefully, in the long run, the creation of ICE and CBP will lead to greater coordination among branches of the government that can trace the money trail of human smuggling in order to cut off its source. The first remedial step the federal government can take is to stop issuing ITINs. Local governments must stop accepting Matricula Consulares. The acceptance of these cards for purposes other than identification demonstrates the local and national governments’ priority of exacting a fee for successfully reaching the United States.

Smugglers must also be deterred in order to make it more difficult for potential immigrants to obtain their services. The real threat of harsh punishment if caught must outweigh the economic reasons that human smugglers continue their business. Maximum sentences must be imposed on

138. INS Report to Congress, supra note 62, at 8 (stating noncompliance diminished effectiveness of program, failing to reduce unauthorized employment). The Report argues that placing the system online will make it more user-friendly for employers and therefore more likely to be utilized. Id. at 9.

139. See Andreas, supra note 5, at 112 (arguing failure of sanctions under IRCA increased accessibility of fraudulent documents for smuggled migrants); Weintraub, supra note 52, at 1230-31 (arguing readily available fraudulent documents bypass intention of employer sanctions). But see Massey, supra note 68, at 22 (claiming IRCA’s employer sanctions drove immigrant labor underground).
those caught in order to set an example for future smugglers.

On an international level, the American and Mexican people need to be educated about the dangers inherent in human smuggling. The families of Mexicans residing in the United States need to know that if their family members can only join them through the use of a smuggler, they may never reach them alive. Additionally, the United States and Mexico must work together to end human smuggling in order to put human life above economic gain.

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